	Introduced in testimony, page.	Copied in exhibit, page.
Certificate of Attorney General under act of February 11, 1908, as to precedence	2326	2327
Letter, Sanborn, J., to McClennan, June 10, 1915	2328	2327
Opinion, Hook, J	2329	2328
Opinion, Carland, J., dissenting	2346	2336
Decree	2350	2338
Assignment of errors	2352	2339
Orders enlarging time to docket case and file record, &c	2357	2342
Order approving condensed statement of evidence	2360	2343
Praecipe for record	2361	2344
Citation and service	2362	2345
Clerk's certificate	2363	2346
Stipulation as to record	2364	2347

X. List of exhibits.

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

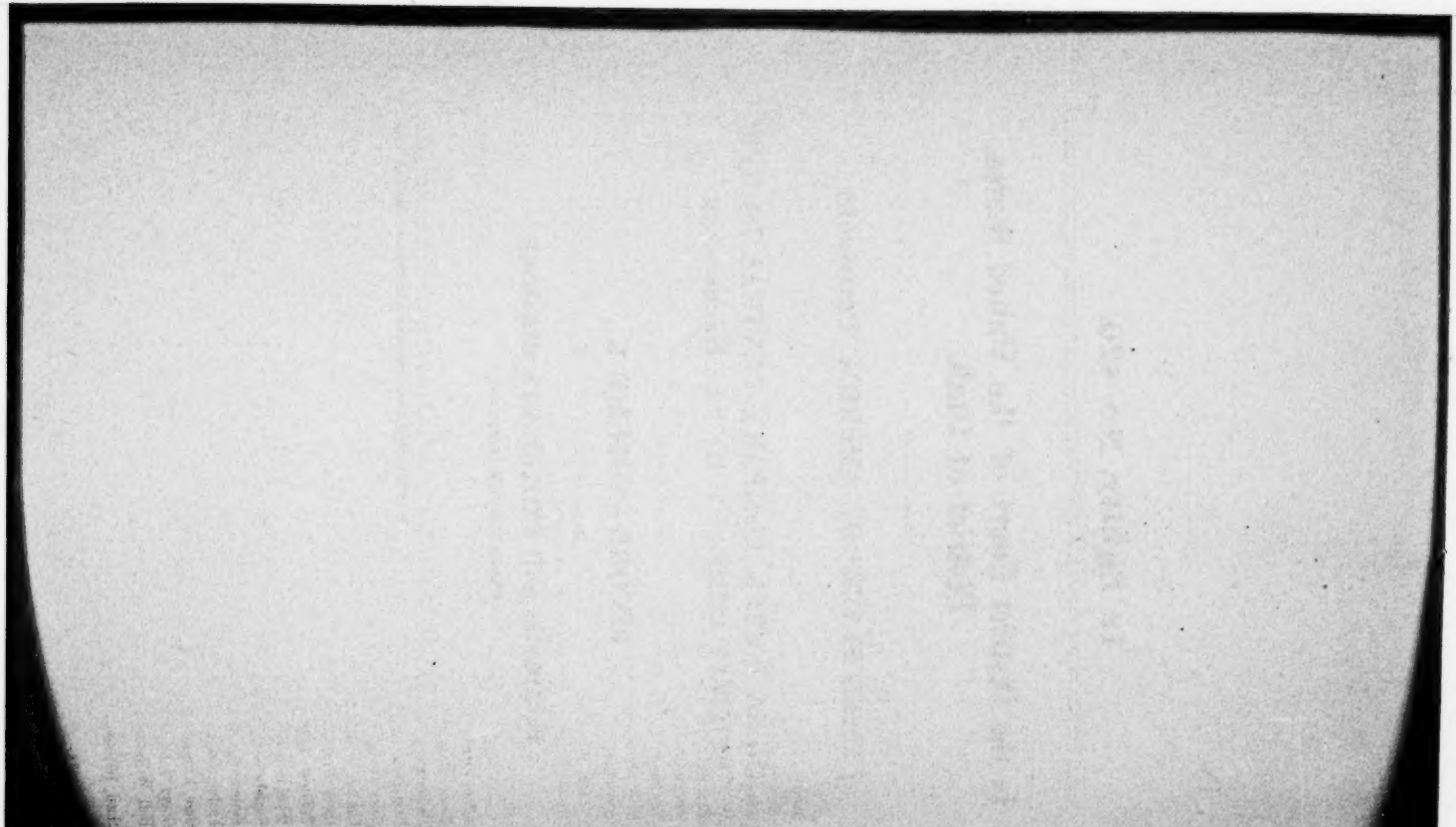
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 1.

PLEADINGS AND PETITIONER'S EVIDENCE.

Pages 1 to 393, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915



IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

In Equity, No. 420.

UNITED STATES, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, AND OTHERS, DEFENDANTS.

GENERAL INDEX.

	Page.
Petition	1
Answer of Southern Pacific Company, and others	26
Answer of Union Trust Company of New York	77
Order appointing examiner	80
Examiner's return of testimony and exhibits	83
Testimony for petitioner	83
Testimony for defendants	394
Petitioner's exhibits	1223
Defendants' exhibits	1677

(The left-hand marginal page references in the printed record are to the pages of the original record as filed.)

INDEX OF WITNESSES.

	Original.	Print.
Allen, Edwin S.	126	138
Boose, Benjamin T.	532	317
Breckenfeld, H. B.	843	457
Chambers, Edward	1939	937
Coles, Oscar L.	412	264
Conner, William H.	544	322
Davis, Frank H.	108	130
DePriest, John B.	500	303
Donaldson, Robert A.	1244	623
Englebright, H.	860	464
Ableman, John M.	1796	873
Fenkle, John E.	1146	578
Gage, Lyman W.	2099	1009
Griggs, John W.	2059	991
Hall, William W.	519	311
Heed, William	708	394
	787	431

	Original.	Print.
Hopkins, Timothy	1300	648
Horsburgh, James, jr	1256	629
Jackson, George Ross	1281	640
Johnson, Ralph Miller	516	310
Johnson, Seymour	1077	547
Klink, George T	1187	597
Kruttschnitt, Julius	1423	705
Lincoln, James C	54	106
Lister, Archie	1039	530
Lovett, Robert S	457	285
Luckett, Edgar Melville	1044	532
Lynch, Robert Newton	1699	829
Macallister, William	1856	899
Marshall, Charles C	1857	900
Martin, Henry Clay	754	416
McDonald, Angus D	422	268
Muir, John	12	88
Munroe, John A	644	366
Neill, Hugh	20	91
	1930	934
Norton, William Henry	1081	549
Pratt, R. H	887	476
Railton, Edward M	1123	568
Redington, C. H	1087	551
Richardson, G. F	1267a	634
Rossbottom, Thomas H	117	134
Ruhlander, Henry	408	262
	1908	923
Schumacher, Thomas S	133	141
Schwerin, R. P	1395	692
Sheedy, Patrick	1174	591
Simpson, James A	2539	1209
Slater, W. W	1030	526
Spence, Lewis J	2106	1012
Speyer, James	2476	1180
Sproule, William	206	175
Strobridge, James Harvey	716	398
Thayer, John V. B	2565	1220
Topping, Arthur A	434	274
Van Deventer, Andrew K	1862	902

LIST OF EXHIBITS.

Petitioner's Exhibit—	Introduced in testimony, page.	Copied in exhibits, page.
1. Large map of the United States	84	[1]1223
2. Act of July 1, 1862, Pacific Railroads	85	1223
3. Act of July 2, 1864, Pacific Railroads	85	1236
4. Act of March 3, 1865, Pacific Railroads	85	1249
5. Act of July 3, 1866, Pacific Railroads	86	1250
6. Act of July 27, 1866, Pacific Railroads	86	1251
7. Act of June 25, 1868, Pacific Railroads	86	1262

[1] Not copied.

Petitioner's Exhibit—Continued.	Introduced in testimony, page.	Copied in exhibits, page.
8. Resolution April 10, 1869, Pacific Railroads	86	1263
9. Act of March 3, 1871, Pacific Railroads	86	1265
10. Act of June 20, 1874, Pacific Railroads	86	1274
11. Act of June 19, 1878, Pacific Railroads	86	1275
12. Corporate History of Central Pacific Railroad Co.	86	1277
13. Corporate History of Southern Pacific Railroad Co	87	1282
14. Lists of officers and directors of Central Pacific Railroad Co. and Southern Pacific Railroad Co	87	1316
15. Reports of number of stockholders in Central Pacific Railroad Co., 1864–1877	87	1342
16. Reports of number of stockholders in Southern Pacific Railroad Co., 1868–1877	87	1414
17. Record of stockholders in Central Pacific Railroad Co. at meeting, April 12, 1898	88	1418
18. Agreement Transcontinental Association, September 28, 1883	90	1421
19. Agreement Transcontinental Association, November 8, 1883	90	1424
20. Agreement between Union Pacific Railroad Co., Southern Pacific Co., Central Pacific Railway Co., Southern Pacific Railroad Co., and Oregon Short Line Railroad Co., February 8, 1913	95	1428
21. Central Pacific Railroad Shareholding Co.—Extracts from records	95	1468
22. Report of Pacific Railway Commission and accompanying evidence	96 365	[1] 1476
23. Report by Mr. Morgan, of Committee on Pacific Railroads, March 29, 1897	101	[1] 1480
24. Agreement between Transcontinental Association and Pacific Mail Steamship Co., October 1, 1889	136	1480
25. Agreement between Panama Railroad Co. and Pacific Mail Steamship Co., December 16, 1895	136	1484
26. Agreement between Panama Railroad Co. and Pacific Mail Steamship Co., June 11, 1902	137	1502
27. Supplemental agreement between Panama Railroad Co. and Pacific Mail Steamship Co., June 11, 1902	137	1517
28. Travelers' Official Guide, June, 1885	141	1522
29. Record of stock in Central Pacific Railroad Co. deposited under plan of February 8, 1899	264	1525
30. Comparative statement of certain rates from New York to California by rail and water, and by rail	277	1599

[1] Not copied.

	Introduced in testimony, page.	Copied in exhibits, page.
Petitioner's Exhibit—Continued.		
31. Comparative statement of certain rates from California to New York by rail and water, and by rail	281	1611
32. Joint Freight Tariff on Wool from Corinne, Utah, and Marmol, Nevada, via El Paso to New York and Boston	282	1616
33. Memorandum of division of joint rates	313	1622
34. Statement of earnings and expenses of Central Pacific Railroad, January 1, 1888, to June 30, 1913	313	1630
35. Statement of operating income and operating expenses of Central Pacific Railway Co. in certain years	313	1634
36. Statement of operating income and operating expenses of Southern Pacific Co. in certain years	314	1635
37. Statement of expenditures for maintenance of ways and structures of Central Pacific Railroad Co., 1887–1901	314	1635
38. Statement of expenditures for maintenance of ways and structures of Southern Pacific Railroad Co. and connections, San Francisco to New Orleans, 1887 to 1901	314	1636
39. Statement of expenditures for additions and betterments (not including new lines) of Central Pacific Railway Co., January 1, 1887, to June 30, 1901	314	1636
40. Statement of expenditures for additions and betterments (not including new lines) of Southern Pacific Railroad Co. and connections, San Francisco to New Orleans, March 1, 1885, to June 30, 1901	314	1637
41. Statement of dividends of Central Pacific Railway Co., 1861 to June 30, 1913	315	1637
42. Statement of dates of opening of the several parts of the Central Pacific Railroad and the Southern Pacific Railroad	315	1638
43–44. Tonnage and revenue between west of Ogden and Atlantic seaboard via Ogden	315	1648
45–46. Tonnage and revenue between west of Ogden and Middle West via Ogden	315	1649
47–48. Tonnage and revenue between west of Ogden and Atlantic seaboard via El Paso	315	1649
49–50. Tonnage and revenue between west of Ogden and Middle West via El Paso	315	1650
51. Tonnage and revenue on Central Pacific Railroad between west of Ogden and Atlantic seaboard via El Paso	315	1650

	Introduced in testimony, page.	Copied in exhibits, page.
Connor's Exhibit—Continued.		
52. Tonnage and revenue on Central Pacific Railroad between west of Ogden and Middle West via El Paso	315	1651
53. Tonnage and revenue between Nevada and Atlantic seaboard via El Paso	315	1651
54. Tonnage and revenue between Nevada and Middle West via El Paso	315	1652
55. Tonnage and revenue between Oregon and northern California and Atlantic seaboard via El Paso	315	1652
56. Tonnage and revenue between Oregon and northern California and Middle West via El Paso	315	1653
57. Tonnage and revenue between San Francisco and Oakland and Atlantic seaboard via El Paso	315	1653
58. Tonnage and revenue between San Francisco and Oakland and Middle West via El Paso	315	1654
59. Acceptance by Central Pacific Railroad Co. of act of July 1, 1862	316	1654
60. Acceptance by Union Pacific Railroad Co. of act of July 1, 1862	316	1657
61. Form of certificate for stock in Central Pacific Railroad Co	316	1659
62. Agreement of Transcontinental Association with Pacific Mail Steamship Co. October 1, 1889 (same as Exhibit 24)	318	1660
63. Agreement of formation of Transcontinental Association December 1, 1887	319	1661
64. Official map classifying territories	324	1666
65. Proportion of joint rates accruing to different lines	326	1666
66. Statement of tonnage from W. H. Connor's territory to California via Sunset Route	327	1667
67. Statement of mileage in and from W. H. Connor's territory	331	1668
68. Statement of carload shipments to California from W. H. Connor's territory, 1901 to 1908	333	1669
69. Statement of number of carloads from W. H. Connor's territory to California, 1912	333	1669
70. Statement of carloads to central and northern California from Cincinnati territory, July to September, 1914	335	1669
71. Same as Exhibit 18	367	1670
72. Same as Exhibit 19	368	1671
73. Statement of tonnage exchanged at Ogden between Union Pacific Railroad and Southern Pacific Co., 1906 to 1914	368	1671
74. Skeleton plan of through lines	393	1671

	Introduced in testimony, page.	Copied in exhibits, page.
Petitioner's Exhibit—Continued.		
75. Acceptance by Southern Pacific Railroad Co. of act of July 27, 1866	393	1671
76. Acceptance by Southern Pacific Railroad Co. of act of March 3, 1871	393	1673
77. Report of commissioners to settle debt of Central Pacific Railroad Co., February 15, 1899	999	1674
Defendants' Exhibit—		
1. Map of lines prior to January 1, 1870	395	[1] 1677
2. Map of lines prior to January 1, 1875	396	[1] 1677
3. Map of lines prior to January 1, 1880	396	[1] 1677
4. Map of lines prior to January 1, 1882	396	[1] 1677
5. Map of lines prior to March 1, 1885	396	[1] 1677
6. Map of lines prior to July 2, 1890	397	[1] 1677
7. Map of lines operated July 2, 1890	397	[1] 1677
8. Circular of Central Pacific Railroad and leased lines August 15, 1879	556	1677
9. Circular of Central Pacific Railroad and leased lines April 27, 1882	557	1678
10. Circular of Central Pacific Railroad and leased lines October 8, 1881	557	1679
11. Circular of Central Pacific Railroad and leased lines January 12, 1882	558	1679
12. Circular of Central Pacific Railroad and leased lines March 6, 1882	558	1679
13. Circular of Central Pacific Railroad and leased lines April 1, 1882	559	1680
14. Circular of Central Pacific Railroad and leased lines May 3, 1882	559	1681
15. Circular of Central Pacific Railroad and leased lines May 20, 1882	559	1681
16. Circular of Central Pacific Railroad and leased lines July 24, 1882	560	1682
17. Circular of Central Pacific Railroad and leased lines January 1, 1883	560	1682
18. Circular of Central Pacific Railroad and leased lines August 21, 1884	560	1682
19. Circular of Central Pacific Railroad and leased lines October 5, 1884	561	1683
20. Lease of Southern Pacific Railroad and others to Southern Pacific Co., February 10, 1885	604	1683
21. W. E. Brown's minutes of meetings in New York in 1884	656	1688
22. Resolution of directors of San Francisco Chamber of Commerce	832	1702
23. Reports of Southern Pacific Co. to Secretary of the Interior, 1868–77, and reports of Central Pacific Railroad Co. to Secretary of the Interior, 1873–77	870	1704

[1] Not copied.

Defendants' Exhibit—Continued.	Introduced in testimony, page.	Copied in exhibits, page.
24. Report of lines leased to Central Pacific Railroad Co., 1877–1884	871	1758
25. Decision of California Railroad Commission, February 24, 1913	875	1769
26. Supplementary opinion of California Railroad Commission, February 24, 1913	884	1782
27. First refunding 4 per cent mortgage of Central Pacific Railway Co. to Central Trust Co., August 1, 1899	900	1788
28. Three and one-half per cent mortgage of Central Pacific Railway Co. to United States Trust Co., August 1, 1899	900	1829
29. Four per cent European loan indenture of Central Pacific Railway Co., Southern Pacific Co., and United States Trust Co., March 1, 1911	901	1870
30. Settlement agreement between the United States and Central Pacific Railroad Co., February 1, 1899	902	1908
31. Report of United States Pacific Railway Commission	919	[1] 1921
32. Senate report, February 17, 1890	920	[1] 1921
33. Senate report, January 28, 1895	920	[1] 1921
34. House report, July 21, 1894	920	[1] 1921
35. Senate report, May 1, 1896	920	[1] 1922
36. Senate bill, April 17, 1896	921	1922
37. House report, April 25, 1896	921	[1] 1938
38. House bill, January 7, 1897	921	1939
39. Senate report, April 1, 1897	921	[1] 1956
40. Senate bill, March 16, 1897	921	1956
41. Senate document. Letter from C. P. Huntington	922	1960
42. Letter from Secretary of the Treasury relative to interest on claims for transportation, May 12, 1900	922	1960
43. Letter from Acting Secretary of the Treasury, February 4, 1910	922	1960
44. Senate bill, January 13, 1897	923	1962
45. House bill, July 12, 1897	923	1965
45a. Plan of readjustment of debt of Central Pacific Railroad Co. (Exhibit B of answer.)	926	[1] 1967
46. Articles of association of Central Pacific Railway Co., July 26, 1899, and amendments	931	1967
47. Deed of conveyance by Central Pacific Railroad Co. to Central Pacific Railway Co., July 29, 1899	931	1978
48. Indenture subordinating lease of Central Pacific Railroad to lien of first refunding mortgage	931	1983

[1] Not copied.

Defendants' Exhibit—Continued.	Introduced in testimony, page.	Copied in exhibits, page.
49. Indenture subordinating lease of Central Pacific Railroad to lien of 3½ per cent bonds	932	1987
50. Pleadings in United States *v.* Union Pacific Railroad Co	933	1990
51. Pacific Mail Steamship Co. Circular and corporate proceedings as to Panama Canal	935	2219
52. Application of Southern Pacific Co. to Interstate Commerce Commission as to operation of Pacific Mail Steamship Co	937	2229
53. Report of the Attorney General, November 30, 1899	995	2239
54. Map of lines operated by Southern Pacific Co	1014	[1]2242
55. Small map of lines operated by Southern Pacific Co	1014	[1]2242
56. Map of all transcontinental lines, December 31, 1900	1022	[1]2242
57. Map of all transcontinental lines, October 1, 1914	1028	[1]2242
58. List of lines maintaining soliciting organizations in California	1040	2242
59. List of lines maintaining soliciting organizations in Atlantic seaboard territory	1040	2243
60. Statement of passenger-train service on Sunset Route, 1883–1914	1044	2245
61. Statement of passenger-train service on Ogden Route, 1883–1914	1045	2246
62. Comparative statement of tonnage, Atlantic seaboard and all other territory, via Ogden	1048	2247
63. Tonnage and revenue between west of Ogden, north of Banning, and Atlantic seaboard via El Paso	1051	2247
64. Tonnage and revenue between west of Ogden, north of Banning, and Middle West via El Paso	1051	2248
65. Comparison of last two exhibits	1052	2248
66. Tonnage and revenue on Central Pacific Railroad between west of Ogden and Atlantic seaboard via Ogden	1053	2249
67. Tonnage and revenue on Central Pacific Railroad between west of Ogden and Middle West via Ogden	1053	2249
68. Comparison of last two exhibits with Petitioners' Exhibits 51 and 52	1054	2249
68½. Tonnage and revenue between Nevada and Atlantic seaboard via Ogden	1054	2250
69. Tonnage and revenue between Nevada and Middle West via Ogden	1054	2250
70. Comparison of last two exhibits with Petitioners' Exhibits 53 and 54	1054	2251

[1] Not copied.

	Introduced in testimony, page.	Copied in exhibits, page.
Defendants' Exhibit—Continued.		
71. Tonnage and revenue between Oregon and northern California and Atlantic seaboard via Ogden	1055	2251
72. Tonnage and revenue between Oregon and northern California and Middle West via Ogden	1055	2252
73. Comparison of last two exhibits with Petitioners' Exhibits 55 and 56	1055	2252
74. Tonnage and revenue between San Francisco and Oakland and Atlantic seaboard via Ogden	1057	2253
75. Tonnage and revenue between San Francisco and Oakland and Middle West via Ogden	1057	2253
76. Comparison of last two exhibits with petitioners' exhibits 57 and 58	1057	2253
77. Tonnage between southern California north of Banning and Oregon and Atlantic seaboard via Ogden and El Paso	1058	2254
78. Tonnage between southern California north of Banning and Oregon and Middle West via Ogden and El Paso	1059	2254
79. Tonnage between California north of Mojave and Middle West via all gateways, separately.	1059	2254
80. Tonnage between California north of Mojave and Atlantic seaboard via all gateways, separately	1059	2255
81. Tonnage interchanged between Southern Pacific Co. and Union Pacific Railroad Co. at Ogden	1062	2255
82. Comparison of Middle West tonnage having origin or destination on Central Pacific bond-aided lines with that having origin or destination elsewhere on Southern Pacific Co. lines	1064	2256
83. Comparison of Atlantic seaboard tonnage having origin or destination on Central Pacific bond-aided lines with that having origin or destination elsewhere on Southern Pacific Co. lines.	1064	2256
84. Chicago, Milwaukee & St. Paul Railway—Alternative routes	1071	2256
85. Union Pacific Railroad—Alternative routes	1071	2256
86. Missouri Pacific Railroad—Alternative routes	1072	2257
87. Atchison, Topeka & Santa Fe Railway—Alternative routes	1072	2257
88. Great Northern Railway—Alternative routes	1073	2257
89. Chicago & Northwestern Railway—Alternative routes	1074	2257
90. Chicago, Rock Island & Pacific Railway—Alternative routes	1075	2257

Defendants' Exhibit—Continued.	Introduced in testimony, page.	Copied in exhibits, page.
91. Chicago, Burlington & Quincy Railroad—Alternative routes	1075	2257
92. Pennsylvania Railroad—Alternative routes	1075	2257
93. Baltimore & Ohio Railroad—Alternative routes	1076	2257
94. New York Central Railroad—Alternative routes	1076	2257
95. Extracts from Commercial and Financial Chronicle	1211	2268
96. Bill in equity in Circuit Court for Ninth District against Southern Pacific Company	1216	2279
97. Lease by Central Pacific Railway Co. to Southern Pacific Co., March 1, 1912	1218	2297
98. Mortgage by Southern Pacific Co. to Union Trust Co., August 1, 1899	1219	2304

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius P. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, Defendants.

Original petition.

(Filed February 11, 1914.)

To the honorable the judges of the District Court of the United States for the District of Utah, sitting in equity:

The United States of America, by its attorney for the District of Utah, acting under direction of the Attorney General, brings this proceeding in equity against Southern Pacific Company, Central Pacific Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills.

The defendants above named are restraining and attempting to monopolize, and are monopolizing, trade and commerce in respect of the transportation of persons and property between the points hereinafter mentioned, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and are violating the provisions of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," as amended and supplemented (the last-mentioned act and the amendments and supplements thereto being known and hereinafter referred to as the Pacific railroad laws). This proceeding is brought to prevent and restrain the defendants from further violating the aforesaid acts of Congress.

On information and belief petitioner alleges and shows:

I.

Southern Pacific Company is a Kentucky corporation, with
3 general offices at Beechmont, in that State, and with other offices in San Francisco, California, and New York City.

Central Pacific Railway Company is a Utah corporation, with general offices at Salt Lake City, Utah.

Union Trust Company of New York is a New York corporation, with its principal offices in New York City, and, as trustee for the Southern Pacific Company under a certain mortgage, more particularly described hereinafter, holds the capital stock of the Central Pacific Railway Company.

William Sproule is a resident of San Francisco, California, and is president and a director of the Southern Pacific Company and a director of the Central Pacific Railway Company.

Julius Kruttschnitt is a resident of New York City, New York, and chairman of the executive committee of the Southern Pacific Company and a director thereof.

Lewis J. Spence is a resident of New York City, New York, and a director of the Southern Pacific Company and its director of traffic, and also traffic manager of the Central Pacific Railway Company.

Ogden Mills is a resident of Staatsburg, New York, and a director of the Southern Pacific Company.

Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, Robert Goelet, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonce F. Loree, Eric P.
4 Swenson, and James N. Wallace, are each residents of New York City, New York, and directors of the Southern Pacific Company.

The said William Sproule, as president and as a director, and the said Julius Kruttschnitt, as chairman of the executive committee and as a director, and the other directors above named, as such, being all of the directors of the Southern Pacific Company, control and direct the policies and acts of both the Southern Pacific Company and the Central Pacific Railway Company, and are responsible for the continuance of the hereinafter-described combinations and monopolizations in restraint of interstate and foreign trade and commerce, effected by said Southern Pacific Company through its domination, control, and operation of the Central Pacific Railway Company, and are likewise responsible for the violation by said companies of the laws herein referred to as the Pacific railroad laws.

II.

Southern Pacific Company owns and operates the "Sunset Route," joint rail-and-water service which moves traffic between New York ty and Pacific coast terminals in California and Oregon. This ute is composed of the fleet of the Southern Pacific Company own as the "Atlantic Steamship Lines," whose vessels ply regularly between New York and the Gulf ports of New Orleans, Louisiana, and Galveston, Texas, and of railroads forming an unbroken line between these Gulf ports and San Francisco, alifornia, and Portland, Oregon. These railroads are owned by rporations which have leased them to the Southern Pacific Company, the latter also controlling such lessee corporations through ock ownership. The names of the controlled companies and the ations of this through railroad line owned by them, respectively, are:

(1) Morgan's Louisiana and Texas Railroad and Steamship Company, a Louisiana corporation, which owns the line from New Orleans to Lafayette, Louisiana, together with branch lines.

(2) Louisiana Western Railroad Company, a Louisiana corporation, which owns the line from Lafayette, Louisiana, to Sabine River, Texas, together with branch lines.

(3) Texas and New Orleans Railroad Company, a Texas corporation, which owns the line from Sabine River to Houston, Texas, together with branch lines.

(4) Galveston, Harrisburg and San Antonio Railroad Company, a Texas corporation, which owns the line from Houston and from Galveston, Texas, to Rio Grande, New Mexico, together with branch lines.

(5) Southern Pacific Railroad Company, a California corporation, which owns the line from Rio Grande, New Mexico, via Yuma, Arizona, to Los Angeles, California, and two routes thence to San Francisco, California—the "Coast Line" via Santa Barbara and the "San Joaquin Valley Line" via Fresno.

The Southern Pacific Railroad Company also owns a line from San Francisco to Tehama, California, and another from the northern boundary of California to Portland, Oregon, and controls through stock ownership various other corporations which own railroads in California, Arizona, and New Mexico.

The Southern Pacific Company also owns a majority of the capital stock of the Pacific Mail Steamship Company, which operates a line of steamships from San Francisco to Hawaii and the Philippine Islands, China, Japan, and other Oriental points. It likewise owns or controls a line of steamships from San Francisco to Panama,

which, in connection with the Panama Railroad crossing the Isthmus and ships running in connection therewith, constitutes a through line from San Francisco to New Orleans and New York City. It also owns and operates a line of steamships from New Orleans to Havana, Cuba.

The Central Pacific Railway Company was formed July 20, 1899. It owns the following railroads:

(1) A line from near Ogden, Utah, to San Francisco, California.

(2) A line extending north from Roseville, California, via Marysville, Tehama, and Weed, to the northern boundary of California.

7 (3) A line running from the northern boundary of California to Kirk, Oregon, and a short line from Oakridge to Natron, Oregon.

(4) A line from Lathrop, California, extending in a southerly direction to Goshen Junction, California.

(5) A line from Oakland to San Jose, California, and a line from Niles to Redwood, California.

(6) A line about five hundred miles long, extending from Hazen, Nevada, in a southerly direction, to Mojave, California.

(7) Important branch lines in Nevada and California.

It also owns about four hundred locomotive engines and about ten thousand cars—including passenger, baggage, postal, dining, observation, refrigerator, and freight cars—and depots, station houses, telegraph lines, wharves, piers, car and repair shops, together with appurtenances, tools, and other equipment used in the maintenance and operation of its railroad.

The Central Pacific Railway Company is successor to the Central Pacific Railroad Company, all of whose properties it purchased in 1899. The last-named company had been formed in 1870, by successive consolidations, under the laws of California, of the following corporations:

The Central Pacific Railroad Company of California, the
8 Western Pacific Railroad Company, the San Francisco, Oakland and Alameda Railroad Company, the San Joaquin Valley Railroad Company, and the California and Oregon Railroad Company, all California corporations.

The said Central Pacific Railroad Company of California is the same railroad company mentioned in the act of Congress approved July 1, 1862 (12 Stat., 489), and in the various acts amendatory and supplemental thereto. The Western Pacific Railroad Company is the same corporation mentioned in the act of Congress of March 3, 1865, and May 25, 1866, amending said act of July 1, 1862 (13 Stat. 504; 14 Stat., 356).

Said Southern Pacific Company owns the capital stock of the Central Pacific Railway Company and, since April 1, 1885, has controlled and operated under certain leases its several properties.

On August 1, 1899, the Southern Pacific Company executed an instrument known and hereinafter referred to as the "Southern Pacific Company's four per cent mortgage (Central Pacific Company's stock collateral)", to secure $36,818,500 of four per cent bonds, secured by pledge with the Union Trust Company of New York of practically the entire stock of the Central Pacific Railway Company—$67,275,000 common and $17,400,000 preferred—which stock this trust company holds as collateral security for the satisfaction of said indebtedness.

III.

California was the first portion of the Pacific slope to be exploited by American enterprise. It was cut off from the settled regions of the country by a wilderness. From the time of its acquisition proposals, inspired by various motives, some military or political, and others commercial, were repeatedly made to Congress to connect it with the trans-Mississippi States by a railroad either owned or aided by the Government. Domestic and foreign complications gave further impetus to this movement, which culminated in the Pacific railroad act of 1862 (12 Stat., 489). This act chartered the Union Pacific Railroad Company, whose powers and duties were prescribed therein and in amendatory acts. It further provided for the construction in sections of a transcontinental line, and for the issue of land patents and interest-bearing bonds of the United States to the said Union Pacific Railroad Company and to associated enterprises, including the above-mentioned Central Pacific Railroad Company of California and Western Pacific Railroad Company, as successive sections of their several railroads should be completed. Of the various routes that had been suggested Congress selected what was known as the "Northern Route", extending from a point on the Missouri River opposite Council Bluffs, Iowa, to the California coast via Ogden, Utah. It was under this act, as subsequently amended and supplemented, that the Union Pacific Railroad Company built that section of this through line between the Missouri River and Ogden, and the Central Pacific Railroad Company of California and the Western Pacific Railroad Company together completed the line to San Francisco. The line from a point about five miles west of Ogden to San Francisco is about seven hundred and thirty-seven miles in length.

The general purposes of the act of 1862 are indicated by its title, already quoted. In section 18 the purposes of the act are thus stated:

"And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

The far-reaching plans of Congress are thus plainly disclosed. It was intended that the road, although built by different companies, should be run as one connected, continuous through line. Section 12 of the act of 1862 (12 Stat., 489) contains the following requirement, which is substantially repeated in section 15 of the act of 1864, cited below:

"The track upon the entire railroad and branches shall be
11 of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast * * *; the whole line of said railroad and branches and telegraph line shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line."

Notwithstanding the liberal provisions of the act of 1862, work on the transcontinental line did not progress rapidly. This led to the amendatory act of July 2, 1864 (13 Stat., 356), which doubled the land grants, accepted on behalf of the Government a second, in lieu of a first, mortgage, and provided that only one-half of the compensation for services rendered for the Government by said companies should be required to be applied to the payment of bonds issued by the Government in aid of the construction of said road.

This legislation required that the railroads so constructed should afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of the others. (13 Stat., 356, sec. 15.)

The act approved June 30, 1874 (18 Stat., 111), made it an offense for any officer or agent of the companies authorized to construct the railroads composing this transcontinental line, or who engages in their operation, to refuse or fail so to use or operate the same.

IV.

The "Sunset Route" of the Southern Pacific Company is a natural competitor of all other carriers operating between points on the Atlantic coast and in the Middle West on the one hand and points on the Pacific coast and in the Orient on the other.

With the line of the Union Pacific Railroad Company extending from Ogden to Council Bluffs, and its various connections running to the Atlantic seaboard, the line of the Central Pacific Railway Company is and, since its construction, has been a constituent part of a through all-rail transcontinental route for the movement of interstate and foreign traffic between points on the Atlantic seaboard and in the Middle West on the one hand, and all points on the Pacific coast of the United States, as well as points in the Orient, on the other.

The Central Pacific Railway Company, in conjunction with its aforesaid connections, is, and for many years has been, a natural competitor of the Southern Pacific Company in the transportation of traffic between the points above named. The volume of traffic for which said lines are natural competitors is large and important.

The lines of the Central Pacific Railway Company connect at or near Fresno, California, with those of the Atchison, Topeka & Santa Fe Railway Company, and form, with other connections of the last-named company, a route which is in natural competition with the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and many other points in central and northern California, on the one hand, and points in Arizona, New Mexico, Texas, and Louisiana, including Phoenix, El Paso, San Antonio, Houston, Galveston, and New Orleans, on the other.

The lines of the Central Pacific Railway Company connect at San Francisco Bay with various steamship lines engaged in coastwise and foreign trade (including lines operating between Pacific and Atlantic ports via the Isthmuses of Panama and Tehuantepec), to and from ports in Alaska, Hawaii, the Philippines, and Asia; and the through routes so formed are natural competitors of the Southern Pacific Company and its water-line connections hereinabove described.

The Central Pacific Railway Company is now constructing a railroad from Weed, California, to Natron, Oregon, where it will connect with lines of the Southern Pacific Company leading to Portland, about one hundred miles to the north. If independent of the Southern Pacific Company, the Central Pacific Railway Company, at moderate cost, could extend its line from Natron to Portland. or,

in consideration of trackage rights granted to the Southern Pacific Company between Tehama and the northern boundary of California, the Central Pacific Railway Company could obtain similar
14 trackage rights over the Southern Pacific line between Natron and Portland. This accomplished, there would be in place of the present single railroad two competitive railroads between San Francisco and Portland. Petitioner alleges on information and belief that if the Central Pacific were thus free to act in its own interests the existence of two such competitive railroads would in the near future become an assured fact.

The lines now owned by the Central Pacific Railway Company, in so far as then existing, were operated prior to 1885 in connection with the lines of the Union Pacific Railroad Company as a continuous connecting route between San Francisco and the Missouri River, with connections eastward to the Atlantic Ocean, and were in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation.

V.

By an instrument dated February 17, 1885, all railroads, equipment, and other properties owned by the Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, were leased to the Southern Pacific Company for a term of ninety-nine years, and all leases of the Southern Pacific Railroad Company's properties held by said Central Pacific Railroad Company were by the same instrument transferred to said Southern Pacific Company. Under that and subsequent leases and amendments
15 the Southern Pacific Company has ever since controlled and operated said properties and the additions thereto. One of such subsequent leases, dated December 7, 1893, by article 5, expressly abrogated the lease of February 17, 1885. Copies of these several instruments are hereto attached, marked "Exhibit A", and made a part hereof.

On February 29, 1912, the Central Pacific Railway Company purchased numerous short railroad lines, aggregating about seven hundred miles, in California and Oregon, composing for the most part the line hereinbefore described as extending from Hazen, Nevada, to Mojave, California, and between Weed, California, and Natron, Oregon. On March 1, 1912, these lines were leased to the Southern Pacific Company, which has since operated and controlled them.

Shortly after the organization of the Central Pacific Railway Company, in 1899, and its acquisition of the properties of the Central Pacific Railroad Company, the Southern Pacific Company pur-

chased all of its capital stock, and has since continued to be the owner thereof.

Both the Southern Pacific Company and the Central Pacific Railway Company are directed and controlled by a single management—that of the Southern Pacific Company; the officers and directors of the Southern Pacific Company exercise similar functions in the control, management, and operation of the Central Pacific Railway Company; the maintenance of both lines is under the direct supervision and control of the chairman of the executive committee of the Southern Pacific Company, whose headquarters are in New York City. All of the mileage and business of the Central Pacific Railway Company are thus under the direct, single, and complete control of the Southern Pacific Company, both as to rates and the routing of passengers and freight.

The Southern Pacific Company acquired the capital stock of the Central Pacific Railway Company and leased the properties of that company with the purpose and effect of preventing competition between the lines of the said Central Pacific Railway Company and its connections and the lines of the Southern Pacific Company in the transportation of passengers and freight in interstate and foreign commerce.

Also, the control of the Central Pacific Railway Company by the Southern Pacific Company prevents the establishment of a competitive route between San Francisco and Portland as aforesaid.

Again, that portion of the line of the Central Pacific Railway Company, hereinbefore described as extending from Hazen, Nevada, to Mojave, California, connects at the latter point with lines of the Atchison, Topeka & Santa Fe Railway Company, and with connections of the last-named company forms a route which, with joint traffic or prorating arrangements between the two companies, would be in natural competition with the Southern Pacific Company and its connections for traffic between points on the Central Pacific Railway Company and tributary territory and points in Arizona, New Mexico, Texas, and other Southern States; but through the control of the Central Pacific Railway Company by the Southern Pacific Company the establishment of such joint traffic or prorating arrangements between the former and the Atchison, Topeka & Santa Fe Railway Company is prevented.

The ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company, and its leases of the properties of that company, and its domination, management, and control thereof, as hereinabove set forth, constitute a combination in restraint of interstate and foreign trade and commerce and

a monopolization thereof in violation of the act of July 2, 1890 (26 Stat., 209).

VI.

As aforesaid, one of the objects of the Pacific railroad laws was to aid the construction of a transcontinental route for the movement of interstate and foreign traffic. It was further intended that such route should be controlled, managed, and operated as one continuous, connected line without discrimination against or adverse to the interests of any of its constituent parts.

In respect of traffic carried over the "Sunset Route" between points on the Atlantic and Pacific coasts and tributary terri-
18 tory, the Southern Pacific Company secures the entire haul and, consequently, the entire revenue. In respect, however, of traffic carried between such points via the lines of the Central Pacific Railway Company through the Ogden gateway, the Southern Pacific Company secures the haul only from San Francisco to Ogden—less than eight hundred miles out of a total of about three thousand two hundred miles; and consequently receives but about twenty-five per cent of the revenue. Therefore, it is in the interest of the Southern Pacific Company to carry, and by reason of its control of the Central Pacific Railway Company it has the power to and does carry, as much of such traffic as possible via its "Sunset Route", sending through the Ogden gateway only such portion thereof as it is unable to control for the "Sunset Route", thereby discriminating against the Central Pacific Railway Company.

By reason of its greater interest in the "Sunset Route", the Southern Pacific Company, in its operation of the line of the Central Pacific Railway Company from San Francisco to Ogden as a part of a continuous connected line from the Missouri River to the Pacific Ocean, does not give to such line equal advantages and facilities, as required by the Pacific railroad laws, but discriminates against both the Central Pacific and Union Pacific lines and in favor of its "Sunset Route" by forwarding via the latter traffic originating or ending on the lines of the Central Pacific Railway Company or in territory tributary thereto.

19 Through its control of the Central Pacific Railway Company the Southern Pacific Company prevents joint traffic or prorating arrangements between the former and the Union Pacific Railroad Company, naturally its most important transcontinental and interstate connection.

The Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and

Union Pacific railroads and other eastern connections, thereby preventing competition and denying equal advantages and facilities as to rates, time, and transportation.

Maintenance by the Southern Pacific Company of Central Pacific Company's properties, moreover, compared with that of the "Sunset Route", is so inefficient as to discourage eastern travel and transportation via the Ogden route, and does not afford and secure thereto equal advantages and facilities as to time and transportation.

The Southern Pacific Company has heretofore, and does now, control, maintain, and operate said Central Pacific Railway Company in the interest of its "Sunset Route" and adverse to the interest of the Central and Union Pacific companies, and has not and does not afford or secure to said Central and Union Pacific companies equal advantages and facilities as to rates, time, and transportation, all in violation of the Pacific railroad laws.

VII.

Prayer.

Wherefore petitioner prays:

(1) That writs of subpœna issue directed to the several defendants herein, commanding them and each of them, to appear herein and answer, but not under oath (that being expressly waived), the foregoing allegations, and to abide by and perform such orders or decrees as the court may make.

(2) That the court adjudge and decree that the lines of railway and transportation known and herein described as the "Sunset Route", operated by the Southern Pacific Company, and those of the Central Pacific Railway Company, constitute competitive systems, and that the ownership by the defendant Southern Pacific Company of all or a controlling interest in the capital stock of the Central Pacific Railway Company, and its lease, control, and operation of the lines thereof, constitutes a combination in restraint of interstate and foreign trade and commerce, and an attempt to monopolize and a monopolization of a part of the same within the first and second sections of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and that said Southern Pacific Company be required to dispose of such capital stock, and cancel and relinquish its lease, control, management, and operation of the lines thereof, under the supervision and direction of the court, to persons not its stockholders or agents, nor otherwise under its control or influence; and that, pending such disposition

and release, it be enjoined from voting such stock, and from receiving dividends in respect of any part thereof, and from receiving any profits, emoluments, reward, or advantage in any way arising from the lease, control, management, and operation of the lines of said Central Pacific Railway Company.

(3) That the defendant Central Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each of them, be perpetually enjoined from in any manner recognizing or accepting the Southern Pacific Company, or any person or corporation acting in its interest, as the owner or holder of any of the shares of its capital stock, and from permitting said Southern Pacific Company, or any person or corporation acting for it, or in its interest, to vote such stock (whether by proxy or otherwise), and that it be enjoined from paying dividends upon such stock to said Southern Pacific Company, or to any person or corporation acting for it, or to any assigns of such company, unless authorized by the court, and from recognizing as valid any transfer, mortgage, pledge, or assignment of such stock by said Southern Pacific Company, or by any person or corporation in its interest, unless authorized by the court.

22 (4) That the control of the Central Pacific Railway Company by the Southern Pacific Company be decreed to be in violation of the aforesaid act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", and the acts amendatory thereof and supplemental thereto; and that said Southern Pacific Company, and its officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined from doing any act which will continue or tend to continue the domination, control, and operation of the Central Pacific Railway Company by the Southern Pacific Company, or by any person or corporation in its interest.

(5) That petitioner have such other further and general relief as the nature of the case may require and the court deem just.

WILLIAM W. RAY,
United States Attorney, District of Utah.

J. C. MCREYNOLDS,
Attorney General.

G. CARROLL TODD,
Assistant to the Attorney General.

JAMES W. ORR,
Special Assistant to the Attorney General.

EXHIBIT A.

Lease—Central Pacific Railroad Company to Southern Pacific Company.

This agreement, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States,

Witnesseth:

That whereas part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe Railroads;

And whereas the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line, and thereby secured an outlet to the Pacific other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

And whereas it now appears that the through business hitherto done by the Central Pacific Railroad will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic;

And whereas the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years, extending continuously from the Pacific Ocean to the Atlantic Ocean;

94 And whereas the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

And whereas the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company whereby its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

And whereas by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

And whereas both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

And whereas it is intended that such shall never be the effect of this agreement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbitrators hereinafter named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit: That it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

Now, therefore, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon or in connection with said railroad and telegraph lines, together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, operate, and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the county of Tulare, with the right to take, hold, operate, maintain, and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

96 The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same at its own expense; pay all taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt", and except the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness", now outstanding and secured by mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the principal of all indebtedness, the payment of which has heretofore been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the Government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of

the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon the said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement fully comply with the terms of, perform all the duties prescribed in, and discharge
27 all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the Thurman Act.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad and to transportation for said Government over the same as fully and faithfully as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earnings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: Provided, however, That any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific Railroad and other leased property for the year ending on the thirty-first day of December next preceding that date, the sum of one million two hundred thousand dollars
28 ($1,200,000). And the said Southern Pacific Company hereby

further in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and as revised and changed shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen cannot agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agree-

ment, or may submit to arbitrators in the manner and with the effect hereinbefore provided for, changes, and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased roads north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of Goshen, it become necessary to use any of the rolling stock or other personal property of the Southern Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

In testimony whereof the said Southern Pacific Company and the said Central Pacific Railroad Company have caused these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed,

suant to orders of their respective boards of directors, the day
year first herein written.
In duplicate.
(S. P. Co. corporate seal.)

W. E. BROWN,
President Southern Pacific Co.

E. C. NASH,
Secretary Southern Pacific Co.
(C. P. R. R. Co. corporate seal.)

LELAND STANFORD,
President Central Pacific Railroad Co.

E. H. MILLER, Jr.,
Secretary Central Pacific Railroad Co.

tral Pacific Railroad Company to the Southern Pacific Company—Modification of Lease.

This agreement made and entered into this first day of January, , by and between the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kenky, and the Central Pacific Railroad Company, a corporation formed and existing under the laws of the State of California the United States:

Whereas, heretofore and under date of February 17, 1885, an agreeent of lease was made and executed by and between the parties hereto; and

Whereas, since the date of the execution of such lease, the lines of railroad of the Central Pacific Railroad Company been extended from Delta, in the State of California, to the ndary line between the States of California and Oregon, forming the last-mentioned point a connection with the line of railroad of Oregon and California Railroad Company; and

Whereas, since the execution of such lease, and in or about Decem- 1887, the said line of railroad to the boundary line between the es of California and Oregon, constituting part of the line from Francisco, in California, to Portland, in Oregon, has been deliv- by the Central Pacific Railroad Company to the Southern ific Company for operation, and the railroad properties operated the Southern Pacific Company as lessee of the Central Pacific lroad have been materially changed; and

Whereas, by reason of the premises the Central Pacific Railroad pany has requested a modification of the terms and provisions the agreement of lease above referred to;

Now, therefore, this agreement witnesseth:

That in consideration of the premises and of the sum of one dolla by each of the parties hereto to the other in hand paid, the receip whereof is hereby ackuowledged, the parties hereto have undertaken covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacifi Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May 1889, and on each first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars ($1,360,000) instead of the sum of one million two hundred thousand dollars ($1,200,000), which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31 1887, and will pay to the Central Pacific Railroad Company
32 on the first Monday of May in each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hundred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and disbursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

In witness whereof the parties hereto have caused these presents to be signed by their respective second vice presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and years first above written.

(S. P. Co. corporate seal.) CHAS. CROCKER,
Second Vice President Southern Pacific Company.

G. L. LANSING,
Secretary Southern Pacific Company.

(C. P. R. R. Co. corporate seal.) CHAS. CROCKER,
Second Vice President Central Pacific Company.

E. H. MILLER,
Secretary Central Pacific Co.

Amendment to lease between Central Pacific Railroad Company and Southern Pacific Company.

This indenture, made and entered into this seventh day of December, eighteen hundred and ninety-three, by and between the Central Pacific Railroad Company of the first part and the Southern Pacific Company of the second part.

Whereas heretofore and under date of the 17th day of February, 1885, an agreement of lease was made and entered into by and between the parties hereto, which agreement of lease was afterwards modified by agreement between the same parties bearing date the first day of January, 1888; and

Whereas the operation of the demised properties under such lease has resulted in very considerable losses to the said Southern Pacific Company, and it thereby appears that by the operation of said agreement the said Central Pacific Railroad Company has been and is being benefited at the expense of the Southern Pacific Company, and a necessity has therefore arisen for a revision and change of such lease so that neither party thereto shall be benefited at the expense of the other;

Now, therefore, this instrument witnesseth:

That in consideration of the premises such agreement of lease has been and is hereby revised and changed by the parties hereto by substituting on and after the first day of January, 1894, for the existing provisions of such lease, as so modified as aforesaid, the terms, provisions, and conditions hereinafter provided and expressed, that is to say:

First. The party of the first part hereby leases to the party of the second part, for the period of ninety years from and including the first day of January next, the railroads of the party of the first part, together with its branches and leased lines, and all depots and station houses, equipments, and appurtenances of every kind and nature whatsoever to the said railroads, branches, and leased lines respectively belonging or appertaining.

Second. The party of the second part will pay to the party of the first a fixed yearly rental for the premises so leased, amounting to the sum of ten thousand dollars per annum, which rental shall be paid in four equal installments of twenty-five hundred dollars each on the first days of January, April, July, and October of each year during the pendency of this lease (excepting only the first day of January, eighteen hundred and ninety-four), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization.

Third. The party of the second part is to operate the said railroads, branches, and leased lines hereinbefore referred to. The said lessee shall apply the earnings and income derived therefrom to paying all operating expenses thereof and the incidental expenses connected therewith, including the sums payable for rentals of leased lines, and, according to their lawful priorities, to the payment of the current interest and sinking fund contributions or other payments from time to time becoming due and payable from the said Central Pacific Railroad Company, whether to the United States of America or to bondholders or others, during the existence of this lease.

And it is further provided and agreed by and between the parties hereto that on the first day of April in each year during the continuance of this lease the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments hereinbefore provided for or agreed or directed are made: Provided, however, That if at the time, viz: such 1st day of April, when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part for or in respect of advances or payments theretofore made by the party of the second part to or for or upon the request of the party of the first part for new additions or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs other than such as fall within the payments before provided to be made by the lessee out of the earnings or income, or for or in respect of any other sums which may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon.

And provided further, That if such balance of net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for any year, and which by the foregoing provisions hereof would be and became payable by said party of the second part to said party of the first part, shall exceed

the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part, then and in that event the said party of the second part shall be entitled to and shall retain to itself for its own use one-half part of any and all excess of such balance of net earnings and income over and above the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part.

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive interest upon all such advances at the rate of six per cent per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, upon the said demised premises and the income thereof until such advances are reimbursed, with interest, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

Fifth. The agreements between the same parties, dated February 7, 1885, and January 1, 1888, respectively, are hereby canceled, except so far as they relate to operation of said demised premises prior to January 1, 1894, and adjustment of accounts in respect to such operation thereof.

Sixth. This indenture may be at any time modified in any of its terms or provisions or canceled by agreement of the parties thereto.

In witness whereof the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
[SEAL.] By H. E. HUNTINGTON, *President.*
Attest:
W. M. THOMPSON, *Secretary.*

SOUTHERN PACIFIC COMPANY,
[SEAL.] By C. P. HUNTINGTON, *President.*
Attest:
G. L. LANSING, *Secretary.*

Between Central Pacific Railroad Company and Southern Pacific Company—Agreement.

Indenture, made and entered into this twenty-second day of March, 1894, by and between Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part.

Whereas, heretofore and under date of the 7th day of December, 1893, an indenture was made and entered into by and between the parties hereto, revising and changing the then existing agreement of lease between said parties, as by said indenture, dated the 7th day of December, 1893, by reference thereto will fully and at large appear; and

Whereas, it has been suggested, on behalf of the Central Pacific Railroad Company, that such last-mentioned indenture should be modified as hereinafter provided, and the Southern Pacific Company has assented to such proposed modification thereof;

Now, therefore, this indenture witnesseth:

That in consideration of the premises the parties hereto have
37 undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, viz:

First. The said indenture, dated the 7th day of December, 1893, is hereby modified by substituting in lieu of article fourth of said indenture the following article, that is to say:

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive lawful interest upon all such advances from the making until the reimbursement thereof, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary in writing at or before the making of such advances.

And it is further agreed between said Central Pacific Railroad Company and said Southern Pacific Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested but skilled in relation to the subject matter, and the award and decision of such arbitrators in writing shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award and decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

Second. The said indenture, dated the 7th day of December, 1893, as so modified by the first article hereof, is hereby in all respects ratified, approved, and confirmed.

In witness whereof, the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

(C. P. R. R. Co. corporate seal.) CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*
Attest:
W. M. THOMPSON, *Secretary.*

(S. P. Co. corporate seal.) SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*
Attest:
G. L. LANSING, *Secretary.*

This agreement, made and entered into this 15th day of April, A. D. 1897, by and between the Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part,

Witnesseth:

That whereas, under existing arrangements between the parties hereto, it has been the practice that on the first day of April in each year while operating the railroad of the party of the first part, the party of the second part should pay to the party of the first part such balance of income or earnings of the railroad, with the appurtenances, received by the party of the second part for the year ending on the 31st day of December, then next preceding, as should remain in the hands of the party of the second part after the deduction of certain charges and expenses.

And whereas, it is to the convenience of both of said parties to change the dates of said accountings and settlements so as to conform to the reports required by the Interstate Commerce Commission and other governmental bodies and officers, by adopting as the basis therefor a fiscal year ending June 30th of each year, instead of December 31st:

Now, therefore, it is hereby agreed by and between the parties hereto, that hereafter all said balances shall be paid

on the first day of November of each year, and shall be for and on account of the year ending on the 30th day of June then next preceding, except that in the first settlement which shall be made under this agreement, to wit, that of November 1st, 1897, such settlement shall be made upon an accounting for the whole period from January 1st, 1896, to June 30th, 1897, both days inclusive.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents or vice presidents, and secretaries, under their several corporate seals, the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
(Corporate seal.) By ISAAC L. REQUA, *President.*
W. M. THOMPSON, *Secretary.*

SOUTHERN PACIFIC COMPANY,
(Corporate seal.) By C. P. HUNTINGTON, *President.*
E. C. WRIGHT, *Secretary.*

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, Defendants. | In Equity, No. 420.

Answer of Defendants.

Southern Pacific Company, Central Pacific Railway Company, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills.

These defendants reserving all manner of exceptions that may be had to the uncertainties and imperfections of the petition, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

Defendants above named deny that they, or any of them, are restraining, or attempting to monopolize or are monopolizing, trade

and commerce in respect to the transportation of persons and property between the points, or any of them, mentioned in said petition, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies".

Said defendants further deny that they, or any of them, are violating the provisions of the acts of Congress mentioned in the bill and described as the Pacific railroad laws.

I.

Said defendants deny that Lewis J. Spence is traffic manager of the Central Pacific Railway Company.

Said defendants further deny that they, or any of them, are responsible for the continuance of any combination or monopolization in restraint of interstate and foreign trade and commerce effected by said Southern Pacific Company by its domination, control, and operation of the Central Pacific Railway Company, or otherwise, or that they, or any of them, are responsible for the violation by said companies of the said Pacific Railroad laws, or that said companies, or either of them, in any way violate the said Pacific Railroad laws or any portion thereof.

II.

Defendants deny that the Southern Pacific Company operates under lease or otherwise either the Morgan's Louisiana and Texas Railroad and Steamship Company, or the Louisiana Western Railroad Company, or the Texas and New Orleans Railroad Company, or the Galveston, Harrisburg and San Antonio Railway Company (incorrectly styled in the petition Railroad Company), and aver that said named corporations operate themselves through their own officers, the control exercised by the Southern Pacific Company being through stock ownership.

They further show that while the "coast line" of the Southern Pacific Railroad Company runs into San Francisco, the other of the two routes referred to in the petition terminates at the east end of Oakland Mole, where its tracks connect with the tracks of the Central Pacific Railway Company; and that the Southern Pacific Railroad Company does not own a line of railroad from the northern boundary of California to Portland, Oregon, the railroad referred to or intended to be referred to in the petition being the Oregon and California Railroad Company, which is under lease to the Southern Pacific Company.

Defendants deny that the Southern Pacific Company owns or controls a line of steamships from San Francisco to Panama, which,

in connection with the Panama Railroad across the Isthmus and ships running in connection therewith, constitutes a through line from San Francisco to New Orleans and New York City.

It does, however, own a majority of the capital stock of the Pacific Mail Steamship Company, which operates a line of steamships from San Francisco to Panama, connecting there with the Panama Railroad across the Isthmus, and which thus performs part of transportation service from San Francisco to New York City; but defendants aver that on or before July 1, 1914, and before the
3 opening of the Panama Canal, either the said Pacific Mail Steamship Company will have ceased to operate said steamships in said business and will not be engaged in any business in competition with any line of railroad owned or controlled by the Southern Pacific Company, or the last-named company will have disposed of its said stock and will not have any interest in or control over, directly or indirectly, the said Pacific Mail Steamship Company.

They further show that the railroad of the Central Pacific Railway Company runs from Ogden, Utah, to Oakland, California, via Niles, California, and not to San Francisco, the connection between Oakland and San Francisco being by boats and barges, and that subsection 5 of paragraph II of the petition should read to be correct, a line from Niles to San Jose, California, instead of "a line from Oakland to San Jose, California".

III.

Said defendants deny that it was intended by Congress that the Central Pacific and Union Pacific lines, although built by different companies, should be run as one connected, continuous through line except as the intent of Congress is expressed in the said Pacific railroad laws.

IV.

Said defendants deny that the Sunset Route of the Southern Pacific Company is a natural competitor of all other carriers operating between points on the Atlantic coast and the Middle West on the one hand, and points on the Pacific coast and in the Orient on the other hand.

Defendants further deny that the Central Pacific Railway Company, in conjunction with its connections, or otherwise, is, or has been, the natural competitor of the Southern Pacific Company in the transportation of traffic between the points above named.

Said defendants deny that the lines of the Central Pacific Railway Company connecting with those of the Atchison, Topeka & Santa Fe Railway Company, at or near Fresno, form, with other connections of the last-named company, a route which is in natural competition with the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and other points in central and northern California, on the one hand, and points in Arizona, New Mexico, Texas, and Louisiana, including Phoenix, El Paso, San Antonio, Houston, Galveston, and New Orleans on the other.

Said defendants deny that the lines of the Central Pacific Railway Company, in connection with the various steamship lines engaged in coastwise and foreign trade, as forming through routes, or otherwise, are natural competitors of the Southern Pacific Company and its water line connections described in the petition.

Said defendants deny that the Central Pacific Railway Company, could, at moderate cost, extend its line from Natron to Portland.

Said defendants further deny that if the Central Pacific Railway Company were free to act in its own interest the existence of two competitive lines between San Francisco and Portland would, in the near future or at all, become an assured fact.

Said defendants deny that the line owned by the Central Pacific Railroad Company, as operated prior to 1885, in connection with the line of the Union Pacific Railroad Company, was in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation, except that both prior and subsequent to 1885 the through route or routes formed by the line of the Central Pacific Railway Company from San Francisco to Ogden in conjunction with connecting railroads, including the Union Pacific Railroad Company, and their eastern connections, have carried traffic in competition with the said Sunset Route and with other transcontinental lines; but they deny that the common control of the Central Pacific Railway Company and the said Sunset Route, which has always existed and under which the said Southern Pacific System of lines (always included therein being the line of the Central Pacific Railway Company) were originally constructed and have subsequently grown and developed by usual and normal means, as hereinafter more fully stated, has prevented or created the power to prevent competition between said through routes or constitutes a restraint of trade or a monopoly or an attempt to monopolize trade, within the prohibition of the said act of July 2, 1890, or otherwise.

V.

Said defendants deny that the lease or instrument dated December 7, 1893, copy of which is attached to the petition, expressly, or at all, abrogated the lease of February 17, 1885, copy of which is attached to said petition; on the contrary, defendants allege that the tenure of said lease of February 17, 1885, has never been interrupted or broken, and that the sole purpose of the instrument dated December 7, 1893, with the subsequent instrument of March 22, 1894, thereto, was to modify or change the terms and conditions of the original lease to meet new conditions and to make a fair adjustment as between the lessor and the lessee in view of existing conditions, and as so modified and changed the original lease of February 17, 1885, was continued and has continued with other modifications and changes subsequently made (as appears from Exhibit A attached to the petition) until the present time.

Said defendants deny that the Southern Pacific Company acquired the capital stock of the Central Pacific Railway Company or the lease of the properties of that company with the purpose or effect of preventing competition between the lines of said Central Pacific Railway Company and its connections and the lines of the Southern Pacific Company in the transportation of passengers and freight in interstate or foreign commerce.

Said defendants also deny that the control of the Central Pacific Railway Company by the Southern Pacific Company prevents the establishment of a competitive route between San Francisco and Portland.

Said defendants further deny that the Central Pacific Railway Company line from Hazen, Nevada, to Mojave, California, in connection with the line of the Atchison, Topeka & Santa Fe Railway Company, forms a route which would be in natural competition with the Southern Pacific Company and its connections for traffic between points on the Central Pacific Railway Company and its tributary territory and points in Arizona, New Mexico, Texas, and other Southern States; or that through the control of the Central Pacific Railway Company by the Southern Pacific Company the establishment of such joint traffic or prorating arrangements between the former and the Atchison, Topeka & Santa Fe Railway Company is prevented.

The defendants further deny that the ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company, or its lease of the properties of that company, or its domination, management, or control thereof, as set forth in the bill, constitutes a combination in restraint of trade or monopolization thereof in violation of the act of July 2, 1890.

VI.

Said defendants deny that any object or intent of the Pacific railroad laws was as alleged in Paragraph VI of the petition herein except to the extent that the objects and intent of said Pacific railroad laws are expressed in said laws themselves, to which these defendants make reference.

Said defendants deny that by reason of any alleged interest of the Southern Pacific Company to carry traffic via its Sunset Route, or to and through the Ogden gateway only such proportion thereof as it is unable to control for said Sunset Route it thereby, or otherwise, discriminates against said Central Pacific Railway Company.

Said defendants deny that through its control of the Central Pacific Railway Company the Southern Pacific Company in any way discriminates against the Central Pacific Railway Company; on the contrary, the defendants allege that the lines of said Central Pacific Railway Company are so interconnected with other lines leased by the Southern Pacific Company that there is no natural competition between such lines; that all of said lines form a unified system, developed to meet the needs of the territory served by them; that it would be against the interest of the Southern Pacific Company as lessee of all these lines and the actual owner of the Central Pacific Railway Company to discriminate in any way against the lines of that company; on the contrary, it is to the interest of the Southern Pacific Company that such lines should receive their full development and their full share of the traffic.

Said defendants deny that in its operation of the line of the Central Pacific Railway Company from San Francisco to Ogden it does not give to such line equal advantages and facilities as required by the Pacific railroad laws, but discriminates against both the Central Pacific and the Union Pacific lines and in favor of its Sunset Route by forwarding via the latter traffic originating or ending on the lines of the Central Pacific Railway Company, or in territory tributary thereto; on the contrary, defendants allege that the Southern Pacific Company gives to both the Central Pacific and Union Pacific lines every advantage and facility required by said Pacific railroad laws and that the Union Pacific line has always been made by the Southern Pacific Company its most favored connection at Ogden, Utah.

Said defendants further deny that through its control of the Central Pacific Railway Company, or at all, the Southern Pacific Company prevents joint traffic or prorating arrangements between the former and the Union Pacific Railroad Company, or that the Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory west of San Francisco as to discriminate against transportation

eastward over the joint transcontinental route of the Central Pacific and Union Pacific Railroads and other eastern connections, or that thereby, or at all, the Southern Pacific Company prevents competition or denies equal advantages and facilities as to rates, time, and transportation to said Union Pacific Railroad Company.

Said defendants deny that Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific Railroad and other eastern connections, or that thereby, or at all, it prevents com-
7 petition or denies equal advantages or facilities as to rates, time, and transportation.

Said defendants further deny that the maintenance by the Southern Pacific Company of the Central Pacific Railway Company properties, compared with that of the Sunset Route, is so inefficient as to discourage eastern travel and transportation via the Ogden route and does not afford and secure thereto equal advantages and facilities; on the contrary, the defendants allege that the lines of the Central Pacific Railway Company have always been maintained by the Southern Pacific Company to as high, if not a higher, standard of efficiency as that maintained on the lines of the Sunset Route.

Said defendants further deny that the Southern Pacific Company has heretofore, or does now, control, maintain, or operate said Central Pacific Railway Company in the interest of its Sunset Route or adversely to the interests of the Central Pacific and Union Pacific companies, in violation of the Pacific railroad acts or of any other acts of Congress, or that it does not afford or secure to the Central Pacific and Union Pacific companies equal advantages and facilities as to rates, time, or transportation, or that said Southern Pacific Company is in any way, or at all, violating any of the provisions of the Pacific railroad laws; on the contrary, defendants allege that from the year 1901 to the year 1913 the Union Pacific Railroad Company, through its purchase and ownership of the controlling interest in the capital stock of the Southern Pacific Company, acquired and exercised full and complete domination and control over said Southern Pacific Company and through said Southern Pacific Company over the Central Pacific Railway Company, and that during the said time the Union Pacific Railroad Company had full power to make any joint traffic or prorating arrangements or rate adjustments which were necessary to give the Union Pacific the advantages and facilities as to rates, time, and transportation to which they were entitled. The defendants allege that the joint traffic and prorating arrangements which were sanctioned and enforced during the time of said

Union Pacific control have continued since the termination of said control and are now in existence.

VII.

The said defendants, for further defense herein, allege that the lines of the Central Pacific Railroad Company and of the Southern Pacific Railroad Company, operated since February 17, 1885, by the Southern Pacific Company, as lessee, constitute the pioneer railroad development of the country west of Ogden, Utah, and El Paso, Texas, and south of Portland, Oregon.

The construction of the main Central Pacific line from Sacramento east to Ogden began in January, 1863, and was completed May 10, 1869.

The construction of the Central Pacific line from Sacramento, via Stockton and Niles, to San Francisco and San Jose was completed in the year 1869.

The construction of the Central Pacific line from Roseville north to the Oregon boundary was begun in October, 1867.

At the Oregon boundary it joined the Oregon and California Railroad, which gave a through line to Portland, Oregon, the operation of which began in December, 1887.

The construction of the Central Pacific line from Lathrop to Goshen was begun November 8, 1870, and completed August 1, 1872.

Because of the large indebtedness of the Central Pacific Railroad Company to the United States Government and others, it was difficult to procure funds upon the credit of that company for the construction of the line southward from Goshen.

It became necessary, therefore, in order to procure such funds to organize a new company, and, accordingly, the Southern Pacific Railroad Company was organized, by consolidation, on October 12, 1870, the capital stock of which, or more than three-fourths thereof, was subscribed for and owned by the stockholders of the Central Pacific Railroad Company.

The said Southern Pacific Railroad Company thereafter continued the construction of the line southward from Goshen, making through connection with Los Angeles in September, 1876, and with Yuma, Arizona, October 22, 1877.

Because of the failure of the Texas and Pacific Railroad Company to construct the road contemplated by the act of Congress of March 3, 1871, and the supplementary act of May 2, 1872, the stockholders of the Southern Pacific Railroad Company of California caused to be incorporated the Southern Pacific Railroad Company of Arizona, which continued the construction of said line from Yuma, Arizona, to the eastern boundary thereof; and also caused to be incorporated the

Southern Pacific Railroad Company of New Mexico, which continued the construction of said line eastward through New Mexico to El Paso, Texas.

Said line was opened as a through line between El Paso, Texas, and points in California in May, 1881.

Thereafter the stockholders of said Southern Pacific Railroad Company of California, through corporations organized and controlled by them, secured a line of railroad from El Paso, Texas, to New Orleans, Louisiana, which line of railroad formed an operating connection with the Atchison, Topeka & Santa Fe Railway Company at Deming, in March, 1881, and with the Texas and Pacific Railroad Company at Sierra Blanca, January 1, 1882.

9

Said line of railroad was opened as a through line of railroad between New Orleans, Louisiana, and points in California, in February, 1883.

At all times prior to April 1, 1885, the Central Pacific Railroad Company operated its lines of railroad above described, and as rapidly as the main line from Goshen southward to New Orleans, Louisiana, or any part thereof, was opened for operation, this line was leased to the Central Pacific Railroad Company, and that company at all times prior to April 1, 1885, operated said lines in connection with its lines, as lessee.

As stated in the petition, by an instrument dated February 17, 1885, all railroads, equipment, and other properties owned by the Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, were leased to the Southern Pacific Company for a term of ninety-nine years from April 1, 1885, and all leases of the Southern Pacific Company's properties held by said Central Pacific Railroad were by the same instrument transferred to said Southern Pacific Company.

The Southern Pacific Company at this time became the owner of the entire capital stock of the Southern Pacific Railroad Company of California, of the Southern Pacific Railroad Company of Arizona, and of the Southern Pacific Railroad Company of New Mexico, and also acquired the controlling ownership of the corporations owning the line of railroad between El Paso, Texas, and New Orleans, Louisiana, as above stated.

At all times prior to the date of the lease of the Central Pacific lines and of the Southern Pacific lines to the Southern Pacific Company, the corporations owning said lines were by stock ownership and directorates under a common control and were never in independent or separate ownership; nor were these lines of railroad, or any of them, ever operated in opposition or in competition with any other of said lines; on the contrary, these lines of railroad were built

veloped, and operated as a unified system of railroads to answer
e needs of the communities served, the companies owning the con-
tituent parts of said lines being controlled by the same stockholders
nd directorates, to the same degree as if all of said lines had been
uilt and always owned and operated by one company.

Prior to the lease to the Southern Pacific Company all of these
ines were operated by the Central Pacific Railroad Company as
wner and lessee, as above stated, and since that time all of these
ines have been operated by the Southern Pacific Company, as
lessee.

Because these lines were in one ownership and management,
they were developed as one property, and little heed given as
o which corporation should hold the title to terminal properties and
ranch lines.

Accordingly, branch lines from points on the Central Pacific were
uilt and were owned by the Southern Pacific Railroad Company,
hese branch lines having no connection with the main line of the
outhern Pacific Railroad Company except through Central Pacific
ines.

At important points, such as Sacramento, California, most of the
ntire title to valuable terminal properties was taken and held in the
ame of the Central Pacific Railroad Company.

This is also substantially true at Oakland, California; while in
an Francisco, California, the Central Pacific Railroad Company
as no terminal property.

In the joint operation of these lines through trains have been run
y the most direct or convenient line without reference to the owner-
hip of these lines; as, for example, instead of detouring through
assenger trains between Ogden and San Francisco, over the Cen-
al Pacific line between Sacramento and San Francisco, via Niles,
uch trains have been operated over the direct line between Sacra-
ento and San Francisco known as the Benicia Cut-Off, owned by
he Southern Pacific Railroad Company.

Through trains between Los Angeles and San Francisco have been
perated over the Southern Pacific lines from San Francisco to
racy, over the Central Pacific line from Tracy to Goshen, and over
he Southern Pacific lines from Goshen to Los Angeles.

Any separation of the Central Pacific lines from Southern Pacific
ines cannot now be had except with great detriment and injury to
ach of these companies; and in order that these lines should now
e operated as separate properties there must be expended very large
ums of money to secure separate terminals to complete these proper-
ies for operation on a basis independent of each other.

Besides, such separation would necessarily impair public service,
through, direct routes could not be used as efficiently or economi-

cally for operation of trains by one company as under present conditions.

The joint ownership, control, and operation of the Central Pacific line under the conditions hereinbefore stated does not in any sense restrain or monopolize trade and commerce in respect to the transportation of persons and property in violation of the act of Congress approved July 2, 1890; nor does such joint ownership, control, and operation in any way violate the provisions of the Pacific railroad laws. On the contrary, the Government of the United
11 States has frequently recognized, as will be hereinafter shown, that such joint ownership, control, and operation was and is in entire harmony with the laws above mentioned, and in no sense a violation thereof.

VIII.

Said defendants further allege that at all times the Central Pacific lines and the Southern Pacific lines have been built, extended, controlled, and operated as one property. Such joint ownership, control, and operation existed, therefore, long before the act of July 2, 1890.

By such joint ownership, control, and operation there was never any restraint of trade or commerce between or affecting such lines.

The Central Pacific Railway Company and its predecessor, the Central Pacific Railroad Company, have always fully complied with the provisions of the Pacific railroad laws.

The said Central Pacific line and the Union Pacific line have always been operated as one continuous line, and neither the Central Pacific Railroad Company nor the Central Pacific Railway Company or their officers have refused to operate said line, so far as the public and the Government were concerned, as one continuous line, or have ever refused in such operation or use to afford and give to the Union Pacific Railroad Company equal advantages and facilities as to rates, terms, and transportation without any discrimination of any kind against the said Union Pacific Railroad Company or its business.

IX.

Said defendants further say that the Government of the United States is estopped by its conduct and is barred by its laches and acquiescence from asserting that the joint ownership and control of the said lines of railroad composing the Southern Pacific system and the operation of the said Central Pacific Railway Company as a part thereof is contrary to its public policy or in violation of the said Pacific railroad acts or the said act of July 2, 1890, and in support of said defenses they show:

Under the said act of July 1, 1862, as amended by the act of July 2, 1864, a subsidy in the form of currency bonds of the United States was granted in aid of the construction of said railroads of the Central Pacific Railroad Company and of the Western Pacific Railroad Company, which bonds bore six per cent interest, payable semi-annually, and matured thirty years after date, and were to be issued upon the completion of sections of twenty miles of railroad and for amounts per mile as stated in the acts.

It was further provided by the act of 1862 that the re-payment of said bonds with all interest thereon which might be paid by the United States, should be secured by a first mortgage lien on the railroad and telegraph line, together with the rolling stock, fixtures, etc., in consideration of which the same were issued.

By the act of 1864 the railroad company receiving such aid was permitted to issue first mortgage bonds equal in amount to the subsidy debt, and such first mortgage bonds were given priority of lien over the Government mortgage.

In 1869 the Central Pacific Railroad Company of California completed the construction of its said railroad from Sacramento to a connection with the Union Pacific Railroad at a point five miles west of Ogden, in the State of Utah, being the road it was authorized by the aforesaid act of Congress to construct.

The length of the railroad from Sacramento to the meeting point with the Union Pacific Railroad was seven hundred thirty-seven and fifty one-hundredths miles, and the subsidy bonds received in consideration thereof from the United States amounted to twenty-five million eight hundred eighty-five thousand one hundred twenty dollars.

In 1869, or prior thereto, the Western Pacific Railroad Company completed the construction of its railroad between Sacramento and San Jose, the length of the bond-aided road being one hundred and twenty-three and sixteen one-hundredths miles, and the subsidy bonds received in consideration thereof amounting to one million, nine hundred seventy thousand five hundred and sixty dollars.

The total length of the bond-aided lines was eight hundred and fifty and sixty-six one-hundredths miles, and the aggregate amount of the bonds of the United States received in aid thereof was twenty-seven million eight hundred and fifty-five thousand six hundred and eighty dollars.

These bonds were issued from time to time during the construction of the railroad, and there were issued at about the same time by the Central Pacific Railroad Company of California and by the Western Pacific Railroad Company first mortgage bonds in amount equal to the said subsidy bonds with a superior lien as aforesaid on the said railroad properties.

The average date of the maturity of both sets of bonds was in 1898.

On June 22, 1870, the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, being both California corporations, were consolidated and merged under the laws of said State into the Central Pacific Railroad Company.

Subsequently, on August 20, 1870, the Central Pacific
13 Railroad was consolidated and merged under the laws of the State of California with the California and Oregon Railroad Company, the San Francisco, Oakland and Alameda Railroad, and the San Joaquin Valley Railroad Company, under the name of the Central Pacific Railroad Company, which was the company that in 1899 was reorganized into the present Central Pacific Railway Company.

Said constituent railroads had constructed and were the owners of the branch lines of railroad from Roseville to the boundary line between California and Oregon; from San Francisco, via Oakland to Niles, and from Lathrop to Goshen, including a branch mileage of about four hundred sixty-seven miles, which branch lines by said consolidation became the property of the Central Pacific Railroad Company.

The said Central Pacific Railroad Company was unable or failed to pay the interest on said subsidy bonds of the United States, as it matured, and the same was paid by the United States; and the amount of said interest and principal due to the United States, as hereinafter more fully set forth, amounted to $58,812,000.00.

Experience having demonstrated the inadequacy of the provisions contained in the acts of Congress of 1862 and 1864 for the payment of said bonds and interest, Congress adopted the act of May 7, 1878, known as the Thurman Act (20 Stat., 56), which required the reservation of the whole compensation due for services rendered the Government, the creation of a sinking fund, the payment annually of certain sums by the Central Pacific Railroad Company, etc. The requirements of this act were performed by the Central Pacific Railroad Company, but the act failed to accomplish its intended purpose.

The Central Pacific Railroad Company was unable to pay the interest on said subsidy bonds, and it became increasingly evident that it would not be able to pay the interest or principal at the maturity of the debt. Consequently, for several years prior to said maturity, from time to time, the matter was made the subject of inquiry and investigation by both Houses of Congress through the Committees on Pacific Railroads and through special committees appointed for the purpose. The investigation by such committees covered the history of the incorporation and construction of said railroad company and of its different parts, its relations to the Southern Pacific Company and lines of railroad which, with the said Co-

Pacific Railroad Company, composed the Southern Pacific system, the ability of the company to pay said indebtedness, the adequacy of the security which the Government had therefor, and the question whether an extension for the performance of said company's obligations to the Government should be granted, and if so, upon what terms and conditions.

The reports of said committees disclosed fully the relations of the Central Pacific Railroad Company to the Southern Pacific Company, the joint control, ownership, and management which had always existed between the Central Pacific Railroad Company and the other railroads composing said system, as well as the lease of the Central Pacific Railroad Company by the Southern Pacific Company of date February 17, 1885, and the various modifications thereof.

The reports also concurred in the statements that the bond-aided line of the Central Pacific Railroad Company did not reach San Francisco, terminating at Sacramento and San Jose, and did not include the line from Roseville to the Oregon boundary, or from Lathrop to Goshen, or the other lines added by consolidation resulting from extensions made without Government aid; and that the security for the Government debt was totally inadequate, and that the only hope of ultimate payment was to extend the time of payment for a long term of years at reduced rates of interest, with provision for periodical payments of such amounts as might be paid from the earnings of the Central Pacific Railroad Company and leave enough for proper maintenance and operation.

Finally, in 1896, the matter of an adjustment of the said indebtedness of the Central Pacific Railroad Company having been referred by the House and Senate to their respective Committees on Pacific Railroads, said committees made their separate reports, that of the House committee being dated April 25, 1896, and that of the Senate committee bearing date May 1, 1896. Both reports were substantially of the same substance and tenor as previous reports, as set forth in preceding paragraph, and both recommended that the Southern Pacific Company be required to participate in the settlement and guarantee the discharge of the Central Pacific Railroad Company's obligations to the Government.

Each committee reported a bill for the extension and ultimate payment of the debt, the bills being practically identical in terms, the fundamental principles of which, in addition to the requirements aforesaid to be made of the Southern Pacific Company, were that the security for the debt should be extended to the nonaided lines and the terminals, and that the Central Pacific Railroad Company should pay fixed sums at prescribed "dates" to reduce the debt as rapidly as possible, these payments and rate of interest being made

as large as, in the opinion of each committee, could be met by the reasonably anticipated earnings of the property.

15 The extensions and payments so provided were that, in addition to interest payments, the company was to pay $365,000.00 per annum on account of principal for ten years from 1898 to 1908; $550,000 per annum for ten years, from 1908 to 1918, and $750,000 per annum each year thereafter until the entire debt should be extinguished, which involved an extension of the debt for a period of fifty years or more.

These bills were fully discussed before each House of Congress and failed of passage, and thereafter the Congress of the United States, by an act approved July 7, 1898, passed as an amendment to the general deficiency bill of that session, provided: "That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads; provided, that any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding."

Said act further provided that such commission should not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise; and provided further that in any settlement that might be made the final payment and full discharge of said indebtedness should not be postponed to exceed ten years, and the whole amount, principal and interest, should be paid in equal semi-annual instalments within the period so limited.

At this time all the material matters and things complained of in the petition as constituting either a violation of the Pacific Railroad laws or of the antitrust act of July 2, 1890, the lease of the Central Pacific Railroad Company to the Southern Pacific Company, the operation of the former as a part of the Southern Pacific system, and the relative location of the lines of railroad composing said system, had long been a matter of public notoriety and of general public knowledge, and had been brought directly within the knowledge of the United States, and especially of the legislative and executive departments thereof, through the reports of said congressional committees and the public debates thereon, as well as by reason of

the relations of said railroads to the Government in connection with said indebtedness as mail carriers and otherwise.

It was well understood by the Congress at the time of the passage of this law that the said indebtedness of the Central Pacific Railroad Company to the United States Government amounted to at least $58,000,000, and according, therefore, to the terms of said law the Central Pacific Railroad Company was required to pay during each of the ten years allowed for the payment of said debt the sum of $5,800,000 per annum.

This sum exceeded many times over any possible net earnings of the Central Pacific Railroad Company that could be applied to the payment of this debt, and it cannot be questioned that the Congress intended and understood that this debt could only be paid by the employment of the credit and resources of the Southern Pacific Company, and that compliance with the prescribed terms of settlement necessarily involved participation therein by the Southern Pacific Company, and the only motive or consideration which could induce the said Southern Pacific Company to participate in the payment of the Central Pacific Railroad Company's debt to the Government was the existence of the aforesaid relations between it and that company and its desire to continue such relations and to make permanent its control of that part of its system.

The defendants, therefore, allege that the Congress at the time it enacted said law of July 7, 1898, contemplated and expected such participation by the Southern Pacific Company in the settlement provided for and had this end in view when it appointed said commission with full power to arrange for such security for the payment of said indebtedness as to the said commission might seem expedient.

The commission under the authority above stated entered into an agreement dated February 1, 1899, with the Central Pacific Railroad Company and Messrs. Speyer & Company, bankers of the city of New York; said Speyer & Company representing certain bondholders and stockholders of said Central Pacific Railroad Company in the negotiations leading to the readjustment and payment of the indebtedness of the Central Pacific Railroad Company to the Government, which agreement is annexed hereto and made part hereof, marked Exhibit A.

At the time of the making of this agreement the Central Pacific Railroad Company was insolvent, and without the undertaking of the Southern Pacific Company, hereinafter stated, it would have been impossible for the Central Pacific Railroad Company to have paid its indebtedness to the Government at the times and in the manner specified in the aforesaid agreement.

17 In order to provide the funds necessary to pay said indebtedness upon the basis of the agreement above stated with the Government, a plan of readjustment was agreed upon by and between the shareholders and bondholders of the Central Pacific Railroad Company and Messrs. Speyer & Company, the readjustment managers, and the Southern Pacific Company.

A memorandum stating such plan of readjustment is attached hereto and made part hereof, marked Exhibit B.

Said settlement agreement with the Government and the above-mentioned readjustment agreements made with the said stockholders and bondholders and the reorganization of the Central Pacific Railroad Company were all parts of one transaction, were interdependent, and had for their common object the carrying out of the said agreement with the Government and the settlement of said indebtedness to the Government.

In accordance with said agreement with the United States Government and said plan of readjustment, said indebtedness of the Central Pacific Railroad Company to the United States Government was fully paid, Southern Pacific Company furnishing the money to pay said indebtedness; and also, as a part of the plan of readjustment, it purchased and became the owner of the entire capital stock of the Central Pacific Railroad Company and also of its successor, the Central Pacific Railway Company, a new company organized in accordance with the agreement with the United States Government and said plan of readjustment.

The members of said commission and the President of the United States were fully advised of all the terms and conditions of said plan of readjustment.

Copies of the agreements upon which said plan of readjustment was based and of said memorandum, Exhibit B, were furnished to the members of said commission and to the President of the United States, and the whole transaction was given the widest publicity in the leading newspapers and financial journals of the United States, so that not only were the private individuals interested in the transaction fully advised, but also the officials of the United States Government, including the members of the Congress of the United States, all of which had full information of the terms and conditions of such readjustment and of the fact that by such plan of readjustment the Southern Pacific Company was to acquire the ownership of the entire capital stock of the Central Pacific Railway Company.

Defendants further allege that the President of the United States and the members of said commission for the settlement of the Central Pacific Railroad Company's aforesaid indebtedness knew, at the time the terms of said settlement agreement were entered into, of the relations between the Central Pacific Railroad Company and the

Southern Pacific Railroad Company and the Southern Pa-
18 cific Company, of the lease of the Central Pacific Railroad Company, of the operation of the Central Pacific lines as a part of the Southern Pacific System, and generally of all the material matters and things now complained of as constituting a violation of either the antitrust act of July 2, 1890, or of the said Pacific railroad laws.

They also knew at the time that the Central Pacific Railroad Company could not, without the aid of the Southern Pacific Company, comply with the terms of said agreement, and they expected, contemplated, and relied upon the participation of the Southern Pacific Company therein and the use of its resources and credit, as was done, to secure compliance with the requirements of said agreement and the ultimate payment of said indebtedness, well knowing that the only inducement or consideration which would move the Southern Pacific Company to so aid in said settlement was its lease of the Central Pacific Railroad Company and its desire to maintain and complete its control of said company as a part of its system of railroads.

By reason of the aforesaid transaction with the United States Government and its duly authorized officials the Southern Pacific Company had the right to believe and rely upon the fact that its relations with the Central Pacific Railroad Company, its lease of the lines and property of said company and its acquisition of the stock of said company were not nor were any of them in violation of the laws or public policy of the United States Government.

In consequence of said acts of the United States Government and the said just expectation and belief on the part of the Southern Pacific Company relating thereto and induced thereby, the Southern Pacific Company incurred the said obligation of the guarantee of the $100,000,000 of the 1st refunding 4% mortgage bonds of the Central Pacific Railway Company, which are now outstanding; and, in acquiring the $12,000,000 preferred stock of the Central Pacific Railway Company, subsequently increased to $17,400,000, and the $67,-875,500 of the common stock of Central Pacific Railway Company, the Southern Pacific Company expended in cash or its equivalent the full par value of said preferred stock and issued in exchange for said common stock an equal amount of its own capital stock and, in addition, $16,819,000 of its said 4% gold bonds, which stock and bonds are now outstanding; and on the other hand the United States received payment of the said indebtedness of $58,812,715.48, which would not otherwise have been paid.

As showing the knowledge of Congress of the matters above stated, defendants refer to the provision contained in the act of Congress

of March 3, 1899 (vol. 30, United States Statutes at Large, page 1245), which reads as follows:

19 "And authority is hereby granted to the Secretary of the Treasury, in his discretion, to dispose of, without commission, at not less than par and accrued interest, any notes or other evidence in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States."

As further showing the knowledge of Congress of the matters above stated, defendants refer to the provision contained in the act of Congress of March 3, 1901 (vol. 31, United States Statutes at Large, page 1023), reading as follows:

"That the Secretary of the Treasury is hereby authorized and directed to make settlement of the claims growing out of Government transportation over nonbond-aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting against the notes of the Central Pacific Railroad Company held in the Treasury of the United States interest on all of said judgment and allowed claims at four per centum per annum, as set forth in his letter to the chairman of the Committee on Appropriations of the Senate, dated May twelfth, nineteen hundred."

A copy of said letter of the Secretary of the Treasury as printed by order of Congress, Document No. 227, 56th Congress, 2d session, is annexed hereto and made a part hereof, and marked Exhibit C.

Said Southern Pacific Company, relying on the expectation and belief created and induced by the Government, as aforesaid, has, since said settlement agreement, incurred heavy financial obligations for the benefit of the Central Pacific Railway Company, which it would not otherwise have incurred, and in the construction of extensions and additions to its system of railroads it has done so in such a manner as to greatly increase the losses and the injury to the efficiency and value of its system which will result from the separation therefrom of the lines of railroad standing in the name of the Central Pacific Railway Company, which it would not otherwise have done.

For instance, on March 1, 1911, it unconditionally guaranteed an issue of bonds of the Central Pacific Railway Company, known as that company's 4% thirty-five year European loan of 1911, aggregating 250,000,000 francs, a loan made for the benefit of the Central Pacific Railway Company, and it furnished out of its own treasury the collateral of stocks and bonds by which said loan is secured, and, among other onerous conditions, it agreed that the loan should mature and become exigible if it disposed of the stock of said Central Pacific Railway Company or if its lease thereof be terminated.

20 And said defendants further allege that by reason of the foregoing facts and circumstances the complainant is estopped from asserting or claiming that the said lease of the Central Pacific

Railway Company to the Southern Pacific Company and the latter's ownership of the stock of the former company, or the control of the one over the other resulting therefrom is in violation either of the Pacific railroad laws or the antitrust act of July 2, 1890, or otherwise contrary to its public policy, and that all objections which could ever have been made by the United States Government to any of said matters have been waived, and that the said United States Government has fully assented thereto and acquiesced therein.

X.

The said defendants for a further and separate defense herein allege as follows:

On February 1, 1908, the United States of America, as complainant, filed its petition in the United States Circuit Court for the District of Utah, against the Union Pacific Railroad Company, the Southern Pacific Company, and others, in which, among other things, it alleged that the Union Pacific Railroad Company had, in the year 1901, acquired sufficient of the capital stock of the Southern Pacific Company to give it control of that company, and that thereafter, in all respects, the said lines of railway controlled by said corporations, respectively, had been operated as one single entire system.

The aforesaid petition of the Government also stated that the Southern Pacific Company was the owner of the capital stock of the Central Pacific Railroad Company, and that by virtue of said ownership the Southern Pacific Company, in all respects, controlled the operation and management of the affairs and business of said Central Pacific Railroad Company.

It also appeared from said petition that the Central Pacific Railroad Company owned the line of railroad from Sacramento, California to Ogden, Utah.

The principal relief sought by said petition was to free the Central Pacific-Union Pacific transcontinental line and the Southern Pacific "Sunset" line from all restraint of trade and commerce which, it was alleged, had been created by the said defendants or any of them.

While a special prayer for relief was made as against the control of the Southern Pacific Company by the Union Pacific Railroad Company, the Government also in said petition prayed for such other and further relief as the nature of the case might require and to the court seem proper in the premises.

The fact that the Southern Pacific Company exercised complete domination and control over the Central Pacific Railway Company appeared in said petition and the necessary parties against whom an effective decree could have been entered terminat-

ing such control were before the court; but after joinder of issue and the full taking of testimony as to all these things the trial court entered its decree dismissing the petition and denying the Government any relief whatever.

The Supreme Court of the United States, on appeal, reversed said decree only upon the point that the control of the Southern Pacific Company by the Union Pacific Railroad Company was illegal and in violation of the act of July 2, 1890; but as to all other matters the Supreme Court of the United States said: "We find no reason to disturb the action of the court below", and as to such matters the final decree was against the Government and in favor of the defendants.

And these defendants further allege and say that the decree of the Supreme Court of the United States hereinabove referred to, in connection with the proceedings and action in the court below and in the Supreme Court, was and is a conclusive judgment of the matters in respect to which issue is tendered by the petition herein, and that said decree finally determines by judgment and record estoppel the validity of the aforesaid ownership by the Southern Pacific Company of the said capital stock of the Central Pacific Railway Company.

XI.

And for another, further, separate, and distinct defense these defendants allege that by the long delay in the assertion of the alleged rights set forth in the petition herein, and by the long forbearance of the petitioner to sue, it was and has been and is guilty of negligence, and the rights of the petitioner and its alleged cause or causes of action set forth in its petition are barred thereby; and the defendants furthermore allege that there was and has been unreasonable delay and laches in the bringing of action for the relief demanded in the petition, and the petitioner's cause or causes of action set forth in its petition are barred thereby.

XII.

And further answering, these defendants say that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of the matters and things alleged in the petition
22 accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is, therefore, barred by the statutes of the United States in such cases made and provided, and the right of the petitioner herein is barred by said statutes.

Having thus made full answer to all the matters and things contained in the petition, these defendants pray to be hence dismissed with their costs in this behalf expended.

WM. F. HERRIN,
Solicitor for Defendants

J. P. BLAIR,
P. F. DUNNE,
GARRETT W. MCENERNEY,
Of Counsel.

EXHIBIT A.

Central Pacific Railroad Company readjustment.

Agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899.

Agreement made and entered into the first day of February, 1899, by and between the United States of America, acting by Honorable Lyman J. Gage, Secretary of the Treasury; Honorable Cornelius N. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, appointed by act of Congress approved July 7, 1898, a commission with full power to settle the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, of the first part; the Central Pacific Railroad Company, a corporation created, organized, and existing under the laws of the State of California and of the United States of America, of the second part; and Messrs. Speyer & Company, bankers, of the city of New York, of the third part.

Whereas the Central Pacific Railroad Company, as now existing, was formed by the successive consolidations hereinafter mentioned, that is to say:

(a) Consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company into a corporation named the Central Pacific Railroad Company, under articles of association and consolidation dated June 22, 1870.

(b) Consolidation of the last-mentioned Central Pacific Railroad Company, the California & Oregon Railroad Company, the San Francisco, Oakland & Alameda Railroad Company, and the San Joaquin Valley Railroad Company into a corporation named the Central Pacific Railroad Company, under articles of association and consolidation dated August 20, 1870.

And whereas the said Central Pacific Railroad Company, party of the second part hereto, is the owner of the following lines of railroad, with their appurtenances, which are known as and called the "Bond-aided lines", viz:

A. The line of railroad (about 737 50/100 miles in length), from a point about five miles west of Ogden to Sacramento, to aid in the construction of which bonds were from time to time issued by the United States to the Central Pacific Railroad Company of California to the amount in the aggregate of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars ($25,885,120) under and in pursuance of the provisions of the act of Congress of the United States, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July 1, 1862, the act to amend the last-mentioned act, approved July 2, 1864, and the act to amend the above-mentioned acts, approved March 3, 1865.

24

B. The line of railroad (about 123 14/100 miles in length) from Sacramento to San José, to aid in the construction of which bonds were from time to time issued by the United States to the Western Pacific Railroad Company to the amount in the aggregate of one million nine hundred and seventy thousand five hundred and sixty dollars ($1,970,560) under and in pursuance of the provisions of the same acts of Congress under which bonds were issued to the Central Pacific Railroad Company of California, as above stated.

And whereas the said Central Pacific Railroad Company is also the owner of the following lines of railroad in the State of California with their appurtenances, which are known as and called the "non-bond-aided lines", viz:

C. The line of railroad (about 24 31/100 miles in length) from Oakland to Niles.

D. The line of railroad (about 146 8/100 miles in length) from Lathrop to Goshen.

E. The line of railroad (about 296 50/100 miles in length) from Roseville to the Oregon boundary;

And whereas the said "bond-aided lines" of railroad are covered by the following mortgages and liens, viz:

First. The bond-aided line from Sacramento to the eastern boundary of California by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, trustees, dated July 25, 1865, under which bonds are now outstanding to the amount at their face value of six million three hundred and seventy-eight thousand dollars ($6,378,000), of which bonds to the

amount of three million and seven thousand dollars ($3,007,000) are now overdue, and bonds to the amount of three million three hundred and seventy-one thousand dollars ($3,371,000) will mature December 1, 1899.

Second. The bond-aided line from the eastern boundary of California to a point about five miles west of Ogden by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, trustees, dated January 1, 1867, under which bonds are now outstanding to the amount at their face value of nineteen million five hundred and three thousand dollars ($19,-503,000), of which bonds to the amount of eighty thousand dollars ($80,000) are now overdue, and bonds to the amount of three million nine hundred and eighty-eight thousand dollars ($3,988,000) will mature June 1, 1900, and bonds to the amount of fifteen million four hundred and thirty-five thousand dollars ($15,435,000) will mature June 1, 1901.

Third. The bond-aided line from Sacramento to San José by the first mortgage of the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of one million nine hundred and seventy thousand dollars ($1,-970,000), and will mature July 1, 1899.

Fourth. The bond-aided line from a point about five miles west of Ogden to Sacramento by the statutory lien in favor of the United States under the acts of Congress, approved July 1, 1862, July 2, 1864, and March 3, 1865, above-mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum of $53,389,052.74), resulting from the issue of bonds to the Central Pacific Railroad Company of California as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said acts subordinate to the liens of the first mortgages of the Central Pacific Railroad Company of California, described in the preceding subdivisions First and Second of this recital.

Fifth. The bond-aided line from Sacramento to San José by the statutory lien in favor of the United States under the acts of Congress approved July 1, 1862, July 2, 1864, and March 3, 1865, above mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum of $1,423,662.74), resulting from the issue of bonds to the Western Pacific Railroad Company as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said act subordinate to the lien of the first mortgage of the Western Pacific Railroad Company described in the preceding subdivision Third of this recital.

And whereas the said nonbond-aided lines of railroad are covered by the following mortgages and liens, viz:

First. The nonbond-aided line from Oakland to Niles by first mortgage from the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of seven hundred and sixty-five thousand dollars ($765,000), and will mature July 1, 1899.

Second. The nonbond-aided line from Lathrop to Goshen by first mortgage from the Central Pacific Railroad Company to D. O. Mills and W. C. Ralston, trustees, dated October 1, 1870, under which bonds are now outstanding to the amount at their face value of six million and eighty thousand dollars ($6,080,000), and will mature October 1, 1900.

Third. The nonbond-aided line from Roseville to the Oregon boundary by first mortgage from the California and Oregon Railroad Company to David S. Dodge and Eugene Kelly, trustees, dated January 1, 1868, and the supplemental mortgage from the Central Pacific Railroad Company as successor of the California and Oregon Railroad Company (by consolidation as aforesaid) to Eugene Kelly and Philo C. Calhoun, trustees, dated January 1, 1872, under which last-mentioned mortgages bonds are now outstanding to the amount at their face value of ten million three hundred and forty thousand dollars ($10,340,000), the date of maturity of such last-mentioned bonds having been extended to January 1, 1918, by virtue of extension agreements dated September 27, 1887, and September 25, 1891, respectively.

And whereas all the said bond-aided and nonbond-aided lines above referred to are further covered by mortgage from the Central Pacific Railroad Company to the Metropolitan Trust Company of the City of New York, trustee, dated April 1, 1889, under
which there are now outstanding fifty-year five per cent bonds
26 of said Central Pacific Railroad Company maturing April 1,
1939, to the amount at their face value of twelve million two hundred and eighty-three thousand dollars ($12,283,000), of which bonds to the amount at their face value of $2,038,000 are now held by the Metropolitan Trust Company of the City of New York as security for the outstanding land bonds hereinafter mentioned;

And whereas it is claimed by the United States, but not conceded by the other parties hereto, that under and by virtue of the provisions of an act entitled: "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other pur-

approved July first, eighteen hundred and sixty-two, and also alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named approved May 7, 1878, the balances of indebtedness to the United States hereinbefore referred to amounting in the aggregate as of the date of this agreement to the sum of $58,812,715.48 are also secured by lien declared in said last-mentioned act upon all the railroad lines above mentioned whether aid or nonaided;

And whereas the lands granted to the Central Pacific Railroad Company of California, by the act of Congress of July 1, 1862, above mentioned, and the lands granted to the California and Oregon Railroad Company by act of Congress approved July 25, 1866, with the exceptions and reservations mentioned in the mortgage hereinafter mentioned, were mortgaged by the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, by mortgage dated October 1, 1870, to secure an issue of land bonds of the Central Pacific Railroad Company which matured October 1, 1890, a part of which were by extension agreement dated September 4, 1890, extended to October 1, 1900, and of which there are now outstanding bonds to the amount at their face value of $2,134,000;

And whereas by act of Congress entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for prior years, and for other purposes", approved July 7, 1898, it was among other things provided as follows, viz: "That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding."

"That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: And also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semiannually, and with such security

as to said commission may seem expedient: Provided, however, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest or any part thereof then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one year after the passage of this act, the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

And whereas it has been agreed by and between the commission appointed by said act and the owners of the railroads above described, that the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads should be settled upon the terms and in the manner hereinafter agreed to, subject to the approval of the President of the United States as provided in said last-mentioned act;

And whereas Messrs. Speyer & Company, from time to time negotiated the sale of large amounts of the bonds secured by mortgage upon the railroads of the Central Pacific Railroad Company above mentioned, and are desirous of cooperating in a settlement of all matters relating to or affecting the indebtedness of said company and the adjustment of its affairs;

And whereas of the first mortgage bonds of the Central Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate, at their face value to twenty-five million eight hundred and eighty-one thousand dollars ($25,881,000), there have been already deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount at their face value of twenty-five million six hundred and thirteen thousand dollars ($25,613,000) under a bondholders agreement, dated August 14, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas of the Central Pacific Railroad Company's fifty-year five per cent bonds, issued under the mortgage to the Metropolitan Trust Company of the city of New York, dated April 1, 1889, above mentioned, amounting in the aggregate (after deducting said bonds so, as aforesaid, held as security for the said land bonds), to the sum of ten million two hundred and forty-five thousand dollars ($10,245,000), there have been deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount, at their face value, of eight million six hundred and eighty-six thousand dollars ($8,686,000) under a bondholders agreement, dated October 1, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas the owners of the bonds deposited under each of the aforesaid agreements of August 14, 1897, and October 1, 1897, have thereby authorized Messrs. Speyer & Company, in their behalf, to negotiate with any other committees or representatives of holders of other securities of said railroad company, or with the Government of the United States, or otherwise, for participation in respect of the deposited bonds in any plan of readjustment or reorganization, or otherwise;

And whereas there have been deposited with committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks, and Joseph Price, in London, and August Belmont, Hon. John G. Carlisle, and George Coppell, in New York, under agreements, copies of which have been furnished to the party of the first part, certificates of the capital stock of the Central Pacific Railroad Company to the amount, at their face value, of at least thirty-eight million four hundred and one thousand eight hundred dollars ($38,401,800) out of a total outstanding capital stock of said company amounting, at its par value, to sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500), and the said committees have authorized and requested the said Speyer & Company to negotiate, on their behalf, with the commission appointed by the act of Congress of July 7, 1898, above referred to, the basis of a settlement, under and in pursuance of the said act, of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of said Central Pacific and Western Pacific bond-aided railroads above mentioned:

Now, therefore, this agreement witnesseth, That in consideration of the premises the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, that is to say:

That the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western

Pacific bond-aided railroads shall be, and it hereby is, settled upon the terms and in the manner following, that is to say:

First.

The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise, is hereby found and agreed to be, on the day of the date of this agreement, the sum of fifty-eight million eight hundred and twelve thousand seven hundred and fifteen dollars and forty-eight cents ($58,812,715.48).

Second.

Within thirty days after this settlement shall become binding by the submission thereof in writing to the President and his
29 approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six month for ten years, counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of $58,812,715.48, and bearing interest at the rate of three per cent per annum, payable semiannually.

Provided, however, that if default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of this agreement of settlement.

Each of the said notes shall be in the following form, viz:

$2,940,635.78.

SAN FRANCISCO, CAL., *February 1, 1899*

On or before ---------- the Central Pacific Railroad Company will pay to the order of the United States of America two million nine hundred and forty thousand six hundred and thirty-five 78/100 dollars, with interest meantime at the rate of three per cent per annum, payable semiannually, for value received.

This is one of a series of twenty notes given by said railroad company to the United States of America, each for the same principal sum, and bearing interest at the same rate but maturing at different dates—that is to say, on or before the expiration of each successive six months for ten years counting from the date hereof. If default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then out-

tanding, principal and interest, shall immediately become due and ayable.

Third.

The payment of the principal and interest of the said notes and f the indebtedness represented thereby, shall be secured by the pledge f $58,820,000, face value, first refunding mortgage four per cent old bonds issued by the Central Pacific Railroad Company, or its ccessor company having title to the aforesaid railroads, such bonds be part of an issue hereinafter described not exceeding $100,000,000 all, one-twentieth part of such pledged bonds to be held as security r each of said notes.

Fourth.

The said refunding bonds so to be pledged as security for the pay- nt of the said notes and interest shall be delivered to the Treasurer the United States within a reasonable time after this settlement comes binding, for obtaining the deposit of securities, the assent security owners, and the carrying out of such plan of reorgani- tion or readjustment as may be necessary to enable the Central cific Railroad Company or its successor company to issue said funding bonds and make the mortgage to secure the same a valid n upon the railroads aforesaid in accordance with the requirements rein expressed. A period of ten months from the delivery of said notes is hereby declared to be *prima facie* such reasonable time, but the Central Pacific Railroad Company agrees to use its best efforts to perfect such mortgage and deliver such bonds fore the expiration of that time; and, on the other hand, should h reorganization or readjustment be delayed by the pendency of icial proceedings for the purpose of enabling the company which o make the new mortgage to execute and deliver refunding bonds ured as provided herein or be delayed by adverse litigation, such iod is to be correspondingly extended; provided, however, that h period shall not be extended for any cause whatever for more n three years from the date of this agreement except with the ritten approval of the President of the United States.

f default shall be made in the delivery of the said bonds so to be ged within the period hereinabove prescribed for such delivery reof, including any extension which there may have been under foregoing provisions, then the whole amount of the said notes outstanding, principal and interest, shall immediately become and payable.

he said first refunding mortgage four per cent gold bonds re- d to in article third and this article of this agreement are to run

for at least forty-five years and to bear interest at the rate of four per cent per annum, payable semiannually, and are to be payable, principal and interest, in gold coin of the United States, and are to be a part of an issue not exceeding one hundred million dollars face value secured by mortgage upon all the railroads, equipment, and terminals now owned by the Central Pacific Railroad Company. Such mortgage shall be the first lien upon the said railroads, equipment, and terminals, or shall be secured by deposit as collateral security therefor of at least ninety per cent of the now outstanding first-mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs first, second, and third in the recitals to this agreement describing the mortgages and liens on "bond-aided lines", and of at least seventy-five per cent of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first-mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the $2,038,000 fifty-year five per cent bonds held as security for the outstanding land bonds, as above stated, shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds, dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said refunding bonds. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured by that mortgage; provided, that the $2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be canceled or deposited as security for such refunding bonds.

31 The mortgage securing such refunding bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof, and shall be in the form agreed upon by the parties hereto, and now identified by the signature of the Attorney General of the United States, unless the form thereof should be hereafter modified with the consent of the Attorney General of the United States and the party of the second part, or its successor company, and the party of the third part hereto.

Upon the satisfaction of record of any existing mortgage any securities or funds held in any sinking fund created or existing by

or under any such mortgage shall be surrendered to the railroad company or its successor company.

The lands granted to the Central Pacific Railroad Company of California and to the California and Oregon Railroad Company, as above stated, are not to be covered by the mortgage securing such refunding bonds. Until the delivery to the Treasurer of the United States of the refunding bonds to be pledged to it under article third hereof, secured as aforesaid, all rights of the United States in respect to said granted lands shall remain in full force and effect, but shall not be enforced unless the Central Pacific Railroad Company, or its successor company, shall make default under this agreement; and upon such delivery of said refunding bonds, secured as aforesaid, all rights, interest, and claims of the United States in, to, and in respect to, such lands shall cease and determine.

From time to time, as the principal or any part of the principal of said notes shall be paid, the United States or other holders of said notes shall return to said railroad company or its successors an equal amount at their face value of the said refunding bonds with all unmatured coupons appertaining thereto; and, as interest shall be paid upon said notes, the United States or other holders of said notes shall detach and return to said railroad company or its successors the coupons appertaining to said bonds representing interest thereon to the date to which interest shall have been paid upon said notes, which coupons shall thereupon be forthwith canceled.

Fifth.

Until the refunding bonds hereinbefore provided for, secured as aforesaid, shall have been delivered to the Treasurer of the United States as security for the said notes, the lien in favor of the United States, reserved in the acts of Congress above mentioned to secure the repayment to the United States of the above-mentioned indebtedness, as such lien now exists, shall remain in full force and effect to the extent of such indebtedness as security for the notes representing such indebtedness; and nothing herein contained shall be deemed to prevent the United States from intervening for the protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or otherwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said refunding bonds, secured as aforesaid then the lien in favor of the United States above referred to, as then existing, shall be immediately vest in, and it is hereby, upon the happening of that event, transferred, to the trustee of the mortgage securing such refunding bonds as security for the entire issue of such bonds.

Sixth.

Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company, or its successor company, from the United States subsequent to the date of this agreement in respect of services to the United States, upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof.

Seventh.

Messrs. Speyer & Company, within one month after the delivery to the United States of the notes referred to in article second hereof, will, against delivery to them of the four earliest maturing notes, endorsed to their order by the Secretary of the Treasury on behalf of the United States without recourse to it, pay to the United States the face value of such notes, viz: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents ($11,762,543.12), with accrued interest thereon to date of payment. From and after the time when such payment shall have been made by Messrs. Speyer & Company they shall, until the delivery of such refunding bonds, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure the indebtedness above referred to. Upon delivery of the said refunding bonds, Messrs. Speyer & Company shall be entitled to receive such bonds to the amount, at their face value, of the principal of said notes then remaining unpaid which are then held by said Speyer & Company.

Within ten days after the maturity of each of said notes held by Messrs. Speyer & Company, the said Speyer & Company shall notify the Secretary of the Treasury of the United States whether such matured note and the matured interest on all the notes held by them have been paid to them or not.

Until the refunding bonds hereinbefore provided for secured as aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, all rights of the United States in or to or in respect of the said lien, and in or to or in respect of the lands granted as aforesaid, shall remain unaffected by the trans-

for of the said notes to Speyer and Company, and all right and title of the United States in the said lien, and in respect of the said bonds, shall be deemed to continue in the United States as fully as if the said notes remained in its possession and ownership, save only that the said right and title shall be deemed to be held by the United States for the pro rata benefit of itself and said Speyer and Company, and the United States may bring and maintain any and all actions, suits, and proceedings which it might have brought or maintained, and may do any and all acts and things which it might have done had all the said notes remained in its possession and ownership, provided that all recoveries, benefits, and advantages derived or obtained through or by means of such actions, suits, proceedings, and acts for the enforcement of such lien and rights, shall inure to the pro rata benefit of the United States and said Speyer and Company. In case of any default in payment of the principal or interest of any of said notes, the United States will thereupon proceed for the enforcement of the said lien.

In witness whereof this agreement has been executed on behalf of the United States of America by Honorable Lyman J. Gage, Secretary of the Treasury, Honorable Cornelius N. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, appointed by the act of Congress a commission as hereabove stated; by the Central Pacific Railroad Company by its president and under its corporate seal attested by its secretary; and by Messrs. Speyer & Company under their hands the day and year first above written. Executed in triplicate.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney General.

Approved:
WILLIAM MCKINLEY.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*
(Central Pacific Railroad Company seal.)
Attest:
W. M. THOMPSON,
Secretary.

SPEYER & CO.

34 EXHIBIT B.

Central Pacific Railroad Company plan of readjustment.

Conditions of participation.

Participation under this plan of readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the depositary named in the readjustment agreement, either at their office, No. 30 Broad Street, in the city of New York, or at the offices of Speyer Brothers, London; Laz. Speyer Ellissen, Frankfort o/Main; Teixeira de Mattos Brothers, Amsterdam, and the Deutsche Bank, Berlin, acting as agents for the depositary under this plan. The plan will embrace only securities so deposited within such time as may be fixed by notice. No securities will be received on deposit unless in negotiable form, and bonds must carry all coupons maturing after February 1, 1899. The word securities whenever used in this plan shall include stocks as well as bonds and coupons.

Pursuant to the offer of the syndicate hereinafter mentioned, holders of the common stock of the Central Pacific Railroad Company may purchase from the syndicate the new common stock, or become entitled to receive the other benefits accruing to depositors of the present common stock under the plan, by depositing their old stock with Messrs. Speyer & Co. or the firms acting as their agents in Europe for that purpose on the following terms: As consideration for shares of the new company, or such other securities and benefits as may be provided in lieu thereof, the depositors of common stock must pay $2.00 per share deposited, and will thereupon be entitled, on the completion of the readjustment, to receive $100 in new common stock or such other securities and benefits as may be provided in lieu thereof.

The payments by depositors of such common stock must be made for account of the syndicate at the offices of Speyer & Co., in New York, or the firms acting as their agents in Europe for that purpose, when and as called for by advertisement published at least twice a week for two successive weeks in at least two of the daily newspapers of general circulation published in the cities of New York, London, Frankfort o/Main, Amsterdam, and Berlin, respectively. All payments must be receipted for by or on behalf of the depositary on the certificates of deposit. Failure to make such payment when and as payable will subject the deposited stock and all rights therein, or in respect thereof, to forfeiture to the syndicate as provided in the readjustment agreement.

The depositary will issue proper receipts or certificates of deposit for all securities deposited. Deposited securities will be placed with the Central Trust Company of New York, or its agents in Europe, as custodian.

The following bonds and stock may be deposited on the terms hereinafter provided:

Central Pacific Railroad Company of California first mortgage bonds, series A, B, C, D, E, F, G, H, and I.

Western Pacific Railroad Company first mortgage bonds, series A and B.

California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B.

Central Pacific Railroad Company (San Joaquin Valley Branch) first mortgage bonds.

Central Pacific Railroad Company land bonds.

Central Pacific Railroad Company fifty-year six per cent bonds.

Central Pacific Railroad Company fifty-year five per cent bonds.

Central Pacific Railroad Company common stock.

New railroad company.

Unless the readjustment managers shall decide to proceed without foreclosure or sale, the various properties will be sold under foreclosure of one or more of the existing mortgages, or otherwise dealt with, and a successor company or companies will be organized. The term "new company", as hereinafter used, is intended to mean either the existing company or the new proprietary company or companies which may be organized.

Deposited securities.

The securities deposited hereunder will be held by the depositary subject to the order and control of the readjustment managers as provided in the readjustment agreement.

All securities deposited under the plan are to be kept alive so long as deemed necessary by the readjustment managers for the purposes of readjustment or the protection of the new company or its security holders.

Interest from the respective due dates of the last matured coupons prior to February 1, 1899, at the same rates, will be paid in cash, upon the completion of the readjustment, on all deposited bonds up to August 1, 1899.

The readjustment managers may collect from the railroad company any interest on deposited bonds, and at their option may pay over the amounts so collected, or any part thereof, to the holders of the

certificates of deposit for such bonds. In case such payments are made, the certificates of deposit will be stamped accordingly.

The syndicate has agreed to purchase for cash, when and so soon as the plan is declared operative, all of the following existing bonds at the prices stated:

At the price of par and accrued interest in New York:	
Central Pacific Railroad Company, of California, first mortgage bonds, series A, B, C, D, E, F, G, H, and I	$25,881,000
Western Pacific Railroad Company first mortgage bonds, series A and B	2,735,000
Central Pacific Railroad Company (San Joaquin Valley Branch) first mortgage bonds	6,080,000
Central Pacific Railroad Company land bonds	2,134,000
At the price of 105 and accrued interest in New York:	
Central Pacific Railroad Company fifty-year six per cent bonds	56,000
Central Pacific Railroad Company fifty-year five per cent bonds	10,245,000
At the price of 109 and accrued interest in New York:	
California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B	10,340,000

Holders of above bonds who prefer to accept cash rather than to take the new securities provided in the plan must signify their election to take cash when depositing their securities, within such time as may be fixed by notice, by having their certificates of deposit stamped accordingly by the depositary or any of the firms acting as their agents in Europe, above mentioned, and will thereupon be entitled to receive the said cash payment therefor at the time that the plan is declared operative, and upon surrender of the certificates of deposit so stamped.

Settlement with United States Government.

The company has entered into an agreement, dated February 1, 1899, with the United States Government and with Messrs. Speyer & Co. which provides in substance as follows:

The balance of the indebtedness due to the United States as of February 1, 1899, amounted, principal and interest, to $58,812,715.48. The agreement provides for the payment by the railroad company or its successor of the whole of this indebtedness within ten years in equal semi-annual installments, with interest meanwhile at the rate of three per cent per annum, payable semi-annually. These payments are to be evidenced by twenty notes of the railroad company, falling due, one every six months beginning August 1, 1899, which are to be delivered within thirty days after said agreement of settlement becomes effective, and are to be secured by an equal amount at face value of the new first refunding mortgage four per cent gold bonds hereinafter described, which bonds are to be delivered to

United States, as provided in said agreement, as soon as practicable after delivery of said notes. In case of default in payment of interest or principal of any of said notes, or of failure to deliver the first refunding mortgage four per cent gold bonds within the time limited in said agreement of settlement, the whole amount of said notes then outstanding will become immediately due and payable. Messrs. Speyer & Co. have agreed to purchase the $11,762,543.12 of said notes earliest maturing, so that the amount of said first refunding mortgage four per cent gold bonds to be retained as collateral by the United States will be $47,056,000, par value, thereof.

New stocks and bonds.

The new company is to authorize the following securities:

First.

$100,000,000 first refunding mortgage four per cent gold bonds, to run not less than forty-five years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads, terminals, and equipment (see Table A, page 10) now owned by the Central Pacific Railroad Company, covering about 1,349 miles of first track and about 365 miles of second track and sidings, or shall be secured by deposit as collateral security therefor of at least ninety per cent of the present outstanding first mortgage bonds of the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company above mentioned, and of at least seventy-five per cent of the aggregate of all the now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In computing the amount of deposited bonds, the $2,038,000 fifty-year six per cent bonds held as security for the outstanding land bonds shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the first mortgage securing the land bonds dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit, as security for the said refunding bonds, of all outstanding bonds now secured by the mortgage so satisfied and discharged. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured

by that mortgage, provided that the $2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be canceled or deposited as security for such refunding bonds.

$47,056,000 of these bonds will be retained by the United States Government as collateral security for the $47,050,172.48 of the 3 per cent notes of the Central Pacific Railroad Company above mentioned remaining in its possession. As these notes are paid, an equivalent amount of these bonds will be returned to the railroad company, and the mortgage will provide that they may then be reissued at the same or a lower rate of interest if the railroad company shall deem it expedient. In no event is the total amount of bonds outstanding at any one time under this mortgage to exceed $100,000,000, and a sufficient amount of bonds will be reserved to take up underlying bonds as provided in this plan, page 7.

The first refunding mortgage bonds are to be applied as follows:

To be retained by the United States Government as collateral for three per cent notes	$47,056,000
In partial exchange for existing bonds (see page 7)	51,253,500
Purchased by syndicate to provide cash requirements of plan (see page 8)	1,690,500
	$100,000,000

38 Second.

$25,000,000 three and one-half per cent mortgage gold bonds, to run thirty years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads and properties covered by the first refunding mortgage above mentioned (subject, however, to the prior lien of such first refunding mortgage), and also by deposit with the trustee under such mortgage, as acquired, of all securities and moneys now or hereafter held in any sinking fund created or existing by or under any now existing mortgage of the present Central Pacific Railroad Company or any divisional railroad company by the consolidation whereof it was formed (see Table B, page 11); and to be also secured by a trust deed upon all the lands now covered by the mortgage, securing the land bonds of the present Central Pacific Railroad Company, dated October 1, 1870 (except in so far as the same shall be released from the lien of said last-mentioned mortgage in accordance with its provisions before such mortgage is satisfied and discharged); and also upon all notes given in payment for lands covered by such mortgage securing said land bonds which shall be outstanding at the time when such last-mentioned mortgage is satisfied and discharged (see Table C, page 12). All income derived from said sinking fund securities

from said lands is to be applied primarily to the payment of the current interest on said three and one-half per cent mortgage gold bonds, and after such current interest shall have been paid or provided for, to the payment of any fixed charges of the railroad company which may be secured by lien, prior to the lien of said three and one-half per cent mortgage, upon its properties or any of them (including interest on the said three per cent notes in favor of the United States above mentioned); but the railroad company, at its discretion, so long as no default exists in respect to principal or interest on said three and one-half per cent mortgage gold bonds, may at any time, or from time to time, sell such securities or lands and apply the proceeds thereof, or any moneys held as security for such three and one-half per cent gold bonds (other than the income above referred to), to the purchase and cancellation of said three and one-half per cent mortgage gold bonds while the same shall be purchasable at not above par and accrued interest; otherwise, to the purchase and cancellation, at the discretion of the railroad company, either of the three and one-half per cent mortgage gold bonds or of the first refunding mortgage four per cent gold bonds or of bonds secured by prior liens upon its properties. All proceeds of or collections from notes given in payment for lands covered by the mortgage securing the land bonds of the Central Pacific Railroad Company, dated October 1, 1870, which may remain unpaid at the time of the satisfaction or discharge of said mortgage securing said land bonds, are to be applied in the same manner as above provided in respect to the proceeds of sinking-fund securities and lands. Suitable provision will be made that no other new mortgage (except to refund such first refunding mortgage four per cent gold bonds or said three and one-half per cent mortgage gold bonds) is to be made upon the properties covered by the mortgage securing said first refunding mortgage four per cent gold bonds, or said three and one-half per cent mortgage gold bonds, so long as any of such bonds of either class or any of the four per cent gold bonds of the Southern Pacific Company, hereinafter referred to, are outstanding; and that no other new mortgage is to be made by the railroad company upon said properties except with the assent of the holders of seventy-five per cent of the preferred stock and a majority of the common stock at the time outstanding.

The three and one-half per cent mortgage gold bonds are to be applied as follows:

In partial exchange for existing bonds (see page 7)	$13,695,000
Purchased by syndicate to provide cash requirements of plan (see page 8)	11,305,000
	$25,000,000

Third.

$20,000,000 four per cent cumulative preferred stock.

This stock will be entitled to cumulative dividends up to 4 per cent per annum, gold, payable semiannually, beginning from August 1, 1899, before payment of any dividend on the common stock. Thereafter dividends up to 4 per cent per annum to be paid on the common stock and the balance of dividends to be paid pro rata upon preferred and common stock. The preferred stock will be preferred as to capital towards the common stock on any liquidation or dissolution of the company.

Suitable provision is to be made that no additional mortgage shall be put upon the property to be acquired by the new company hereunder and that no increase in the amount of the preferred stock authorized under this plan shall be made except in each instance after obtaining the consent of the holders of 75 per cent of the whole amount of preferred stock and a majority of the whole amount of common stock at the time outstanding.

This preferred stock will be applied as follows:

To Southern Pacific Company in consideration of the issue of an equal amount at par value of the Southern Pacific Company's four per cent gold bonds hereinafter mentioned, such bonds, after providing for requirements of the readjustment, to be applied only to betterments and additions to the railroad company's properties	$12,000,000
To Southern Pacific Company in consideration of the issue of an equal amount at par value of its said four per cent gold bonds, to be used to provide additional funds, if required, for the payment of said three per cent notes to the United States, and thereafter to be applied only for betterments and additions to the railroad company's properties	3,000,000
Reserved to be issued from time to time to an equal amount at par value in consideration of the issue of $5,000,000 of said Southern Pacific Company's four per cent gold bonds for betterments and additions to the railroad company's properties (such bonds to be issued at the rate of not exceeding $200,000 par value thereof per annum)	5,000,000
	$20,000,000

40 Fourth.

$67,275,500 common stock.

This stock will be applied as follows:

Sold to syndicate and offered for sale to depositors of present common stock (see page 1)	$67,275,500

Pursuant to an agreement made between the Central Pacific R.R. Co., London shareholders' committee, the readjustment managers

the Southern Pacific Company, that company has offered to pur-
all of the existing common stock deposited under the plan or
new common stock which the readjustment managers shall be
thorized to sell as herein provided upon substantially the follow-
terms:

The holders of certificates of deposit for existing common stock
the railroad company, who shall make the cash payment of $2.00
share deposited as hereinbefore provided, to receive, in exchange
their stock, common stock of the Southern Pacific Company,
re for share, and also twenty-five per cent of the par value of
ir stock in the new four per cent gold bonds of the Southern
cific Company, to be secured by a collateral trust mortgage as
ted below.

Unless stockholders at the time of depositing their stock certifi-
es shall notify the depositary of their election not to sell their
posited stock, or the new common stock to be issued therefor, to
Southern Pacific Company upon the terms above stated, and
ll at the same time have their readjustment certificates of deposit
mped "non-assented", such depositing holders will be deemed to
ve authorized the sale of their stock to the Southern Pacific Com-
ny upon said terms, and such deposited stock or the corresponding
w stock when issued, will accordingly be delivered to the Southern
cific Company in exchange for the above-named securities to be
ven as the purchase price thereof.

In case the readjustment managers shall determine to proceed
thout foreclosure, the new common stock will not be issued, but the
isting common stock deposited under the plan (excepting stock
presented by certificates of deposit stamped "non-assented")
ll be sold to the Southern Pacific Company upon the terms above
entioned, and the holders of certificates of deposit therefor who
ve made the cash payment in respect thereof, as hereinbefore pro-
ded, shall be entitled to receive the new securities to be paid by
e Southern Pacific Company as the purchase price thereof.

Copies of the said agreement with the Southern Pacific Company
ay be obtained at the office of the depositary or any of the managers.

Agreement and guarantees of the Southern Pacific Company.

Under the said agreement the Southern Pacific Company agrees
at it will, at the time and in the manner therein provided, issue its
ur per cent gold bonds (aggregating $36,819,000 face value) as
llows:

Such four per cent gold bonds shall bear interest at the rate of
ur per cent per annum from August 1, 1899, free of taxes, and
ve fifty years to run (but subject to redemption at any time, at

the option of the Southern Pacific Company, at par and ac-
41 crued interest, upon six months' notice by publication). Such bonds shall be issued only to the following amounts:

In part payment of the purchase price under the plan of the common stock of the railroad company, being one-fourth of the par value thereof	$16,819,60
In consideration of the issue of the new preferred stock of the railroad company as above stated	15,000,00
Reserve to be issued only for betterments or additions to the railroad company's properties at the rate of not exceeding $200,000 par value thereof per annum, against the issue of an equal amount at par value of the new preferred stock	5,000,00
	$36,819,60

The said four per cent gold bonds are to be secured by a collateral trust mortgage covering the $12,000,000 of new preferred stock presently issued, and the additional $8,000,000 of such preferred stock as and when the same shall be issued and delivered; and, also, all the common stock of the railroad company, purchased by the Southern Pacific Company. Said collateral trust mortgage shall contain suitable provisions for the protection of the holders of bonds secured thereby, and shall authorize the trustee under said mortgage to sell the stocks of the railroad company covered thereby in case of six months' default in payment of the principal or interest of said four per cent bonds of the Southern Pacific Company. Suitable provisions will also be made that so long as any of said four per cent gold bonds of the Southern Pacific Company remain outstanding neither the preferred nor common stock of the railroad company shall be increased beyond the amounts hereinbefore mentioned respectively, unless arrangements have been made for depositing under said collateral trust mortgage the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered by such mortgage was of the whole outstanding stock of such class as the same existed before such increase; and also that the said railroad company shall not be merged or consolidated with any other railroad company without the consent of the holders of the majority in amount of such four per cent gold bonds of the Southern Pacific Company then outstanding.

The Southern Pacific Company further agrees that upon delivery to it of said $12,000,000 of new preferred stock, and at least 377,194 shares of the common stock of the railroad company, it will simultaneously, by appropriate written instruments endorsed thereon, guarantee unconditionally the payment of the principal and interest, as they shall severally mature, of the first refunding mortgage four per cent

gold bonds at the rate of four per cent per annum, and of the three and one-half per cent mortgage gold bonds at the rate of three and one-half per cent per annum, payable in gold, free of taxes, beginning from August 1, 1899.

Application of new securities.

It is contemplated that, as a consideration for the property and securities to be conveyed and delivered to the new company, or which it shall acquire pursuant to the plan, it shall deliver the new bonds and stock, excepting such final amounts as shall be reserved for the future use of the new company and such amounts as are deliverable directly to the United States Government as hereinbefore provided. The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

The following details show the disposition to be made under the plan of the securities of the new company:

Table showing amount of cash and new securities which deposited securities will be entitled to receive on completion of readjustment.

Existing bonds and stock to be deposited.	Each $1,000 receives—		
	Cash.*	New 4% first refunding mortgage gold bonds.	New 3½% mortgage gold bonds.
Central Pacific Railroad Company of California first mortgage bonds:			
Series A	$33.33	$1,000	$50
Series B, C, D, E, F, G, H, and I	20.17	1,000	50
Western Pacific Railroad Company first mortgage bonds, series A and B	35.00	1,000	50
Central Pacific Railroad Company (San Joaquin Valley branch) first mortgage bonds	50.00	1,000	75
Central Pacific Railroad Company land bonds	41.67	500	700
Central Pacific Railroad Company fifty-year 6% bonds	50.00	500	900
Central Pacific Railroad Company fifty-year 5% bonds	41.67	500	900
California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B	20.17	1,000	200

*Interest from the due dates of the last coupons matured prior to February 1, 1899, at the same rates up to the date when the new bonds begin to bear interest—namely, August 1, 1899.

Holders of certificates of deposit for Central Pacific common stock (not stamped "Nonassented"), on payment of $2 per share deposited, will be entitled to receive for each $100 share deposited:

Southern Pacific Company's stock $100

Southern Pacific Company's four per cent gold bond, bearing interest from August 1, 1899 25

43 **Estimated cash requirements and provision therefor.**

For payment of four 3% notes maturing as follows:	
$2,940,635.78 on August 1, 1899; $2,940,635.78 on February 1, 1900; $2,940,635.78 on August 1, 1900; $2,940,635.78 on February 1, 1901	$11,762,543.1
For new equipment, improvements, and other purposes of the new company, including also expenses of the readjustment, commission to syndicate, compensation of the readjustment managers in the formation of the syndicate, etc., any surplus to new company	9,657,556.9
	$21,420,100.0
To meet these requirements the syndicate will contribute by the purchase of new securities to be issued under the plan and the agreement with the Southern Pacific Company	$21,420,100.0

Syndicate.

A syndicate has been formed by Messrs. Speyer & Co., of Ne York, Messrs. Speyer Brothers, of London, Mr. Laz. Speyer Ellisse of Frankfort o/M., Messrs. Teixeira de Mattos Brothers, of Amste dam, and the Deutsche Bank, of Berlin, which will be conducted b the first named firm as syndicate managers, and which agrees:

(1) To purchase $11,762,543.12 of the Central Pacific Railroa Company's 3% notes to be given in settlement of claim of Unite States as above stated.

(2) To purchase $67,275,500 of the new common stock, and to offe the same for sale to depositing holders of the present common stoc of the Central Pacific Railroad Company, as stated on page 1.

(3) To purchase $1,690,500 of the first refunding mortgage fo per cent gold bonds, $11,305,000 of the three and one-half per ce mortgage gold bonds, and $12,000,000 of the new Southern Paci four per cent gold bonds.

(4) To buy the outstanding bonds of holders who assent to t plan, and while depositing their securities prefer to take cash rath than the new securities, as stated on page 2.

(5) To make advances and perform other obligations essential f the purposes of the plan.

Position of the new company.

The annual fixed charges after readjustment and after the payment of all the notes given to the United States Government as proposed, it is estimated, will be not over	$4,875,000.

44 The average net earnings, after payment of taxes, rentals, and all other expenses, for the 10½ years ending June 30, 1898, were, including miscellaneous income (see Table D, page 13) $4,893,259.17

...nd present annual income from sinking fund securities (as reported by the company, see Table B, page 11)	$689,680.00	
		$5,582,989.17

It thus appears that the fixed charges of the new company on completion of the readjustment will be well within the past net income of the property.

The above statement of fixed charges does not take into account the saving in annual interest during the ten years ending August 1, 1909, during which time the company will only have to pay three per cent interest on the balance of the notes given for its debt to the United States Government and remaining unpaid from time to time, while the first refunding mortgage bonds deposited as security therefor carry interest at four per cent.

It is estimated that under the readjustment upwards of $4,500,000 cash will be provided, which will be immediately available for improvements on the properties of the railroad company.

Dated February 8, 1899.

TABLE A.—*Rolling stock.*

...motives	304
...ggage, mail and express, passenger, dining, and business cars	308
...ping and tourist cars in which the company has three-fourths interest	33
...ight cars of all classes	5,036
...vice and working cars	204

Floating equipment.

Passenger ferry steamers: Amador, 985 tons; El Capitan, 982 tons; ...kland, 1,672 tons; Piedmont, 1,854 tons.

Car transfer steamers: Transit, 1,566 tons; Thoroughfare, 1,012 ...s.

River steamers: Apache, 938 tons; Modoc, 930 tons.

Tug: Rival, 26 tons.

February 8, 1899.

[Seal Central Pac. R. R. Co.] CHARLES BABBIDGE,
Assistant Secretary.

TABLE B.—*Statement of Central Pacific Railroad Company sinking funds.*

Nos. 3, 4, 5, 6, and 9.

...th and Northwestern Railway Company five per cent bonds	$300,000.00
...rt Worth and New Orleans Railway Company six per cent bonds	548,000.00
...nston, Harrisburg and San Antonio Railway Company five per cent bonds	1,024,000.00

Guatemala Central Railroad Company six per cent bonds	$1,788,000.00
Iberia and Vermilion Railroad Company five per cent bonds	322,000.00
Morgan's La. and Texas R. R. & S. S. Co. five per cent bonds	1,000,000.00
Northern California Railway Company five per cent bonds	600,000.00
Oregon and California Railroad Company five per cent bonds	400,000.00
San Antonio and Arkansas Pass Railway Company four per cent bonds	600,000.00
Central Pacific Railroad Company six per cent bonds (San Joaquin Valley Division)	2,000.00
Southern Pacific R. R. Co. (of Cal.) five per cent bonds	1,202,000.00
Southern Pacific R. R. Co. (of N. M.) six per cent bonds	2,035,000.00
Southern Pacific Company Steamship six per cent bonds	2,429,000.00
Western Pacific Railroad Company six per cent bonds	1,000.00

No. 10.

Central Pacific Railroad Company fifty-year five per cent bonds of 1939	117,000.00

No. 11.

California and Oregon Railroad Company five per cent bonds, series A	15,000.00
Central Pacific Railroad Company, successor to California and Oregon R. R. Co., series B, five per cent bonds	50,000.00
	12,553,000.00

46 *Cash uninvested.*

Nos. 3, 4, 5, 6, and 9	$13,685.10
No. 10	59,154.63
No. 11	13,618.91
Total	$86,458.75
Present annual income from above investments	$699,680.00

[Seal Central Pac. R. R. Co.]

CHARLES BABBIDGE,
Assistant Secretary.

TABLE C.—*Central Pacific Railroad Company—Statement of land-grant account, February 1, 1899.*

Partial payments on account of land contracts on which final payment has not been made	$185,190.00
Unpaid principal of deferred payments	639,055.75
Total	$824,245.75

The number of acres of land remaining unsold February 1, 1899, as correctly as this can be ascertained, approximate about 7,370,000 acres.

February 8, 1899.

[Seal Central Pac. R. R. Co.]

CHARLES BABBIDGE,
Assistant Secretary.

TABLE D.—*Central Pacific Railroad Co.—Statement of earnings and operating expenses.*

	Gross earnings from operation (including rentals).	Expenses of operation [a] (including taxes and rentals).	Net earnings from operation.
[illegible] ending 30th June, 1898	$15,504,309.60	$9,846,276.87	$5,658,032.73
[illegible] average for 10½ years ending June 30, 1898	14,540,550.95	9,647,291.78	4,893,259.17

[a] In arriving at the expenses of operation, full provision has been made for replacement of rolling stock, [illegible], and cross-ties.

Southern Pacific Company—Statement of operations.

According to the annual reports, the surplus of the Southern Pacific Company and of its proprietary companies, after payment of all expenses, including taxes, interest on funded debt and sinking-fund payments, and after deducting advances to the Oregon and California Railroad Company, but without deduction of betterments and additions, was:

For year ending	June 30,	1897	$1,999,720.78
do.	do.	1898	4,122,602.61

Whereas, after deduction of betterments and additions, the amounts were as follows:

For year ending	June 30,	1897	$1,108,046.56
do.	do.	1898	2,823,344.58

EXHIBIT C.

Senate Document No. 227, 56th Congress, 2d Session.

Interest upon certain allowed claims.

March 2, 1901.—Ordered to be printed.

Mr. Stewart presented the following letter, signed L. J. Gage, Secretary, relating to the question of interest upon certain allowed claims for transportation services rendered to the Government over the nonbonded lines of the Central Pacific Railroad Company and Southern Pacific Company, and transmitting a statement as to the dates when the claims were settled and allowed by the accounting officers, and also as to such claims as were embraced in the judgments rendered in favor of the companies.

MAY 12, 1900.

SIR: The department is in receipt of your communication of the 9th ultimo, inclosing copy of an amendment offered to the sundry

civil bill now pending before your committee, relating to the que tion of interest upon certain allowed claims for transportation se vices rendered to the Government over the nonbonded lines of th Central Pacific Railroad Company and Southern Pacific Compan The amendment proposed provides for interest at the rate of 4 p cent per annum upon amounts which became due from the Unite States to the Central Pacific Railroad Company and the Southe Pacific Company for transportation services rendered to the Gover ment over the lines of these companies for which no subsidy bon were issued by the United States in aid of their construction.

Replying to your request to be furnished with a statement in much detail as practicable as to the dates when these claims were se tled and allowed by the accounting officers, and also as to such clai as were embraced in the judgments rendered in favor of the co panies, I have the honor to state that under the Pacific railroad ac of 1862 and 1864 one-half of the earnings from Government tra portation over the bond-aided roads was required to be applied the payment of the principal and interest of the subsidy bonds issu by the Government in aid of their construction, and by the act May 7, 1878, commonly known as the Thurman Act, the other ha of Government transportation earnings over the bond-aided lines w to be withheld and applied to the sinking fund created by said a Neither of these acts related to the transportation earnings over t nonbonded lines, which, under certain decisions of the Supre Court, were required to be paid in cash.

The services for which payment was withheld were rendered most part during the years 1883 to 1896, inclusive. Under vario rulings of the accounting officers, payments for these services bei withheld, suit was commenced by the Central Pacific Railroad Co pany in the Court of Claims in November, 1885, for recovery amounts then due and for further amounts accruing for sim
49 lar services. This case was decided in favor of the compa and, on appeal by the Government, was affirmed by t Supreme Court.

After the spring of 1885 the transportation services for the Gover ment over the nonaided lines of the Central Pacific Railroad C pany were rendered by the Southern Pacific Company as lessee these lines, and as compensation for such services was also withhe suit was commenced by the Southern Pacific Company in the Co of Claims therefor, and judgment was rendered in favor of company in January, 1893, for $1,824,336.44. The question as withholding payment having already been decided by the Supre Court, as above stated, no appeal was taken by the Government.

The Second Comptroller, in a decision rendered in August, 1885, says:

"With reference to the order of the late Secretary of the Treasury of January 12, 1884 (directing that all balances ascertained by the accounting officers to be due for these services should be certified without suggestion as to the mode of payment, but should be held in abeyance for the future disposition of Congress), it is difficult to see how it can longer be upheld. It was evidently intended only to be temporary in its operation and to anticipate that some explanatory or remedial legislation by Congress would be had; but two sessions have since passed, and that body had manifested no disposition to further legislate upon the subject. Under this order an approximate estimate shows that over $900,000 are now held in suspenso, having been neither paid to the company or credited to them under the Thurman Act. It is clear that the Government can not properly refuse to act at all in the matter. It should either pay this money over to the company or else it should be covered into the Treasury and invested and applied, as required by the act of 1878."

The following is a summary of the amounts of interest on the various allowed claims computed at 4 per cent:

1. Interest on claims embraced in judgments of the Court of Claims for the periods from the respective dates of rendition of such judgments to the respective dates of payment thereof	$640,041.89
2. Balance of interest, exclusive of amount stated in foregoing, on all claims from the respective dates of certifications by the accounting officers to the respective dates of payment thereof	856,048.52
Total amount of interest	1,496,090.41

Credit for these claims and judgments amounting to $1,162,939.48 was allowed in settlement agreement entered into with the company by the United States February 1, 1899, but in the absence of express authority of law the amounts of interest as herein stated were not allowed.

I inclose herewith a statement showing somewhat in detail the amounts of interest on claims embraced in each judgment and the interest on allowed claims separately. These judgments and claims are all reported in Senate Document No. 34, Fifty-fourth Congress, second session, and Senate Document No. 36, Fifty-fourth Congress, first session.

I have also had prepared a statement showing by date, number, and amount each allowed claim, and the date, number, and amount of each judgment, with the interest computed at 4 per cent thereon from the respective dates of settlement by the accounting officers

to the dates of payment thereof, which I will take pleasure in forwarding to the committee should it so desire.

Respectfully,

L. J. GAGE,
Secretary.

Hon. W. B. ALLISON,
Chairman Committee on Appropriations,
United States Senate.

51 ***Statement showing amounts of interest at 4 per cent per annum on claims allowed by the accounting officers for transportation services rendered for the United States by the Central Pacific Railroad Company and Southern Pacific Company over lines in aid of the construction of which no subsidy bonds were issued by the United States.***

CLAIMS EMBRACED IN JUDGMENTS.

	Amount of claims.	Interest from dates of certification to rendition of judgments.	Interest from dates of rendition of judgments to dates of payment.	Total.
Judgment No. 14711, rendered by Court of Claims March 8, 1886, favor of Central Pacific Railroad Co., first reported in House Ex. Doc. 121, Fifty-first Congress, first session, Senate Document 34, Fifty-fourth Congress, second session	$1,113.31	$28.21	$574.65	$[illegible]
Judgment No. 15755, rendered by Court of Claims February 11, 1889, favor of Central Pacific Railroad Co., first reported in House Ex. Doc. 234, Fifty-first Congress, second session, Senate Document 34, Fifty-fourth Congress, second session	804,094.31	125,256.18	261,718.18	[illegible]
Judgment No. 16097, rendered by Court of Claims January 31, 1893, favor of Southern Pacific Company, first reported in Senate Ex. Doc. 59, Fifty-second Congress, second session:				
Senate Document 34, Fifty-fourth Congress, second session	499,208.46	106,576.76	68,165.90	174,[illegible]
Senate Document 236, Fifty-fourth Congress, first session	1,310,281.09	265,443.12	309,555.18	[illegible]
Total interest on claims in judgments		517,304.27	640,041.89	1,157,[illegible]

CLAIMS NOT IN JUDGMENTS.

	Amount of claims.	Interest from dates of certification to dates of payment.
Senate Document 34, Fifty-fourth Congress, second session	$1,043,631.03	$[illegible]
Senate Document 236, Fifty-fourth Congress, first session	298,837.50	136,[illegible]
Total interest on claims not in judgments		338,744.[illegible]
Total interest		1,495,[illegible]

SUMMARY.

Interest on claims in judgments from dates of rendition of same by the Court of Claims to dates of payment or settlement		$640,041.[illegible]
Interest on claims in judgments from dates of certification by the accounting officers to dates of rendition of judgments	$517,304.27	
Interest on allowed claims, not in judgment, from dates of certification by the accounting officers to dates of payment or settlement	338,744.25	[illegible]
Total interest		1,495,[illegible]

District Court of the United States for the District of Utah.

United States of America, petitioner, *vs.* Southern Pacific Company, Central Pacific Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius H. Bliss, Walter P. Bliss, Henry W. de Forest, Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Lemuel F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.	In Equity. No. 420.

Answer of defendant Union Trust Company of New York to the petition of the United States of America herein.

This defendant denies that it is restraining, or attempting to monopolize, or is monopolizing, trade or commerce in respect of the transportation of persons or property between the states mentioned in the petition, or any of them, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." This defendant denies that it is violating the provisions of the act of Congress approved July 1, 1862, and the amendments and supplements thereto, described in said petition as the "Pacific railroad acts."

So far as the allegations of the petition hereinabove denied as to relate to the other defendants, the defendant Union Trust Company of New York is without knowledge.

I.

This defendant admits that Southern Pacific Company is a Kentucky corporation with offices in New York City.

This defendant admits that Central Pacific Railway Company is a California corporation.

This defendant admits that Union Trust Company of New York is a New York corporation with its principal offices in New York City, and that it, as trustee of a certain mortgage made to it by the Southern Pacific Company and dated August 1st, 1899, holds certain of the capital stock of the Central Pacific Railway as hereinafter set forth; but it denies that it holds said capital stock as trustee for the Southern Pacific Company, and alleges that it holds the said

stock as the trustee for, and for the protection of, the owners of the bonds secured by the aforesaid mortgage.

3 Except as to the allegations hereinabove specifically admitted or denied this defendant is without knowledge as to the allegations contained in the first article of the petition.

II.

This defendant admits that Southern Pacific Company owns and operates the "Sunset Route", a joint rail-and-water service which moves traffic between New York City and Pacific coast terminals in California and Oregon.

This defendant admits that on August 1, 1899, the Southern Pacific Company executed an instrument known as the "Southern Pacific Company's Four Per Cent Mortgage (Central Pacific stock collateral)" (*not* "Central Pacific Company's stock collateral") to secure $36,819,000 (*not* $36,818,500) of 4% bonds secured by pledge with the Union Trust Company of New York of practically the entire stock of the Central Pacific Railway Company—672,742 shares of the common stock of the Central Pacific Railway Company of the par value of $67,274,200 (*not* $67,275,000), and 174,000 shares of the preferred stock of the Central Pacific Railway Company of the par value of $17,400,000, which stock is now held by this defendant as collateral security under said mortgage.

Except as to the allegations hereinabove specifically admitted or denied this defendant is without knowledge as to the allegations contained in the second article of the petition.

III.

4 This defendant is without knowledge as to the allegation contained in the third article of the petition that it was intended that the road or roads therein referred to although built by different companies should be run as one connected, continuous through line.

IV.

This defendant is without knowledge as to the allegations contained in the fourth article of the petition.

V.

This defendant admits that the Southern Pacific Company, prior to August 1, 1899, became the owner of all or nearly all of the stock of the Central Pacific Railway Company, which stock is now deposited with this defendant as collateral security as set forth in the second article of this answer.

Except as hereinabove specifically admitted this defendant is without knowledge as to the allegations contained in the fifth article of the petition.

VI.

This defendant is without knowledge as to the allegations contained in the sixth article of the petition.

VII.

Further answering the petition herein the defendant Union Trust Company of New York alleges that on August 1st, 1899, a certain mortgage or deed of trust was made by and between the defendant Southern Pacific Company and the defendant Union Trust Company of New York by the terms of which the defendant Southern Pacific Company agreed to pledge and deposit with the defendant Union Trust Company of New York certificates of the preferred stock of the Central Pacific Railway Company to the amount at its face value of $12,000,000, and certificates of the common stock of said company to the amount at its face value of $67,274,200, the said certificates to be assigned in blank with irrevocable powers to transfer the same; and it was further provided and agreed that the certificates so pledged and deposited should be held by the defendant Union Trust Company of New York upon the terms and conditions expressed in said instrument, upon trust for the benefit of the persons who should become holders of the bonds to be issued under said mortgage, to secure to such holders the punctual payment of the said bonds and the interest thereon as it should become due; and it was further provided and agreed that additional preferred stock of said Central Pacific Railway Company, not exceeding in the aggregate $8,000,000, should be deposited in a similar manner, and upon the same terms, conditions, and trusts with the defendant Union Trust Company of New York when delivered to the said Southern Pacific Company.

That pursuant to the terms of said instrument the said Southern Pacific Company has deposited with the defendant Union Trust Company of New York, as trustee as aforesaid, certificates of preferred stock to the amount at its face value of $17,400,000, and certificates of common stock to the amount at its face value of $67,274,200 of the said Central Pacific Railway Company, the said certificates being endorsed in blank with irrevocable power to transfer the same; and that bonds secured by the said mortgage have been issued to the amount of $34,218,500. This defendant alleges, upon information and belief, that the said bonds were issued for value and are now held by many investors whose names are to

it unknown, and that the said bonds do not become due until August 1st, 1949.

Wherefore the defendant Union Trust Company of New York prays that the petition herein may be dismissed with costs to this defendant, or that if the court shall grant to the petitioner any relief to which it shall seem to the court that said petitioner is entitled, that then and in that event this court will make a decree which will not in any way affect the lien of the mortgage to this defendant or in any way depreciate the value of the shares of stock of the Central Pacific Railway Company deposited with it as collateral to said mortgage.

UNION TRUST COMPANY OF NEW YORK,
By J. V. B. THAYER,
Vice President.

DICKSON, ELLIS, ELLIS & SCHULDER,
Attorneys for Defendant,
Union Trust Company of New York.

WILLIAM H. DICKSON,
PERRY D. TRAFFORD,
Of counsel for said Defendant Union Trust Company of New York.

1 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *vs.* SOUTHERN PACIFIC COMPANY AND OTHERS, Defendants.	In Equity. No. 420.

The above-entitled cause being at issue on petition and answers filed,

On motion of counsel for petitioner, and with the consent of counsel for the defendants,

It is ordered that Frank R. Hanna, Esq., of New York, N. Y., be and he is hereby designated and appointed special examiner herein, to fix and hold hearings for the taking of such evidence as either party may desire to adduce before him, whether within or without the district of Utah, and he is hereby empowered to cause to be summoned for such hearings all witnesses and to administer to each the proper oath as such, and it shall be his duty to take and report to this court all evidence thus adduced and offered by the petitioner and the defendants, respectively, together with such objections as may be offered thereto. Such examiner shall have full authority expeditiously to carry out fully the intent and purposes of this order.

He shall at once give notice by mail to counsel for the respective parties of his appointment herein attaching a copy of this order.

The date of the commencement of taking testimony herein is hereby fixed at July 20th, 1914, at 11 o'clock a. m. The examiner shall, as soon as may be, give reasonable notice of all subsequent hearings, either personally or by mail, telegraph, or by an order entered at any regular hearing, to at least one counsel for the petitioner, and to one counsel for each of the defendants which have filed separate answers, viz, for the petitioner, James W. Orr; for the defendants other than the Union Trust Company, William F. Herrin; for the defendant, Union Trust Company, Perry D. Trafford. The examiner may continue such hearings from time to time by order made and entered during any regular hearing held hereunder. The examiner may, upon application of any of the parties and upon reasonable notice fix the time and place for the taking of testimony in said cause. Also the respective parties may from time to time agree as to the time and place of taking testimony. The examiner shall report to this court the testimony as completed and all proceedings had before him, by filing with the clerk of this court a duly certified typewritten or printed copy thereof.

On representation of counsel for the parties hereto, that the character and volume of testimony to be taken in this case, and the residence of the witnesses in different parts of the country, beyond the reach of subpœna, make it impossible to complete the taking of testimony within the time limits prescribed by the rules of court, it is

Further ordered that extensions of time in which parties may take testimony be and they are hereby granted and fixed, viz: The petitioner shall have until February 1st, 1915, in which to complete taking its opening testimony, the right, however, being reserved to petitioner to apply for further extensions of time therefor; defendants shall have until August 10th, 1915, in which to complete taking their testimony in chief, with right reserved to apply for further extensions of time so to do; the fixing of the period of time for taking rebuttal testimony being reserved until the completion of the testimony in chief by both sides. Provided, That if the petitioner shall finish taking its opening testimony before the date herein fixed, then it shall give written notice thereof to defendants, and the time for taking defendants' testimony shall begin twenty days from receipt of such notice and end six months thereafter, and if defendants shall complete taking their testimony before the time so fixed they shall so notify petitioner, and the time for taking rebuttal testimony shall then be fixed by the court. The right is reserved to each party

hereto to apply to the court for further extensions of time for the taking of testimony.

The said examiner, if at any time unable, for any reason, to perform the services required of him hereunder, may designate some suitable, competent person, to act in his place and stead, with full powers as herein stated, subject, however, to the approval of the counsel for the petitioner and for the defendants.

4 Witnesses shall not be required to sign their testimony unless special request so to do is made to the examiner by counsel for either side within 24 hours from the time the witness was excused.

By agreement of counsel the hours for the taking of testimony on any given date shall rest in the discretion of the examiner.

The compensation of the examiner for services herein contemplated is fixed as follows:

For acting as examiner and for reporting, and making the transcript of testimony, proceedings, and exhibits in this case he shall be allowed and paid at the rate of twelve and one-half cents (12½ cts.) per page of 22 lines for the original transcript and for each of 4 additional copies neostyle, of which copies he shall deliver daily the morning after the evidence is taken two to each the petitioner and the defendants herein, to be paid for by them, respectively. For additional copies he shall receive 5c. per page of 22 lines. The party at whose instance the witness is called shall pay for the original transcript. The examiner shall also be paid by the party at whose instance the testimony is taken, when away from New York upon duties connected with this case, his actual and necessary expenses of lodging and subsistence not to exceed $5.00 per day, his actual and necessary expenses of transportation also $5.00 per day when so absent from New York and no testimony is taken.

(Signed) J. A. MARSHALL,
Judge.

5 Dated this 12th day of June, 1914.

We assent to the foregoing order,

JAMES W. ORR,
Counsel for the Petitioner.

J. P. BLAIR,
Counsel for the Defendants.

PERRY D. TRAFFORD,
Counsel for Deft. Union Trust Co.

Filed June 12, 1914.
JERROLD R. LETCHER,
Clerk.

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs. In Equity. No. 420.
SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS.

I, Frank R. Hanna, special examiner herein, hereby certify that the accompanying testimony, volumes Nos. 1 to 10, and petitioner's exhibit, volumes Nos. 1 to 12, contain the evidence and exhibits offered by the petitioner, United States of America; that the accompanying testimony, volumes Nos. 11 to 30, and defendants' exhibit, volumes Nos. 1 to 9, contain the evidence and exhibits offered by the defendants, Southern Pacific Company et al.; and that said volumes contain all of the evidence and exhibits offered in this cause by the respective parties hereto.

And I further certify that I have filed with the clerk of the District Court of the United States for the District of Utah the aforesaid volumes of testimony and exhibits, together with the original exhibits delivered to me by the respective parties.

Witness my hand at New York, N. Y., this 26th day of June, 1915.

FRANK R. HANNA,
Special Examiner.

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. De Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, Defendants. | In Equity. No. 420.

ROOM 720, CUSTOM HOUSE,
New York City, Sept. 21, 1914.

The above-entitled cause came on for hearing before Special Examiner Frank R. Hanna, Esq., at eleven o'clock a. m.

APPEARANCES.

On behalf of the United States: James W. Orr, Esq., Edward P
McClennen, Esq., and Edward E. Gann, Esq., special assistants t
the Attorney General.

2 On behalf of the defendants: W. F. Herrin, Esq., J. P
Blair, Esq., and P. F. Dunne, Esq., for the Southern Pacif
Company, the Central Pacific Railway Company, and the individua
defendants named in the petition; Perry D. Trafford, Esq., for th
Union Trust Company of New York.

3 The EXAMINER. We will proceed with the hearing, gentl
men.

Mr. BLAIR. Before any evidence is offered we desire to interpo
the following objection:

The Southern Pacific Company, the Central Pacific Railway Com
pany, and the individual defendants, having made the pleas i
bar and estoppel set forth in paragraphs IX and X of their answ
herein, and desiring and intending to insist upon said pleas, an
desiring and intending further to rely upon the said record, pr
ceedings, and decree referred to in paragraph X of the answer an
the argument of counsel as conclusive proof of the existence, prio
to the merger in 1901 between the Union Pacific Company and th
Southern Pacific Company, of competition between the two com
panies and the want of power in the Southern Pacific Company t
prevent such competition, now formally object to any evidence i
support of the issues covered by said pleas or the further matte
in respect to which the said prior proceedings and record a
claimed to be conclusive, and state that any cross-examination the
may make is made without waiver, but with full reservation of a
their said pleas and contentions. And to save useless repetitio
they ask that this objection and reservation be considered as ma
to all the testimony about to be taken in this cause, and they gi
notice that said objection and reservation are so made.

4 Mr. MCCLENNEN. The petitioner offers as Exhibit No.
this map of the United States. I take it that defendants wi
not object or require any formal proof of this.

Mr. BLAIR. Not so far as it is a map of the United States; b
so far as it may show the location and situation of the lines of ra
road, we have not seen it and do not know whether it is correct
not.

(The map referred to was marked by the examiner "Petitioner
Exhibit No. 1, September 21, 1914", and will be found in the volum
of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 2, 12th U. S. Statutes at Large, page 489, chapter 120, the act of July 1, 1862, which reads as follows. I take it that I need not read it. It may simply be copied into the record.

Mr. BLAIR. We should be willing to make the agreement that all the acts of Congress relating to the Union Pacific Railroad Company may be considered in evidence without being formally offered.

Mr. McCLENNEN. I think it is going to be convenient to have them right in the record, anyway.

Mr. BLAIR. Are you going to have them copied right into the record?

Mr. McCLENNEN. Yes; these Pacific railroad acts. I think it will be convenient to have them copied in, so we can refer to the copies in the record.

Mr. BLAIR. Mr. McClennen, I do not want to make a captious objection, but those acts need not be offered in evidence. They are matters of which we take notice of by the courts, and I do not think we should be put to the expense, or that anybody should be put to the expense, of having the acts of Congress copied in the transcript of the testimony.

Mr. McCLENNEN. It is not going to be a very serious expense.

Mr. BLAIR. They are very long acts.

Mr. McCLENNEN. There will be constant reference to them, and it will be very convenient to have them all together in the record.

Mr. HERRIN. I never heard of the introduction in evidence of a public act of Congress. It is a matter which may be referred to at any time.

Mr. McCLENNEN. We want it more for the convenience of having the acts all together for easy reference, without having to turn to the volumes of the statutes every time we refer to the acts.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 2, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as petitioner's Exhibit No. 3, 13th Statutes at Large, page 356, chapter 216, the act of July 2, 1864.

Mr. BLAIR. The same objection to the incorporation of that in the record.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 3, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 4, 13th Statutes at Large, page 504, chapter 88, the act of March 3, 1865.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 4, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

7 Mr. McCLENNEN. The petitioner offers as Exhibit No. 5, 14th Statutes at Large, page 79, chapter 159, the act of July 3, 1866.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 5, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 6, 14th Statutes at Large, page 292, chapter 278, the act of July 27, 1866.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 6, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 7, 15th Statutes at Large, page 79, chapter 77, the act of June 25, 1868.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 7, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 8, 16th Statutes at Large, page 56, joint resolution No. 19, of April 10, 1869.

8 (The resolution referred to was thereupon marked "Petitioner's Exhibit No. 8, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 9, 16th Statutes at Large, page 573, chapter 122, the act of March 3, 1871.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 9, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 10, 18th Statutes at Large, page 111, chapter 331, the act of June 20, 1874.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 10, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 11, 20 Statutes at Large, page 169, chapter 316, the act of June 19, 1878.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 11, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

9 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 12 a statement entitled "Outline history of corporate organization of the Central Pacific Railroad Company", prepared under the supervision of counsel for the defendants and tendered by them as believed to be accurate, this offer being made under the agreement that either party is to have the right, which is hereby reserved, to offer additional, explanatory, or corrective evidence on the same subject.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 12, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 13 a statement entitled "Outline history of corporate organization of the Southern Pacific Railroad Company", prepared under the supervision of counsel for the defendants and tendered by them as believed to be accurate, this offer being made under the agreement that either party is to have the right, which is hereby reserved, to offer additional, explanatory, or corrective evidence on the same subject.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 13, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 14 stipulation of September 17, 1914, as to the officers and directors from time to time of the Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company, including the lists attached thereto.

(The stipulation referred to was thereupon marked "Petitioner's Exhibit No. 14, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 15 the copies certified by the Secretary of the Interior under date of August 31, 1914, of the reports filed by the Central Pacific Railroad Company, beginning with the year 1864 and ending with the year 1877, to the extent only that those reports set forth the list of stockholders in the company.

(The papers referred to were thereupon marked "Petitioner's Exhibit No. 15, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. HERRIN. Are these photographs of the originals on file?

Mr. McCLENNEN. As I understand; yes.

Mr. BLAIR. We have no objection, provided the right be reserved to us to offer any part of those reports which we may consider relevant.

Mr. McCLENNEN. There is no objection to your so doing, of course, reserving our right to object to them as to relevancy, and with the understanding that none of them will be offered unless in some way they are called to our attention specifically before the close of your testimony.

The petitioner puts in evidence as Exhibit 16 the copies certified by the Secretary of the Interior under date of August 31, 1914, of the reports of the Southern Pacific Railroad Company, filed in the office of the Secretary of the Interior for the years from 1868 to 1877,

inclusive, so far only as these reports give the names of the stockholders.

Mr. DUNNE. To the same extent and for the same purpose as Exhibit 15?

Mr. MCCLENNEN. Yes.

Mr. BLAIR. And with the same reservation?

Mr. MCCLENNEN. Yes, and the same agreement.

(The papers referred to were thereupon marked "Petitioner's Exhibit No. 16, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. MCCLENNEN. The petitioner puts in evidence as Ex-
12 hibit 17 the certified copy by W. M. Thompson, Secretary of the Central Pacific Railroad Company, of the minutes of the meeting of April 12, 1898, of that company.

Mr. BLAIR. We object to this as irrelevant, immaterial, incompetent, and without foundation, and on the ground that there is no proof whatever of the signature or authority of the officer purporting to give the certificate.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 17, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

JOHN MUIR was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. What is your residence?

A. New York City.

Q. And your address?

A. 74 Broadway.

Q. I show you what purports to be a print of an agreement of the Transcontinental Association dated September 28, 1883. Can you tell me whether that agreement was executed by you?

A. Yes.

13 Q. And in what capacity did you execute it?

A. I was superintendent of traffic of the Northern Pacific Railroad Company.

Q. Was the agreement executed by the Southern Pacific Company?

A. Yes.

Q. Entitled "Southern Pacific Railway Company"?

A. Yes.

Q. And by whom for that company was it executed?

A. By Mr. A. N. Towne.

Q. What was Mr. Towne at that time?

A. General manager.

Q. Have you any knowledge of where the original agreement now is?

A. I do not know.

Q. What was the last that you knew of it?

A. I have no recollection now of it except of the time when it was executed.

Q. Where was that?

A. It was executed in the Palace Hotel in San Francisco, the first one; and there was a subsequent one, I think, confirmatory of it, with some changes, in Topeka, Kansas.

Q. Now, is the subsequent one to which you refer, this one that I show you, headed "Topeka, Kansas, November 8, 1883"?

A. Yes.

Q. Was that signed by you?

A. Yes.

Q. And was it signed by the Southern Pacific Railroad Company?

A. Yes; the same parties as to that first agreement.

Q. By Mr. Towne as general manager of that company?

A. Yes.

Q. Do you recognize those two as being copies of the original agreements?

A. As well as I can. I have glanced over them, but after thirty years, of course, my recollection of the details is not quite as clear as it might be; but as well as I can remember these are the copies of the agreements which were then executed.

Q. I understand you that you have no knowledge of the whereabouts of either?

A. At that time there was a copy or copies delivered to each of the roads that signed the agreement.

Q. And who kept the original?

A. I can not recall one as being an original. I should think they would all be signed by the different parties, and each one be furnished with a copy.

Q. Each one having a signed one?

A. That is what I recall.

Q. What was the last that you knew of your copies of the originals?

A. I would naturally have taken that and delivered it to probably the auditor of the Northern Pacific Railway Company in St. Paul. That was the headquarters of the Northern Pacific Railway Company—to the proper custodian, whoever he might have been at that time.

Q. Do you remember in whose hands the copies belonging to the Southern Pacific Railroad Company were left at your meeting?

A. All I recall is that the two principal parties in connection with that agreement on behalf of those two roads were A. N. Towne, who signed it, and Mr. J. C. Stubbs, who had a great deal to do with framing it. He had probably the most of any of the parties to say as to its form.

Q. Do you know whether any of the originals were left with the Transcontinental Association?

16–17 A. I do not know, as a matter of fact, but I believe they were, as it would be the natural thing to do.

Mr. BLAIR. Counsel objects to that answer on the ground that——

The WITNESS (interrupting). I do not know.

Mr. BLAIR. The witness says he does not know, and counsel objects to any other part of the answer except the statement by the witness that he does not know.

18 Q. Where were the headquarters of the Transcontinental Association at the time of the agreement?

A. The Transcontinental Association was then just formed, and I think the headquarters were fixed at first at San Francisco and subsequently at Chicago.

Q. The Transcontinental Association was finally dissolved, was it not?

A. Long after my severance from the Northern Pacific road.

Q. Are you able to give the date?

A. No, sir.

Q. You severed your connection with the Northern Pacific at what time?

A. I think in the following year, 1884, at the time of the Villard collapse.

Mr. MCCLENNEN. The petitioner offers as Exhibit No. 18 the agreement of September 28th, 1883, just refered to by the witness, and the petitioner offers as Exhibit No. 19 the agreement of November 8, 1883, just referred to by the witness.

Mr. BLAIR. Counsel objects, first, on the ground that the ex-
19 ecution of the documents has not been sufficiently proved, nor has it been sufficiently proved that the documents are correct copies of the originals; and, further, on the ground that the foundation has not been laid for the offer of a copy in lieu of the originals; and, finally, in the alternative on the ground that the originals would be irrelevant, immaterial, and incompetent evidence to any issues in this case.

Mr. MCCLENNEN. It is agreed by counsel that the prints themselves need not be marked, but that the transcription of the documents in the record shall have equal force with the prints.

Mr. BLAIR. They may be copied in the transcript.

(Copies of the papers referred to were marked, respectively, "Petitioner's Exhibit No. 18, September 21, 1914", and "Petitioner's Exhibit No. 19, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. BLAIR. No questions, Mr. Muir.

(Witness excused.)

HUGH NEILL was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. What is your full name?

A. Hugh Neill.

Q. What is your residence?

A. New York City.

Q. And what is your address?

A. No. 121 West 11th Street.

Q. Are you the secretary of the Southern Pacific Company?

A. I am.

Q. And you have been how long?

A. Since January 31, 1913.

Q. Do you hold any official position in the Southern Pacific Railroad Company, the Central Pacific Railroad Company, or the Central Pacific Railway Company?

A. I hold the position of assistant secretary, I believe, of the Southern Pacific Railroad Company and of the Central Pacific Railway Company. That is my recollection. I do not think I am an officer of the Central Pacific Railroad. I would have to verify that by looking at the record. I did not know what I would be asked.

Q. What is the general scope of the duties which you perform as secretary?

A. Of what company; of the Southern Pacific Company?

Q. Of the Southern Pacific Company?

A. I attend all meetings of the board of directors and of the executive committee of the board of directors, and have general charge of the minutes, and under the by-laws perform such other duties as are assigned to me by the board of directors, the executive committee, or the chairman.

Q. Do you have the custody of any of the records or documents of any of these companies?

A. I have the custody of many—not all—of the original agreements entered into between the Southern Pacific Company and the other companies. I do not know just what you mean by "docu-

ments". I have custody of the official minutes of the Southern Pacific Company.

Q. Do you have the custody of the minutes or contracts of any of the other three companies just mentioned?

22 A. I have not the custody of the minutes—the official minutes—of either the Central Pacific Railway Company, the Central Pacific Railroad Company, or the Southern Pacific Railroad Company. So far as I recall, I have not the custody of any agreements or other documents—original documents—of those companies, except perhaps some agreements in which the Southern Pacific Company is a party.

Q. Some of the records and documents of these companies were destroyed in the San Francisco fire of 1906, were they not?

A. Practically all of the records then in storage at San Francisco were destroyed in that fire.

Q. Were there any records in New York destroyed by fire?

A. Well, there was a fire in New York in January, 1912, known as the Equitable Building fire. I was not then secretary of the company. I know, as a matter of general information, that a great many office records were destroyed in that fire.

Q. Do you know whether any of these four companies have any of the original minutes of the meetings of stockholders and the meetings of directors and the meetings of executive committees occurring prior to 1906?

23 A. I could not state as to the Southern Pacific Railroad Company, the Central Pacific Railroad Company and the Central Pacific Railway Company because, as I stated before, I have not the custody of the original records of those companies; and for the Southern Pacific Company, the records—by which I understand you mean the minutes—prior to 1906 are destroyed—are not in existence.

Q. Do you know, as matter of general information in your office, whether the same is true of the other three companies?

A. My understanding is that they were destroyed in the San Francisco fire.

Q. And does that apply as well to the original contracts of these four companies?

A. I can not answer as to that, because I do not know who had the custody of the contracts at that time. I can not testify of my own knowledge after January 31, 1913.

Q. The main offices—the head offices—of these four companies in 1906 were in San Francisco, were they not?

A. I can not state as to that. I do not know what you mean by "main offices".

Q. The offices where the principal transactions would be kept of record in ordinary course of business.

Mr. ORR. The offices of the president.

By Mr. MCCLENNEN:

Q. (Continuing.) Where the offices of the president and chief officials were?

A. As matter of general information I could state that my belief is that the main offices of the Southern Pacific Company in 1906 were located in New York City; that is to say, that the president of the company had his headquarters located in New York City. Without reference to data or office records I could not say as to the other companies. I do not recall, at the moment, who were presidents of the companies at that time; that is, of the three subsidiary companies.

Q. Were the San Francisco offices of the four companies all together?

A. My belief is that they were located in the same building.

Q. And were the offices of the four companies in New York all together?

A. I can not answer that question categorically, for the reason I have stated; I had no official connection with either one of the four companies in 1906, though I was an employe of the Southern Pacific Company.

Q. Did the Southern Pacific Company, as a large stockholder in any of these other companies, have in its possession any of the records, minutes, or documents of any of the other three companies?

A. At what time do you mean?

Q. At the time of these respective fires.

A. I could answer only as a matter of general belief. As I stated, I had no custody of the records at that time.

Q. And that would be what?

A. That there were probably in the offices of the Southern Pacific Company copies of various documents and records of the other three companies mentioned. As to the custody of the original records, I can give no answer.

Q. Have you seen the seal, or papers bearing the seal, of the Central Pacific Railroad Company from time to time?

A. I have seen the impression of the seal.

Q. I refer to petitioner's Exhibit 17. Is that the impression of the seal of the Central Pacific Railway Company?

A. (After examination.) Without further opportunity for investigation and study I could not answer.

Q. Have you any recollection whatever of the characteristics of the seal of the Central Pacific Railway Company?

A. I have none.

Q. None whatever?

A. No.

27 Q. Have you in your possession or control any papers containing any impression of the seal of the Central Pacific Railway Company?

A. I think it possible that I have.

Q. Would you be willing to investigate and bring one this afternoon, if you can find one?

A. Yes; assuming that counsel advise me that it is entirely right and proper. It is a matter that I should follow their advice upon.

Mr. McCLENNEN. Counsel for the Government will advise you that it is entirely proper.

(Whereupon, at 12.35 o'clock p. m., a recess was taken until 1.45 o'clock p. m.)

28 AFTER RECESS.

Mr. BLAIR. Counsel for the defendants withdraw their objection to the authenticity of the seal and the signature of Secretary Thompson to Exhibit No. 17.

HUGH NEILL, the witness on the stand at the taking of recess, resumed the stand for further direct examination.

By Mr. McCLENNEN:

Q. I show you, Mr. Neill, what purports to be a printed copy of an agreement dated February 8, 1913, between the Union Pacific Railroad Company, the Southern Pacific Company, the Central Pacific Railway Company, the Southern Pacific Railroad Company, and the Oregon Short Line Railroad Company. Can you tell me whether you witnessed the execution of such an agreement?

A. I witnessed the execution of an agreement between the parties named on the date mentioned as secretary of the Southern Pacific Company.

Q. Is the original agreement in your possession?

A. One indenture of the original agreement is in my custody.

29 Mr. McCLENNEN. Mr. Blair, may we use this copy to the same extent as we might use the original?

Mr. BLAIR. No objection, reserving the right to correct any difference which may appear upon comparison of the copy with the original.

By Mr. McCLENNEN:

Q. That agreement was signed by Robert S. Lovett as chairman of the executive committee of the Union Pacific Railroad Company?

A. Yes; it was.

Q. And was signed by the Southern Pacific Company by J. Kruttschnitt, chairman of the executive committee of the Southern Pacific Company?

A. Yes.

Q. It was signed by the Central Pacific Railway Company by William F. Herrin, president?

A. Yes.

Q. It was signed by the Southern Pacific Railroad Company by William Sproule, president?

A. Yes.

Q. And it was signed by the Oregon Short Line Railroad Company by Robert S. Lovett as chairman of the executive committee?

A. It was.

Q. And it bore the seals of those several companies?

A. Yes, sir; it did.

Q. And was attested by the secretaries of those several companies?

A. In some cases, by the secretaries; in other cases, by the assistant secretaries, as the agreement itself will show.

Mr. McCLENNEN. In accordance with the above agreement the petitioner puts in evidence as Exhibit 20 this printed copy of the agreement as for the original.

Mr. BLAIR. In order that we may determine intelligently whether we have any objections I would like to ask the purpose for which the offer is made.

Mr. McCLENNEN. The agreement is offered for all the purposes for which it may be relevant in this case, one of which is to show the practical feasibility of operating the Central Pacific Railroad, separated from the control of the Southern Pacific Company, and the practicability of overcoming any obstacles to a separation.

Mr. BLAIR. Counsel objects to the document offered on the ground that the same is irrelevant, immaterial and incompetent testimony with respect to any of the issues in this case.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 20, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 21 certificate of P. Thompson, registrar of Joint Stock Company, Somerset House, London, England, of copies of extracts from the documents on file in his office, of the Central Pacific Railroad Shareholding Company, namely, summary of the capital and shares, list of shareholders, extract from minutes of meeting of June 22, 1899,

relative to the winding up of the company, extracts from the articles of association of the company, and return of final winding up meeting.

Mr. BLAIR. Defendants' counsel waive the proof of the official character and signature of the officer certifying to the paper, but object to the offer as tending to adduce irrelevant and immaterial testimony.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 21, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

32 Mr. MCCLENNEN. The petitioner puts in evidence as Exhibit 22 the United States executive documents, first session, 50th Congress, 1887–1888, volumes 2 to 6, inclusive, containing volumes 1 to 9 of the report of the United States Pacific Railway Commission, containing a message from the President of the United States, Grover Cleveland, January 17th, 1888, transmitting the report of the Pacific Railway Commission; also containing that report; also containing the evidence and exhibits referred to in that report; and the petitioner calls attention to the following parts, on which the petitioner relies, from those reports and evidence:

Page 4 from the report of the commission: "We submit herewith the respective reports of these gentlemen, with the tables, statistics, and exhibits thereto appertaining, which will be found in volume 8 of the evidence and proceedings herewith submitted."

Mr. BLAIR. Counsel objects, so far as it includes any testimony taken before said commission, or any document, as irrelevant and incompetent and *res inter alios acta*, not binding upon these defendants, and that said documents do not prove themselves. We do not object to the report or the message of the President, although we do not consider that it is necessary to offer them in evidence.

Mr. MCCLENNEN. In view of the objection the petitioner
33 calls attention to the fact that the reports and evidence are not offered as evidence of the facts narrated therein, but as evidence of what was communicated to the Congress.

Mr. BLAIR. It is agreed that the message of the President and the report of the Pacific Railway Commission of 1887, and the documents and testimony covered by the above offer need not be copied into the transcript, but may be referred to in the official printed volumes with the same effect as if embodied in the transcript, and that in the event of appeal they need not be copied into the record, but may be referred to in like manner on appeal to the Supreme Court.

(The document referred to was thereupon marked "Petitioner's Exhibit No. 22, September 21, 1914".)

34 Mr. BLAIR. I understand you have offered all of that, have you not?

Mr. McCLENNEN. We have offered the whole thing in the way I ve stated it. Now, the parts to which the petitioner calls attention will indicate by page, or I will read, whichever is more convenent for you. There is not a great amount of it.

I read as follows from page 4: "We submit herewith the respec- e reports of these companies, with the tables, statistics, and ex- ibits thereto appertaining, which will be found in volume 8 of the idence and proceedings herewith submitted."

From page 2572, from the statement of J. C. Stubbs, I read as llows:

"The through rates of fare for business between California and ints in the eastern States are regulated by competition."

From page 2598 I read as follows: "There are now eight trans- ntinental railroad lines in addition to the original Union and Cen- al Pacific line—that is to say, there are eight other lines, each of hich competes in whole or in part with the original Union and ntral Pacific line for the traffic interchanged between the Pacific coast and the territory of the United States and Canada east of the Rocky Mountains. They are as follows:

(1) The original Union and Central Pacific line, opened for rough traffic in May, 1869.

(2) The thirty-second parallel route, or Atchison, Topeka and nta Fe and Southern Pacific line, via Deming, opened in March, 81.

(3) The thirty-second parallel route, or Southern Pacific and mas and Pacific line, via El Paso, Tex., opened in January, 1882.

(4) The thirty-second parallel route, or Galveston, Harrisburg nd San Antonio Railway and Southern Pacific, via El Paso, Tex., ened in February, 1883.

(5) The Burlington and Missouri River Railroad and Denver and o Grande in connection with Central Pacific, opened in May, 1883.

(6) The Northern Pacific Railroad, opened in September, 1883.

(7) The Atlantic and Pacific in connection with the Southern Pa- ic, opened in October, 1883.

(8) The Oregon Short Line, the date of whose opening for busi- ss I am unable to give.

(9) The Canadian Pacific, opened for business in July or August, 86."

This is from the statement of J. C. Stubbs of July, 1887.

From page 2599, from an exhibit to Mr. Stubbs' statement, I read as follows:

"Exhibit A. Comparative statement showing freight tonnage and harges on through traffic and percentage of same done by each route r periods as noted."

It is not necessary for me to read the detail of that statement. You are familiar with it. I am constructively reading through page 2600.

Mr. BLAIR. Very well.

Mr. MCCLENNEN. From page 2656, from the testimony of Leland Stanford, I read as follows:

"Q. You began paying dividends in 1873. How long after that was it before the stock began to be bought and sold?—A. We could not get it on the market until, I think, about 1880 or 1881. I think it was 1880. Then we sold, I think, five millions to a syndicate in New York and they put it on the market. They were better manipulators than we were. They put that stock on the market, and after that time it had a regular quotable value. I do not think it ever got below 60 cents on that market for several years, though we could not sell much of it. After that I believe it went down as low as 26. I think that was the lowest."

37 "Q. What is your present interest in the Central Pacific Company?—A. I do not know how it stands on the books, because my stock was sent east and was put in shape there to be transferred. I do not care much generally about telling my private business, but in this case I have no particular objection. I think I have about equal in value to thirty-two thousand, which would make $3,200,000.

"Q. Thirty-two thousand shares of stock?—A. I think that would be about thirty-two thousand. I remember it rather according to its par value than otherwise.

"Q. And that is your present interest which you own in your own right?—A. Yes."

The date of this is July 29, 1887.

From page 2737, from the testimony of Leland Stanford of August 2, 1887, I read as follows:

"Still we were doing well up to 1881, and we thought that we would be able to meet our obligations at maturity. We passed resolutions for the establishment of a sinking fund to meet the obligations due the Government. But when the Thurman bill was passed it took the matter out of our hands, and the Government took it upon itself to look after this sinking fund. We had nothing to say about it. We were not satisfied, though we had no objection to the

38 Government being the custodian of the sinking fund. At that time we did not have any doubts as to our ultimate ability to pay the debt to maturity; but important competing lines of railroad were built. Up to the time of the completion of the Atchison, Topeka and Santa Fe road to a junction with the Southern Pacific at Deming, our only competitors were mule teams, ox teams, and pack animals. The rates were large, and we had no difficulty in get-

whatever we thought was fair. We could charge whatever we ght best. When the other road was built, however, business was ided and the rates cut down. Whenever any new road was built, business fell off very perceptibly and the percentages fell off the way through. On the Central Pacific, the falling off in the ugh business has been so great that now it commands but about per cent.

Some people have thought that we helped to divert this business onstructing the Southern Pacific road. This is not so, however. construction of the Southern Pacific road was provided for by of Congress, and its management went into the hands of people than those who controlled the Central Pacific. It soon became rent that the best interests of the Central Pacific required that the control of the Southern Pacific should be in the same hands, and that that road should work in perfect harmony with the Central Pacific. It became a necessity, therefore, that hould control the Southern Pacific, and when opportunity offered vailed ourselves of it and purchased the controlling interest in road. Since then the roads have worked in entire harmony, with the advantages of a pooling arrangement, and the advantages lting from our system of leases."

From page 2803, from the testimony of Leland Stanford of gust 3, 1887, I read as follows:

"The Southern Pacific, as perhaps you may have noticed, was or- ized under an act of Congress, and authority was given to people connected with the Central Pacific to build the road. We early that if that line of railroad was completed—if it crossed the ra Nevada Mountains—all the valleys of the State would be to it and it would be a very serious competitor of the Central ific. So we tried to control it, and we have succeeded in con- ling it; and the consequence is that it has never been operated to prejudice of the Central Pacific."

From page 2829, from the testimony of Leland Stanford of gust 3, 1887, I read as follows:

"Q. What effect had the construction of the Southern Pacific upon the Union Pacific?—A. So far as it diverted business, of course it was injurious; but we got on pretty well bout cutting rates. There was no chance for the Southern Pacific touch the Union Pacific at all, until the Atchison and Santa Fe ched it, and that immediately formed a new line; but before that Southern Pacific went off by way of Fort Yuma and down into na, and it did not affect the Union Pacific business by as much a penny or a pound of freight. There was no place where they ld come into competition, but the moment that the Atchison and

Santa Fe touched the Southern Pacific and formed a through line for all the business of the interior as well as the Atlantic coast, the both the Union and the Central became affected.

"Q. What percentage of a year's business after the connection o these roads was affected or diverted?—A. I think you have it here I think that year it had the immediate effect of diverting 23 per cen of the whole through business.

"Q. So that the income of the business of the Union Pacific, by reason of the construction of the Southern Pacific, was affected to the extent of 23 per cent?—A. Yes, sir. I may be mistaken a
41 to it being immediately in that year, but I think the account show that. I was going to say this: Neither we ourselves, individually, nor any of the Central Pacific people are in any manner responsible for the building of the Southern Pacific line. I mean to say they had nothing to do with procuring the Government aid for the Southern Pacific. They had no interest in the Southern Pacific until long afterwards. Mr. Anderson spoke yesterday about the Northern Pacific being provided for the same year that we were. That is a mistake. We organized and commenced work under the act of 1862, and our company accepted its terms. So that the provision for the building of the Northern Pacific was made two years after the commencement of the construction of the Central Pacific."

From page 3310, from the testimony of J. C. Stubbs of August 19 1887, I read as follows:

"Commissioner LITTLER. What Congress will want to know is whether the Central Pacific and Union Pacific occupy such relation to the traffic of the Pacific coast that they can compete successfully with any other road from here to New York.

"The WITNESS. It does it and has done it.

"Commissioner LITTLER. That is one of the important questions to be considered in any further legislation that may take place in relation to this matter.
42 "The WITNESS. It is the shortest route and, in my judgment with proper management, it is the best route, and always will be."

From page 3717, volume 5, from a letter of December 10, 1874 from C. P. Huntington, president, to Honorable Thos. A. Scott president Texas Railway Company, Philadelphia, Pennsylvania, I read as follows:

"My great interest, of course, is with the Central Pacific, which will not be benefited by the construction of this road; but the parties who control the Southern Pacific are very anxious to have this southern line completed at an early day. And so long as I am acting as the president of the company I shall do all that I can to carry out their wishes."

From page 3738, from a letter to Mr. Colton of April 26, 1876, I
d as follows:

"Scott has several parties that I think do nothing else but write
icles against the Central Pacific and its managers, then get them
lished in such papers as he can get to publish them at small cost,
sends the papers everywhere; and there is no doubt that he has
done much to turn public sentiment against us. If it was
known that the C. P. did not control the S. P. I think we
could beat him all the time, although he had about the same
ntage over us in Washington that we would have over him in
."

From page 3751, from a letter of May 15, 1877, to Mr. Colton, I
d as follows:

"Scott is working everywhere for his open highway, but I think
can beat him; but it will cost money and harder work to beat
with money under the plan of some of my associates, viz: having
derstood that the C. P. and S. P. are, as it were, one property.
it would be without money if the public could know the facts—
that is, that the S. P. is a separate and distinct property."

Mr. McCLENNEN. In the same way, with the same limitations, the petitioner puts in evidence as Exhibit No. 23 the
rt of Mr. Morgan from the Committee on Pacific Railroads,
ch 29, 1897, in the Senate of the United States, 55th Congress,
session, Minority Report No. 20, part 2, together with the
endix thereto, being Senate Report No. 778, part 2, 54th Congress,
session, April 21, 1896, the same matter as appears in the appen-
also being printed as "Pacific Railroad Debt" and other Senate
uments, 1896, in the 54th Congress, first session, Document No.
, entitled "Government debt of the Pacific railroads; notes of
rings before the Senate on Pacific Railroads of the Senate of the
ted States on the subject of the indebtedness of the Pacific rail-
ds to the Government." Ordered printed June 9, 1896.

Mr. BLAIR. The same objection is made as was made to the offer of
Pacific Railroad Commission report and testimony, and the same
ement to obviate the necessity of copying this report into the
rd.

The minority report was thereupon marked "Petitioner's Exhibit
23-A, September 21, 1914", and the appendix was thereupon
marked "Petitioner's Exhibit No. 23-B, September 21, 1914".)

Mr. McCLENNEN. The parts to which the petitioner calls
ttention are: Original page 133, appendix page 71, the testi-
y of Collis P. Huntington, February 17, 1896:

Senator MORGAN. Did you have any in the Central Pacific?

Mr. HUNTINGTON. Yes.

Senator MORGAN. Did you transfer that stock?

"Mr. HUNTINGTON. No.

"Senator MORGAN. Have you got it yet?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. How much?

"Mr. HUNTINGTON. Not a great many shares. I suppose I have got four or five thousand shares.

"Senator MORGAN. How much money would that represent on the face value?

"Mr. HUNTINGTON. One thousand shares represent $100,000.

"Senator MORGAN. And you have got four or five thousand shares, about $500,000?

"Mr. HUNTINGTON. Yes."

Mr. MCCLENNEN. Also original hearing page 139, appendix page 77, the same day; testimony of Collis P. Huntington:

46 "Senator MORGAN. You say the stock of the Central Pacific has been taken up by this Kentucky company?

"Mr. HUNTINGTON. Excuse me. The Southern Pacific Company has no stock in the Central Pacific.

"Senator MORGAN. None at all?

"Mr. HUNTINGTON. No.

"Senator MORGAN. No stockholder of the Central Pacific has ever exchanged his stock with the Southern Pacific?

"Mr. HUNTINGTON. No; I am sure of it. No stockholder of the Central Pacific was ever asked to exchange it.

"Senator MORGAN. You never would permit that?

"Mr. HUNTINGTON. We would not ask it to be done."

Mr. MCCLENNEN. Also Appendix, page 108, original hearing, page 170, from the testimony of Collis P. Huntington, February 18, 1896:

"Senator MORGAN. The Southern Pacific was not built as a feeder to the Central Pacific?

"Mr. HUNTINGTON. No."

Mr. MCCLENNEN. Appendix, page 136, original hearing, page 199, testimony of Collis P. Huntington, on the same day:

"Senator MORGAN. I will read to you a portion of the statement made by you before the Senate Committee on Pacific

47 Railroads on the 6th of February, 1894:

"'Senator MORGAN. Who owns the Central Pacific now?

"'Mr. HUNTINGTON. It belongs to a great number of shareholders; there are so many of them that I do not know who they are; I suppose there are 25,000 of them altogether.'"

Mr. MCCLENNEN. Also Appendix, page 141, original hearing, page 203, from the same testimony on the same day:

"Senator MORGAN. You had stock in the Southern Pacific (the Kentucky company) to the amount of probably $10,000,000?

"Mr. HUNTINGTON. No; I do not know how much I had.
"Senator MORGAN. And in the Central Pacific you had none at all?
"Mr. HUNTINGTON. Oh, yes; I had some. I always had stock in e Central Pacific.
"Senator MORGAN. How much?
"Mr. HUNTINGTON. Four or five thousand shares."
Mr. McCLENNEN. Also Appendix, page 143, original hearing, page 6, testimony of Mr. Huntington the same day:
"Mr. HUNTINGTON. Yes. It competes with it like all the other es, but not to the same extent. The great through tonnage which is picked up is west of the Alleghanies."

Mr. McCLENNEN. Also Appendix, page 146, original hearing, page 208, testimony of Collis P. Huntington, February 1896:
"I will ask you, preliminarily, Mr. Huntington, to state as nearly you can the exact amount of stock which you now own in the Cenal Pacific Railroad.
"Mr. HUNTINGTON. I stated, I think, that I owned over 6,000 ares.
"Senator MORGAN. Representing in face value over $600,000?
"Mr. HUNTINGTON. Yes.
"Senator MORGAN. What is the largest amount of stock in that ilroad which you have ever owned?
"Mr. HUNTINGTON. I do not know that I have ever owned more an that. I had an interest in the Contract and Finance Company.
"Senator MORGAN. You do not think that you have ever personally wned more than $600,000 of this stock?
"Mr. HUNTINGTON. I never had more than that standing in my wn name. I am not prepared to say that I had ever so much as hat.
"Senator MORGAN. What was the largest amount you owned at any time, or that you had a right to, as a member of the Contract and Finance Company?
"Mr. HUNTINGTON. I do not know. Mr. Hopkins kept all hese accounts; he was the bookkeeper of the concern, and whatever e said always went with me. I never saw the books of the Conract and Finance Company.
"Senator MORGAN. Were all the memoranda of the ownership of he stock and the distribution of the stock of each stockholder in he Contract and Finance Company kept on the books of that ompany?
"Mr. HUNTINGTON. I think so. The Central Pacific stock was old largely, and the debts of the Contract and Finance Company

were paid out of the proceeds of the sale, so that it did not really come into my hands.

"Senator MORGAN. Was there ever any distribution of the assets of the Contract and Finance Company?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. When was that made?

"Mr. HUNTINGTON. I do not recollect the date. I should say along in the seventies.

"Senator MORGAN. Did that include a distribution of the bonds and stock of the Central Pacific Company?

"Mr. HUNTINGTON. There was no distribution. They were
50 sold to pay the debts of the Contract and Finance Company, which debts were incurred, according to my recollection, by the building of the Central Pacific road.

"Senator MORGAN. And out of their sale the Contract and Finance Company paid its debts?

"Mr. HUNTINGTON. Yes."

Mr. MCCLENNEN. Also appendix, page 155, original hearing, page 217, testimony of Mr. Huntington on the same day:

"Senator MORGAN. At the time of the completion of the Central Pacific road in the manner you have described, how much did the Contract and Finance Company owe?

"Mr. HUNTINGTON. I do not know.

"Senator MORGAN. About how much?

"Mr. HUNTINGTON. I do not know how much, but it was in the millions.

"Senator MORGAN. Two or three or four millions?

"Mr. HUNTINGTON. A good deal more than that.

"Senator MORGAN. Five or six or seven or eight millions?

"Mr. HUNTINGTON. I can not say. My impression is that the Contract and Finance Company owed considerably more than $10,000,000.

"Senator MORGAN. Has that all been paid?

"Mr. HUNTINGTON. It has been all paid.
51 "Senator MORGAN. How?

"Mr. HUNTINGTON. By selling what we had to sell; but mostly shares of the Central Pacific."

Mr. MCCLENNEN. Also appendix, page 159, original hearing, page 221, Mr. Huntington's testimony on the same day:

"Senator MORGAN. So that we will commence now in 1870 when the road was in full operation. What was the stock of the Central Pacific worth in 1870?

"Mr. HUNTINGTON. I do not know. The stock could have been sold for 10 cents, I know, in 1869.

"Senator MORGAN. It then had not gone into operation?

"Mr. HUNTINGTON. Yes; it went into operation on the 10th of May, 1869.

"Senator MORGAN. Between 1870 and 1880 was there not a rapid increase in the value of the stock?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. How did it go?

"Mr. HUNTINGTON. I think between 70 and 80. I think I sold some at 85."

Mr. McCLENNEN. Also appendix, page 232, original hearing, page 94, the testimony of Mr. Huntington, March 6, 1896:

"Senator MORGAN. There was only about sixty millions of stock of the Central Pacific issued in all?

"Mr. HUNTINGTON. That was all at that time.

"Senator MORGAN. And you had all of that except a little margin—a little fringe—you four?

"Mr. HUNTINGTON. We had a very large majority of the stock. I mean the Contract and Finance Company.

"Senator MORGAN. These shares commenced to appreciate, and appreciated rapidly while the dividends were being paid, did they not?

"Mr. HUNTINGTON. They appreciated. That would be the natural effect.

"Senator MORGAN. You say, 'We carried the shares until they began to appreciate, and then we commenced selling them'?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. Why did you commence selling shares when they began to appreciate and when they were paying such heavy dividends?

"Mr. HUNTINGTON. Because we were owing money."

Mr. McCLENNEN. Also appendix, page 277, original hearing, page 139, testimony of Mr. Huntington, March 7, 1896:

"Senator MORGAN. I thought you made the most of it by paying your debts. What is the largest amount of stock that you ever owned in the Central Pacific at any time?

"Mr. HUNTINGTON. I never owned very much. I owned some stock in the Contract and Finance Company.

"Senator MORGAN. I am talking about the Central Pacific Company.

"Mr. HUNTINGTON. I would not be positive that I ever had more than a couple of thousand shares.

"Senator MORGAN. You have 6,000 shares now.

"Mr. HUNTINGTON. I was thinking about old times.

"Senator MORGAN. Two thousand shares is about all you owned?

"Mr. HUNTINGTON. Until a long time after.

"Senator MORGAN. When did you become the owner of 6,000 shares?

"Mr. HUNTINGTON. I do not know. It may have been that the Contract and Finance Company may have distributed the shares of the Central Pacific that it owned. The Contract and Finance Company got money and paid all its debts, and it may have distributed some shares.

"Senator MORGAN. Did you say that the 6,000 shares which you now own were distributed to you by the Contract and Finance Company?

"Mr. HUNTINGTON. They may have been.

"Senator MORGAN. Have you ever bought any of the Central Pacific in the market?

"Mr. HUNTINGTON. I do not believe I have."

54 JAMES C. LINCOLN was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. ORR:

Q. Just state on the record your name, place of residence, and occupation.

A. My name is James C. Lincoln; residence, New York City; occupation, manager of the traffic bureau of the Merchants' Association of New York.

Q. How long have you been manager of that?

A. Since 1912.

Q. What railroad experience have you had, and in what departments of service?

A. I have had a somewhat extended railroad experience in practically all of the departments.

Q. Commencing at what time, and give in a general way what your experience has been, and what positions you have occupied.

A. I entered the railway service in September, 1876, with what was then known as the St. Joseph & Denver City Railroad. My first service was somewhat of a general utility boy around the gen-

55 eral office. I was connected with the car-service department and from that went into the transportation department; was chief clerk in the general freight and passenger department, and at the time I left the service of the St. Joseph & Grand Island, as it was then known, in 1888, I was the chief clerk in the general freight and passenger department of that line.

In September, 1888, I went to Atchison, Kansas, as commercial agent of the Missouri Pacific Railroad Company, in charge of the central branch and the western extension divisions. In the fall of 1889—as I recall it, it was in November, 1889—I was called to the

headquarters of the Missouri Pacific in St. Louis, and on the 1st of January, 1890, I was made assistant general freight agent. I remained with that company from 1890 to 1905, occupying the positions, respectively, of assistant general freight agent, first assistant general freight agent, general freight agent, and at the time I left as assistant freight traffic manager.

Q. Then where did you go?

A. When I left the Missouri Pacific I went with the Merchants' Exchange of St. Louis as commissioner in charge of its traffic bureau. I remained with that organization from May, 1905, until May 1912, when I came to New York to take charge of the traffic bureau here.

Q. In a general way, what are your duties in your present position?

A. My duties in my present position are to look after the question of rates, rules, and regulations as applied to the shipping public by the carriers, and to look after particularly and see that New York is not discriminated against in the matter of rates, and to see that no unjust burdens are placed upon the shippers of this community in the way of rules and regulations. The position is largely that of—well, a "go-between" between the railroads and the shipping public, and to bring about the best of feeling, so that they may better understand each other.

Q. Are you acquainted with the system of railroads managed or controlled by the Southern Pacific Company—the general plan?

A. Why, no—in a very general sort of way. The railroads of the West, yes. I would not say now that I could recall with particular reference to the change from "railroad" to "railway" and the different organizations.

Q. I did not mean the different constituent lines; I meant the general plan.

A. Yes.

Q. Do you know especially where the Central Pacific Railway operates its lines?

A. From Ogden to San Francisco, Sacramento and San Francisco.

Q. Are you acquainted with the transportation line known as the "Sunset"?

A. Yes.

Q. Where does that operate?

A. What is known as the "Sunset Route" operates from New Orleans to San Francisco.

Q. Does it do so in connection with any water line—water service?

A. The Morgan Line, owned by the Southern Pacific Company, enjoys what is known as the "Sunset Route" out of New York to San Francisco and Pacific coast points.

Q. Does the "Sunset" have an all-rail line from San Francisco to New Orleans?

A. What is known or what I would designate as the Southern Pacific has an all-rail line from New Orleans and Galveston to Pacific coast points.

Q. It handles transcontinental traffic, does it, by rail and water?

58 A. From New York and seaboard territory, and it handles business by water to New Orleans and thence by rail to the Pacific coast.

Q. Could you make some statement as to the length of time the Southern Pacific Company, to your knowledge, has operated that transcontinental line, rail and water line?

A. I could not go back and establish a definite date. It has been a very long time that the Morgan Line and the Southern Pacific Company have engaged in transcontinental business.

Q. Has the Southern Pacific Company also a rail connection to New York from New Orleans?

A. It has no rail connection that it owns. Of course, there are rail lines operated from New York to New Orleans. They can operate in connection with them.

Q. It makes a through route that way?

A. There are through routes from New York via New Orleans to the Pacific coast. The Southern Railway and its connections, the L. & N. and the Atlantic Coast Line and connections; they are practical routes.

Q. I will get you to state whether there is a possible all-rail transcontinental line over the Central Pacific and the Union Pacific and eastern connections from San Francisco to the Atlantic seaboard.

59 A. The more direct route from New York to San Francisco would be through the Chicago and Mississippi River gateway, through trunk lines from New York, such as the Pennsylvania and the New York Central lines, those two lines in particular. Also the Wabash line serving Chicago and St. Louis and thence west over the lines operated from Chicago to the Missouri River, and the Union Pacific from Omaha or Kansas City through Ogden to San Francisco.

Q. The Union Pacific from Omaha or Kansas City would operate in connection with what line from Ogden west?

A. They would operate to San Francisco with the Central Pacific.

Q. I will get you to state, in your opinion, from the experience you have had and your acquaintance with railroads and with transcontinental lines, whether the Southern Pacific Company, as you have

described it, and the Central Pacific Railway Company with its eastern connections, are competitive systems for transcontinental business.

A. They are competitive systems. The degree of competition, of course, is dependent upon the territory of origin of the business.

Q. Take a shipment of wool from the west coast to the east coast. How could that naturally and practicably be transported?

A. California wool could move by the Sunset route, or it could move—speaking now of the Southern Pacific lines—from Ogden to the Missouri River gateway through Omaha and Kansas City. The Pacific coast wool, I would not say would move to any great extent by water routes; it would go through the northern gateways.

Q. What are the wool markets on the Atlantic coast or near the Atlantic coast?

A. Boston, in New England, is the great wool market.

Q. How about the movement of hops from the west coast, transcontinental?

A. The California hops move largely by rail. They move in part by rail and water.

Q. Are you acquainted with what has been known—as a traffic man—as the dead line running north and south, say east of Buffalo and Pittsburgh and Toronto and as far south as the Ohio River?

A. I do not believe I comprehend that term as applied to transcontinental business. I do not believe I understand the term.

Q. What is the Atlantic seaboard territory that is handled or influenced or controlled by the Southern Pacific Company as applied to transcontinental business?

Mr. BLAIR. He did not say there was any Atlantic seaboard territory influenced or controlled by the Southern Pacific Company as applied to transcontinental business.

Mr. ORR. I am just going to ask him to say so.

Mr. DUNNE. Then we will object to the form of the question as incompetent and calling for a conclusion of the witness and without foundation. I think you ought to reframe it.

Mr. ORR. Well, I may later; but I will let him answer this one.

The WITNESS. The Atlantic seaboard territory, as applied to transcontinental business, is the territory which lies east of Buffalo, Pittsburgh, and Cleveland, and north of the Ohio and Potomac Rivers. It is in that territory that through rates apply from and to Pacific coast points, the rates being the same by Chicago, St. Louis, and the Missouri River gateways, and the same by the Gulf ports. It is in that territory that the Morgan Line operates traffic through the port of New York; that is, they can reach as far south as Pittsburgh and

draw the business into New York, and then going on to the Pacific coast by the Gulf ports, and that is the territory of competi-
62 tion between the all-rail lines and the rail and water lines on Pacific coast traffic.

By Mr. ORR:

Q. On tonnage originating within the territory you have just described, to be transported to the Pacific coast, we will say, by the Southern Pacific Company, what becomes of the local rate from the point of shipment to New York?

A. The local rate from point of shipment to New York is absorbed in the through rate. I want to qualify that statement by saying that there are some rates which are made from New York to Pacific coast terminals that only apply from the port of New York.

Q. That is on the higher classes?

A. On the very low classes, the very low rated commodities.

Q. To your knowledge and from your experience, what transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?

Mr. BLAIR. He has not said that he knows, and he has not said that any company dominates it, so I object to the form of the question as leading, improper in form, and suggestive.

Mr. ORR. After the word "what" add "if any."

63 Mr. DUNNE. I would like to have the reporter read that question now.

(The reporter read the question as amended, as follows:)

"To your knowledge and from your experience, what, if any, transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?"

Mr. BLAIR. Counsel has added the words "if any", and it was not in the same form as when the objection was made. It makes it appear that the question was as now read.

Mr. DUNNE. I think the record ought to show. There is no foundation in this record, or any knowledge on the part of this witness, as to the percentage of tonnage originating in seaboard territory which goes by any particular carrier, whether all-rail or rail and water, and the proper way to examine him would be to ascertain if he has any knowledge of the respective percentages originating in that territory tributary to the different carriers, served by the different carriers.

(The question was again read by the reporter.)

The WITNESS. If you are speaking of the present time, I would not say that any particular company could dominate the situation
64 as to rates to the Pacific coast. Of course the Southern Pacific Company, by reason of its extensive lines in California, would and should receive consideration at the other hands in the adjustment

d rates. A very different situation exists today from what existed prior even to 1910.

Q. Take the condition as it was; are you acquainted with the conditions as they existed prior to 1901?

A. Yes; I am——

Q. I mean on this rate situation—this traffic situation—in the territory you have described on transcontinental traffic?

A. It is my recollection that it was about 1901, or possibly 1902, that the Union Pacific influence over the Southern Pacific came into existence. As to the time prior to 1901, that, by reason of my official connection with the Missouri Pacific, I was quite familiar with at that time.

Q. What was the situation at that time, if you know, as to what influence or what companies dominated—controlled—the traffic in the territory you have described?

Mr. BLAIR. Counsel objects to the form of the question as leading and suggestive. The witness has not testified that any company dominated or controlled the traffic referred to.

By Mr. ORR:

Q. Go ahead.

A. Prior to 1901 the Southern Pacific Company was the dominating factor in adjusting rates to the Pacific coast. That is very logical and very probable by reason of the territory covered by their rails.

Mr. DUNNE. We move to strike the answer out as not responsive to the question.

By Mr. ORR:

Q. I will ask you to state whether you have knowledge of the conditions prevailing prior to 1901 as to what particular company or transportation company practically controlled the rate?

Mr. BLAIR. Counsel objects and protests against the form of the question as leading and suggestive, the question embodying or implying a statement of conditions about which the witness has not testified.

Mr. ORR. I have asked him the question whether he has knowledge of it.

Mr. BLAIR. He has not stated that any railroad dominated the situation.

Mr. ORR. The question, Judge, if you will listen to it, makes that inquiry. It is answerable yes or no.

Mr. BLAIR. So is every suggestive and leading question answerable by yes or no.

(The pending question was read by the stenographer.)

67 By Mr. ORR:

Q. The question is, have you a knowledge as to what company did control it. That could be answered by yes or no.

A. I have knowledge; yes, sir.

Q. You may state what company it was, or what companies, if more than one, that controlled that rate.

A. At that time the rates to California were controlled by the Southern Pacific and the Santa Fe Companies.

Q. Have you knowledge of the manner in which the tonnage was solicited by the Southern Pacific Company and its soliciting agents for transcontinental traffic, both from the west coast to the East and from the East to the West, prior to 1901?

A. Prior to 1901 California traffic from the seaboard territory was solicited by the Gulf route—water line to New Orleans or Galveston, and the Southern Pacific beyond.

Q. Is that what you have referred to at times as the Sunset Route?

A. Yes; what was known as the Sunset Route.

Q. In taking that route would any part of the traffic pass over the Union Pacific and Central Pacific Railroads?

A. It would not.

68 Q. Do you know the conditions prevailing in respect of transcontinental traffic from the territory you have described from 1901 to 1913, or any part of that period?

A. Oh, a changed condition was brought about after the close relations between the Union and Central and Southern Pacific lines in the Union and Southern Pacific systems, and from the territory in the Middle West which is called the C. F. A. territory, and from a part of the trunk line territory, business moved more freely, and through the Omaha gateway, than was true prior to 1901.

Q. Since the "unmerging", as we will call it, of the Southern Pacific and Union Pacific Companies, have you knowledge of the conditions in respect of which you have just testified?

A. Do you mean the last change that was made?

Q. Yes.

A. I would not desire to speak authoritatively on that point. I have not been in the railway business, have not been looking after the business of the coast, since about 1912.

69 Q. Within your knowledge and experience, within your experience and knowledge of the situation, as far as you are able to state as to the conditions of traffic as it proceeds, we will say, westward from the Atlantic coast, what territory is covered by the Southern Pacific competition—active solicitation?

A. I could not answer that question with authority as to to-day. I can answer it as to the time when I was in the railroad business.

Q. Yes.

A. And when I was soliciting business and trying to get business for the Missouri Pacific Company.

Mr. DUNNE. What years do you have in mind?

The WITNESS. Well, up to 1906—1905—and prior to 1900 or 1901, along in that period of time the Southern Pacific Company was more or less active in the solicitation of California business in the territory—well, with the Central in Missouri and to some extent at points on the Ohio River, points in Ohio and Indiana. That I know, because in my official capacity with the Missouri Pacific I would come in contact with the competition in that territory. The Missouri Pacific, you understand, was trying to get business by way of Denver, or by way of Pueblo, I should state, and Ogden, and the Central Pacific, or by way of Texarkana and El Paso, and we had the competition of the Southern Pacific in the territory of St. Louis and east thereof, and in Ohio and Indiana and in what is known as trunk-line territory.

By Mr. ORR:

Q. Business solicited by the agents of the Southern Pacific Company in the territories you have just mentioned, if the Southern Pacific Company secured the business, which way was it routed and sent?

A. Well, part of it went over the Illinois Central into New Orleans and thence west.

Q. Over the Sunset Route?

A. Over the Sunset line.

Q. Over the Southern Pacific, you mean?

A. The Southern Pacific. A part of it would move over the M. K. & T., and in that territory, and thence over the Southern Pacific; some of it by way of the Cotton Belt and thence over the Southern Pacific; or, in other words, the Southern Pacific lines solicited absolutely the business by way of New Orleans; in territory south of the Ohio River and along the Ohio River they solicited business by way of Memphis and the New Orleans gateway. From points north of the Ohio River and from points in what is known as Central Freight Association territory and east of the Mississippi River, the New Orleans route being longer, they would operate by other gateways, and they undertook to solicit the business for the more direct route, and worked with the lines that might have an edge on the business in that territory in which it originated. They even worked with the Iron Mountain, so far as that is concerned.

Q. Would any part of it be sent by way of the Union Pacific and Central Pacific?

A. Southern Pacific solicitors would not be soliciting business to go by way of Omaha and the Ogden gateway; that is, prior to 1901.

Q. Yes. Now, you say it would go by way of New Orleans. Why did they send it that way?

A. It is a long haul.

Q. They got the longest haul out of it by sending it by way of New Orleans?

A. By way of New Orleans.

Q. They could have sent some of it by the Rock Island to El Paso, could they not?

A. Yes; they could have sent some of it that way, or they could have moved it by other lines to El Paso—the Iron Mountain
72 and T. P.

Q. Are you familiar with the route from Kansas City by the Orient to Alpine, Texas?

A. No; I am not. It has been constructed since I left that territory.

Q. I believe you testified to the conditions up to 1901.

A. Yes.

Q. What, if any, change was there, or what changes were there, in the situation from 1901 to 1906, to your knowledge?

A. When the solicitation of California business for the Missouri Pacific System and the D. & R. G. began we found there was a tendency on the part of the Southern to give the business to the Union Pacific, so as to get the long haul from California to Omaha or to Kansas City. It made necessary a very active solicitation of business in California to secure the routing by Omaha, D. & R. G. and Union Pacific, and at no time were our routings cancelled through the Alpine gateway on California business.

Q. During the period extending from 1901 to the spring or the early part of 1913 had you ever known of solicitors of the Southern Pacific, or solicitors for the Southern Pacific, soliciting trans-
73 continental freight, or freight destined to the Pacific coast to go over the Central Pacific?

A. After the consolidation, as I call it, of the Union Pacific——

Q. No; the question is except during the period from 1901 to 1913.

Mr. BLAIR. He has testified that he did not know anything about the conditions since 1912, so that the question goes further forward than his information extends.

By Mr. ORR:

Q. Let me ask that question again. I do not think you understood it.

I say, except during the period from 1901 to 1913, except during that period, have you ever known of the Southern Pacific being solicitors of Pacific freight over the Central Pacific?

A. No. That means the territory prior to 1901.

Mr. BLAIR. What is that answer?

(The stenographer read the last answer of the witness, as follows:)

"A. No. That means the territory prior to 1901."

The WITNESS. That means the time prior to 1901, I mean. He has brought it up to the present date—1913.

By Mr. ORR:

Q. The Southern Pacific Company, you say, operates a part of its transcontinental line by steamboats. Are you acquainted with the storage arrangements in New York City which that company has or have for the accommodation of shippers?

A. On their business from California, brought into New York my recollection is that they allow about fourteen days' free time for delivery, storage period. That is easy to be found by an examination of the tariffs.

Q. That is an arrangement for free storage for a period of fourteen days, is it?

A. They give the shippers fourteen days to remove their freight from the pier on California business.

Q. Whether a man wants to reconsign his freight, or whatever disposition he wants to make of it makes no difference; is that right?

A. That is my understanding; he has fourteen days to move it.

Q. Is there any transcontinental all-rail route which has any such free-storage arrangement in New York City?

A. There is not.

Q. You may state whether or not, in your opinion, the free-storage arrangement of the Southern Pacific, fourteen days' free time, is an inducement, or an added inducement, for shippers to use that route?

A. It would be for some.

Q. Yes.

A. For some who wish to avail themselves of the opportunity of shipping.

Q. What are the requirements about removing shipments from there—from cars? How much free time is allowed?

Mr. BLAIR. Counsel objects to the evident attempt to prove by the witness the conditions and terms which appear in the written tariffs, and must appear in the written tariffs of the railroad companies parties thereto, on the ground that the best evidence is the tariffs themselves.

By Mr. ORR:

Q. You may answer.

A. The rule in New York City on shipments arriving by the all-rail routes from the west is that the property shall be removed—

this is on package freight—from the pier or station within 72 hours. In the case of carload freight, which is tendered for delivery on private tracks, within 48 hours thereafter demurrage will begin to accrue. In case of boat delivery stations it is sent to the public warehouse at the end of 72 hours.

76 A different rule prevails on business arriving by the boat lines. That is not confined exclusively to Pacific business. A different arrangement prevails on goods arriving by boat lines.

Mr. BLAIR. These rules are all in the printed tariffs, are they not?

The WITNESS. They should be in the printed tariffs.

Mr. BLAIR. They are of no force if they are not?

The WITNESS. I assume not.

By Mr. ORR:

Q. Are you acquainted with the effects of closing any of these particular gateways that you have mentioned or have not mentioned? Did you describe what the general effect would be; for instance, the closing of the Ogden gateway by the Union Pacific, what is the effect of that?

A. If the Ogden gateway were closed?

Q. Yes.

A. By the Union Pacific?

Q. Yes.

A. I don't believe I understand.

Q. What traffic does it influence or control?

A. You are speaking of the Union Pacific on transcontinental business?

77 Q. On transcontinental business.

A. As controlling the Central Pacific?

Q. No; as to the effect of its closing the gateway. You speak of closing a gateway. What does that mean?

A. Well, Ogden is the gateway from the East to the Pacific coast.

Q. Yes.

A. And the Central Pacific Railroad was the connection of the Union Pacific and the Rio Grande Western, serving that territory. If the Central Pacific were to cancel out its through rates and percentage arrangement with the Rio Grande Western Railroad, in railway parlance that would be termed as closing a gateway; or, as has been done in the case of handling lumber to the Northwest, the Great Northern through routes and joint rates had prevailed by certain junction points in the interior, and with the cancellation of such joint rates that went out and closed that gateway. There are various through rates in effect by Newport News, by Savannah, and by Norfolk. They are all supposed to be gateway points. If the through rate is cancelled by one of those routes, and the through

and through route that previously had been in effect was cancelled, that gateway would be closed.

Q. Would that mean that the rate would be quoted only to that gateway?

A. It could only move then on the combination of locals to and that gateway, and ordinarily the closing of a gateway precludes moving of business through that gateway.

Q. That would apply to the closing of any other gateway?

A. It would cancel out the through rate and divisions through one junction point by one road, and permit such through routes joint rates and divisions to operate through another route. Of course, as to one line, the gateway is closed to it.

Mr. ORR. You may cross-examine, if you desire to.

(Thereupon, at 4.30 o'clock p. m., an adjournment was taken until to-morrow, September 22, 1914, at 10.30 o'clock a. m.)

SECOND DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 22, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne for the Southern Pacific Company, et al., and Mr. Trafford, for the Union Trust Company of New York.

JAMES C. LINCOLN, the witness under examination at the taking of adjournment, resumed the stand for further examination.

Cross-examination by Mr. BLAIR:

Q. Mr. Lincoln, I want to direct your attention to the transcontinental lines and traffic conditions existing at the time of the merger, and just before the time of the merger, in 1901, of the Union Pacific and the Southern Pacific. If a man at that time had goods that he wished to ship, say, from points in northern and central California to the Atlantic seaboard, what different routes or through lines were open to him? Name, say, the all-rail lines.

A. You mean——

Q. (Interposing.) I mean, say, northeast of the Tehachapi Mountains or north of a line drawn through Mojave and Santa Barbara.

A. They had, at that time, in going to this eastern territory——

Q. (Interposing.) To the Atlantic seaboard.

A. To the Atlantic seaboard we had the lines of the Central Pacific to Ogden and thence from Ogden to Omaha over the Union

Pacific or to Kansas City over the Union Pacific or from Ogden over the Rio Grande Western and D. & R. G. to Pueblo, Denver, or Colorado Springs, there connecting with the C., B. & Q., the C., R. I. & P., the Missouri Pacific——

Q. We know what is meant by those initials, but probably the court which reads your testimony would not know.

A. Connecting at the Colorado common points with the Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Missouri Pacific; and the Atchison, Topeka & Santa Fe; at Omaha and Kansas City the connections of the Ogden gateway were the various lines operating between Omaha and Chicago, Kansas City and Chicago, or Omaha and St. Louis or Kansas City and St. Louis,
81 or Mississippi River crossings. Do you want me to enumerate those lines?

Q. No; I suppose the Chicago & North Western——

A. (Interposing.) The Rock Island, North Western, Chicago & Great Western, and numerous other lines.

Q. They reached as far as St. Louis and Chicago?

A. Then from Chicago and St. Louis eastward the principal lines were the Pennsylvania, the New York Central, the Baltimore & Ohio and other connections. Of course, there were many other routes—the Wabash in connection with the Grand Trunk or the Clover Leaf in connection with the Lake Shore and various connections. In addition to that there were the routes operating through the Atlantic ports as far south as Newport News or possibly Savannah.

Q. Now, we have had the through route—what we would call the Ogden route—formed by the Central Pacific, the Union Pacific and their eastern connections, and then we have the route via the Denver & Rio Grande, formed by the Central Pacific, the Denver & Rio Grande, and its eastern connections?

A. Yes.

Q. What others?

A. Of course, operating through the Ogden gateway there were various joint through routes, like the M., K. & T., operating in connection with the Union Pacific through Junction
82 City; the St. Louis & San Francisco, operating in connection with the Union Pacific through Ellsworth, Kansas; and the Frisco also had connections with the Santa Fe at the junction point in Kansas. But there were a host of lines that could be made up intermediate with the gateways or beyond the gateways.

Then there was the line—speaking now of the Southern Pacific connections——

83 Q. I asked you as to all the lines that were available to a man who wanted to ship goods from northern and central California points to the Atlantic seaboard.

A. There was the Southern Pacific Line, then, coming through from California territory, operating through Galveston and New Orleans, giving them their long haul, and thence via the Morgan or Mallory Lines. The Southern Pacific also operated in connection with the Texas Pacific via El Paso; it operated in connection with the Rock Island Railroad—I would not say as to just what date the Rock Island was able to reach that territory; they did not get to El Paso, I think, until later than 1901; but the Southern Pacific had connections with the M., K. & T. through—I think the interchange was made through Dennison; I am not positive of that point; I mean the M., K. & T. came down to Dennison, connecting with the Southern Pacific.

In addition, there was the Santa Fe route from California, with its lines through to Kansas City and even through to Chicago.

Q. It reached San Francisco?

A. It reached San Francisco; yes.

Q. And had a through line to Kansas City?

A. And had a through line to Kansas City and Chicago.

Q. Did they not also form a line to Galveston and thence by the Mallory Steamship Line to New York?

A. They also had a line through Galveston and the Mallory. I believe they also operated in connection with the Morgan——

Q. But principally with the Mallory?

A. Principally with the Mallory, naturally.

Then, from that California territory there is the other gateway, through Portland and the northern route to reach the eastern seaboard territory. I am referring to connection with the Great Northern and Northern Pacific.

Q. All these lines or routes which you have mentioned were open to a shipper of goods between the territories I have mentioned?

A. Yes, sir.

Q. The rates were practically the same by all?

A. They were the same by all; the tariff rates were the same by all; yes.

Q. Now, the traffic passing between Atlantic seaboard territory and points in northern and central California were large and important at that time, were they not?

A. Very large.

Q. It was actively and vigorously sought after by these different lines?

A. The seaboard California business was actively sought after by all the lines.

Q. Did the eastern connections of the Union Pacific, forming part of this Ogden route, maintain soliciting agents on the coast at that time?

A. As to the trunk lines operating out of New York, I do not know that they all had soliciting agents on the coast at that time.

Q. The New York Central had, had they not?

A. You are going back now fourteen years; I can not recall with definiteness as to representations. The lines operating from Chicago and the Mississippi River westward had representation.

Q. Such as the Chicago & Northwestern?

A. The Chicago and Northwestern. I am inclined to believe that the principal lines, like the Pennsylvania and the New York
86 Central, had agents. I know there was a very large soliciting force in California representing the different lines.

Q. The Union Pacific had soliciting agents on the coast?

A. Oh, yes.

Q. And the Denver and Rio Grande?

A. Yes.

Q. And the Santa Fe?

A. Yes.

Q. And the Missouri Pacific?

A. Part of the time separately and part of the time with the Denver and Rio Grande.

Q. Over what route did the Union Pacific and its eastern connections solicit the routing of freight?

A. The Union Pacific solicited the routing of business via Ogden.

Q. And so did its eastern connections?

A. Its eastern connections, in working with the Union Pacific road would solicit for the movement by Omaha or Kansas City. Of course the eastern connections were also cooperating, working with other routes, from the Missouri River.

87 Q. Were there not eastern connections which were closely affiliated and in sympathy with the Union Pacific line?

A. I would say that during that period, as representing the Missouri Pacific, that certain lines were more closely affiliated to the Union Pacific than to the Missouri Pacific.

Q. Working for the Missouri Pacific you worked for the Denver and Rio Grande?

A. I worked for the Denver and Rio Grande business to Ogden.

Q. And its eastern connections, more closely connected with the Union Pacific Company, worked for the Ogden route?

A. Well, we felt that some of them were a little more loyal to the Union Pacific at that time than the Missouri Pacific. Of course there were connections with the Missouri Pacific, such as the Rock Island.

Q. How did they show that sympathy?

A. We felt there was a larger proportion of business going through the Omaha gateway, through the influence of the old tripartite, the

Chicago, Rock Island & Pacific, the Chicago, Milwaukee and St. Paul and the Chicago & Northwestern. We felt those lines were operating more strongly with the Union Pacific than they did with the Missouri Pacific, although the Missouri Pacific was also
88 a connection of those lines.

Q. So that the agents of these different through lines, for the traffic to which I have referred, were striving at that time each to secure the traffic for its own through line?

A. The representatives of each line tried to get the business for its own line.

Q. So, when the agents of the Southern Pacific were seeking to secure the traffic I have mentioned for the Sunset Route the agents of the other lines were trying to get it for their lines?

A. They certainly were.

Q. Which was the strongest of those all-rail lines at that time?

A. From what territory?

Q. Northern and central California points to the Atlantic seaboard.

A. The Southern Pacific was the strongest.

Q. I asked which was the strongest of the all-rail lines?

A. The Central Pacific, Southern Pacific, and Union Pacific I would consider the strongest rail line operated to and from
89 California points on business all rail to and from the Central Freight Association and Trunk Line territory.

Q. The Central Freight Association includes what territory?

A. The Central Freight Association included the territory west of Pittsburgh, Cleveland, and Buffalo, and east of Chicago and St. Louis, north of the Ohio River.

Q. By strongest, I suppose you mean it was the most powerful bidder for that traffic?

A. It was the most direct line.

Q. And it secured the most of the traffic?

A. To San Francisco, yes. I would not say that it was as strong at Los Angeles as the lines operating through the El Paso gateway.

Q. Los Angeles would not be included in northern and central California.

A. I know that.

Q. I asked you to qualify it as to northern and central California.

A. Very well.

Q. So that as to northern and central California, in this scramble for the traffic I have mentioned, the Ogden route was the most successful bidder?

90 A. Of the all-rail roads?

Q. Of the all-rail roads.

A. Yes.

Q. Have you ever made up any percentages of the entire volume of traffic passing between the territories I have mentioned, so as to be able to know what percentage passed by any of these different routes?

A. I cannot recall any figures. We had those percentages in the earlier days of the business moving into California by the different gateways and different lines.

Q. At that time the American-Hawaiian Line, which now operates through the Isthmus of Tehuantepec, was not in existence?

A. No; prior to 1901 it was not in existence.

Q. I am informed that very recently the American-Hawaiian Line goes through the Panama Canal.

A. It has now diverted its route to operate through the Panama Canal.

Q. Prior to the opening of the Panama Canal it operated through Tehauntepec?

A. Through Tehauntepec. I do not know the date of that opening.

91 Q. It was not in existence in the period we are talking about, 1901 and prior thereto?

A. It is my impression it was not.

Q. In your direct examination yesterday you were asked this question, and you answered, at page 59, as follows:

"I will get you to state, in your opinion, from the experience you have had and your acquaintance with railroads and with transcontinental lines, whether the Southern Pacific Company, as you have described it, and the Central Pacific Railway Company with its eastern connections, are competitive systems for transcontinental business?

"A. They are competitive systems. The degree of competition, of course, is dependent upon the territory of origin of the business."

Do you mean any more by your answer than this, that the through line formed by the Central Pacific and the Union Pacific and their eastern connections, form an alternative or competitive route with the through line formed by the Southern Pacific lines to Galveston or New Orleans and thence by the Morgan Line to New York?

A. Answering the question there, I would say that the two routes are competitive with each other.

Q. That is what you meant by your answer yesterday?

92 A. I meant that by my answer yesterday, but the question of yesterday was much broader than the question of to-day. Yesterday it was with reference to the entire California traffic, whereas your questions so far have referred to the upper California traffic.

Q. Well, then, your answer yesterday means that as to all through transcontinental business which might pass over and reach its destination either by the through route formed by the Central Pacific and the Union Pacific and its eastern connections or by the route known as the Sunset-California route; that is, with respect to all such traffic those two routes form alternative or competitive routes?

93 A. They do.

Q. That is what you meant by saying that the Central Pacific Railway Company's system and its eastern connections was competitive with the Southern Pacific system?

A. It is competitive.

Q. Do you mean to say that those two through routes were simply theoretically competitive, or were they actually competitive?

A. Actually competitive.

Q. In your testimony yesterday you spoke of an allowance of fourteen days free storage by the Sunset-Gulf Route. Is it not a fact that the all-rail lines allow ten days free storage on the Jersey side and three days on the New York side, and do not count the day of arrival and delivery?

A. On carload business there is ten days allowed on the Jersey side for disposition and reconsignment instruction, delivery not yet having been tendered; held there free for orders. But after it is placed at pier or freight station for unloading, the time is set at two hours for removal of the property from the pier or station.

Q. Then they do get ten plus three days?

A. Yes.

Q. Without counting the day of arrival?

94 A. Without counting the day of arrival, on carload freight that is not consigned direct to a delivery point, and has not been suspended while in course of transportation.

Redirect examination by Mr. Orr:

Q. In your cross-examination you described certain or several transcontinental routes handling the business, and you were asked whether each and all of those routes were actively, through the time you have described, competing for that business, soliciting the business. Do you know whether the Central Pacific had any such solicitors, independently, at that time?

A. I could not answer that definitely. I have understood that the Southern Pacific representatives represented the whole line. I do not recall that there were separate representatives for the Central Pacific and for the Sunset Route.

Q. The Southern Pacific had very active solicitors for such business, had it?

A. Yes.

Q. Do you know which way they solicited the business to be routed?

A. Why, out of New York seaboard territory, as would
95 be very natural, they solicited the business by the Morgan line, Sunset Route.

Q. And not by the Central Pacific?

A. No. Well, I would like to qualify that to a certain extent; just as it is with all the lines, that their first effort is to secure the business by the route over a line giving the longest haul. If they can not control the business for that line, they may, and frequently do, join with other lines in securing the business so as to get a haul out of it, regardless of distance.

Q. And in that way they always endeavor, if they can not get the best haul, the longest haul, to get the next best and the next longest haul?

A. Those are natural qualifications of a solicitor.

Q. And either the next best, or even the next best after that, would not include a Central Pacific route from Atlantic seaboard territory?

A. Well, I would say that on the seaboard territory practically two routes only are open in the solicitation of business. One would be by Gulf ports, in connection with their water line, and the other would be by Ogden. I am speaking now of upper California; except as to low-class freight, where time is not very much of a feature, it
96 would be my judgment that the Southern Pacific is jeopardizing their general business by undertaking to get a long rail haul to New Orleans and thence by rail to the seaboard; that is, as to northern California business.

Q. If they did that they would get a longer haul than by going through the Ogden gateway?

A. They would get a longer haul than by going through the Ogden gateway.

Q. And a larger revenue?

A. And a larger revenue.

Q. You spoke of their natural solicitation of business by the water and rail route passing through New Orleans or Galveston. What percentage of the revenue would they get if sent that way?

A. By all-rail through New Orleans?

Q. No; by water to New Orleans and rail to California.

A. If they used the Morgan Line to the Gulf and their rail line beyond, they would get 100 per cent.

Q. Can you estimate the percentage of revenue they would get if sent by Ogden?

A. I could not. I would not undertake to deal with those divisions of rates at this time.

Q. The Union Pacific solicitors naturally sought business of the territory you have described over the Central Pacific and Union Pacific, did they, at that time?

A. If they wanted to participate in the traffic, that is the only way they could solicit—over the Union Pacific by Kansas City and Ogden, or Omaha and Ogden.

Q. And the bulk of the business that went that way came from that solicitation, over that route?

A. No; I would not say that it came through the Union Pacific solicitation entirely.

Q. How would you say it did come?

A. Well, the lines operating from seaboard territory, all-rail, or from Central Freight Association territory to the Mississippi and Missouri Rivers, were soliciting business in competition with the route operating south over the Sunset Route.

Q. You did not understand my question.

(The last three questions and answers were read by the reporter.)

Q. (Continuing.) The point I wanted to make was, or to call your attention to was, the business that went through the Ogden gateway which you have described as moving that way came principally through the Union Pacific solicitation, and not through that of the Central Pacific?

A. The business through the Ogden gateway came through the Union Pacific solicitation, or solicitation of the lines east of the Missouri and Mississippi Rivers.

Recross-examination by Mr. BLAIR:

Q. Do you know, generally, what the conditions now are in regard to the movement of this same class of traffic from northern and central California to the Atlantic seaboard?

A. Oh, I could only speak of that in a mere general superficial way. I am not in the railroad business, but in touch with the movement of traffic.

Q. Do you know enough to answer this question, whether or not the competition for that traffic by the different lines is not as strong now as it was prior to 1901?

A. I do not think it is as strong as it was in 1901 from seaboard territory.

Q. What makes you think that? I am speaking of since the unmerger of the Southern Pacific with the Union Pacific.

A. Well, I only express an opinion based upon a very general knowledge of the situation. I do not feel or believe that the trunk lines are as active in the solicitation of transcontinental business through the Chicago and Mississippi River gateways as they were prior to 1906, or even prior to 1901. There were different conditions

existing at that time than those which exist to-day. I think that quite a large volume of business moves from this seaboard territory to Pacific coast points on the solicitation of the Southern Pacific and on the solicitation that is secured by service; so that it moves by way of the Morgan line and the Southern Pacific by reason of the better service. Service is the solicitor nowadays, and it moves by reason of better service than can be rendered by the all-rail routes to Chicago and the Mississippi River.

Q. According to that, if that theory were correct, the proportion carried by the Sunset-Gulf route now would be greater than the proportion carried in 1901, if your theory were correct?

100 A. From the near-by seaboard territory; that is what I was referring to, yes. I do not feel that to-day the Southern Pacific are going as far away from the seaboard territory in securing business against the all-rail lines as they did at that time; but we have to take into account a different condition existing today from that which existed in 1901.

Q. What are those different conditions?

A. One of the principal differences in condition is rebates. There are no rebates to-day.

Q. So that prevents an indirect all-rail line from getting business as successfully as under the régime of rebates?

A. It certainly does. It prevents them from getting business that they did get in the former days.

Q. So that, say, in 1901, or prior to that time, a railroad going south and then north through the Middle West territory, say, might compete with a direct all-rail line from the coast to the Middle West territory through not observing strictly their tariff?

A. Through accommodations given by way of rebates and otherwise, they secured business that they were really not entitled to.

101 Q. And in the present days of the observance of tariff rates they do not try to get this business by indirect routes?

A. They can not.

Q. But as to the main lines—the Santa Fe, the Ogden route, the Western Pacific, which has come in on the scene since 1901, in connection with the Denver and Rio Grande and the Rock Island combination—they compete as actively now as they did in 1901, do they not?

A. The main lines compete very actively now. They are restricted, as I say—some of the main lines in the territory of competition—by reason of natural conditions and by reason of service. A fair illustration of the competition that existed in 1901 and the competition that exists to-day is this: At one time there was considerable traffic moving through Central Freight Association territory—not

from Chicago proper, but Central Freight Association territory, Ohio and Indiana points—down by way of New Orleans to California points, and I do not believe there is very much of that business moving to-day, because it is too long a line. To-day that business will move for San Francisco through the Missouri River gateways, very largely, and to southern California through the southwestern gateways.

Q. So that you would naturally expect that if, in the early days, the Southern Pacific tried to secure the routing of that traffic via New Orleans, it would now try to secure the routing of the traffic, if it were to participate in it at all, via Ogden?

A. Unless there is some very exceptional business upon which service cuts no figure, they would certainly solicit the business via Ogden. At least that is the only way that is left to them, I think. They have to please the public to-day in service more than in those days.

Q. The public to-day control the routing of traffic; that is, if the shipper gives routing directions, they have to be followed?

A. There is where different conditions prevail to-day from what they did in 1901. The shipper can designate the way his property shall go. In 1901 he could not.

Q. Mr. Lincoln, eliminating this question of rebates and its effect, and the right of the shipper to route, is there anything which would justify you in saying that competition is less vigorous between these transcontinental lines now than it was in 1901?

A. Well, I could not answer that as to the actual solicitation of business for the transcontinental lines now as compared with then, because I am not in the railroad service; but I can answer the question broadly as to railway traffic as a whole, that there is not as active solicitation of the business now as there was in 1901 or prior to 1906.

Q. Is that due to the more close observance of the tariff rates and regulations?

A. In large part it is due to that and in large part it is due to service, which an irregular route can not compete with.

Q. An irregular route?

A. I am speaking of the general question. I feel that it is also in large part due to the community of interest between railroads. They are allowing business to take its natural routes more than they did in the past. There has been an evolution in railroading since 1910—quite an evolution.

Q. The change in respect to giving up the rebates has a tendency to make traffic seek the best routes—the direct route?

A. It has.

Q. And eliminates the competition by indirect, roundabout routes; is that it?

103 A. It certainly does.

Mr. BLAIR. That is all.

By Mr. ORR:

Q. I believe you stated, did you not, Mr. Lincoln, that the Central Pacific and the Union Pacific was the most direct route?

A. To San Franciso and upper California from seaboard territory and C. F. A. territory.

Q. Do you wish to be understood as saying that if, in the days prior to 1901, the Southern Pacific Company practically controlled the traffic between the territories you have described, it was done by indirect methods?

Mr. BLAIR. Counsel objects to the form of the question as attributing to the witness a statement which I do not think he has made. The witness has never said the Southern Pacific practically controlled the traffic in question.

Mr. ORR. I am afraid you are mistaken about that.

Mr. BLAIR. You do not have to be afraid about it.

Mr. ORR. He did say that, I think. He said that the South-

104 ern Pacific dominated and practically controlled certain territory.

Mr. BLAIR. Will you find that in his testimony? You put that in your question and we objected to it.

Mr. ORR. I know you did, and he answered it. (Reading from page 62 of the stenographic transcript:)

"Q. To your knowledge and from your experience, what transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?"

That was objected to, and there is a good deal of objection in the record at this point.

Then I read from page 63 of the record, near the bottom:

"The WITNESS. If you are speaking of the present time, I would not say that any particular company could dominate the situation as to rates to the Pacific coast. Of course, the Southern Pacific Company, by reason of its extensive lines in California, would and should receive consideration at the other hands in the adjustment of rates. A very different situation exists to-day from what existed prior even to 1910.

"Q. Take the condition as it was. Are you acquainted with the conditions as they existed prior to 1901?

105 "A. Yes, I am——

"Q. I mean on this rate situation—this traffic situation—in the territory you have described, on transcontinental traffic?

"A. It is my recollection that it was about 1901 or possibly 1902 hat the Union Pacific influence over the Southern Pacific came into istence. As to the time prior to 1901, that, by reason of my official nnection with the Missouri Pacific, I was quite familiar with at at time.

"Q. What was the situation at that time, if you know, as to what fluence or what companies dominated—controlled—the traffic in e territory you have described?

"Mr. BLAIR. Counsel objects, etc.

"Q. Go ahead.

"A. Prior to 1901 the Southern Pacific Company was the dominat- g factor in adjusting rates to the Pacific coast. That is very logical d very probable by reason of the territory covered by their rails."

Mr. BLAIR. Now read the next question and you will get to the point.

"Q. I will ask you to state whether you have knowledge of the conditions prevailing prior to 1901 as to what particular mpany or transportation company practically controlled the rate?"

And then more objections.

I continue to read, at the top of page 67.

"Q. The question is, Have you a knowledge as to what company d control it? That could be answered yes or no.

"A. I have knowledge; yes, sir.

"Q. You may state what company it was, or what companies if ore than one, that controlled that rate?

"A. At that time the rates to California were controlled by the outhern Pacific and the Santa Fe Companies."

(By request the stenographer read the pending question, as fol- ws:)

"Q. Do you wish to be understood as saying that if, in the days ior to 1901, the Southern Pacific Company practically controlled e traffic between the territories you have described it was done by direct methods?"

Mr. ORR. Now, what is the objection, Mr. Blair?

Mr. BLAIR. That the witness has never testified that the Southern Pacific controlled the traffic passing between, say northern and central California points and the Atlantic sea- oard.

By Mr. ORR:

Q. You may answer, if you understand the question.

A. I understood, and believed, that the Southern Pacific was the ominating line in the matter of rates to and from California, for e reason that it occupied that territory with its rails; it was the istributing line for a large part of the business from San Fran-

cisco, Sacramento, and Los Angeles. Its occupation of the territory naturally made it the dominating line in the question of rates to and from California.

Q. Now, the question; If it did so dominate and control that traffic, do you mean to be understood as saying that it did so through the means you have described as being indirect?

A. No; I do not mean that.

Q. If there is any change in this control of that traffic, you do not mean to say that it is because of the change in conditions you have described?

A. There is a change in conditions not only as to rebates——

Q. I mean, rebating——

108 A. I say there is a change in conditions not only as to rebating but also a change in conditions as to the control of the local territory in California.

Mr. ORR. I believe that is all.

Mr. BLAIR. That is all.

FRANK H. DAVIS was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. What is your name?

A. Frank H. Davis.

Q. And your residence?

A. Elizabeth, New Jersey.

Q. And your address?

A. 25 Broad Street, New York.

Q. Were you ever connected in any way with Mr. Collis P. Huntington?

A. Yes, sir.

Q. When did that begin?

109 A. I entered his service February 1, 1881.

Q. And it continued up to what time?

A. Until July 1, 1901.

Q. When you first entered his service in what capacity was it?

A. As clerk.

Q. Through what different capacities did the service extend?

A. I remained a clerk for several years and was then appointed an officer of the different companies. When I left the Southern Pacific I was assistant treasurer in New York.

Q. During all that twenty years were you in the New York office?

A. Yes, sir.

Q. Was the Southern Pacific office and Mr. Huntington's own office at the same place?

A. Yes, sir.

Q. In your position as clerk were you brought into acquaintance with the properties which he held, his investments?

A. To some extent.

Q. Was there a time when you received definite information as to what his investments were?

A. I had a record of his investments on the books which I kept for some years.

Q. That you kept for him?

A. Yes, sir.

Q. When did that bookkeeping begin?

A. It was very imperfect at the start. I cannot tell you just when a definite set of books was opened for Mr. Huntington.

Q. Can you fix it within certain years?

A. I should say it was before 1885.

Q. When those books were opened up did you enter up on them the different investments that he then had?

A. Yes, sir.

Q. At that time did he have any stock in the Central Pacific Railroad Company?

A. My recollection does not go back as far as that. I could not tell you.

Q. Do you remember whether he had any considerable amount of such stock, if he had any?

A. I can not recall. That is thirty-odd years ago. I can not recall any detail from the books.

Q. Do you know what has become of those books?

A. I do not.

Q. At this period was there any stock of the Central Pacific Railroad Company standing in your name?

A. I can only tell that by reference to the stock transfer books. I do not recall it.

Q. You mean you do not recall——

A. (Interposing.) Whether any stock was in my name or not. The stock transfer books would show that if there was.

Q. Do you remember whether at any time, during the period of your being a clerk, stock stood in your name?

A. Yes; there was such a time.

Q. Was that stock your own property?

A. It was not.

Q. Do you know who the owners of it were?

A. I could not say that. The stock was the property of different parties who were interested in the Central Pacific; it might have been one or it might have been another whose stock was in my name.

Q. Did you have any general knowledge of how many stockholders there were in the Central Pacific in, say, 1885?

A. I could not tell you.

Q. Did you know whether the number was small or large?

A. I could not tell you that.

Q. Did you know at that time whether there were any stockholders in Europe?

A. From general information. I was not the transfer clerk.

Q. Were the transfer books of the Central Pacific Railroad Company kept in that same office?

A. They were kept on the same floor, in a different office.

Q. You remember the fact of there being a lease made by the Central Pacific Railroad Company to the Southern Pacific Company?

A. From general information. I do not remember seeing the lease.

Q. You knew at the time that it was reported that a lease had been made, as current information?

113 A. Yes.

Q. At that time do you know whether there were European stockholders in the Central Pacific?

A. I am not able to tell that definitely. I assume there were. There had been before that time.

Q. There had been before that time?

A. Yes.

Q. Do you know about when the sales to the European stockholders began and ended?

A. I could not tell you when they began or when they ended. When I went there, in the company's employ, stock was being sold.

Q. That is, in 1881?

A. Yes; but when it began and when it ceased I am not able to tell you, because I could not remember.

Q. Through what house were those sales made?

A. Speyer & Company.

Q. Do you know for what account the sales were made—whether it was for Mr. Huntington's personal account or for any joint account?

A. It was for the account of the various individuals who owned the stock.

Q. What individuals?

114 A. Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker.

Q. Were the sales made on joint account of the four?

A. I could not say. The stocks were sold, and they were credited with the proportion that they had contributed to the number of shares.

Q. Do you know, in 1881, when you went there, how long the sales had been going on?

A. I do not.

Q. Do you recall, then, whether Mr. Huntington had left any considerable amount of the Central Pacific stock?

A. I am unable to state.

Q. We had a conversation about this matter a few days ago, did we?

A. Yes.

Q. Do you remember the subject matter of the opening up of the books being discussed by us at that time?

A. Yes.

Q. Do you now recall whether or not, when you opened up a definite set of books, there was any considerable number of shares of Central Pacific stock among the shares that Mr. Huntington then held?

A. I do not remember.

115 Q. You had a belief on that subject when we talked the other day?

A. That he had not very many, as I recall; but as to how many, it is impossible for me to remember.

Q. You have the recollection that there were not very many when those books were opened up?

A. Yes.

Q. But how many, of course, you can not recall?

A. No.

Q. And you do not know where those books are now, at this time?

A. No, sir.

Q. And that opening up you place somewhere between 1881 and 1885?

A. I should say before 1885.

Q. You have spoken of stock standing in your own name not belonging to you; can you tell me whether such was the case with any of the other employees?

A. That did not belong to them?

Q. Yes.

A. I should say so. There might have been some instances where a man might have had a hundred or two hundred shares belonging to him, but the greater part did not.

116 Q. Did that stock remain in the name of those employees after the stock itself had been sold abroad?

A. It was delivered in those names. Parties, of course, having the right to send it back for transfer at any time.

Q. Did a considerable part of that stock continue in those names without being sent back for transfer for some length of time?

A. A considerable part.

Q. Do you remember a visit to this country of Sir Rivers Wilson?

A. I do.

Q. Do you remember whether that was in the early nineties?

A. I can not tell you the date, sir.

Q. Do you remember whether any of the English shareholders had transferred their stock prior to the arrival of Sir Rivers?

A. I could not tell you.

Mr. McCLENNEN. That is all.

Mr. BLAIR. We have no questions.

117 THOMAS H. ROSSBOTTOM was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Thomas H. Rossbottom.

Q. And your residence?

A. Sound Beach, Conn.

Q. And your address?

A. My business address is 24 State Street, New York.

Q. What is your occupation?

A. I am secretary of the Panama Railroad Company.

Q. How long have you occupied that position?

A. I can not say exactly how long I have been secretary. I should think it is about seven or eight years.

Q. Have you with you certain contracts made with that railroad company?

A. I have here some contracts between the Panama Railroad Company and the Pacific Mail Steamship Company.

Q. Have you an agreement with you dated October 1, 1872?

A. No, I have not.

118 (At this point counsel placed a book before the witness.)

A. (Continuing.) That was not between the Panama Railroad Company and the Pacific Mail Steamship Company. That was a copy of an agreement between the Pacific Mail Steamship Company and a number of transcontinental railroads, that we had in our files. It was not the original agreement.

Q. You had a copy?

A. We only had a copy of that.

Q. And you testified in the case of the United States against the Union Pacific Railroad Company, did you?

A. I just offered that in evidence.

Q. Was that copy which you there offered a correct copy of the original?

A. I do not know. I explained at that time that I did not know ything about it; that I had just found it in our files.
Q. You do not know where the original is?
A. No, I do not.
Mr. DUNNE. He does not know that there is an original.
The WITNESS. I know nothing about it except that I found what purports to be a copy in our files.

By Mr. McCLENNEN:

Q. Was the copy in your files of this agreement of October 1872, a printed copy?
A. No; a typewritten copy.
Q. Was it in the files of your company where contracts pertaining to the affairs of the company were kept?
A. No; it was not.
Q. Where was it?
A. It was in our file called "Transcontinental matters."
Q. Where did you keep other contracts relating to transcontinental matters?
A. We kept those in the safe.
Q. In the safe?
A. Yes.
Q. Those were originals that were kept in the safe?
A. Originals were kept in the safe.
Q. Did you have in this same file with this copy of October 1, 72, copies of others, the originals of which were in the safe?
A. No.
Q. You have no copies of those?
A. No.
Q. Did the copy which you found there bear date October 1, 1872?
A. Well, I can not recollect that it did, but from the fact that it as offered as a copy of a supposed agreement of October 1, 1872, must have borne that date at that time.
Q. And was this copy that was introduced in the merger record copy of the one that you then furnished?
A. No; I offered at that time the only copy we had.
Q. You left that with them?
A. I left that with Mr. Severance.
Q. And Mr. Severance was one of the counsel for the Government in that case?
A. I think he was.
Q. You haven't seen that copy since?

A. Well, I would not like to state that, because that would indicate that Mr. Severance had not returned it, but I could not find it.

Q. You have looked?

A. I have looked for it.

Q. In an effort to get it?

A. I only heard of this hearing a half an hour ago, and I
121 looked through my papers in that short interval trying to find it, but I have not been able to find it.

By Mr. GANN:

Q. That was due to the fact that you were away from the office, was it not, Mr. Rossbottom?

A. Yes.

Mr. MCCLENNEN. Petitioner offers as Exhibit 24 the copy from the record in the case of the United States against the Union Pacific Railroad Company just referred to in the cross-examination of the witness.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 24, September 22, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. BLAIR. Counsel object to the offer on the ground that the exhibit offered does not prove itself, and there is no proof whatever that there ever was any such contract. There is no proof that the exhibit is a true copy of that contract, and, in the alternative, the copy, if it existed and if the exhibit is a true copy thereof, is irrelevant, incompetent, and immaterial evidence.

Mr. DUNNE. And we have not even evidence that the printed copy shown the witness is a copy of the alleged contract to which the question referred.

Mr. MCCLENNEN. I wish you would waive that particular
122 objection, so as to relieve us of the necessity of proving that it is really a correct copy, as it is very evident that it is.

Mr. BLAIR. We have no objection to saying, subject to correction, that we shall not dispute that the printed transcript of the Union Pacific merger case is a correct transcript of the evidence educed in that case, this statement being made to apply to this particular matter.

By Mr. MCCLENNEN:

Q. Have you with you the original contract between the Panama Railroad Company and the Pacific Mail Steamship Company, dated December 16, 1895?

A. I have.

Mr. MCCLENNEN. This contract the petitioner offers as Exhibit 25. Will you inspect it and then permit us to return it without keeping it as part of the records?

Mr. BLAIR. Have you a copy of this?

Mr. MCCLENNEN. That is in the merger record at page 3293.

Mr. BLAIR. Objected to as irrelevant, incompetent, and immaterial testimony.

Mr. MCCLENNEN. Saving your objection, may I substitute for the original the copy that is in the merger record at page 3293?

Mr. BLAIR. As you have the original there, he is going to copy it anyway, is he?

Mr. MCCLENNEN. Yes.

Mr. BLAIR. Just let him copy the original.

Mr. MCCLENNEN. The original, then, may be returned to the witness?

Mr. BLAIR. Yes.

(The contract referred to was thereupon marked "Petitioner's Exhibit No. 25, September 22, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. MCCLENNEN:

Q. Have you also the contract between the Panama Railroad Company and the Pacific Mail Steamship Company, dated June 11, 1902, and a supplemental contract between the same parties bearing the same date?

A. I have.

Mr. MCCLENNEN. The petitioner offers in evidence as Exhibit 26 the original contract just referred to, and as Exhibit 27 the supplemental contract just referred to.

Mr. BLAIR. We make the same objection as to those.

Mr. MCCLENNEN. And with the same agreement as to the use of the copies?

Mr. BLAIR. Yes.

(The original contract referred to was thereupon marked "Petitioner's Exhibit No. 26, September 22, 1914", and the supplemental contract "Petitioner's Exhibit No. 27, September 22, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. ORR:

Q. When did this agreement of December 16, 1895, go out of existence?

A. I will have to look at the contract itself. I think in 1902. The contract states when it terminated.

Q. Are you certain it continued until 1902?

A. Well, I can tell you exactly. In 1900 it terminated.

Q. It terminated in 1900?

A. December, 1900.

Q. When did the 1902 agreement terminate?

A. That terminated on July 12, 1905. This agreement of 1902 provided that when the United States Government secured control of the Panama Railroad then we had the right to terminate the
125 agreement upon giving six months' notice, and we gave the steamship company six months' notice on January 12, 1905, so that it terminated six months after that.

Cross-examination by Mr. DUNNE:

Q. Was there any intermediate contract between the expiration in 1900 and the resumption of contractual relations in 1902?

A. Yes; there was a charter agreement between the steamship company and the Panama Railroad by which we chartered their steamers on the Atlantic side.

Q. On the Atlantic side?

A. Yes; at a rate per month.

Q. And that was the only agreement?

A. That was the only agreement.

(Whereupon a recess was taken until two o'clock p. m.)

126 AFTER RECESS.

EDWIN S. ALLEN was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. GANN:

Q. What is your occupation?

A. I am vice president of the National Railway Publication Company.

Q. And how long have you been vice president of that company?

A. Six months.

Q. How long have you been connected with the company in other capacities?

A. Since 1881.

Q. Does the National Railway Publication Company publish a book known as the "Official Guide"?

A. It does.

Q. How long has that company published such a book?

A. I think it was 1868 it was started.

Q. It has been published for a great many years?

A. Yes.

127 Q. What, generally speaking, is the matter that is published in the Official Guide?

A. It publishes time tables and maps, lists of through sleeping cars, the officers of railroads and connections, index of stations, and so on.

Q. Has it a wide circulation?

A. Yes, it has a wide circulation.
Q. Is it distributed generally among railroad men?
A. Yes.
Q. Have you from your files brought a copy of the Official Guide?
A. I have.
Q. What is the date of the volume which you have produced?
A. June, 1885.
Q. What are the sources from which the information published in that guide is secured?
A. It comes from the officers of the railway companies.
Q. And is it paid for in the same manner as advertising matter?
A. Well, some of it is; some of it is published gratuitously and some of it is paid for.
Q. You carry in that magazine, or publication, editorial matter, do you not?
A. Yes.
Q. That is not paid for, is it?
A. No.
Q. Will you turn to page 223 of the Guide and state what that page covers, generally speaking?
A. It covers a list of the officers of the Southern Pacific Company.
Q. Who held office in June, 1885, or about that date?
A. Yes.
Q. And give the names of the officers?
A. Yes.
Q. Does it also show the division of the Southern Pacific Company's lines as to operating divisions?
A. I can not say as to operating. It says, "Atlantic system, east of El Paso" and "Pacific system, west of Ogden and El Paso." I do not know whether that represents the operating or traffic.
Q. Who furnished you the information upon which that was published?

Mr. BLAIR. Were you in charge in 1885?

The WITNESS. I was not in charge; no sir. I was working on the editorial force.

Mr. GANN. He says since 1881.

Mr. BLAIR. He may have been connected with it without having any knowledge of the sources from which that information is derived. I object to the question until the witness is shown to have personal knowledge of the matter about which he is interrogated.

By Mr. GANN:

Q. You stated that you were an officer and vice president of the company?
A. Yes.

Q. At the present time?

A. Yes.

Mr. BLAIR. Six months.

The WITNESS. Yes.

By Mr. GANN:

Q. And since that time you have been in service—since 1881?

A. Yes.

Q. And, owing to the multiplicity of things that are sent to the office by railroad companies, could you have personal knowledge of each and every order that was sent to the office of the National Railway Publication Company?

130 A. No, sir; I could not.

Q. Have you in your possession, or the possession of the National Railway Publication Company, at this time, the original order or orders upon which the information published on page 223 was published?

A. I have not.

Q. Have they been destroyed?

A. They have been destroyed.

131 Q. I will read from the deposition that was given by Mr. R. H. Pratt in San Francisco on Tuesday, July 14, 1914, at the instance of the defendants in this case. On page 22 there is this language, and I will ask you to compare the language shown on page 223 of the Official Guide for June, 1885, with it, and say if it agrees with the words shown in this deposition:

"The general traffic manager, under the direction of the general manager of the Pacific system, will be charged with the handling of all through business of the company and that interchanged by or which may be competitive as between the Pacific and the Atlantic systems"——

The WITNESS. "And the Atlantic system."

Q. Does that language coincide?

A. It coincides with the notice appearing about the middle of this page.

Q. Does the page also show that Mr. John C. Stubbs was at that time general traffic manager of the Southern Pacific Company?

A. J. C. Stubbs.

Q. Does that page show that the line from El Paso to New Orleans, designated a part of the Atlantic system, appears anywhere as a part of the Pacific system?

132 A. I can not say as to that.

Q. The constituent lines making up the Atlantic system and the Pacific system are shown, are they not?

A. I do not understand that they are divided here.
(Counsel indicates on page 223.)
A. (Continuing.) That does not apply; it does not show that those are the eastern Atlantic system.
Q. Is there a description on page 223 of the Atlantic system which says "east of El Paso"?
A. Those words are used.
Q. Are the words "west of Ogden and El Paso" attributed to the Pacific system?
A. Yes.
Mr. GANN. The petitioner offers in evidence as Exhibit 28, page 223, of the Official Guide, dated June, 1885.
Mr. BLAIR. Before making objection, I desire to ask the witness a question which is the basis of the objection.

By Mr. BLAIR:

Q. Do you of your own personal knowledge know that that information was obtained from any report made by the Southern Pacific Company?

A. I do not.

Mr. BLAIR. Counsel objects to the evidence offered on the ground that it is not the best evidence, that no foundation has been laid for introducing secondary evidence, and the matter appearing on the page offered has not been traced to any of the defendants in this case, and, furthermore, generally on the ground that the evidence is immaterial, incompetent, and irrelevant.
(Page 223 of the Official Guide, June, 1885, was thereupon marked "Petitioner's Exhibit No. 28, September 22, 1914", and will be found in the volume of petitioner's exhibits.)
(No cross-examination.)

THOMAS M. SCHUMACHER was called as a witness on behalf of the petitioner and, being first duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your residence?
A. New York.
Q. And your address?
A. 21 East 82nd Street.
Q. Will you please state your connection with the railroad business, giving the different capacities in which you have acted, the roads for which, and the times in which, chronologically, as nearly as you can?
A. That is quite a long story. I can give you the detail of it; I can file it with you; I have a copy of it in my office, but it is a very

long story. I have made a good many changes. However, I will go through with it, if you desire.

Q. If you will, I think it will be very convenient to have it.

A. Shall I go back to the time I started in the railroad business?

Q. I think so; yes. We want indirectly to find out how old you are in that way, without asking the question.

A. I started in at 16 as a telegraph operator on the Erie Railroad; from there to the old Bee Line, which is now part of the Big Four, as freight clerk.

Q. You started when?

A. When I was sixteen.

By Mr. ORR:

Q. What year?

135 A. I was born in 1862. I can not make all these figures for you here. From the old Bee line, I railroaded there for two or three years, as a clerk and trainman, brakeman and fireman, and yard conductor. From there to St. Louis, I went with the Burlington, I think it was, as clerk; from there to the Missouri Pacific. I am going over this hurriedly and not giving you all the details, but I will later—that is, after I get a little further along I will give you a little more detail. I was with the Missouri Pacific, I think, four or five years, and from there to the Big Four again as cashier at East St. Louis. Then with the Union Pacific in 1887 as chief clerk in the general agent's office at St. Louis, October 1st, 1887. I was in that position until April 1st, 1891, when I went to Omaha as chief clerk in the general freight office of the Union Pacific. I was in that position until November 1st, 1894, and then I went to San Francisco as general agent in charge of the freight business of the Union Pacific in California. I was in that position four years. I left and was made to go with the Continental Freight Express as general manager and vice president, with headquarters in San Francisco. I was there two years and returned to the Union Pacific as general agent in

136 San Francisco, and was there about a year, and was sent from there to Salt Lake City in charge of the traffic of the Oregon Short Line, a part of the Union Pacific system. I was in that position four years. From there I came to New York as general manager of the United Fruit Company's Steamship Line. I was in that position for one year. From there I went with the El Paso & Southwestern as general traffic manager, with headquarters at Chicago four years. From there as vice president in charge of traffic of the Denver & Rio Grande and Western Pacific, six months. From there I returned to the Union Pacific and was assistant director of traffic of the Union and Southern Pacific systems for six months; thence to the American Smelting and Refining Company, in charge of their

traffic, for two years. From there I returned to the El Paso & Southwestern as vice president, and there I have been since, and last November I was made chairman of the Chicago, Rock Island and Pacific Railway board. I think that is pretty close to correct.

137 By Mr. McCLENNEN:

Q. In those positions have you had a general knowledge of transcontinental freight matters for a number of years?

A. Since 1887.

Q. What, in railroading, is described as transcontinental freight?

A. Freight that has its origin or destination east of the 97th meridian, I believe, which passes through Freemont, Nebraska. I may not be correct as to the number of the meridian, but that is the line—freight having its origin or destination east of that meridian and picked up or laid down on the Pacific coast, west of the Sierra Nevadas.

Q. That definition has been true for many years past?

A. I do not know of any other definition.

Q. There is a territory, is there not, known as the "Seaboard freight territory" or "Atlantic seaboard territory"?

A. Yes.

Q. What is that territory?

A. I do not believe I could answer that question accurately as to how far from the seaboard west is considered seaboard territory. I do not believe I can answer that question.

138 Q. Can you state how far south it extends?

A. My understanding is that seaboard means "seaboard"—on the seaboard. When you go west of the seaboard you get in so-called trunk-line territory.

Q. In the movement of freight from the Atlantic to the Pacific, and the reverse, is there a certain territory, not immediately on the water line on the Atlantic, which is, nevertheless, rated as seaboard territory?

A. Yes.

Q. And is there any exactly defined western boundary line to that territory?

A. I do not know of any.

Q. Is there a territory on the Atlantic seaboard from which freight is drawn to the seaboard for shipment around to the Pacific?

A. Yes, sir.

Q. And in the ordinary operations, about how far west does that territory run?

A. Well, I think that varies largely with the rates and the commodities involved. On some commodities the rates are low and the seaboard lines can go farther west than they can on some other

commodities. I do not believe there is any definite line—I
139 never understood that there was any definite line. They go as far as they feel they can, and take care of the locals. That is my understanding.

Q. When you say "take care of the locals", am I right in understanding you to mean that the lines running by water from New York will carry to California at the New York rate, bearing themselves the charge from the interior to New York?

A. I believe they still do that. I know they did years ago; when I was in the transcontinental business they did that, and I suppose they do yet.

Q. Is that what is called "absorbing the rate"?

A. Absorbing the locals to the seaboard.

Q. Is there a territory known as Central Freight Association territory?

A. Yes, sir.

Q. And, roughly, what are the boundaries of that?

A. The eastern boundary is an imaginary line from Buffalo to Pittsburgh, thence following the Ohio River, I think, north of the Ohio River and as far west as the Mississippi River. The Mississippi River is the western boundary line, and the imaginary line through Buffalo and Pittsburgh is the eastern boundary line and the Great Lakes the northern boundary and the Ohio River the southern boundary.

140 Q. Is there any hiatus between the eastern boundary line of the Central Freight Association territory and the Atlantic seaboard territory?

A. I do not know of any.

Q. Is there a territory known among railroad men as the "Western trunk line territory"?

A. Yes, sir.

Q. And about what territory is that?

A. The Western trunk line has its eastern boundary at Chicago and Chicago junction points and the western boundary line is the Missouri River.

Q. Is there a territory known among railroad men as the Trans-Missouri territory?

A. Yes, sir.

Q. What, roughly, are the boundaries of that?

A. I am not as positive of that. I believe the eastern boundary is the Mississippi River and the western boundary is—well, it runs up to the Colorado junctions; in fact, it takes in the intermountain country; the trans-Missouri freight bureau publishes or promulgates all tariffs, naming rates between the Mississippi River on the East, Kansas, Nebraska, Colorado and Utah on the west.

Q. And that includes as well the Inter-Mountain——

141 A. Yes; not beyond Ogden.

Q. Then is there a rough general description for the rest of the territory west?

A. Yes.

Q. What do you call that?

A. The territory comprising Arizona, Nevada, eastern Oregon, and western Idaho. I do not know of any specific name for that territory. The rates are published both by the Trans-Missouri bureau and by the Transcontinental bureau. I think both bureaus handle those tariffs. The dividing line on the Oregon Short Line between Trans-Missouri and Transcontinental is Kuna, Idaho; Ogden on the Central and Union; and Albuquerque on the Santa Fe.

Q. Going back, now, to your railroading at the time of 1881, was there any means of getting into California and Nevada and the western slope generally by rail other than through the Ogden gateway and the Central Pacific Railroad?

A. No; not all-rail.

Q. What was the next gateway that was made into California?

A. I do not believe I can answer that question from memory.

142 Q. It appears that in 1883, in February, the Sunset Route was in operation through El Paso. Up to that time was there any other gateway than Ogden and El Paso into that Pacific slope territory?

A. I do not know. The Santa Fe and—the Atlantic & Pacific was built before that, I know—I am not prepared to answer that question.

Q. At the present time are there any means of getting into California with any reasonable directness by rail other than through the Ogden gateway, through El Paso, and, third, over the Santa Fe?

A. Yes.

Q. What other means?

A. There is the San Pedro Line, Salt Lake & San Pedro, from Salt Lake to Los Angeles—a very direct line.

Q. That connects with the Union Pacific at Salt Lake?

A. And the Denver & Rio Grande also.

Q. And that connection was made about when?

A. 1905; July 7th it was opened for business.

Q. Is there any other?

A. Of course, the northern lines all take business for California.

Q. And by the "northern lines" you mean what?

A. The Northern Pacific and the Great Northern. They

143 handle California business by the way of Portland.

Q. Does the Canadian Pacific——

A. I do not believe they are in the business now. They went out of the business some time ago.

Q. Is the business for California which goes over the Northern Pacific or the Great Northern of a substantial amount, comparatively?

A. No; I should not say so.

Q. What means of access did the Missouri Pacific have to California during the periods when you were connected with that road?

A. With the Western Pacific? You say "that road."

Q. Were you not connected with the Missouri Pacific?

A. No; I was with the Western Pacific.

Q. I beg your pardon.

A. Oh, when I was a clerk for the Missouri Pacific, you mean?

Q. Yes; away back.

A. I think we had a line in connection with the M., K. & T. through El Paso.

Q. And the M., K. & T. is what?

144 A. The M., K. & T. at that time was a part of the Missouri Pacific system.

Q. But I mean, for the court's purposes, will you not give the full name?

A. The Missouri, Kansas & Texas was a part of the Missouri Pacific as well as the Iron Mountain; and some other freight went via the Iron Mountain and the Missouri, Kansas & Texas to Texarkana or Dennison, and thence by the Texas & Pacific to El Paso.

Q. And from El Paso over what?

A. Over the Southern Pacific; and also through the Missouri Pacific to Kansas City, and thence over the Union Pacific to Ogden or the Santa Fe direct. The Union Pacific traffic, of course, went over the Central Pacific.

Q. The Western Pacific that you have mentioned runs from where to where?

A. Salt Lake to San Francisco—to Oakland.

Q. Does it pass through Ogden?

A. No, sir.

Q. That was opened about June, 1910, was it?

A. In 1910, I think.

145 Q. At the present time are there any other ways than these that you have just described of reaching California from the eastern half of the country by rail?

A. I think we have mentioned them all.

Q. What is the method by which the Chicago, Milwaukee & St. Paul reaches California?

A. Yes; we omitted that one. They have their own rails, of course, to the Pacific coast—Seattle. I believe they have a traffic arrange-

with some of the lines, the O.-W. R. & N., that lets them down Oregon, and with the Southern Pacific into California. I am rtain of that, however. Of course, they take business to Coun- Bluffs and there turn it over to the Union Pacific. That is their California line.

Q. What is the course of the Burlington with freight for the cific?

A. Their longest haul is to Billings, Montana. They also have a to Denver, where they connect with the Denver and Rio Grande, another line to Cheyenne, where they connect with the Union cific. I think the Cheyenne line has been closed recently, so that r routes to California would be, first, through Billings, and, sec- ond, through Denver—earnings considered.

Q. Disregarding questions of intercorporate relations, what would be the ordinary course which freight would take, if not anced otherwise, from and to northern and central California, say th of Fresno, and from Nevada to and from the Central Freight ociation territory and territory east of that and north, say, of line of the Norfolk & Western near the southern boundary of ginia?

A. It would move through Ogden.

Q. And, moving through Ogden, would take it over what line to th Ogden?

A. From California?

Q. From California.

A. Either the Central Pacific or the Western Pacific. They are allel lines.

Q. And before 1910?

A. The Central Pacific only.

Q. When you were connected with the Union Pacific, in charge at Francisco, from November, 1894, for the ensuing four years, was Southern Pacific engaged in seeking traffic from northern and tral California to the east and the reverse?

A. Yes, sir.

Q. In what way was that traffic sought?

A. Well, it depended on how far east the destination or point of origin might be. If it was east of Toledo, Detroit, In- apolis, Cincinnati—take that line, say; on and east of that line; r influence was directed to the Sunset line, their long haul, and of that line through Ogden.

Q. By the Sunset line you are describing the lines through El so to Galveston or New Orleans and thence by water to New York; you?

A. No.

Q. What?

A. I mean by their Sunset line to the territory mentioned—th
is, the middle west territory that would move all rail via New O
leans in connection with the Illinois Central, the L. & N., the Sout
ern Railway, the Queen & Crescent. If destined to Atlantic s
board points then they would work it by water from Galveston
New Orleans in connection with the Morgan Steamship Line.

Q. During that period was the Sunset line competitive with th
lines composed physically of the Central Pacific and the Union P
cific, using "competitive" in the sense of both lines havin
148 the facilities to take the business and the Sunset line seekin
to get it by the Sunset line?

A. Were they competitors?

Q. Yes.

A. Very much so.

Q. What was your strongest competitor during that period wh
you were representing the Union Pacific?

A. The Southern Pacific—to that particular territory?

Mr. DUNNE. To which particular territory?

The WITNESS. East of the line that I spoke of.

By Mr. MCCLENNEN:

Q. At that period did the Union-Central line have any other i
portant competitor?

A. They had the Atchison.

Q. Do you remember about when the Atchison got into California

A. Well, they were into Mojave—I do not know the date; I cou
not give you the date.

Q. But it was considerably before that, was it not?

A. Oh, yes; but into San Francisco, I should say, along in 18
or 1897.

148a Q. That was over the tracks of the Southern Pacific, und
some trackage arrangement, was it?

A. Yes; by using the Southern Pacific tracks from Mojave
Bakersfield, 65 miles, and buying the San Joaquin Valley Railroa
I believe.

Q. Do you remember whether or not possibly the actual gettin
into San Francisco by the Atchison over its own line was in Ma
1899?

A. Possibly as late as that; I thought a little earlier than th
That may be correct.

Q. And do you remember about when the Atchison got to Ch
cago, at the other end?

A. They built into Chicago, I should say, in 1899 or 1900, or abo
there. That is a guess, however, I am not positive of that.

Q. Do you know to what extent—of course not stating it in tons or in dollars, but in general—the Sunset Line was taking the freight of central and northern California to the Atlantic seaboard, as compared with that moved over the Central through Ogden?

A. Well, for any particular time?

Q. Take it during the time you were in San Francisco, from 1894 to 1898.

A. I do not believe I could give any figures; I can not give any figures as to that; but the Ogden lines got very little of that business. The strong line was the Sunset line, through the Gulf ports.

Q. What were the circumstances that led to the success of the Sunset line in that competition? That is, what did that line have to offer that succeeded in controlling such traffic as it did control?

A. Well, they had their local organization in San Francisco, which has always been very strong. They could do a great many things locally for shippers that a foreign line could not do; I mean legitimate things. Their service was better.

Mr. BLAIR. You are speaking of what time?

The WITNESS. From 1894 to 1898.

By Mr. MCCLENNEN:

Q. In general were the rates the same of both lines?

A. Yes.

Q. Where rates are the same, what are the elements of competition? What can railroads offer to induce traffic one way or the other—legitimately?

A. Principally service.

Q. And by "service" you cover how much?

A. I do not quite understand your question.

Q. Do you mean time in transportation?

A. Transportation schedules; yes.

Q. Ability to keep to schedules?

A. Yes.

Q. Settling claims promptly also, I suppose?

A. Yes; the manner in which they take care of the business, in every way.

Q. Do you remember the occurrence, which was, in fact, in 1901, when the Union Pacific and the Southern Pacific came under a common organization to some extent?

A. Yes.

Q. Commonly called "the merger"?

A. Yes.

Q. Did you notice the effect which that had upon the attempts to influence business by the Sunset line in preference to the Central Pacific, as compared to what it had been before?

A. I will answer that in this way: That merger had the effect of moving the eastern terminus of the Central Pacific, you might say, to Omaha, stretching their haul a thousand miles and increasing their earnings proportionately. The line over which they solicited freight was moved east accordingly; instead of passing through Detroit, Toledo, Indianapolis, and those cities, they moved into Pittsburgh, we will say. That business moved through Omaha; not entirely so, however, but the earnings being much more favorable through Omaha than they had been before, that line was favored.

Q. The reason for favoring the Sunset Line was what? That is the reason for the Southern Pacific's favoring the Sunset Line was what?

A. Because their haul was longer and their earnings were greater.

Q. And even after this so-called junction, we will say, between the Central and the Union, as I understand you, they still sought the seaboard business by the Sunset Route?

A. Yes.

152 Q. Including in that business that which was east, say, of Pittsburgh and Buffalo?

A. Not so accurately, I do not believe; that is, around Pittsburg territory. The Atlantic seaboard was solicited by the Sunset Route I think, we will say, as to Pittsburgh territory they were rather neutral as between Omaha and Sunset. It depended somewhat on the commodity.

Q. After that 1901 merger what was the condition in the Central Freight Association Territory? Did they reverse things and seek by the Union-Central, or did they let it take its own course as between that way and New Orleans?

A. I do not believe I could answer that question; I did not come in contact with that particular traffic at that time.

Q. Take Chicago business before 1901. Was the Southern Pacific making an effort to get it by New Orleans?

A. Well, very little, if any.

Q. How was it after 1901?

A. Exclusively through Omaha.

Q. Take another point: Cincinnati. How was that before 1901 and after?

153 A. Before 1901, Sunset. I think after the merger they favored the Ogden route or the Omaha route.

Q. Was there in the growth of the country, or in business conditions, or in any other way any reason for the change in the lines over which the traffic moved other than the change in the manner or extent of the solicitation?

A. I do not believe I quite understand your question.

Q. Without putting it down on the record again—you have indicated a change in 1901.

A. Yes.

Q. I am asking you whether there was anything other than the change in the soliciting efforts to account for that change?

A. I may be dense on this, but I don't get that question.

Q. Undoubtedly the denseness is mine. I am perfectly willing to assume it. I am right in understanding you, am I not, that after 1901 the proportion of the traffic moving through Ogden from this central territory was greater than it had been before 1901?

A. Yes.

Q. Now, I asked you whether there was any reason for that change in proportion, other than the change in the effort of the Southern Pacific organization, which before, as you say, had been very vigorously directed towards the Sunset line?

A. Well, the reason for more traffic moving through Omaha is because the Southern Pacific helped to put it that way rather than through New Orleans.

Q. Did you have an opportunity to observe the effect of the merger of 1901 on the traffic over the Central Pacific through Ogden which theretofore had passed over the Denver & Rio Grande and Missouri Pacific?

A. Yes.

Q. What was the effect?

A. Well, after the merger the Denver & Rio Grande takings were very materially reduced.

Q. Am I right in saying that it was because it moved over the Union Pacific more exclusively rather than over the two lines?

A. Yes; that is what built the Western Pacific.

Q. The Western Pacific was built as an ally of the Denver & Rio Grande and Missouri Pacific?

A. Can you tell me, of the commodities which moved from this northern California and perhaps Oregon region, and perhaps Nevada, over the Sunset Route which, as a matter of normal traffic, would go over the Central Pacific and Union Pacific and Missouri Pacific if it was not diverted the other way?

A. To what eastern territory?

Q. To the Atlantic seaboard.

A. Of the principal commodities moving through southern Oregon and northern California for the Atlantic seaboard the principal commodity is hops, I believe. They move generally by the Sunset Route. They had for many years, and I suppose they do yet. Some canned goods move from there; wool from Nevada. I guess those are about all.

Q. I call your attention to copper. What knowledge have you about that?

A. There is a large copper smelter in the Shasta Mountains north of Redding. There were two there, but I think one is closed down, the Balacallelo. I do not know just what their output is, but they are quite an important shipper of copper, which all moves to the Atlantic seaboard by the Sunset.

156 Q. You spoke of wool from Nevada. Do I understand you mean that eastbound wool is carried west over the Central Pacific to the Southern Pacific by the Sunset Route?

A. It is moved that way if it is possible. I could not speak accurately of the last few years.

Q. In large or small quantities?

A. There is quite a considerable quantity of wool produced there, and a great deal of it moves over the Sunset line; not all of it, however; some over the Ogden line.

Q. How far east in Nevada was wool taken around by this long haul going west and then east?

A. I do not know whether the Southern Pacific did come east of Winnemucca or not; I don't think so.

Q. Do you know whether they have taken it that way around from as far east as Corrinne?

A. Yes; shipments have moved that way, but not in considerable quantity. Kelton was quite a shipping point in my days out there they moved from there, too, but not very much.

Q. In your experience with this general railroad situation prior to 1901, had you ever known of any effort being exerted by the Southern Pacific to get any transcontinental freight over the

157 Central Pacific except that freight which they were unable to control for the Sunset Route?

A. Sunset first, always, to that territory.

Mr. BLAIR. To which territory?

The WITNESS. East of what we used to call the "dead line"; I don't know just what the description is, but Sunset preferred always.

By Mr. McCLENNEN:

Q. This is the first time you have used that expression "dead line"; what do you mean by the words?

A. I do not believe I can describe that now; I did have it at one time; but approximately Detroit, Toledo, Indianapolis, Cincinnati on and east of that line, I should say; that may not be quite correct but approximately so.

Q. After the merger, so called, in 1901 were considerable sums spent in the upkeep and improvement of the Central Pacific Line?

A. Yes.

Q. What was the condition of that line up to 1901?

A. Physical condition?

Q. Physical condition.

158 A. Well, it was a fairly good—what we call a dirt railroad; very little ballast except over the mountains on their heavy grades, laid with 60 and 70 pound rails and kept up just fair.

Q. How would it compare for efficiency and comfort with that same road now?

A. About 50 per cent, I should say.

Q. Was any effort made by the Southern Pacific to get transcontinental passenger traffic over the Sunset?

A. Yes.

Q. What was done in that regard?

A. Well, they favored the Sunset Line on passenger business very largely. I believe they were the first to put on a high-class train that stayed on. The Union Pacific put on a so-called limited train, the Golden Gate Limited, I think it was called, or Golden Gate Special—the Golden Gate Limited, I guess, probably in 1889 or 1890. That train was put on and operated for part of one season and discontinued; it was not a popular train. Two or three years later the Southern Pacific put on the Sunset Limited, and I think ran it once a week, and it has been on ever since; in fact, it is a daily train now.

Q. You say that the Union Pacific was not a popular train. What do you mean, with the traveling public?

159 Q. They made a lump charge, which included transportation, sleeping-car accommodations, and meals, and it was not a popular train, I think, on that account very largely. The charge was rather excessive compared with the rates made by other limited trains. Do you know the reason for that high charge?

A. Well, that was by agreement between all the lines interested—the Northwestern and the Union Pacific and the Central Pacific. It was an experiment; it was the first train of the kind to be put on.

Q. What have you observed as to freight schedules over the line of the Central-Union and the line of the Sunset and as to the regularity with which the schedules were kept prior to 1901?

A. I think they were equally good both ways.

Q. About what was the normal length of time of freight hauled from San Francisco to New York over the Central-Union and the eastern connections and over the Sunset Route?

A. That time varied a great deal from year to year and at different times in the year; all the way from ten days to twenty-five or thirty days by rail, all rail, and the Sunset time was probably 17 or 18 days.

160 Q. It was what?

A. Oh, 17 to 20 days.

Q. Prior to the time that the Atchison got into San Francisco what were the possibilities, as a practical matter, of the other railroads making rates to California or establishing any particular through service against the objection of the Southern Pacific?

A. We usually did as they wanted us to do.

Q. And why was that?

A. We could not get in in any other way. Mr. Stubbs was the boss.

Q. That is, Mr. J. C. Stubbs?

A. Yes.

Q. What position did he occupy in the Southern Pacific?

A. He was vice president, in charge of traffic. That meant a great deal more than it does nowadays, though.

Q. What is the comparative effect upon the routing of traffic of the initial carrier and the intermediate carrier or the delivering carrier?

161 A. As to where it is controlled, you mean?

Q. As to how it is routed? I mean if the shipper does not exercise his present rights, what is the comparative opportunity and power of the Southern Pacific and the Union Pacific, and, say, the Northwestern, over traffic originating in Southern Pacific territory?

A. And simply routed Southern Pacific?

Q. No other route specified.

A. No other route specified?

Q. No other route.

A. They would take their long haul; every railroad would do that.

Q. Would it be accurate to say that in the majority of cases of the actual shipment of freight the wishes of the initial carrier determine the route that it will follow?

A. Yes.

Q. About how long has it been that shippers have done much about making their own through routing? I do not refer to the actual time when the law was passed, but how long has it been, as a practical matter, that shippers have done much themselves about insisting upon the through routing since the date named?

A. They have been active in that way ever since I have been in the business.

162 Q. After June, 1910, when the Hepburn Act was passed, have they had much success about it?

A. Yes; I should say so.

Q. Did you know about the orange routing situation in California?

A. Yes.

Q. What was the situation there, say, from 1899 to 1910?

A. Prior to the law being passed?

Q. Yes.

A. The initial lines did most of the routing by reason of the fact that they had arrangements made for icing this freight that had to be iced in transit, and they did not have icing arrangements by all the lines, so that the freight necessarily had to move over the lines with which they had icing arrangements.

Q. Do you know whether they actually reserved the right in their tariff to do their routing?

A. Yes; I think they did.

Q. You have spoken of the influence of the Southern Pacific as the initial carrier in California; what is the influence of the
163 Southern Pacific as the initial carrier in New York?

A. Well, it is not as strong as it is in California. Their line out of here is a water line, and they do not serve an immense big State like they do in California nor originate the business that they do in California, and naturally they have not the influence.

Q. Do they maintain active soliciting agents in New York?

A. Yes, sir; very active.

Q. Do you know how high the percentage of the New York-San Francisco business has moved over the Sunset Route at times?

A. At any time?

Q. Yes; take the apex.

A. Well, I think if you would go back into the eighties, they probably took as much as 90 per cent of the New York-San Francisco business over their Sunset Line. That has decreased, however, gradually since that time. I do not know what percentage they take now, but I would not say as much as 50 per cent.

164 Q. If it is not taxing your memory too much, can you tell me what division of the joint rate was made between the lines west of Ogden and the Union Pacific and the trunk lines?

A. The division of the rate between New York and San Francisco?

Q. Yes.

A. I think I could give you that. Without the bay transfer and the Missouri River bridge the rates divide in this way:

First, take out 25 per cent for the lines east of Chicago; of the remainder, take 15 per cent for the line between Chicago and the Missouri River; from that result, the proportion accruing to the lines between the Missouri River and San Francisco would divide: 54 per cent to the Union Pacific and 46 per cent to the Central Pacific.

That is not exactly correct, because there are some bridge and bay transfers deducted and added back, but they will not change it materially. That is the old basis and, as far as I know, it is still in effect and never has been changed.

165 Q. As you have observed it in actual railroading, if a line such as from San Francisco to Ogden is in control of a company whose only means of moving the traffic is over that line, a company which wants that traffic, is the public likely to get better, worse, or the same accommodations that it would get if that line was in control of a company that had another line, say, through El Paso and New Orleans, over which it wanted to move all of the business that it could?

Mr. BLAIR. I object to that as not calling for any facts or for any expert testimony, but for a mere opinion of the witness.

The WITNESS. Let me see if I understand you correctly. If I understand you correctly, if one ownership owns both lines?

(At the request of counsel for the petitioner the reporter repeated the pending question.)

The WITNESS. Does not your question contradict itself there? You say that this company owns a line between San Francisco and Ogden, that it has no other way of handling this traffic, and then you say it owns another line around by the way of El Paso?

By Mr. MCCLENNEN:

Q. That is the comparison I made. I put two situations
166 to you: One, this railroad from San Francisco to Ogden, owned by one company that owns no other road, but simply has its connection with other roads for a through line; that is one situation. Then I put you another case, of that road being in the control of a company which also has another line from San Francisco by El Paso and New Orleans to the terminal points, and ask you whether in the first case assumed or in the second case assumed, as you have observed railroading, the public is likely to get the better accommodations over the San Francisco-Ogden line. Or, put shortly, if a company's attention is devoted exclusively to getting traffic over the one line, San Francisco-Ogden, will the public be apt to get better service over that line or will it not, than if that company's attention is directed to getting the traffic as far as possible over another line?

A. I understand your question, I think, and I will answer it in this way: The more competition the better service the public will get.

Q. And, as a practical matter in railroading, does the control of the two lines by one company operate, by so much, as a restraint upon the competition?

A. To some extent I should say so; yes.

167 Q. I am not sure whether I have asked you in terms yet whether, in your opinion, the Sunset line is a competing line with the Central Pacific-Union Pacific line for the eastern territory that you have described.

A. Yes, sir; it is.

Q. Has enough time elapsed since the "unmerging", I will call it, of the Union and the Southern, in 1913, to be able to judge yet of what the effect has been in the way of assisting toward restoring competition of the union which had existed before 1901?

A. I do not believe I can answer that. I have not been with those lines since, and I am not familiar with it. I do not know the facts.

Q. After shippers have become habituated to sending traffic in a given way that they have been induced to follow, are they apt to keep on doing that for some time, even if the inducement ceases?

A. I have found them very changeable.

Q. Are shippers generally influenced to any considerable extent by the solicitation of freight solicitors?

A. Yes, sir.

Q. If the Central Pacific Railroad was separated from the
168 Southern so that the intermediate central lines, conspicuously the Union Pacific, had open opportunity to determine rates and matters of through freight without any influences of those interested in developing the Sunset line, what, in your opinion, would be the effect upon the traffic over the Central line?

A. Well, so far as fixing rates is concerned, it would not have any effect.

Q. And how with respect to the volume of traffic and service accommodations, getting cars, and such matters?

A. I doubt if it would have very much effect. Other lines make the competition.

Q. You mean by "other lines", which lines?

A. The Santa Fe and the San Pedro, the northern lines—there are so many lines that fix the competition. The competition is not just between two lines. All lines enter into it.

Q. What would be the effect as to the volume of traffic passing over the Central?

A. If they had their own organization in San Francisco—local?

Q. Yes.

A. Ownership there?

Q. Yes.

169 A. I think it would help.

Q. What are the means of water communication from San Francisco to the Orient at the present time?

A. The steamship lines?

Q. Yes.

A. From San Francisco to the Orient I think there are three lines: The Pacific Mail, the Nippon Yusen Kaisha, and the third line is the Toyo Kisen Kaisha. There are three lines, as I recollect.

Q. It appears that the Pacific Mail is a company controlled by the Southern Pacific. Do you know about the other companies?

A. I think the others are independent lines.

Q. There was an Oriental & Occidental Line, was there not?

A. Yes. That no longer exists.

Q. When did that go on and when did it go off? Do you remember?

A. I do not believe I could give you those dates, in and out; but soon after Mr. Harriman had control of both properties I think the O. & O. was eliminated from the service.

170 Q. By Mr. Harriman getting control you refer to what we have been calling the merger of 1901?

A. Yes; but the Jap line was substituted at that time, as I remember.

Q. Did you know of the fact of the closing of the Roseville gateway during the period of the merger?

A. For what particular traffic?

Q. For traffic in Oregon north of Ashland and destined to points on the Atlantic seaboard and east of the Mississippi River.

A. I am not certain about that. Of course, the line never amounted to much; it never was very wide open; so the closing—we would not make much of a note of it.

Q. By "wide open" you mean jocularly to intimate that there was not a great deal of traffic moving there?

A. It never was a natural line for any of that traffic.

Q. What constitutes the opening and closing of a gateway?

A. Well, taking the rates out or putting them in.

Q. That is, it does not mean that traffic can not move through that junction?

A. Yes; it does. If there are no rates through a certain
171 junction, the traffic can not move that way; it would be overcharged, because the one line would charge its local up to the junction and the other line would charge its local beyond, which might be fifty per cent higher than the through rate, so that traffic can not move without the through rates applying.

Q. That is, opening a gateway is putting in a tariff, a joint rate, through that gateway?

A. Applying through that gateway.

Q. And closing it is taking that joint rate off?

A. Yes. Of course, the physical connection must be there.

Q. Did you know anything about the existence of the transcontinental agreements between the Southern Pacific and various other roads relative to through business?

A. No; I am not familiar with those.

Q. What is a differential, Mr. Schumacher?

A. I do not know that I can give you a Webster definition of a differential, but I will explain it to you in this way: One line may charge a certain rate, say, a hundred per cent rate, for the reason that it is the shortest and best line. Another line may make a rate five or ten per cent less, because it is an inferior line, so it is termed a differential line.

172 Q. Has the Southern Pacific at any time attempted to get differentials for the Sunset line?

A. I think they have tried to make it a differential line, but they have never succeeded.

Q. Why was that?

A. For the reason that it has always been considered as good a line as any between the two coasts.

Q. And when you say they have tried, I understand you to mean that they have tried to persuade the competing railroads that their line was in such a condition that they ought to have a differential?

A. Yes.

Q. Without its being regarded as a rate war?

A. Yes; largely for the reason that it is part water.

Q. That leads me to ask you: are there some kinds of freight that will not move part water and part rail?

A. Oh, there are a few commodities, but we find they are very few.

Q. Do you know whether any fruits move by the Sunset line from southern California?

A. Well, by the rail lines, a great deal of it.

Q. That is, coming through El Paso; and how far over the Southern Pacific?

173 A. Well, via the El Paso route and by the different gateways in Texas, several different gateways, they move California fruits of all kinds; for instance, citrus fruits going into the Southern States they move to New Orleans, and deciduous fruits may move that way, too.

Q. Does the time of the year or the temperature affect at all the possibility or feasibility of shipping fruits by the Southern line?

A. Yes, sir.

Q. Prior to the opening of the Western Pacific, was the Union Pacific absolutely dependent on the Central Pacific for getting into California?

A. Oh, they could get in there by the way of Portland and water.

Q. That is, by going up over the Oregon Short Line to Portland and then down by water?

A. Yes; but it is not a very desirable route, and not worked very strong at any time. The more they worked it the worse they were off.

Q. If I am not borrowing, was it a "practicable" route?

A. No; I never regarded it so, because I tried to get the business that way.

174 Mr. BLAIR. We might interpose the objection of estoppel, as the Government contended exactly the contrary in the Union Pacific merger case, and the Government counsel in their brief, and the Supreme Court agreed.

The WITNESS. That it was a practicable route?

Mr. BLAIR. Yes.

The WITNESS. If they had to solicit business like I did, they would not have thought so.

Mr. BLAIR. It shows the ingenuity of Government counsel.

Mr. MCCLENNEN. I am afraid my esteemed friends are paraphrasing the Supreme Court rather freely in the description they give of what the Supreme Court said.

That is all, Mr. Schumacher.

Cross-examination by Mr. BLAIR:

Q. Mr. Schumacher, will you name the principal now existing through all-rail lines for transcontinental traffic between the Atlantic seaboard and, say, northern and central California points? Probably you might best describe them by their western connections.

A. You mean the western connections of the lines going into Chicago and St. Louis?

175 Q. I mean to suggest that you could probably more definitely describe them by beginning with the——

A. (Interposing.) California lines?

Q. Yes.

A. And radiate from California?

Q. Yes.

A. I do not know how accurately I can give that. I am a little rusty on those things. However, I will try. The Southern Pacific Sunset Route and its connections—shall I name the different gateways?

Q. Yes; you might name the different gateways.

A. Its connections at Tucson, El Paso, Alpine, San Antonio, Houston, New Orleans; there is an intermediate point there where they connect, I think, with the Kansas City Southern; I do not recall the junction.

Q. And they connect at El Paso with the Texas & Pacific?

A. Oh, yes; Texas & Pacific. There are two connections there at El Paso; and Beaumont for the Kansas City Southern. I may have omitted the Frisco junction. I know they have a connection there, but I do not know the name of the junction.

Q. That is one set of all-rail transcontinental lines?

A. Yes.

176 Q. Now, what other set?

A. We will take the Atchison next. They have a connection with the Colorado & Southern through Pueblo, the El Paso & Southwestern at Vaughn, New Mexico; the Frisco at Medora, Kansas, I believe. Then they connect with the Mallory Line at Galveston, and at the Missouri River with all the Missouri River lines.

Q. Have they not a line from San Francisco to Chicago?

A. Yes.

Q. A direct line?

A. A line direct from San Francisco and all California points, practically all of them, to Chicago, where they connect with all the eastern lines.

Q. What others?

A. Then we have the so-called San Pedro route from Los Angeles to Salt Lake. It there connects with the D. & R. G., the Oregon Short Line, Union Pacific, and all of its connections—all of the connections of those lines east.

Q. That are controlled by the Union Pacific?

A. Or the D. & R. G.; they connect with both.

Q. It is controlled by them with the Union Pacific?

A. Yes; they are equal owners, I think. Then we come north
177 to the Central Pacific. They connect at Ogden with the Union and the Denver & Rio Grande; and, of course, through those lines, have access to all of their eastern connections, which practically means every railroad east of the Missouri River.

Q. You have the Western Pacific?

A. And then the Western Pacific, which connects at Salt Lake with the D. & R. G.; and they also have an arrangement to work with the Union Pacific through the Oregon Short Line and the Union Pacific. Their connection is practically the same as the Central Pacific.

Q. It might be said that the Central Pacific, the Union Pacific, and its connections make one line, and the Western Pacific and Denver & Rio Grande are a closely affiliated line, are they not?

A. The Western and the D. & R. G.?

Q. Yes.

A. Yes; one ownership.

Q. You have modestly omitted your own line.

A. The Rock Island? The Southern Pacific does not connect directly with the Rock Island at El Paso. They connect with the El Paso & Southwestern, and we connect them with the Rock Island on the north.

Q. So that makes another line?

178 A. Yes.

Q. And the Rock Island reaches Chicago in that way?

A. Yes.

Q. Through——

A. (Interposing.) Chicago, St. Louis, and Memphis are our principal eastern points.

Q. Would it not be correct to say that the main line, the more direct line, that runs from northern and central California points to the Atlantic seaboard territory is the line made by the Central Pacific, the Union Pacific and its eastern connections, the Western Pacific, the Denver & Rio Grande and its eastern connections, the Santa Fe running through to Chicago, and the Southern Pacific and Rock Island reaching to Chicago?

A. Yes.

Q. They are the more direct, the principal lines for the traffic that I am referring to?

A. Yes.

Q. Which of those lines were not in existence in 1901? Was the Western Pacific and Denver & Rio Grande combination in existence? I know the Denver & Rio Grande was, but was the Western Pacific?

A. The Western Pacific was not.

179 Q. The Rock Island had not been completed in 1901?

A. No. Well, the Rock Island connection into El Paso had not been completed.

Q. Are there not now two mixed rail and water lines which offer alternative routes for the movement of traffic between the points I have named?

A. By the Gulf ports?

Q. Yes.

A. Yes.

Q. One of these is the Sunset-Gulf route we have heard so much about?

A. Yes.

Q. What is the other?

A. The other water line?

Q. Mixed rail and water line. What does the Santa Fe do?

A. The Santa Fe have a connection with the Mallory Line. The T. & P. also have a connection with the Mallory Line.

Q. The T. & P. does not reach San Francisco?

A. It connects with the Sunset at El Paso, and from there goes on to New Orleans, and has a service with the boat line; that

180 is, with the Morgan Line; but they can reach the Mallory Line through Galveston, by way of the I. & G. N.

Q. That furnishes a mixed rail and water line?

A. Yes.

Q. And the Santa Fe from San Francisco, in connection with its affiliated lines in Texas, reaches the Mallory Line at the Gulf, and

has a close working arrangement with them for a through mixed rail and water line from California to the Atlantic seaboard territory?

A. Yes.

Q. Are there not some other lines, known as the Isthmian lines, which furnish alternative routes for traffic between northern and central California and the Atlantic seaboard?

A. Yes.

Q. Which are those two?

A. Well, the Pacific Mail—I suppose they are still in the business—in connection with the Panama Railroad and Panama steamships.

Q. I am not speaking of the events in the last two or three months.

A. No. Well, then, this Pacific Mail, in connection with the Panama Railroad and the Panama Railroad steamships on the east side; the Pacific Mail on the west coast. That makes a through line by the way of Panama.

181 Q. And which is the more powerful of the water lines that have come into existence in recent years?

A. The American-Hawaiian.

Q. And where is its route?

A. It has been by way of the Tehuantepec Railroad across the Isthmus of Mexico, but recently they have started through the canal.

Q. The American-Hawaiian Line was not in existence through the Isthmus of Tehuantepec or through the Panama Canal in 1901 or prior thereto?

A. No.

Q. So that since 1901 there have been additional transcontinental lines for the movement of traffic between northern and central California and the Atlantic seaboard territory?

A. Yes.

Q. Now, the traffic passing between those territories, I suppose, is large and valuable in amount?

A. Yes.

Q. And increasing, is it not?

A. Yes.

Q. Is it not contested for by these different through lines that you have mentioned, you and I together?

189 A. Yes.

Q. Is the contest vigorous or sluggish?

A. Vigorous.

Q. And active?

A. Yes.

Q. Now, take the Central Pacific-Union Pacific lines, whatever of that traffic it now secures it gets in competition with the other

railroad lines, and as a general rule in competition with the Isthmian lines and the mixed rail and water lines?

A. Yes.

Q. Is it able to strive successfully for a portion of this traffic?

A. The Union and Central Pacific?

Q. Yes; now?

A. Yes.

Q. Would it not be true to say that it is the strongest competitor for that traffic now?

A. You mean to San Francisco?

Q. Yes.

A. Yes.

Q. By strongest you mean the most successful?

A. Yes.

183 Q. Notwithstanding all this competition?

A. Are you speaking of the Atlantic seaboard business?

Q. I am speaking of the Atlantic seaboard business, but not exclusively from the city of New York.

A. I will change my answer on that. I do not consider the Union and the Central Pacific strongest from the Atlantic seaboard. I think the Sunset is.

Q. Is it the strongest of the all-rail lines?

A. Yes.

Q. Have you any figures which would enable you to say with any degree of confidence that, taking the Atlantic seaboard territory as a whole and not confining your attention exclusively to the city of New York or the port of New York, that the Sunset-Gulf route now carries more of that traffic than passes over the Central Pacific-Union Pacific line?

A. Well, I do not know; I could not answer that accurately; but my thought is that the Sunset carries more than any one line; not more than all the all-rail lines, but more than any one.

Q. Is it a more powerful competitor for that class of business than the American-Hawaiian Line?

A. Well, since the American-Hawaiian Line is operating
184 through the canal I should say that they are the strongest now.

Q. They are the strongest line now?

A. Yes.

Q. Now, is there not some of this traffic which, either by reason of its character or by reason of its packing, does not admit of transhipment, and the competition therefor is limited to the all-rail lines?

A. Oh, there are a few commodities.

Q. There are a few commodities, but are they not important in volume?

A. Well, some of them are important. Take the fruit; the green fruit, of course, does not move through the Gulf ports, and that is a very important commodity.

Q. It is very important both in amount and in value?

A. Yes.

Q. That would include perishable fruit, which requires refrigeration or ventilation?

A. Yes.

Q. That is a kind of traffic that is very desirable?

A. Yes.

Q. And vigorously competed for?

A. Yes.

Q. That would include deciduous fruit, citrus fruit, vegetables, oysters, and fresh meat, would it not?

A. Yes.

Q. Then is there not a great deal of traffic which goes packed in ice which can not be unloaded in transit?

A. Well, we used to think so, but we are getting away from that. We find that we can handle nearly all of it over the water lines.

Q. And even that shipped in tank cars?

A. Not tank cars.

Q. Well, a good deal of it goes in tank cars?

A. Not very much.

Q. Wine, asphalt, and oil?

A. We can handle wine all right in bulk; we are doing it every day.

Q. And freight stored in cars in bulk?

A. Yes.

Q. And freight which by reason of its character must be loaded in the car and run to destination?

A. Well, there are a few commodities which will not permit of transfer, but very few of them.

Q. I am not dealing so much with the number of commodities, but upon the value of the traffic. The possibilities from that traffic would represent quite a large figure, would they not?

A. Yes.

Q. It is very valuable traffic?

A. Very.

Q. How about automobiles?

A. I do not know that any of them have ever been handled by ships; that is a large figure, a large traffic.

Q. There is a considerable movement in that commodity?

A. Yes.

Q. As a general thing these through rates on transcontinental traffic are the same over the different roads?

A. Yes.

Q. Rates do not, then, cut much of a figure in the striving for the traffic?

A. No.

Q. And how do the different lines go about it in securing this traffic? What agencies do they put to work to secure it, each for its own line?

A. Well, they have solicitors that go around to the different
187 shippers and beg for the business, day in and day out.

Q. Who controls the routing of traffic nowadays, at the present time?

A. Well, usually the man in charge of the shipping of a large institution, or a small one for that matter.

Q. In other words, the shipper?

A. The shipper; yes.

Q. Now, take the westbound traffic from the Atlantic seaboard to northern and central California points, how is that solicited for?

A. Westbound from Atlantic seaboard to central and northern California points?

Q. Yes; how is it solicited for?

A. It depends on the solicitor. If it was a Northern Pacific man he would solicit for his road, and if it was a Union Pacific man he would solicit for his road.

Q. Then it is solicited for by agents or representatives of the different railroads forming part of the different lines?

A. Yes.

Q. And that solicitation takes place at what end?

188 A. Sometimes at both ends of the lines. They solicit both the consignee and the consignor.

Q. In other words sometimes the consignor controls the routing of the traffic and sometimes the consignee?

A. Yes.

Q. And the result of that is that the different lines taking part in these different through routes maintain soliciting agents both in the east and in the west?

A. Yes.

Q. And those soliciting agents, in case of a westbound shipment go after the consignor in the east and go after the consignor in the west?

A. Yes; they work every way they know how.

Q. Have the western lines, the Rock Island, the Santa Fe, the Union Pacific, the Western Pacific, and the Denver & Rio Grande eastern sales agents?

A. Yes.

Q. And that is true of the Isthmian lines?

A. Yes.

Q. And true of the Sunset-Gulf line?

A. Yes.

Q. And these different soliciting agents try to secure the forwarding of traffic over their lines?

A. Yes.

189 Q. Over the line they represent?

A. Yes.

Q. Is the competitive solicitation between these lines or routes that I have mentioned mild or vigorous?

A. Vigorous.

Q. And active?

A. Yes. There is not enough business to go around.

Q. Now, we have had some talk with respect to the traffic between the Atlantic seaboard territory and northern and central California to be preferentially solicited by the Southern Pacific via the Sunset Route. When the Southern Pacific agent is trying to secure this traffic is he the only Richmond in the field?

A. No.

Q. He meets with the Union Pacific and its eastern connections is striving to get that traffic by the Ogden route?

A. Yes, they are all there trying to get it.

Q. And the consignor sits up and determines by which route his traffic shall go?

A. Yes, usually the consignor on that business.

190 Q. And would not what I have said in respect to solicitation by these different roads apply to east bound traffic between the same points?

A. Yes.

Q. Was that true substantially in 1901 and prior thereto as to the lines then in existence?

A. Well, there were not so many lines, but there were enough lines to make the competition.

Q. If there has been any change there is more competition now than there was in 1901?

A. Yes.

Q. You have spoken of the through line formed by the Central Pacific and the Union Pacific and its eastern connections, that through line offering an alternative or competitive route for the Sunset-Gulf Line, we will say. Do you mean that that was theoretical competition, or is it actual?

A. It is actual.

Q. And always has been within your memory?

A. Yes.

Q. Except I suppose from the time of the merger?

A. Yes.

Q. Now, as to your connection with the Union Pacific; dur-

191 ing your connection with the Union Pacific was there a through service over the Central Pacific and Union Pacific via Ogden?

A. Passenger or freight?

Q. Both?

A. Both.

Q. Joint rate?

A. Yes.

Q. Through contracts of shipment?

A. Yes.

Q. Through passenger tickets?

A. Yes.

Q. Through freight trains?

A. Yes.

Q. Were those arrangements for through service over the Ogde Route such as to admit a movement of through transcontinenta traffic over that route?

A. Yes.

Q. What was the relation between the Union Pacific and the South ern Pacific prior to 1901; friendly or unfriendly?

A. Very friendly.

Q. Which route was preferred in connection with the South

192 ern Pacific for traffic that did not pass over the Sunset Route

A. Well, I used to think they preferred the D. & R. G., b the D. & R. G. man thought that they preferred me, so that I do n believe we can decide that. The eastbound business at Ogden divid about 45 and 55 per cent, 45 per cent to the Denver & Rio Gran and 55 per cent to the Union Pacific. I used to think the Denver Rio Grande got too much.

Q. Was that determined in any way by the amount of deliver which those lines made to the Union Pacific or made to the Centr Pacific?

A. That was a factor, but not the only one.

Q. That was what the Southern Pacific strove to observe, was i

A. Yes.

Q. Now, were there not arrangements for handling through traf such as I have described prior to 1901, satisfactory to the Uni Pacific?

A. Yes.

Q. You never made any complaint in regard to that?

A. No.

Q. Do you know whether there still exists these through trai through service, and through rates?

A. Yes.

193 Q. At the present time by the Ogden Route?

A. Yes; I think the service is better, if anything, than it was then.

Q. Do you know of any two connecting lines under independent management which have any closer relations for operation as one continuous line than exist between the Southern Pacific and the Union Pacific via Ogden?

A. No.

Q. So, so far as the public is concerned in regard to rates and time of transportation, they are operated as one continuous line, are they not?

A. Yes.

Q. You spoke of a quite large percentage that the Southern Pacific secured for the Sunset-Gulf Route in the eighties. Was that not due to the fact that the service on all the all-rail lines for through business was not very good?

A. Well, that probably had something to do with it; but I think there were other reasons more potent than the service.

Q. Well, has not the proportion which the Sunset-Gulf Route secures of this transcontinental business been a greatly diminishing quantity?

194 A. Yes.

Q. From year to year?

A. Yes.

Q. And it is less strong in influence now than it was at any time?

A. Yes; it is decreasing.

Q. And likely to be decreased in the future with the opening of the Panama Canal?

A. Yes.

Q. So that the outlook is that whatever empire or dominion the Sunset-Gulf Route exercised over the traffic passing from California to the Atlantic seaboard territory is a past empire or a failing or receding control?

A. I should think on the wane.

Q. The service over the all-rail lines is very much improved since 1901?

A. Very much.

Q. The ability of the Southern Pacific to offer superior service—if it ever had that ability—is less now than it ever was, is it not?

A. Well, it has grown less in the last few years.

195 Q. You spoke of the condition of the Central Pacific line from 1894 to 1898, and you stated that its present condition was very much better?

A. Yes.

Q. That would be true of pretty nearly every railroad, would it not?

A. Yes. But I think the Central is quite marked in its improvement.

Q. And the Union Pacific has been quite marked in its improvement?

A. Yes.

Q. Now, in regard to transcontinental passenger service, were you speaking of passenger service by the Sunset-Gulf Route?

A. Yes.

Q. How long did it take a passenger to go from New York by ship to New Orleans and thence to San Francisco?

A. I think the time from here to New Orleans is five days by ship, and from there to San Francisco—well, I do not know what the schedule is now, but it is longer than it is from Chicago, I think.

Q. How long does it take them to go from San Francisco to New York via Ogden?

196 A. Well, it is possible to make the run in four days.

Q. So that you have a nine-day run on one hand and a four-day run on the other?

A. Yes.

Q. Have you any idea as to the relative amount of passenger business which goes over the Ogden Route as compared with the passenger business which goes over the Sunset-Gulf Route via New Orleans?

A. I can not speak as to figures; I suppose it is greater by Ogden.

Q. In 1901 and prior thereto the Union Pacific had only one line to make use of between Ogden and San Francisco—the Central Pacific?

A. Yes.

Q. And now has two lines, the Western Pacific also?

A. Yes.

Q. In 1901 and prior thereto the Union Pacific had a line to Portland and then from Portland by water to San Francisco, did it not?

A. They had a line; yes.

Q. We are influenced by the contentions made on the one side in the Union Pacific merger suit, and you might call that a re-

197 taliatory line. Now, what other line was there reaching into California, into the Pacific Ocean? What other line has it control of?

A. The San Pedro.

Q. That is a good strong line, is it, and goes into Los Angeles?

A. Yes.

Q. In 1901 the Hepburn bill had not been passed, had it?

A. I hope it was not.

Q. And the Interstate Commerce Commission had no authority to compel connecting lines to make through routes and through rates?

A. No; my recollection is that they don't undertake anything of that kind.

Q. In 1901 the shipper had not the right by law to direct the routing of the traffic?

A. I do not know about that.

Q. Assuming, then, that in 1910 the Interstate Commerce Commission for the first time required the railroad companies to observe the routing directions of shippers; assume that, and also assume that since 1901 the Interstate Commerce Commission has had the right not only to establish through routes and through rates with
198 connecting lines, but to establish reasonable divisions, if they meant to agree among themselves?

A. Yes.

Q. Now, taking into consideration all these changes since 1901, would you say that the Union Pacific is more or less at the mercy of the Southern Pacific by reason of its control of the Central Pacific now than it was in 1901?

A. I do not see that their condition has changed very much; I do not think they are very much better off now than they were then or very much worse off then than they are now.

Q. Are they more or less at the mercy of the Southern Pacific now than they were then?

A. They are not any more at the mercy of the Southern Pacific.

Q. Are they not very much less?

A. I don't think so. They have another connection, which is more helpful to them than anything else.

Q. And the Southern Pacific could be required by the Interstate Commerce Commission to establish through rates with the Union Pacific?

A. Yes.

199 Q. It could be compelled to make fair divisions with them?

A. Yes.

Q. The Union Pacific has two retaliatory lines now where it had one in 1901?

A. Well, not to San Francisco.

Q. What is that?

A. They have one line to San Francisco and one to Los Angeles. They have not two lines to San Francisco; that is, two other than the Central.

Q. They have a line to Portland.

A. I don't call that a line at all, and never did.

Q. We tried for years, I understand, not to call it a line, but the Supreme Court put it on the map.

A. Well, it is not on my map.

Q. And that high authority having put it on the map, we should try to keep it there.

Mr. McCLENNEN. I think we ought to object to your incorporating in that question a statement of fact not yet in evidence.

Mr. BLAIR. Before I asked the question I established the existence of the line via Portland and also the control of the Union Pacific over the line to Los Angeles.

200 Mr. McCLENNEN. My objection was directed to the accuracy of your description of what the Supreme Court had said or done.

Mr. BLAIR. That is something so easy of correction by the Supreme Court that if it is not correct it will hardly do any harm.

Mr. McCLENNEN. I thought it would be more apt to do good, so far as that is concerned.

Mr. BLAIR. Then I am surprised that you object to it.

Mr. McCLENNEN. I was afraid the gift would be overlooked.

201 Redirect examination by Mr. McCLENNEN:

Q. Mr. Blair has spoken of the different lines of communication from San Francisco to the East, and among others he mentioned the Panama route formed by the Pacific Mail Steamship Company and the Panama Railroad and the boats on the east side of Panama. That is the same Pacific Mail Steamship Company which is controlled by the Southern Pacific?

A. Yes.

Q. You assented to Mr. Blair's question to the effect that there were no two separate lines forming a continuous route which were more closely connected than the Central and the Union. Do you refer in that answer to anything more than physical connection?

A. Yes; the physical connection, and they make through rates, run through trains, their working arrangements generally are friendly to the territory other than Sunset territory.

Q. Did you mean any more than what you have now described by your answer?

A. No.

Q. There are connecting lines which form a continuous
202 line where both of the connecting lines seek to throw all the traffic possible over the connection, are there not?

A. Yes; there are cases of that kind; usually the same ownership, however.

Q. That might be described as a more close union than a line the operators of which were seeking to divert to a certain route as much of the traffic as possible?

A. There may be connections that work 100 per cent with each ther. The Central and Union do not, but aside from their Sunset erritory, I do not believe two lines could work any more closely ogether than the Union and Southern or Central.

Q. But so far as Sunset territory is concerned, the reverse is true?

A. Yes, sir.

The Southern Pacific would favor their long haul.

Q. The connection between the Western Pacific, for instance, and he Denver & Rio Grande, and the connection between the El Paso Southwestern and Rock Island, is much closer than that between he Central and the Union?

A. I would not say "much closer"; they are closer, because they work practically all business in connection with each other, 08 although they have other affiliations; but probably not as much so as the Southern Pacific has with its Sunset line.

Q. You also, as I understand, assented to Mr. Blair's statement hat the Union and the Central were operated as one continuous ne. By that you, of course, meant, among other things, that they ad joint rates, that there were through trains——

Mr. BLAIR. Counsel objects to counsel for the petitioner leading his n witness and practically answering his questions for him.

(By request, the reporter read the pending unfinished question.)

By Mr. MCCLENNEN:

Q. Did you mean to include more than that; and if so, what?

A. No; I think that covers it.

Recross-examination by Mr. BLAIR:

Q. Mr. Schumacher, the fact that the Southern Pacific sometimes licits traffic for its Sunset Route which would otherwise pass over e Ogden route or some other through-rate line—does that inter- re with the arrangement for through service via the Ogden route?

4 A. No.

Q. It does not have any effect upon that?

A. No, sir.

Q. The soliciting or routing of traffic has no essential connection ith the existence of arrangements for the handling of through affic so as to make the two connecting lines a continuous line for the ssage of freight?

A. No.

Q. Counsel asked you about a line of steamships to Panama, the cific Mail. Is there not another line in operation, the Luckenbach ne?

A. I do not know about it.

Q. You are not prepared to say whether or not there is another line in operation than the Pacific Mail?

A. No; I do not know about it.

By Mr. McCLENNEN:

Q. Does the soliciting done by the Southern Pacific for the Sunset Route have the effect of diminishing the amount of traffic which normally would go over the Central and Union, or does it not?

A. Yes.

(Whereupon an adjournment was taken until to-morrow, Wednesday, September 23, 1914, at 10.30 o'clock a. m.)

205 THIRD DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 23, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.; and Mr. Trafford, for the Union Trust Company of New York.

Mr. McCLENNEN. Please note upon the record that it is agreed between counsel for petitioner and the counsel for the defendant that the petitioner is not to be taken, by virtue of the stipulation contained in petitioner's Exhibit No. 14, to have conceded the validity of the deed of July 29, 1899, from the Central Pacific Railroad Company to the Central Pacific Railway Company noted on that exhibit under the list of officers for the year 1900.

Also, please note, without agreement, to avoid any misunderstanding, that none of the stipulations made or to be made are to be taken as an admission by the petitioner of the validity of the lease from the Central Pacific Railroad Company to the Southern Pacific Company of February 17, 1885.

206 The petitioner reserves the right to attack the validity of this lease under the claim, of which the petitioner gives notice, that this lease is invalid as being in violation of the rights of the stockholders of the Central Pacific Railroad Company and of the public, not properly authorized, and *ultra vires*, and not permitted under the Federal legislation accepted by the Central Pacific Railroad Company, and not permitted by the charter of that company, and not permitted by the statutes and laws of the State of California, or by the constitution thereof.

WILLIAM SPROULE was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your residence?

A. San Francisco, California.

Q. And your address?

A. Personal?

Q. Or business.

A. Flood Building, San Francisco, is my business address.

207 Q. You are the president of the Southern Pacific Company?

A. Yes.

Q. Do you hold any official position in the Southern Pacific Railroad Company, the Central Pacific Railroad Company, or the Central Pacific Railway Company; and if so, what?

A. I am president of the Southern Pacific Railroad Company. I am a director in the Central Pacific Railway Company, I believe is the corporation, and I may be a director in the Central Pacific Railroad Company, but I do not recall for the moment. The manual that counsel has will show that.

Q. You are one of the persons named as defendants in this case?

A. I am.

Q. You are temporarily in New York on other business of the company?

A. Yes.

Q. How long have you been connected in any way, as employee or otherwise, with any of those four companies just mentioned?

A. From 1882 to 1906 and from 1911 to date.

208 Q. Your connection from 1911 to date has been as at present?

A. As at present.

Q. During the five years from 1906 to 1911 were you not associated in any way with any of those concerns?

A. I left the service in 1906.

Q. From 1882 to 1906, will you please state the different capacities in which you served from time to time and with which companies?

A. I was in clerical capacities from 1882 to 1887. I became assistant general freight agent in 1887, general freight agent in the beginning of 1898, and freight traffic manager later in that year. That position I retained until I resigned from the company's service in 1906 to engage in other business.

Q. In what department of the work were you engaged clerically from 1882 to 1887?

A. In the freight department, under the general freight agent; subsequently under the freight traffic manager, and then under the general traffic manager.

Q. Were your positions from 1882 to 1887 such as to make you conversant with the general courses of the movement of freight over the Southern and Central Pacific Railroads?

A. In a general way, yes.

209 Q. Were you in the railroad business from 1906 to 1911?

A. No; I was in the express business in 1911.

Q. What concern?

A. Wells-Fargo & Company. I was its president.

Q. President of Wells-Fargo & Company during that period?

A. Yes.

Q. Is that a company that is affiliated in some way with the Southern Pacific Company?

A. No affiliation.

Q. I want to ask you a few questions relative to the map, Petitioner's Exhibit No. 1. Will you note this purple marking and see whether or no it represents correctly the lines of the Central Pacific Railroad?

A. I think so. On that small scale it is hard to tell whether the lines are precise, but in a general way that shows it.

Q. Does the marking in red upon the same map correctly represent the lines operated or controlled by the Southern Pacific Company, other than the Central?

A. I think so.

Q. Do the lines in blue correctly represent the lines operated by the Union Pacific Railroad?

210 A. Those are the lines of the Union Pacific Company. We have no line at present, or in contemplation, from Grants' Pass in southwestern Oregon running, as shown on the map, toward the coast. The hatched lines on this map from Kirk in the southern part of Oregon to Oak Ridge, shown in hatched lines in purple, have not been constructed. Also the line from Eugene Junction in the western part of Oregon, running west and south to Myrtle Point, is under construction, but has not been completed. Also the line from Fernlee in the western part of Nevada to and through Susanville in the eastern part of California, shown here in red, should be shown as purple, as it is owned by the Central Pacific Railway Company. Also the line in red from Harrington, in the north central part of California and running northerly toward Calusa, is under construction. The line from Hazen in the western part of Nevada to Mojave in the southern part of California, shown in purple, that part which is between Mina in the western part of Nevada and Owenyo in the eastern part of California is narrow gauge. The lines in red running north from Maricopa in the southern part of Arizona, and from Bowie in the southeastern part of Arizona, shown in red, are properties of the Arizona Eastern Railroad Company.

Q. The entire capital stock of the Arizona Eastern Railroad Company is owned by the Southern Pacific Company?

A. Yes, sir.

Q. Do you know approximately how long the company has owned the whole or a majority of the stock of that company?

A. I do not.

Q. A part of this line, indicated in red on this map, is made up of the Galveston, Harrisburg & San Antonio Railway Company?

A. Yes; that is east of El Paso.

Q. The capital stock of that company outstanding, stated in dollars at par, is $27,084,372, of which the Southern Pacific Company owns $27,055,900?

A. As to those matters, if you do not wish to accept the figures that are shown in the annual report, I would suggest that you ask those questions of the comptroller, because these are questions with which I, as the operating officer in charge of the Southern Pacific properties, do not myself deal.

Q. I understand. I am taking these right from the annual reports as the simplest way of getting them in the record.

A. I do not wish them to be given as answers from myself.

Q. It would be correct to say that that is what is shown in the annual report of the company?

A. If that is what is in the annual report, yes.

Q. The tracks of the Galveston, Harrisburg & San Antonio Railroad Company, the main line of them, runs from what point to what point?

A. El Paso to Houston.

Q. I am correct, am I, that the annual report of the Southern Pacific Company shows that the capital stock of the Louisiana Western Railroad Company, in dollars at par, is $3,360,000, all of which is owned by the Southern Pacific Company?

A. Yes, sir.

Q. The line of that railroad is from what point to what point?

A. From New Orleans—I forget its junction with the G., H. & S. A.

Mr. BLAIR. It extends from at or near the boundary line between the States of Texas and Louisiana to Lafayette, formerly Vermillionville, in the State of Louisiana; that is the Louisiana Western.

Mr. MCCLENNEN. And is part of the main Sunset line?

Mr. BLAIR. It is a part of the Southern Pacific system and is a part of what you have designated as the Sunset Route.

By Mr. MCCLENNEN:

Q. Am I right that the annual report of the Southern Pacific Company shows that the capital stock of the Texas & New Orleans Rail-

road Company, stated in dollars at par, is $5,000,000, of which the Southern Pacific Company owns $4,999,100?

A. Those are the figures, as shown on page 46.

Q. What are the termini of that railroad?

A. It connects the G., H. & S. A. with the Louisiana Western Railroad Company. I am not familiar with the junction points down in that country.

Q. Am I right that the same report shows that the capital stock of the Morgan's Louisiana & Texas Railroad & Steamship Company, stated in dollars at par, is $15,000,000, all of which is owned by the Southern Pacific Company?

A. It is so shown on that page of the annual report, yes.

215 Q. What are the termini of that railroad?

A. Can you answer that, Mr. Blair?

Mr. BLAIR. That railroad runs from Lafayette to New Orleans, but it has extensive branches in other directions. That may be said of the Texas & New Orleans Railroad Company. It has extensive branches which do not form a part of the Sunset Route.

By Mr. MCCLENNEN:

Q. The same report shows that the total outstanding stock of the Southern Pacific Railroad Company, stated in dollars at par, is $160,000,000, all of which is owned by the Southern Pacific Company.

A. Yes.

Q. That road runs, with numerous branches, from San Francisco, California, to El Paso, Texas?

A. Yes.

Q. Do you know how long any of these ownerships have been, substantially as described in this report?

A. Any of them?

Q. Yes.

A. Originally, in 1882, when I went with the company, it

216 was the Central Pacific. In 1885 it became Southern Pacific, and many of these lines were then built; others of them have since been built. They were constructed for purposes of public travel and interlaced from time to time as demand for the transportation caused construction, and the convenience of financing placed them with either company.

Q. When you say that it was "Central Pacific" and became "Southern Pacific" you are referring, I take it, to the operating title, not meaning to convey the idea that there was a change of name of the same corporation?

A. I refer to the operating title.

Q. The Southern Pacific Company did not come into existence at
l until the latter part of 1884; is that correct?
A. So I believe.
Q. In 1882, when you went with the company, the Southern
acific Railroad Company of California and of Arizona and of
ew Mexico had the ownership of a line extending from San Fran-
isco to El Paso?
A. Yes.
Mr. HERRIN. From Goshen to El Paso.
The WITNESS. That is right; from Goshen to El Paso. They
also had a line from San Francisco to Soledad, as I remember,
he Coast Line Southern Pacific Railroad, California.
By Mr. MCCLENNEN:
Q. That line was a part of what has since become the Coast line?
A. Yes, sir.
Q. It was subsequently completed into Los Angeles?
A. Into a junction with a line to Los Angeles.
Q. When you went with the company, in 1882, the Southern
acific Railroad Company connected physically at El Paso with the
acks of the Galveston, Harrisburg & San Antonio Railroad; is that
rrect?
A. I think that is correct.
Q. But the line eastward has not been completed far enough
to give a complete line to New Orleans?
A. I think it had been completed in 1882.
Q. Would it conform to your memory that the completion of that
ne and the opening of it as a physical matter was the first of
ebruary, 1883?
A. Of course, at that particular time I was not in position to charge
y memory with those matters, but I know the Sunset Route opened
mediately following my joining the company. I joined in October,
82, so I suppose it was probably in the beginning of 1883. The
ate, of course, is readily accessible.
Q. Did you know about those railroads at all before going with the
mpany?
A. No; that was my entrance into railroad service. I entered at
at time as a junior clerk. That was my first entrance into the rail-
ad business.
Q. Prior to the opening of that line to New Orleans, which, if
ere is no objection, I will ask you to take as February 1, 1883, the
ly entrance by rail into California for transcontinental business
as through Ogden over the line of the Central Pacific Railroad, or
over the line of the Atlantic & Pacific, which has since become
the Atchison, meeting the Southern Pacific Railroad at Dem-

ing, New Mexico, and entering California through Yuma, on the boundary line of Arizona and California.

A. Yes. The Texas & Pacific also had connected January 1, 1882, at Sierra Blanca with the tracks of the Galveston, Harrisburg & San Antonio Railroad, and so, through El Paso, with the tracks of the Southern Pacific Company.

Q. Then in 1881 El Paso became for the first time a gateway into California for transcontinental freight?

A. So I understand.

Q. Prior to that time the tracks of the Central Pacific were the only means of reaching California by rail for transcontinental business?

A. Yes.

Q. The only competition up to that time with the Central Pacific Railroad on transcontinental business was the water competition?

A. Water competition, including the Isthmus of Panama.

Q. That is, there was a line of steamers from New York to Colon, and railroad tracks across the Isthmus to Panama, and a line of steamers to San Francisco?

A. Yes.

Q. Was there any regular line around the Horn?

220 A. My recollection is that there was one or more.

Q. There was, at all events, considerable traffic by clipper ships around the Horn?

A. Yes; Funch, Edye & Company.

Q. It is evident as a matter of knowledge of a railroad man that the completion of an independent line to New Orleans with connections to New York would inevitably bring strong competition with the Central Pacific Railroad; am I right?

A. There would be competition, and the competition would also be with the water lines.

Q. If a transcontinental line or a line mixed water and rail entering California through Arizona was in contemplation and imminent, was there, as a matter of railroading, any way of preventing that competition with the Central except by discouraging or preventing the completion of that line or acquiring control of it?

(The question was repeated by the reporter.)

A. I do not know how to answer that question. Was there any means of discouraging the competition?

(The question was again repeated.)

A. (Continuing.) I do not see that discouraging or preventing it has anything to do with the case, because neither was done. The fact is that the line was built, and as soon as built necessarily entered into competition. It was very much better for the Central Pacific, of course, that it should be in hands that were

friendly to the Central Pacific; but so far as the public interest was concerned, the lines were constructed and at the public service and to the public advantage.

Q. That is, the joint control of the two lines would inevitably reduce the sharpness of the competition?

A. Well, it was one control; it was not two or more controls. The control was a unit. It was controlled by the same people; that is, the Central Pacific line was built from California east and the lines of the Southern Pacific Railroad were built from California east, but they were both built and all built by the same people and the same interests, and the question of corporate name was merely one of convenience.

Mr. McCLENNEN. The petitioner moves to strike out the answer as not responsive to the question.

By Mr. McCLENNEN:

Q. I have not asked you in this question what was done, but the effect of the state of facts which I recited in the question. I will ask to have the question read and will ask you to follow the question and answer that as nearly as you can.

Mr. DUNNE. That is objected to as not calling for testimony of any fact, but simply as an argument in the question, based upon hypotheses of one sort or another.

(The question was again repeated by the reporter.)

Mr. DUNNE. We add to our objection that it assumes the existence of a joint control, the witness answering responsively that it was a single or unitary control.

(The question was again repeated by the reporter.)

The WITNESS. I answered that the control was not joint. It was a unit of control.

Mr. McCLENNEN. I ask that the answer be stricken out as not responsive, and the second part of the answer stricken out as not responsive.

By Mr. McCLENNEN:

Q. If the operations of the Central Pacific Railroad and the operations of the Sunset line were under a single control, it would inevitably reduce the sharpness of the competition between the two lines, would it not, on transcontinental business?

Mr. DUNNE. Just a moment. We object to that question as without foundation, purely speculative and argumentative, and self-contradictory.

(The question was repeated by the reporter.)

The WITNESS. That question assumes that the Central Pacific is a through line, which it is not. It is only a link in the through line.

It is a through line that makes the competition. The line from Ogden to San Francisco does not compete with a line, for example, from San Francisco to New Orleans.

By Mr. McCLENNEN:

Q. Is there any competition between the Central Pacific Railroad and the Atchison, Topeka & Santa Fe?

A. There is not. The Central Pacific Railroad stops at Ogden.

Q. Is there any competition on transcontinental business between the Central Pacific Railroad and the Western Pacific Railroad?

A. There is competition between the through line formed by the Central Pacific and its eastern connections and the through line formed by the Western Pacific and its eastern connections on transcontinental business, but there is no competition as to the Central Pacific itself on transcontinental business.

Q. Is there any competition between the Central Pacific
224 Railroad and its eastern connections and the Atchison, Topeka & Santa Fe on transcontinental business?

A. The Central Pacific and its eastern connections and the Atchison, Topeka & Santa Fe Railroad, yes. The competition is active.

Q. If the Central Pacific Railroad and its eastern connections were not under the same control as the Sunset Route, would there be competition, as a practical matter, between the Central Pacific Railroad and its eastern connections and the Sunset Route on transcontinental business?

A. The competition would be the same.

Q. The two lines—that is, the Central Pacific Railroad and its eastern connections and the Sunset Route—are physically and in a business way in a position to compete strongly for transcontinental business, one against the other, are they not?

A. The Central Pacific with the Southern Pacific?

Q. The Central Pacific with its eastern connections.

A. As at present constituted, they are.

Q. The effect of having the two lines in one control is to reduce the sharpness of that competition?

225 A. It is not; the effect is to increase the public service and improve it.

Q. Does the Central Pacific Railroad and its eastern connections compete to-day as strongly with the Sunset line as the Atchison, Topeka & Santa Fe does on transcontinental business?

A. On transcontinental business the line formed by the Central Pacific and its eastern connections is fully as effective as the Atchison, Topeka & Santa Fe.

Q. By "competition" in these answers that you have given you mean, do you not, that the different lines named are in a position to carry the same classes of business from and to the same territories; am I right?

A. By "competition" I mean that as competitors they are separate and distinct units contending for the same business, namely, transcontinental business.

Q. Is the Central Pacific Railroad contending actively for business which could move by the Sunset Route?

A. The Southern Pacific in soliciting business solicits for its longest haul, with respect to far eastern territory for the classes of business which it can handle by that route to better advantage, but as to the main business of the coast, the high-class business, its solicitation is for the Central Pacific and its eastern connections within designated areas.

226 Q. That class of merchandise which can not satisfactorily be carried by the Sunset line the Southern Pacific seeks to carry by the Central; is that correct?

A. We seek to carry by the Sunset our long-haul business, considering the Sunset Route as our longest haul; limited, however, by the topography of the country, that where the public service would be inferior by the Sunset Route we do not aim to take the business that way. In general, throughout the territory served by the Union Pacific and throughout the interior of the United States we solicit from all points tributary to the Central Pacific in conjunction with the Ogden line.

Q. That is, on all business which is of a nature so that it can be persuaded to the Sunset Route between California on the one hand and the Atlantic seaboard on the other you seek to get it for the Sunset Route?

A. Yes.

Q. You do not seek to get that class of business for the Central Pacific Railway?

A. Our long haul is our preferred haul, and our next preference is the Central Pacific.

227 Q. My question was very simple. I want to know if you will not answer it a little more directly, Mr. Sproule? I think the answer "No" would fully cover it. I am not sure.

Mr. BLAIR. The witness has a right, of course, to answer your question and to make any qualification afterwards to fully present all the facts.

Mr. MCCLENNEN. There is not the slightest question of that; but I do not think he has fully answered it. I do not think there will be any difference between us as to what he may do after that.

(By request the reporter read the question as follows:)

"Q. You do not seek to get that class of business for the Central Pacific Railway?"

The WITNESS. We do seek it, but initially we seek it for the Sunset Route, and, if not readily obtainable by the Sunset Route we take it by the Central Pacific line. Independently of that, however, there is a great mass of business which we do not solicit for the Sunset Route at all, and which is solicited only for the Central Pacific line.

By Mr. MCCLENNEN:

228 Q. That is, what you can legitimately get for the Sunset Route you seek to get for that route and do not seek to get for the Central Pacific unless you are unable to control it for the Sunset, is that correct?

A. For the class of business that we solicit for the Sunset Route, yes.

Q. What are the commodities which you do not solicit for the Sunset Route? And in giving your answer please abstain from generalities and give the commodities by name.

Mr. BLAIR. Would it not serve to make matters clearer if you defined what you mean by the Sunset Route? You mean the route through Galveston to New York?

Mr. MCCLENNEN. First, in answer to your suggestion, these questions are predicated on the supposition that we are speaking of freight between California points and Atlantic seaboard points, and by "Sunset Route" I am intending at this present time to include what passes through El Paso and New Orleans, or what would pass through El Paso and New Orleans or Galveston.

Mr. BLAIR. And by boat to New York?

Mr. MCCLENNEN. And by boat to New York; or, if there be such a thing, by rail from New Orleans to New York.

(By request the reporter read the pending question, together with Mr. McClennen's explanation.)

229 The WITNESS. Deciduous, or what is commonly called fresh fruits or green fruits, from all of the northern and central California shippers, we solicit exclusively via Ogden.

All Asiatic business coming to us in ships from the Orient goes by way of Ogden, unless the destination makes it necessary to send it the other way.

And from all points in northern and central California, all business we endeavor to send by the Ogden line when it is destined to any point west of Buffalo or Pittsburgh. In fact, generally speaking, for the entire territory of the United States west of Pittsburgh and Buffalo and north of the Ohio River the Central Pacific is the pre-

ferred line and the Union Pacific the preferred connection in every respect.

By Mr. McCLENNEN:

Q. The question and the explanations were long, so that you are perhaps to be excused for it, but you observe that you have got away from the question as explained. I was speaking of the freight originating in California or to be delivered there to the Atlantic seaboard or originating on the Atlantic seaboard, and asking you to name the commodities between those two territories, that you did not solicit preferentially by the Sunset Route. You started by mentioning fruits from northern and central California, but you named no other commodity. Are there any others?

A. I do not think there are any others. I should have added vegetables and citrus fruits.

Q. That is, fresh vegetables?

A. Fresh vegetables and citrus fruits.

Q. Then, on all business between the Atlantic seaboard and California, excepting fruits in the northern and central part of California and fresh vegetables, the first effort of the Southern Pacific Company is to persuade the freight not to pass over the Central Pacific Railway through Ogden, but rather to pass through El Paso; is that correct?

A. To and from the Atlantic seaboard.

Q. That is true, is it?

A. Yes. You understand, of course, that our solicitation is but a small part of the total solicitation for all that business. All the railroads are soliciting and competing for it.

Q. The Atchison, Topeka & Santa Fe Railroad is competing for that business, is it not?

A. It is.

Q. The Western Pacific Railway Company is competing for that business?

A. It is.

Q. Is there any other road with lines in California competing for that business?

A. With lines in northern and central California, you mean? The San Pedro line also competes in southern California.

Q. Is there any other?

A. Those are the terminal lines.

Q. And the only ones?

A. Yes.

Q. Do any of the railroads not having lines in California solicit in California for eastbound freight to the Atlantic seaboard?

A. A multitude of them.

Q. Will you name those that you know that solicit in California?

A. In addition to the terminal lines, the Northern Pacific, the Great Northern, the Canadian Pacific, the Union Pacific, the

232 Denver & Rio Grande, the Missouri Pacific, the Iron Mountain, the Texas & Pacific, the Chicago & North Western, the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific, the El Paso & Southwestern, the Burlington, the Chicago & Great Western, the Lake Shore, the New York Central System, the Pennsylvania System, the Baltimore & Ohio System, the Illinois Central, the Frisco line, and there are some others.

Q. You can think of no others at present?

A. There are several others.

Q. I say, you can think of no other names at present? I want to exhaust your recollection.

A. The Wabash; the International Great Northern, I think; the Chicago & Alton, I think; there may be three or four more. Those are the important ones.

Q. The Northern Pacific solicits California business for carriage from Portland over its own lines?

A. It has divisions with us, and works with a steamer line also.

Q. That is, what it succeeds in getting goes either by steamer line from San Francisco or runs over your rails to Portland?

A. Yes.

233 Q. Is that competition serious, so far as California business is concerned with the Sunset Line?

A. It is one factor in the competition.

Q. To save putting it several times: The competition of the Northern Pacific, the Great Northern, and the Canadian Pacific is not very serious, so far as California business is concerned, is it?

A. The percentage of business they do, I think, is not heavy.

Q. And that is on account of the natural conditions, their being so far north; they are not in a position to carry it as readily as these other lines?

A. Mixed rail and water route.

Q. The Union Pacific solicitation, both east and west, is directed toward getting the freight over its lines to Ogden and then over the Central or Western Pacific to California, or from, as the case may be?

A. You refer, now, to strictly California business?

Q. Yes.

A. No. It is restricted, so far as it does not compete with their San Pedro line.

Q. With that exception, is my statement correct?

234 A. Generally speaking, I think so as to freight business?

Q. The solicitation of the Denver and Rio Grande is directed towards getting the business, so far as California is concerned, over the Western Pacific, is it not?

A. Yes; the Western Pacific is their preferred connection. They also work with the Central Pacific.

Q. They do work with the Central Pacific?

A. Yes.

Q. What has just been said about the Denver and Rio Grande applies equally to the Missouri Pacific and Iron Mountain?

A. Yes.

Q. That is, the Missouri Pacific and the Iron Mountain, the Denver and Rio Grande, and the Western Pacific are commonly known as the Gould lines?

A. Yes; excepting that the Iron Mountain has also a connection with the Texas & Pacific and works freely with it in conjunction with our El Paso route.

Q. The effort of the Texas & Pacific is to get a business into California over the Southern Pacific Sunset rails?

A. Via El Paso.

235 Q. The effort of the Chicago Northwestern is to carry the traffic east and west, receiving or delivering at Omaha?

A. Yes.

Q. Carrying it over the Union Pacific?

A. The Chicago & Northwestern, the Union Pacific, and the Central Pacific form the through line.

Q. And what is the preference of the Chicago, Milwaukee & St. Paul?

A. They also work with the Union Pacific and Central Pacific.

Q. The effort of the Rock Island, so far as California business is concerned, is to deliver it to the Sunset Route at El Paso?

A. At El Paso. They also make deliveries to the Union Pacific at their Colorado junction—Pueblo.

Q. Their long haul is to El Paso?

A. Their long haul is to El Paso.

Q. And their preference is to El Paso?

A. Yes, sir. They also work through Omaha, as you are aware. They join the Union Pacific at Omaha.

236 Q. The Rock Island line from Chicago through Omaha, and by connections to El Paso?

A. With the Union Pacific at Omaha. It also has a line from Chicago to El Paso in conjunction with the El Paso and Southwestern. It also has a line to Colorado.

Q. The Rock Island has three gateways with which it connects up in transcontinental business, and its preference, in their order, is El Paso or the Colorado points or Omaha?

A. Yes.

Q. The preference of the Chicago, Burlington & Quincy is what?

A. They work both with the Rio Grande and the Union Pacific, and their business reaches us at Ogden from the Union Pacific and also reaches the Western Pacific at Salt Lake.

Q. The effect of the Chicago Great Western is to get the business through Omaha or Kansas City?

A. Yes.

Q. And that means ultimately over the Central Pacific or the Western Pacific?

A. They work directly, I think, with the Union Pacific.

237 Q. I suppose, so far as southern California is concerned, it might mean the San Pedro?

A. Yes. However, they work, as do all of these roads, with anybody that will work with them, as a rule. Most of these roads work with the roads that work with them; that is, the Chicago Great Western would solicit business in conjunction with the line that was soliciting for it, you see.

238 Q. As a matter of fact, between these connecting lines where there are choices, that is somewhat a matter of trade between them, is it not?

A. It is a matter of interchange——

Q. (Interposing.) That is, A says to B——

A. (Interposing.) "If you will give me this business, I will give you this business"; not as a rule as to any general specific business, but in the general trend of solicitation, because business is so actively solicited and the competition so keen.

Q. Now, the Lake Shore & Michigan Southern, the New York Central, the Pennsylvania, and the Baltimore & Ohio prefer to get the business to pass through Chicago; is that correct?

A. Some business through Chicago, and some of them prefer some business through St. Louis.

Q. And from that point on west to California it means the same lines that we have just been mentioning?

A. It depends on their western connections—whoever they happen to be.

Q. The Illinois Central is a Mississippi Valley line, is it not?

239 A. It has two lines; it runs from Chicago to Omaha, and from Chicago to New Orleans.

Q. Its longest haul is to New Orleans?

A. Yes.

Q. And it is working more or less preferentially for the Sunset Route, is it not?

A. It works for its longest haul.

Q. Which means the Sunset Route?

A. The Sunset Route would be its natural connection.

Q. If California business gets to New Orleans, the only practicable method is the Southern Pacific from there to California, is it not?

A. Well, we think it is the best line.

Q. And it carries practically all?

A. It is the line that has the best-known shippers.

Q. And it carries practically all of the through business from New Orleans to California?

A. Well, the Texas & Pacific has its own line.

Q. The amount it carries is inconsiderable in comparison with that the Sunset carries, is it not?

A. The Sunset line carries the greater part of the business, I think.

960 Q. The effort of the Frisco Line is to get the California business through Fort Worth and thence over the Southern Pacific?

A. They work very largely with the Santa Fe, too.

Q. Where do they deliver to the Santa Fe or receive from?

A. I do not know what their junction point is at present.

Q. Which gives the Frisco line the longer haul—Fort Worth or the other?

A. I think the divisions are about the same.

Q. The Wabash works preferentially with the Missouri Pacific, does it not—the Gould lines?

A. I think not. I do not know as to that, but I think they work with all lines.

Q. The International & Great Northern runs where?

A. It is a Texas line that runs—well, I would have to look at the guide to determine where its lines are—it is a local line that runs through Texas, from northern Texas down to the Gulf and from northern Texas down to a connection with the Texas & Pacific.

961 Q. Its preference on California business is the Southern?

A. I think it is the Texas & Pacific, is it not? I do not know what its preference is, except that its business reaches us by El Paso.

Q. You say you think its preference is the Texas & Pacific, which brings it to you at El Paso. The Chicago & Alton is another Mississippi Valley line?

A. Yes.

Q. And they seek to carry to Kansas City?

A. Kansas City. You understand that when we talk of the preference of most of these lines that that is simply a general belief, based upon observation, but to determine what the existing preference of

any line really is, anybody outside of their own council would have to analyze.

Q. These preferences do rise to a point of agreement in some instances?

A. In some instances, but generally not; the lines generally consult their own interests.

Q. The business that is influenced by these other lines to pass through Ogden you carry as tendered over the Central Pacific?

A. Yes.

242 Q. To and from California?

A. Yes.

Q. Now, am I right in assuming that these same lines maintain solicitors in Atlantic seaboard territory in an effort to secure the west-bound freight to California?

A. That is generally true.

Q. Has the business of the Western Pacific become large as compared with that of the Central and Southern and the Atchison?

A. It has not.

Q. Up to the present time it is not very much of a factor in the competition, is it?

A. It is an important factor in the competition, but it does not succeed in getting a large share of the business. Its competition, however, is just as active as if they were getting a large quantity.

Q. The strongest competitor of the Sunset Route is the Atchison, Topeka & Santa Fe for California business; is that correct?

A. I should say the strongest competitor is the Central Pacific-Union Pacific line.

(Whereupon a recess was taken until two o'clock p. m.)

243 AFTER RECESS.

The WITNESS. I desire to add to my answer as to commodities which, by reason of their character or packing, we do not solicit for the Sunset Route, the following:

List of commodities not competitive with Sunset-Gulf route.

Perishable freight:
Deciduous fruit, citrus fruit, vegetables, oysters, fresh meat.
Coal and coke in bulk.
Live stock.
Grain in bulk.
Emigrant movables.
Hides and pelts, green.
Liquids, in tank cars. (Wine, asphalt, and oil.)

ore, in bulk.
ash, doors, and blinds.
comotives.
assenger and freight cars.
ilk.
ca.
High explosives.
Earthenware, stoneware, and crockery, in bulk.
Organs and pianos, harnessed in cars.
in cans.
elicate machinery.
loves.
utomobiles and other vehicles.

WILLIAM SPROULE, the witness under examination at the taking of recess, resumed the stand for further direct examination.

By Mr. MCCLENNEN:

Q. In view of this list which you have just given I will digress om the examination I was making to ask you with reference to the ings on this list. As to deciduous fruit, what is the reason for not nting them over the Sunset Route?

A. Deciduous fruit means the fruits of trees whose leaves fall nually, and they are perishable and want market directly.

Q. That is, it is important to get expedition in transportation?

A. Yes.

Q. And the same is true of citrus fruits?

A. The same is true of citrus fruits.

Q. And vegetables?

A. And vegetables. All those three are diverted freely in transit. The shippers desire to so ship as to easily divert them.

Q. The shipments of citrus fruits from California are very heavy?

A. Yes.

Q. They do go to some extent by the Sunset line?

A. Slightly, only for that territory or contiguous.

Q. That is, only for the southern portion of the State?

A. Yes; and adjacent territory.

Q. Could you place any rough division line in California as to the trus fruit traffic, saying "north of this it all goes via Ogden and uth otherwise"?

A. No; because it is not packed that way. A given territory nts pears, for instance, and another territory at a given time wants aches. It depends on where market can be had. There is no arbi-

trary line of division of any kind; it is simply a question of how the shipper desires it sent.

Q. The citrus fruit, practically none of it goes by the Morgan boats from New Orleans to New York?

A. Generally speaking, none of it.

Q. Even that which passes through El Paso goes all-rail?

247 A. Yes.

Q. Over other lines beyond?

A. Yes. It is wholly determined by the shipper, to suit his purposes.

Q. Take, for instance, Fresno as a point. Does a large part of the citrus fruit south of Fresno go to El Paso?

A. Yes; it does; because the climatic conditions make it favorable. Later in the season it goes out by Ogden because that is a cooler climate.

Q. Does much citrus fruit originating north of Fresno go through El Paso?

A. Citrus?

Q. Yes.

A. Hardly any.

Q. The deciduous fruit shipments from California are small in comparison with the citrus, are they not?

A. They are not small, but they are very much less than the citrus.

Q. The deciduous fruits of the southern part of the State go out through El Paso, do they?

A. They go both ways.

248 Q. Is there much traffic in fresh vegetables?

A. Yes.

Q. What part of the State are they shipped from?

A. North, south, and central.

Q. All over the State?

A. Yes.

Q. Do you carry in your mind the approximate tonnage per year in fresh vegetables?

A. No; I do not recall.

Q. Oysters, where do oysters in California go?

A. The oysters are westbound.

Q. They are westbound oysters?

A. Yes.

Q. And fresh meat, is that shipped out or shipped in?

A. Shipped in. There is very little movement of fresh meat; it is only under very unusual conditions that fresh meat is shipped.

Q. Is there much traffic in oysters?

A. Yes; because California does not re-seed or propagate oysters out there, with minor exceptions.

Q. Coal and coke in bulk, what is the reason for not urging that through El Paso?

A. Do you refer now to the Atlantic seaboard?

Q. I am simply taking your list.

A. It is coal and coke in bulk, and we would not want to handle on our steamers. As a matter of fact, coal and coke that moved California moves in bulk.

Q. Moves in bulk and does not move from the seaboard, does it?

A. Some blacksmith's coal is moved from seaboard, and some ke, but as a rule it comes from points in Georgia or Alabama.

Q. And goes all rail?

A. Through New Orleans, that is, territory contiguous to New leans, you see.

Q. That coal and coke in bulk to California largely goes over the ils of the Southern in entering California, and not over the rails the Central?

A. But if it originates in the north it goes over the Central. Take cahontas coal or coke for example. It would come over whatever e could get it; so far as we are concerned, we try to get it over the Union Pacific.

Q. Live stock; is the movement chiefly in or out of California?

A. Blooded stock in and market stock out.

Q. And the reason for not urging that over the Sunset is the need rapid transportation?

A. Well, it would not be a desirable route for transshipment; ited rail and water makes it undesirable. We could handle all ese things, but we do not try to.

Q. You try to get it through El Paso, having it brought by rail to e southern lines?

A. If it originated down in the Southern States we would probly bring it to El Paso, but if it originated anywhere that made it ossible reasonably to the Omaha gateway it would move that way. ou understand the shippers have the selection of their own route d they select the routes that are physically best for them.

Q. And in doing your soliciting, when the desires of shippers have come fixed in a certain way you do not necessarily attempt to persuade them further; you drop that branch of traffic and go to others?

A. We do not solicit against the shippers' interests.

Q. Grain in bulk?

A. That is generally eastbound. Barley, for example, to New York for brewing purposes.

Q. And what is the reason for not carrying that or not seeking that through El Paso?

A. The same reason; it is in bulk and transshipment would be awkward. We would have to ship it in bulk from ship to car and then when it got to New York we could not unload it in bulk on the wharf and we would have to find some means of disposing of it; as a commercial question, it is not feasible.

252 Q. Emigrant movables?

A. They are the ordinary outfit of an emigrant moving.

Q. They are very apt to follow the line the emigrant follows?

A. Yes; they follow the route of the emigrant and they are highly breakable and difficult freight to handle, and the emigrant naturally wants it, so far as possible, at the destination in the shape in which he shipped it.

Q. Hides and pelts, green?

A. Hides and pelts are generally ill-smelling and unpleasant stuff to handle, and we do not want to mix them in with other freight.

Q. Liquids, in tank cars. I take it you do not want to remove them from the tanks into the vessels?

A. In those cases where we refer to bulk or in tank cars, it means that the rates being the same those commodities will naturally seek the rail line rather than one in which they would have to find some other container for the transshipment.

Q. Ore, in bulk?

A. The same reason.

Q. Do you not carry some considerable amount of copper from
253 the Shasta Mountains via the Sunset to the Atlantic seaboard?

A. We have carried some what is known as copper bullion, copper mat; that is, the smelter product which goes to the eastern refineries to be separated into the original metals.

Q. That is a large traffic?

A. No.

Q. Can you give me any idea of the tonnage?

A. At present I think they are all closed down.

Q. But when they have been in operation, I mean.

A. At one time it amounted to a couple of hundred tons a month, I think; but the activities of the Government have stopped them. The fumes from the smelter destroying the adjacent foliage shut them up.

Q. Sash, doors, and blinds?

A. Lumber and its products generally. They are the products of our forests, and we do not attempt to take them by the Sunset.

Q. What is the objection to their going by the Sunset?

A. They are fragile and easily damaged.

Q. Locomotives naturally go all rail?

A. Yes; besides, they are unwieldy.

Q. Passenger and freight cars, the same?

A. Similar.

Q. Silk?

A. Silk and tea, and all Asiatic cargo, we have always sent over the Union Pacific.

Q. What is the reason, as to silk and tea? Why could not they go over the long route?

A. They are of very high value.

Q. High explosives?

A. For safety reasons.

Q. Earthenware, stoneware, and crockery, in bulk?

A. They are fragile.

Q. Organs and pianos harnessed in cars?

A. They could not harness them on board ship. "Harnessing" is a term that applies to their fastening in the cars with leather straps and harness.

Q. Tin cans?

A. Tin cans are very bulky. They are shipped in bulk in the cars, and if we handled them we would have to crate them.

Q. Delicate machinery, stoves, automobiles, and other vehicles?

A. The same general reason. We do not consider any of those competitive.

Q. Am I right in understanding you, then, that as to these classes of commodities mentioned in the list that you have just given you simply let them take their natural course without attempting to urge the traffic one way or the other?

A. No; we go further than that. We do not want them.

Q. You do not want them?

A. No.

Q. Going on with what we were talking about before, you have given us, as best your memory would permit, the different domestic and foreign lines that maintain solicitors or otherwise solicit in California?

A. I should have added the Erie and the Grand Trunk to the list which I gave.

Q. The Erie and the Grand Trunk?

A. And the Lackawanna and the Lehigh Valley.

Q. Those four all seek to get the traffic through Chicago?

A. Mainly so, except as to the Grand Trunk. I do not know what their policies are.

Q. What other way does the Grand Trunk have to——

A. (Interposing.) Presumably it is through Chicago.

Q. Is the list which you have given of the roads which solicit in California inclusive of substantially all of the lines

which solicit in the seaboard territory for California freight, or are there additional lines soliciting?

A. They solicit in Atlantic seaboard territory freight for California and solicit in California freight for the Atlantic seaboard; but in addition to those I have named which solicit freight from California to the Atlantic seaboard there are undoubtedly a very large additional number who solicit for westbound business in Atlantic seaboard territory.

Q. And they are the various lines which desire to get the business to go through Chicago or St. Louis?

A. Yes; every line in Atlantic seaboard territory desires to get its share of the California business.

Q. Incidentally we have had it defined, but I would like to make sure, and I will ask you: When you speak of Atlantic seaboard territory you mean all of the United States east of——

A. The Atlantic seaboard is east of Buffalo and Pittsburgh.

Q. And north——

A. Of the Norfolk & Western.

257 Q. Making it very nearly agree, but not quite, with the southern boundary line of Virginia?

A. Parkersburg is the point which is the boundary line.

Q. Leaving out of consideration these commodities which you say you do not desire over the Sunset line, as to other commodities the efforts of all of these roads which seek to route through Ogden are directed necessarily, incidentally, to increasing the business of the Western Pacific, the Central Pacific, or the San Pedro line?

A. Or the Santa Fe.

Q. Well, if it went through Ogden would it still travel out over the Santa Fe?

A. Oh, via Ogden? No.

Q. I am right in limiting it to those three, so far as Ogden is concerned, am I not?

A. The efforts of those roads are directed to securing the business for themselves primarily—the originating road—and it will naturally endeavor to route its business most favorably to its own interest; and by what gateway it will arrive in California is a matter which they, as a rule, give only secondary consideration.

258 Their first consideration is for themselves. Their next consideration is for a route that is agreeable to the shipper on the one hand and by which they can give him service on the other hand.

Q. Their effort is for their long haul, speaking in general?

A. On their own line; yes.

Q. I did not make the particular question sufficiently clear to you——

A. I did not quite catch what you meant.

Q. I mean the limitation in the particular question. We have been over the list and I got you to say which of them would prefer Ogden and which of them would prefer El Paso or the Atchison.

A. Yes.

Q. Now I say: Among all those lines which prefer Ogden the success of the effort of those roads to get freight necessarily incidentally helps the business either of the Central Pacific Railway, the Western Pacific, or the San Pedro?

A. It is the business of whichever road happens to get it.

Q. Those are the only three that would get it if it went through Ogden, are they not?

A. The San Pedro Line does not go through Ogden; it goes through Salt Lake. If it goes through Ogden, the only line that would get it would be the Central Pacific.

Q. Then all these lines that are seeking to get the freight for their longest haul, in the case of the lines in which that results in its going through Ogden, their efforts necessarily increase the business of the Central Pacific Railway?

A. As a part of the through line.

Q. And the effort of the solicitors of the Southern Pacific under the direction of its management is to counteract those efforts except in the commodities which I have mentioned, and have the freight go to your so-called 100 per cent line, through New Orleans?

A. No; quite the contrary. We aim to reciprocate with all those lines and interchange business with them and give them business to an extent that will justify them in working all they know how over our lines; that is, the through line via Ogden.

Q. Your solicitors in the Atlantic seaboard territory and in California visit the same merchants to a considerable extent, the same shippers, that are visited by the solicitors of all these other lines, do they not?

A. Yes; there is a very active solicitation by all roads and by all lines.

Q. And the effort of those solicitors with those shippers, except for the excepted commodities, is to have the shipments via the Sunset Route?

A. That is our preferred line.

Q. And if that solicitation is successful, it results in offsetting or defeating the efforts of the solicitors of these various other lines by so much?

A. Yes; naturally. If the Sunset Route gets it, the Santa Fe does not get it. If the Sunset Route gets it out of Los Angeles, the San

Pedro does not get it. If the Central Pacific gets it, the Western Pacific does not get it. It naturally follows that what one line gets, the other line does not get.

Q. Precisely. In these various questions as to effort and the movement of freight, I take it you have been speaking, in the main, as of the present time, have you not?

A. Yes; you are asking your questions as of the present time.

Q. The management of the Union Pacific Railroad and the
261 management of the Southern Pacific Railroad was in the same hands from 1901 until the early part of 1913, was it not?

A. Yes, sir.

Q. Before 1901 that was not the case?

A. It was not.

Q. During the period from 1901 to 1913 it was still the desire of that management to use the Sunset Route as the preferred route for the business between California and the Atlantic seaboard?

A. It was.

Q. Will you define Central Freight Association territory?

A. That is between Buffalo and Pittsburgh on the one hand and Chicago and St. Louis on the other, and north of the Ohio River.

Q. During the time that the Southern and Union were under the same control, the effort as to freight between Central Freight Association territory and California was to have it go over the Union and the Central?

A. Yes.

Q. The effort as to the country in the Mississippi Valley below the Ohio River, to California, was to have it go over the Sunset Route?

262 A. The El Paso.

Q. You mean to distinguish that from New Orleans, do you?

A. That includes New Orleans, but not exclusively New Orleans.

Q. That is, either to have it go through New Orleans——

A. (Interposing.) Through New Orleans or through Houston, or through any of the various junctions, as might be advisable.

Q. The obvious reason for this effort with reference to the Central Freight Association territory and California was that this so-to speak common management, if it went over the Central route, got the haul all the way from Omaha to California?

A. Yes.

Q. Or from Kansas City to California?

A. Yes.

263 Q. And that was more profitable than to have that freight travel over independent lines down to New Orleans, where the Sunset Route would get on the whole a smaller percentage of the haul than they would if it went to Omaha; is that correct?

A. That was one of the considerations, I think.

Q. During the period from 1901 to 1910 the most of the soliciting officers of the Union Pacific and the Southern Pacific were consolidated into the hands of one man in each place?

A. Joint officers.

Q. There were exceptions to that, I think?

A. Yes.

Q. Do you happen to remember which those were?

A. The New York office, which the Union Pacific maintained separately, and the Southern Pacific maintained its office, and at Boston.

Q. Otherwise the officers were all consolidated?

A. And I think at Philadelphia.

Q. At Philadelphia the offices were maintained separately?

A. Yes; they were maintained separately.

964 Q. Do those three exceptions cover all?

A. Yes.

Q. Prior to 1901 the offices of the Union and of the Southern, the soliciting offices, had all been separate offices?

A. That is correct.

Q. And the solicitors of those respective roads were directly competing with each other to get the business?

A. Sometimes competing and very often cooperating.

Q. Before that merger—I will call it for short—of 1901, the attitude of the Southern Pacific management toward the freight traveling between Central Freight Association territory and San Francisco had been somewhat different from what it became after the merger, had it not?

A. Very slightly.

Q. Prior to 1901 the traffic from Pittsburgh to California was all sought via New Orleans by Southern Pacific solicitors, was it not?

A. Some kinds of freight.

Q. And the same is true of Cincinnati?

A. Yes.

Q. And true to some extent of Cleveland, Ohio?

965 A. I am not sure of that, but Cleveland would be only to a slight extent, if at all.

Q. The same was true to some extent of Detroit?

A. I think not.

Q. Didn't automobiles travel from Detroit via New Orleans prior to that?

A. They may have done so, but if so it would be only to a very limited extent.

Q. Do you remember whether the Milwaukee beer was sought by the Sunset Route?

A. I don't remember.

Q. You don't remember one way or the other?

A. I don't remember one way or the other; I would be very much surprised if they got it. Do you continue to refer to California business?

Q. I continue to refer to California business. Freight was sought prior to 1901 by the Southern Pacific via New Orleans and via El Paso from Chicago and St. Louis?

A. From St. Louis, yes; from Chicago, some. The seeking of business in those days, I should explain, did not depend upon Southern Pacific solicitation; it depended on conditions that prevailed in those territories at that time, conditions that have since
266 vanished by force of law. I mean that the controlling forces in those days were the local lines in those territories, and business took routes in those days that under the conditions of the present it would not take at all, and those conditions were not of the Southern Pacific's making.

Q. Those various lines running, roughly speaking, north and south through the Mississippi Valley territory, were all seeking to have the California business go through New Orleans preferentially?

A. It was no uncommon thing in those days for business to seek the most circuitous possible route in order to get the largest aggregate amount of advantage out of the transportation?

Q. You mean for the initial lines?

A. Yes; and the intermediate lines, the various lines over which the business moved.

Q. Speaking in general the effort of the initial railroad is apt to be more effective than the effort of the intermediate or delivering railroad in influencing the routing of business?

A. It depends on who has the most to offer, everything else being equal; the initial line has the advantage if it——

267 Q. For instance, if the New York Central Railroad wanted the business to go through Omaha, even if they did not have solicitors in the field their very presence on the ground where they were giving the information to shippers through their ordinary local agents would tend to make a much larger amount of business go through Omaha than if that same railroad wanted the business to go through New Orleans; is that true?

A. If the shipper had no interest except at the originating point, that would be true.

Q. What is the meaning of "common points"; for instance, "Pittsburgh common points" means what?

A. That is that the Pittsburgh rate applies to points adjacent; it would take the common rate, the same rate, subject to the same conditions.

Q. Then, speaking in general, what you have said in one way or the other about Pittsburgh, Cincinnati, Cleveland, Detroit, Chicago, and St. Louis would apply to the adjacent territory?

A. It means the point and the other shipping points adjacent 908 that take the same rate, subject to the same conditions.

Q. And the attitude of the Southern Pacific Company, as you have described it, toward the freight in those various cities I have mentioned, would apply equally to the adjacent territories of those cities?

A. I do not know to what that question is directed. You are talking about the period prior to 1901?

Q. Yes.

A. Prior to 1901 the term "common points" had the same general signification that it has now.

Q. And the attitude of the Southern Pacific, for instance, towards Pittsburgh freight would be the same as the attitude of the Southern Pacific towards the Pittsburgh common points, for instance, whatever that attitude might be?

A. Well, I am not willing to say that the attitude of the Southern Pacific with respect to business to-day, under the conditions that prevail to-day, would always be the same as in 1901 with respect to Pacific business under conditions that prevailed at that time.

Q. I am still keeping back of 1901.

909 A. But I can say this, that the policy of the Southern Pacific with respect to the conduct of its business is the same since the unmerging, since 1913, the period to which you refer, as it was prior to the time we became dominated by the Union Pacific, 1901.

Q. Now, in addition to the efforts of the local lines in the Mississippi Valley running north and south to get the business through New Orleans, the Southern Pacific solicitors were also endeavoring in that region to get it in that way, were they not?

A. In 1901?

Q. Yes, and prior thereto.

A. There was a great deal of that business that we were not endeavoring to solicit at all.

Q. But there was a great deal of it that you were?

A. There was a great deal of it that we solicited.

Q. Do you want to leave the comparison in that way, as "a great deal and some"? Was there not really more that they were endeavoring to solicit that way than the reverse?

A. No; the great volume of the interior business was being solicited by the routing through Omaha.

270 Q. That was the volume of the interior business of the kind that could be best handled through Omaha?

A. Business generally, interior business.

Q. But as to those classes of freight which could stand the long haul without difficulty, the effort of the Southern Pacific solicitors in Central Freight Association territory prior to 1901 was to get that business through New Orleans, was it not?

A. The bulk of it, no; some of it, yes. With reference to conditions that favored the shipper, wherever the conditions favored the shipper, whoever influenced the tonnage, the solicitor was very likely to work for that business because that was the line of least resistance; but as a general proposition the major portion of the business west of Buffalo and Pittsburgh, inclusive, went by Omaha, the great volume of it; a very small fraction of the tonnage went by way of New Orleans.

Q. I am not speaking now about the actual movement of the traffic, but about the effort so far as the shippers' interests would not suffer, so far as the commodity was of a kind that would stand the long haul without difficulty, was not the effort of the Southern Pacific solicitors prior to 1901 to get the freight from the

271 Central Freight Association territory through New Orleans?

A. With those qualifications, I think it was. But, as exemplifying what I said a while ago about the conditions at that time being responsible for that, it was to the shipper's interest in large measure to send his freight by New Orleans or it would not have so gone. For example, at this time and since the unmerging, our solicitors do not solicit Central Freight Association territory through New Orleans through the Sunset route, but solicit it in connection with the Union Pacific. It was the conditions that were peculiar at that time, and which no carrier controlled.

Q. And that condition was a condition of years' standing, was it not?

A. Years' development. Incidentally, that was the reason why the Hepburn Act was passed.

Q. I have been talking to you about California freight. I would now like to direct your attention to Oregon freight. Is the effort of the Southern Pacific Company with reference to such Oregon freight as is going to travel to the eastern part of the country, and which can be got to pass through California, an effort to have that freight go via the Sunset route, excepting those commodities of which

272 you have given me a list?

A. In the case of Oregon the force and stress of the competition is via Portland, and as against the short haul through Portland

we solicit the business by any route by which we will be successful in holding it.

Q. That is, as to that Oregon business, your possibilities are either a short haul out of Portland or else to haul it through California?

A. Yes. Salem, the capital of Oregon, for instance, is only a few hours from Portland and from the Great Northern and Northern Pacific and O. W. R. & N. Any of them may get it, but other forces are all in the field soliciting it; the commercial force of Portland is behind that solicitation, and we have simply to solicit that business by any route by which we can capture it.

Q. But the efforts of your solicitors and your instructions to them are to get it toward California rather than toward Portland?

A. To get it to the route that will give us the most money.

Q. That means toward California?

273 A. Well, yes. As an illustration, prior to the merger we had the route opened through Ogden in connection with the Union Pacific. When the merger came the Ogden route was closed so as to force that business through Portland to the Union Pacific lines through that gateway.

Q. You refer to the Roseville gateway?

A. Yes; the Roseville gateway. Since the unmerging we have reopened the Roseville gateway with the Union Pacific, and now deliver that business to them at Ogden.

Q. You had a division line with respect to that, did you not? That is, business north of a certain point and south of a certain point, or did you close the Roseville gateway entirely?

A. The Roseville gateway was entirely closed on Oregon business.

Q. And the effect of that was that business which was going through Ogden from Oregon had to go over the Oregon Short Line?

A. Or else came down over to the Southern Pacific and out through the El Paso gateway.

Q. You did not get the limit to my question. All the freight that was going through Ogden after that gateway was closed had to go over the Oregon Short Line?

274 A. It had to go over the Oregon Short Line, reaching the Union Pacific at Granger.

Q. The Roseville gateway had been an open gateway for years before 1901?

A. Yes.

Q. How soon after 1901 was the Roseville gateway closed?

A. Very shortly after that.

Q. Prior to the closing of that gateway the Oregon business could come down to Roseville, which is near Sacramento, and then go over the Central Pacific to Ogden?

A. Yes.

Q. The closing of that gateway at Roseville had the direct effect of preferring the Oregon Short Line to the prejudice of the Central Pacific?

A. Yes.

Q. The closing of the Roseville gateway did not affect at all the passage of Oregon business via El Paso?

A. No.

Q. That was still open?

A. It was.

Q. And the effort of the Southern Pacific was to get the
275 Oregon business, so far as it was possible to go through El Paso?

A. Naturally.

Q. That effort continued, even during the period of the merger?

A. It did.

Q. And, of course, continues to-day?

A. Yes. Well, when you say that effort continues to-day in that last question I suppose you are still referring to Atlantic seaboard business?

Q. I am referring to Atlantic seaboard business; yes. At the time the Roseville gateway was closed by the Southern Pacific the Ogden gateway to the Central Pacific from the Union Pacific was also closed as to Oregon business, was it not?

276 Mr. BLAIR. May we have that question repeated?

(The question was repeated by the reporter.)

The WITNESS. I don't understand that question now. May I have it again?

(The question was again repeated.)

The WITNESS. That is as to Oregon business?

By Mr. MCCLENNEN:

Q. As to Oregon business; yes.

A. The Oregon gateway was not closed by the Central Pacific.

Mr. HERRIN. By the Southern Pacific?

The WITNESS. It was closed by the Southern Pacific under the merger conditions.

By Mr. MCCLENNEN:

Q. It was closed by the Southern Pacific?

A. Yes; because the Union Pacific did not want to get the business that way; they wanted to get the business through Portland, and it was for that purpose that the change was made. The Southern Pacific, you know, reopened that gateway as soon as the merger period ceased.

Q. The quantity of freight moving through El Paso east and west between Oregon and Atlantic seaboard is a large quantity, is it not?

A. Not very large; no.

Q. Have you any idea what it would amount to in tons?

A. No. The figures are accessible; they are documental.

Q. Now, what are the conspicuous commodities that are carried via El Paso from Oregon?

A. Chiefly hops, dried fruit, and lumber.

Q. Is the great bulk of the freight in those three commodities?

A. Yes. It is not great in bulk, but that is the bulk of the business.

Q. I mean that a very large proportion of whatever freight there is of the three kinds you have mentioned?

A. Yes.

Q. There is some freight that travels via the Sunset Route to Oregon, is there not?

A. Yes.

Q. If there were no question of the desires of the railroad, or a difference of organization, as a physical matter the natural course of freight passing south through Weed, for instance, and destined to the eastern part of the country, would be over the Central Pacific through Ogden, would it not?

A. By "the eastern part of the country" you mean a line directly east of Omaha?

Q. The whole of the country east of Omaha; yes.

A. The northern portion would pass over the Central Pacific-Union Pacific line, and the States to the south would be more likely to go to the southern line through El Paso.

Q. You mean south of Sacramento?

A. No; I am taking business from Weed, for example, going to the east. If it were destined to points, we will say, in Iowa, Illinois, Indiana, and Ohio, it would be likely to go by way of the Central Pacific-Union Pacific line, but if it were destined to Oklahoma or any of the territory to the south it would be more likely to go by the El Paso line. That would be the line of least resistance, as a matter of railroad operation.

Q. And the same would be true if it were destined for the Atlantic seaboard territory that you have described—the natural course would be through Ogden?

A. The Atlantic seaboard, not to that extent, no; because in sending it around by the Sunset line they have found that that route is a satisfactory route to them—the shippers.

Q. The mileage from Roseville to New Orleans, if overlaid on the Central Pacific-Union Pacific and eastern connections, would come pretty near to reaching the Atlantic seaboard, would it not?

A. To New Orleans; no.

Q. Roseville, then, to New Orleans, would be about 2,500 miles?

A. To the Atlantic seaboard it would be nearer 3,500 miles.

Q. Roseville to the Atlantic seaboard?

A. Yes.

Q. It would be nearer 3,000, would it not?

A. Eight hundred plus a thousand is eighteen hundred, and five hundred more is twenty-three, and a thousand more is thirty-three hundred—between thirty-two hundred and thirty-three hundred, Roseville Junction to New York.

Q. Is not that from San Francisco to New York?

A. There is only 108 miles difference. Giving it in round figures, it is 700 miles from Roseville Junction to Ogden, 1,000 miles
280 from Ogden to Omaha; that is 1,700 miles; and 500 miles—say 490 miles by the short line—from Omaha to Chicago, and the shortest distance from Chicago to New York that I recall is 973 miles. It is over a thousand miles by the New York Central.

Q. Is not the shortest distance 912 miles?

Mr. SPENCE. 916 miles.

The WITNESS. 916 miles. Then I have erred by 60 miles.

By Mr. MCCLENNEN:

Q. This is a convenient time, so let me ask you in regard to these distances and see if they are correct.

A. Do you expect me to be a walking distance table? Here is a table that tells some of them, and I will give you any distances you want, but I would like to have a chance to look them up.

Q. Omaha to Ogden is 1,000 miles?

A. Yes.

Q. Ogden to San Francisco is 782 miles?

A. Yes.

Q. Chicago to Omaha 492 miles?

A. Yes.

Q. New York to Chicago 916 miles?

A. Yes.

281 Mr. BLAIR. Will you designate that as being by the shortest route?

By Mr. MCCLENNEN:

Q. These distances that I am giving you are all by the shortest rail route except as otherwise indicated.

A. They are correct for our present purposes.

Q. Pittsburgh to New York 444 miles?

A. Yes.

Q. New York to New Orleans by water, 1,741 miles; New York New Orleans by shortest rail, 1,372 miles; New Orleans to Houston, 362 miles; Galveston to Houston, 58 miles; New Orleans to El so, 1,192 miles; New Orleans to San Francisco, 2,482 miles; Chigo to New Orleans, 912 miles; Buffalo to New York, 442 miles; incinnati to New Orleans, 829 miles; Portland to New York, ortest rail, 3,204 miles; Portland to New York, via New Orleans d water from New Orleans, 4,487 miles; San Francisco to New ork, 3,191 miles; San Francisco to Kansas City, 1,986 miles. Perhaps it is asking too much for you to verify those, but will you cept them as being correct, except as attention is called to some error?

A. Subject to correction, yes. They do not always agree with the mileage given on this table which I have before me. suppose there are some minor changes perhaps.

Q. Why, then, would not the natural course of freight coming om Oregon through Weed and destined even as far east as the seaard territory, if uninfluenced in any way, naturally pass through oseville and Ogden rather than travel away down to New Orleans, here it had to be carried after it got there by water some 1,700 iles more?

A. It would be a question of the shipper's interests, but chiefly the service. The chief item in the shipper's interest would be e service that he would get. If he finds that by sending it that ay he gets better service, one more satisfactory to him, that is the ay he will ship it. You understand that we have nothing to offer e shipper except his interest in his own shipments—no concession any kind whatever that we can offer him—and the controlling ctor in the routing of all business is not the wishes of the initial rrier or of any other carrier, but it is the shipper's interest in his n business. That is a point which it is advisable we should not se sight of in the technical question of the carriers controlling the routing. The carrier has no control over the routing except the service.

Q. What I mean is this: If you could say to the shipper rth of Weed, "We can offer you just as good accommodations, just free cars, just as prompt attention to your demands, just as quick cing of your freight and settlement of your claims on goods that u ship over our road through Ogden as we can through El Paso", en the natural course of freight coming down from the north rough Weed would be to go through Ogden rather than through l Paso, would it not?

A. You are stating the condition as it exists—that he does get same facilities in every respect so far as the initial carrier is c cerned, the Southern Pacific, whether he sends it out via Ogde via El Paso. There is not one whit of difference. When the sh ment from Weed comes down to Roseville Junction it comes do in the same train whether it is to go out via Ogden or via El P When it goes into the train via Ogden it goes into a train that train the service for which is put on in conjunction with the Un Pacific and in cooperation with it and coordinated with it. I takes the train via El Paso, that is a separate service, and co around via El Paso and Galveston, or whatever route
284 shipper selects; but there is no discrimination against him for him with respect to any route that he elects.

Q. What are the sort of things that your solicitors can and do to shippers to induce them to the Sunset Route, rather than thro Ogden?

A. In times of congestion, for example, or in times of economie the part of the railroads, as the case may be, he finds that when freight gets to Omaha or at any of the many junctions bey Omaha or terminal yards, it is held up, he loses track of it, he n not get it for weeks; and if it comes around by way of Galvesto New York he knows where it is, he knows where to find it, and has no difficulty of that kind. It is only his experience of those c ditions that prompts him to consult his own interest in giving business to the line that, while longer in mileage, is shorter in ser

Q. Is there any other persuasion that you can hold out to Oregon shipper to use the Sunset line rather than the Central Pa line?

A. We have neither concession nor club that we can hold over h

Q. I mean is that one thing, of continuous service by
285 company, the only advantage that you have to offer him to t this circuitous route rather than the shorter and more nat route?

A. I can not answer a question that says "shorter and n natural," because that is a statement to which I do not give ass The natural route for any shipper is the route that will get him shipments to his destination with the least friction to him and most profit to him, which means the shortest time and the facilities.

Q. Then I will not characterize it at all. Other than continu control by one company, have you any inducement to persuade Oregon shipper to use the Sunset Route rather than the Og route?

A. It is not the continuous control that does it.

Q. What is it?

A. It is the congestion and the difficulty of getting through the terminals in these various Eastern States and cities. They get into a network of lines throughout the East here, and the further the business gets away from home the more does it lose its identity in the great mass of business in this eastern country. That is the condition that puts him on his guard.

Q. What is the commodity which you ship from California that most requires expedition in delivery?

A. Fresh fruit.

Q. By what line do you send that, chiefly?

A. That is sent, the great preponderance of it, over the Central Pacific-Union Pacific line, in conjunction with the North Western or St. Paul, and almost uniformly the Erie Railroad to New York. In fact, the Erie has made a specialty of that green fruit business, because of the difficulties that I have described, including the fruit terminals on their own wharf in New York. They make a specialty of the green fruit movement.

Q. And that course of transit you select and urge because it is the most expeditious?

A. Yes. It has been specially organized to take care of that business, which has been built up in that way from a few hundred cars to many thousands annually.

Q. Has any effort been made by the Southern Pacific Company to specially organize for the carriage of other commodities through Ogden as expeditiously as they are carried through El Paso to the Atlantic seaboard?

A. Yes; we endeavor to handle oranges the same way. We have a special arrangement for handling all Asiatic cargoes.

Q. Do the Asiatic cargoes go through promptly?

A. Yes. The business has been specially organized for that purpose. You can realize that raw silk worth $50,000 a carload must be given expedition.

Q. Are there any other classes of merchandise as to which the Southern Pacific has made special efforts to provide expedition on carriage over the Central and through Ogden?

A. The Southern Pacific and Union Pacific have a cooperative manifest freight system which covers all the freight moving, which has been in effect for years and is in effect to-day—was in effect before the merger.

Q. Has any effort been made to organize to insure prompt deliveries at and east of Omaha by the connecting lines?

A. So far as practicable, by appealing to their own self interest. You know when it gets to Omaha it divides up among all the connections east. While it is practicable to make a train load to Omaha, that train load will fly into splinters when it gets to Omaha, and as

it gets farther forward it is still further disintegrated until finally, by the time it gets a few hundred miles beyond, there may be nothing left of the original train.

Q. What is the ordinary time which freight takes from San Francisco or Roseville via El Paso and Galveston or New Orleans to New York?

A. Mr. Spence, can you state that?

Mr. McCLENNEN. Please.

Mr. BLAIR. Let the witness testify, and you can ask the other witnesses what they know when they get on the stand.

Mr. ORR. But the witness called for help.

Mr. BLAIR. Let the witness state what he knows, and you can
289 ask whatever you want of the other witnesses as they appear.

The WITNESS. Mr. Spence would be my authority on that. About eighteen days, I should say.

By Mr. McCLENNEN:

Q. What is the average time on freight from San Francisco or Roseville to New York via Ogden and Omaha?

A. That is a very hard question to answer. It approximates the same thing.

Q. Is there any inducement other than greater expedition that you can hold out to the Oregon shipper to New York to persuade him to ship by the Sunset Route through El Paso rather than by the Central Pacific through Ogden?

A. Nothing beyond the shipper's own interests and wishes.

Q. Other than expedition is there any other interest of the shipper that now occurs to you that you can point out to him as a persuasion?

A. Service and attention sum up the considerations of the shipper.

Q. You can give the same amount of attention at the initial point whichever way he ships, can you not?

A. Yes.

290 Q. You can furnish him the cars as quickly and conveniently whichever way he ships?

A. Whichever way he ships, so long as his shipment is on our rails. We give the same attention and consideration by whichever route he ships, and the same bill of lading and the same contract and the same liability.

Q. What element of service, other than promptness, do you have to point out to him that you can not give via Ogden that you can give via El Paso?

A. Nothing except what I have already stated.

Q. There is a considerable amount of freight that is not needed hastily, as to the routing of which the shipper is not particularly regardful, is there not?

A. I think such freight as that is negligible in quantity, because e interest runs while the freight is in transit.

Q. Given about equal time, is there not a great amount of freight e routing of which the shipper is not particularly regardful of?

A. He is regardful of it all; but there is some about which he is more insistent because of the character of it, either its value, or because of its seasonableness, or because it is of a perishable nature.

Q. The routing interests him almost entirely on account of probe speed and assurance of delivery?

A. With another consideration on the part of the shippers of rtain commodities, and that is their ability to divert the freight transit to market or destination other than the one originally signated. They make those shipments sometimes responsive to arket demands. At other times they make them because they sell eight in transit.

Q. Shippers are actually considerably influenced by freight solicirs, are they not, to choose this, that, or the other route?

A. They are variously influenced by them.

Q. That is, solicitors do succeed in accomplishing work for the ilroads employing them—many of them very large amounts of rk—do they not?

A. I am afraid they would lose their jobs if they did not. That is, good man will accomplish more than a poor man on the same ing. You cannot exclude the human element from anything.

Q. What position does Mr. Spence hold with the Southern Pacific?

A. Director of traffic.

Q. Does he hold any position with the Central Pacific Railay Company?

A. The Central Pacific Railway Company is leased to the Southn Pacific.

Q. I did not mean to intimate anything by my question. He does t hold any position with that road, does he?

A. I do not know. I do not remember.

Q. And as director of traffic of the Southern Pacific Company is the one in control of the course that traffic shall take, so far as e company is concerned?

A. Yes, sir.

Q. The solicitation by the company's solicitors is under him?

A. Let me make that plain as to myself: That while I am president the company as a whole, I am in direct charge of the administion and operation of the Southern Pacific Company's lines west of Paso, Ogden, and Portland, and I am in direct charge of every-

thing within that territory. Mr. Spence, as director of traffic in New York, is the executive officer and has direction of the company's traffic generally.

293 Q. Let me understand you. Does that mean that although not having the title, you are virtually the director of traffic so far as that western end is concerned?

A. It means that our men handling traffic in the territory I have described work under my direction.

Q. To that extent are you coordinate with Mr. Spence?

A. Mr. Spence is my advisor in the matter.

Q. And in your respective territories you control the matter of traffic, whether it be over the Southern Pacific or over the Central Pacific?

A. Yes; whatever route it takes.

Q. Whatever route it takes of the so-called Southern Pacific system?

A. Yes. When we are soliciting business it is always to be remembered that we are solicting against the field. We are solicting against every route.

Q. Why is that?

A. Because any of these other roads can come in and get it. The Santa Fe is just as active in the field as we are, and so is the Western Pacific and so is the Union Pacific, and so are all of these roads that I have described. They have their soliciting staff on the street,

294 their offices under the leading hotels in the city and in the principal towns, and they are scattered throughout this territory solicting business day and night, literally; and we have to be as alert as any of them to hold the business to the lines dominated by the Southern Pacific.

Q. The division of the Southern Pacific system into the Atlantic system and the Pacific system has existed at times, has it not?

A. It has existed at all times.

Q. Does it still exist?

A. It still exists.

Q. What is the Pacific system?

A. The Pacific system is the lines west of El Paso, Texas, Ogden, Utah, and Portland, Oregon.

Q. And the Atlantic system?

A. The Atlantic system is the lines east of El Paso.

Q. The Central Pacific, then, falls entirely into the Pacific system?

A. The Central Pacific is wholly within the Pacific system.

Q. And the Sunset Route east of El Paso, including the boat line to New York, is in the Atlantic system?

295 A. Yes, sir.

Q. By the way, the boat line from Galveston and from New Orleans to New York is directly operated by the Southern Pacific Company, is it not?

A. Yes, but Morgan's Louisiana & Texas Steamship Company has its own manager in New York.

Mr. BLAIR. I think it should be noted that the steamship line is owned and operated by the Southern Pacific Company, and not by Morgan's Louisiana & Texas Steamship Company.

By Mr. MCCLENNEN:

Q. That is what I understood. That is the fact?

A. Yes.

Q. The Sunset Route is in the field against all competitiors, just as any other railroad is in the field against all competitors, is it not?

A. Yes.

Q. So far as business in California is concerned, apart from that directly contributory to the Atchison rails, the Southern Pacific Company is in a more influential position than any other carrier to acquire the business and affect the routing, is it not?

96 A. We have more lines in California and therefore ought to have a greater radius of activity, but the Santa Fe solicits business all over our lines in California, and so does the Western Pacific.

Q. Does much freight originating on the Southern Pacific lines go over the Santa Fe to points which could be served by the Sunset Route or the Central Pacific?

A. All that they can influence that way.

Q. No doubt; but is that a large quantity?

A. It is of some volume.

Q. Does it amount to much?

A. It is appreciable, I think.

Q. Appreciable?

A. Under the traffic arrangements they have the same opportunity to get business there that we have, so far as the shipper is concerned.

Q. The line that has the rails in the shipper's town or city, other things being equal, is in a very much better position to control the through routing of the traffic or to persuade the through routing of the traffic than any other road, is it not?

A. It should be.

97 Q. And is?

A. Other things being equal; yes.

Q. There has been practically no competition in rates on transcontinental business for years, has there?

A. The policy of the Government has prevented very aggressi competition in rates, because any road cutting a rate has to gi thirty days' notice to its competitors.

Q. How long has that been required by the Government?

A. Since 1906, as I recollect it. We formerly had to give noti before we raised a rate. Now we have to give notice also before w reduce it. That, of course, has an obvious effect.

Q. Without disregarding the pleasantness of it, or the humor it, do you really wish to put upon the Government, with all i other burdens, the responsibility for the uniformity of rates betwe the different transcontinental carriers that has existed for so long?

A. I have raised no issue with the Government.

Q. Then, coming back to the question again, and not considerin for the moment who is responsible for it, the fact is, is it not, th rates on transcontinental business for years have been pra
298 tically the same over all the different roads? That is tru is it?

A. Yes; that is true.

Q. And the competition between them has been in solicitation, i service, in equipment, ease of getting cars, searching out and se tling claims, promptness in delivery, and the personality of the ind vidual representatives of the different roads, their courtesy in dea ing with the public? That is true, is it not?

A. I think that is true.

Q. Is that a fairly comprehensive statement of the possible el ments of competition other than rates?

A. It is a very pleasant generalization; but having heard only once, I do not know just how comprehensive it is. It sound comprehensive.

(By request the reporter repeated the pending question.)

The WITNESS. I do not detect what you have left out. It seem to be all right.

299 By Mr. MCCLENNEN:

Q. You have spoken of the interest of the shipper as affec ing the choice of route. It is true, is it not, that every railroa where it can furnish the shipper equally good accommodations ov the route which gives it the longest haul seeks to have the freig routed that way for the purpose of giving the railroad the greate revenue; is that correct?

A. Every railroad works for its long haul that gives it the mo or greatest revenue when not inconsistent with the service to th public.

Q. I included that in my question. Have your instructions solicitors as to routes which they should work preferentially be oral or on paper, or both?

A. They are merely general instructions. I do not give them to the solicitors myself.

Q. What is that?

A. They are merely general instructions, and in line with the policy I just explained to-day.

Q. Are circulars issued to them from time to time?

A. I think not.

Q. Do you recall whether, after what I will call the "unmerging" in 1913 of the Union and Southern, circulars were
300 issued over your name to solicitors, instructing them to work the Sunset Route preferentially?

A. I should say not.

Q. Do you speak with positiveness about that?

A. I think so.

Q. The instruction is conveyed by word of mouth from time to time?

A. The instructions would not be given by me to solicitors; they would be given by the officer to whom they report.

Q. And he would be whom?

A. The general freight agent.

Q. Would your directions be given to the general freight agent?

A. My directions would be given generally to the vice president in charge of traffic, and he would deliver them to his freight traffic manager; and it is probably the freight traffic manager, by the way, who would issue those instructions.

Q. Do you know whether or not the freight traffic manager, or any other officer or employee of the company, has issued circu-
301 lars with reference to working the Sunset Route preferentially?

A. I do not know; but I do not think so. Those instructions would be flexible and to fit the commercial business to which they are adapted. Rigid instructions these days do not go far.

Q. In the early part of the examination there was a slight difference between us as to phraseology. You remember where I spoke of the joint control and you spoke of a unit control?

A. Yes.

Q. I want to direct your attention back to that matter. You have no personal knowledge of who built the Central Pacific Railroad, have you?

A. Well, I lived in California at that time, and the people who built it were Huntington, Stanford, Crocker, and Hopkins, and their associates. They were known as the "big four" at that time.

Q. When were you born?

A. I was born in Ireland.

Q. When?

A. In 1858.

302 Q. You were eleven years old when the railroad was completed and in operation?

A. I did not go to California until 1879.

Q. Well, did you know anything about the Central Pacific Railroad before 1879?

A. Not of my personal knowledge, except such as a young fellow picks up; but as a matter of personal knowledge about which I could testify, of course, I knew nothing about it.

Q. Now, when you spoke a moment ago about Huntington, Hopkins, Stanford, and Crocker, you did not mean to convey the idea that they physically built the road, of course?

A. No; I referred to knowledge that has come to me since, including talks with Mr. C. P. Huntington.

Q. You did not mean to convey the idea that the road was built for them as individuals, as distinct from the corporation known as the Central Pacific Railroad?

A. I did not mean that at all; I meant that they were the men who promoted it and who succeeded in their plans in accomplishing it.

Q. And that is all that you meant?

A. That was all.

Q. In the same way, confining yourself to your personal knowledge, you do not know who constructed or, prior to 1879,

303 owned any part of what is now the Sunset Route?

A. No.

Q. Up to comparatively recent times, if at all, you have no personal knowledge as to who were the holders of the stock of the Central Pacific Railroad Company or the Southern Pacific Railroad Company?

A. No. In those days I only knew it as incidental to my daily work.

Q. At the present time the Southern Pacific Company has widely scattered stockholders, has it not?

A. The Southern Pacific?

Q. Yes.

A. Yes.

Q. There are perhaps 26,000 different stockholders?

A. About 27,000.

Q. And that is somewhat near what it has been for a matter of a dozen years past?

A. I do not know as to that.

Q. Your knowledge on that matter runs back only during the period that you have been president?

A. Yes; and only then when I have had occasion to inquire.

304 Q. There is now no particular group of stockholders that controls the affairs of the Southern Pacific Company, is there?

A. I understand there is not.

Q. I think it appears sufficiently by the answer, but there is no question that the Southern Pacific Company now owns all of the stock of the Central Pacific Railway Company, is there?

A. No, sir.

Q. And it has since 1899?

A. I so understand.

Q. Did you know of the fact of the holdings of stock of the Central Pacific Railroad Company in Europe?

A. No; I would not have any relation to that.

Q. Well, in your connection with the affairs of the company, did you know the fact that some considerable blocks of stock, or some considerable quantity of the stock, was held in Europe?

A. Of which company?

Q. Of the Central Pacific Railroad Company?

A. Yes; I understood that it was.

Q. And that was as early as your first going with the company, was it not, in 1882?

A. I believe so, but I would not be sure as to that.

305 Q. Did you know that those holdings exceeded a majority of the stock?

A. At that time I was not in position to know anything about it except in a hearsay way. My information was very limited at any time about it.

Q. In the San Francisco fire of 1906 the San Francisco records of those companies were burned, were they not?

A. Destroyed by fire when the city burned.

Q. That included the records of the Southern Pacific Company and the Southern Pacific Railroad Company, the Central Pacific Railroad Company and the Central Pacific Railway Company; am I right?

A. If all those records were there at that time, the presumption is that they were burned. My understanding is that they were.

Q. Was nothing in the way of records or papers of those that were there saved?

A. I believe not. I was one of three officers who endeavored to undertake the saving of papers in the morning, but we were driven out by the Army. The building where the papers were stored caught fire later; it took fire later in the day, when the entire

306 business portion of the city was destroyed.

Q. You did not leave the company then?

A. No; I did not leave until six months after.

Q. And you were there at the time?

A. Yes; and until six months afterwards.

Q. The records of all these four companies were kept in San Francisco, were they not?

A. Except such as were kept in New York at the headquarters here. I would have no means of knowing about those.

Q. Do you know what sort of things were kept in New York?

A. No; you see I had nothing to do with that.

Q. At the present time is there in existence anything by way of records of the company or stock books or otherwise showing who were the stockholders in the Southern Pacific Company in 1899 or in 1893 or in 1885, or any of those years?

A. I do not know.

Q. You do not know whether there is or not?

A. No.

Q. Do you in your position as president know of any means of ascertaining with accuracy who were the shareholders in the Southern Pacific Company at those times?

307 A. If there were any record I do not know where it would be kept; I do not know where it is kept now, but I think in New York. I do not think it is kept in San Francisco. I know that the record of stockholders is carried in New York now. As to the records for those preceding years, I do not know whether such a record exists, or, if it does exist, whether it is in New York or not. Our executive offices are here.

Q. What officers of the Southern Pacific Company have knowledge of the records of the stockholders for that period?

A. I assume the comptroller.

Q. Who is that?

A. A. D. McDonald; he is comptroller and vice president, with offices at 165 Broadway.

Q. He is the comptroller of what?

A. The Southern Pacific Company.

Q. Is he comptroller of any of the others—that is, the Central Pacific Railroad Company, the Central Pacific Railway Company, or the Southern Pacific Railroad Company?

A. I do not know as to the organization of those companies, whether they have an officer of that title. The organization list is carried here.

308 Q. Do you know where the meetings of stockholders of those companies, or any of them, in 1899 and prior thereto, used to be held?

A. In 1899 and prior thereto?

Q. Yes.

A. I had no relation to the subject then. I understand—I would prefer not to undertake to testify on that.

Q. Does any freight from Nevada to the Atlantic seaboard territory go by way of the Sunset Route?

A. I think there is some wool and hides.

Q. How far to the east does that freight start on the lines of the Central Pacific Railroad? Does it start as far east as Corinne, Utah?

A. I think not; I could not say precisely, but I think it is confined to western Nevada. It may possibly be as far east as Elko.

Q. Elko is about a quarter of the way from the eastern boundary of Nevada?

A. About that.

Q. And that wool is carried to Sacramento?

A. Yes; that would be carried to Sacramento.

Q. And then to El Paso?

A. Yes; but it is a small quantity, a very small tonnage.

Q. That movement of traffic has been going on for some years?

A. Yes.

Q. Was it larger some time ago than it has been of late years?

A. I do not know, as a matter of fact, but I think it was.

Q. Prior to 1901 there was considerably more that went through El Paso, was there not, from that country, than since that time?

A. Yes, there was more than since that time; the service was better by the Southern line than it was by direct line to the Atlantic seaboard, by reason of the lack of ability of the lines east to handle it through promptly. It was simply following the line of least resistance; it was a matter of service.

Q. Do you remember a time when in that wool territory the railroad used to issue a bill of lading for fixed weights and count if the shipper left the wool unrouted, but would issue only a bill of lading "shippers load and count" if the shipper routed through Ogden?

A. I do not know as to that, but I can not conceive of a case in which that might be, because if it went around by Galveston we could count it at Galveston and check it up. If it went out to the east we would have no such opportunity, but that is a by-gone day, you know. The shipper has the right to route now that he did not have in those days. The law has changed since, and that is all gone.

Q. Do you know, as a matter of experience with bills of lading, that a bill of lading "shipper's load and count" was not as good for banking purposes as one for a definite load or weight?

A. If the shipper was good at the bank it was all right.

Q. Yes; if he did not need any collateral it would not make any difference at all; is that what you mean?

A. No; but if he held the bank harmless as against an error in his own count, the bank accepted that notation "shipper's load and count." As a matter of fact, it was a very general way of doing all kinds of business at that time. Even at the principal stations, shippers loading at sidetracks would prefer to take a bill of lading at "shipper's load and count" than to bring their freight to the station and have it checked into the car.

311 Q. Why didn't they always take that that way, then; why didn't they always take it "shipper's load and count"?

A. When it suited their convenience they did.

Q. Do you know whether the ability to give a definite load and count bill, if the wool was left unrouted, had the effect of leaving considerable quantities of it unrouted by the shipper?

A. Do you ask me as a fact whether it did?

Q. Yes.

A. I could not answer that.

Q. You do not know?

A. No.

Q. Is this distinction that I have mentioned to you, as applied to that Nevada wool, entirely new to you as I put it to you to-day?

A. No; I know that bills of lading have been issued "shipper's load and count", and there are bills of lading shipped clean. The clean bill of lading is a superior bill of lading.

Q. You knew, did you not, that the reason for the railroad's doing that was so that they might have the routing over the Sunset Route?

312 A. No; I do not admit that such a thing was done with any such design, or that it was done for any other reason than that it was actually routed by the shipper "shipper's load and shipper's count", and the railroad did not know what the count was. That is the fact. But to state it another way: As I understand your question, it is whether the railroad used that compulsory device to control the routing of business, and that if it went by one route the railroad, without knowing what the count was, would give a clean bill of lading, while if it went by another route they would give a "shipper's load and count." Such practice was never indulged in, to my knowledge.

Q. You have expressed it somewhat differently than I intended to develop from you. What I meant was this: Not that compulsion was exercised upon the shipper, but that a certain advantage—perhaps of some value, and perhaps in some instances not of value—was extended to him as an inducement for him not to exercise his

right to route the freight, leaving him to leave the freight unrouted and take the advantage, if he wanted to, or to route the freight and not take the advantage, as he might please. That is the practice to which I am directing your attention, and I am asking you if such occurred.

313 A. I do not believe it was ever done. I never heard of such instructions being given or suggestions made that it should be done. In fact, I think we would have a fine riot with the shippers if we attempted it any time.

Q. You said that there was some issuing of bills of lading in former times "shipper's load and count"?

A. Yes.

Q. And that that practice has been discontinued?

A. No; I did not say that.

Q. That still goes on?

A. Yes. Where the shipper loads at a point where there is no opportunity to count it, he loads the car at a siding, we will say, in the country, perhaps behind his own barn or packing house somewhere, or delivers the shipment to the carrier and takes his bill of lading "shipper's load and count."

Q. Perhaps I misunderstood you, but I thought you said something in this connection that some practice had ceased, did you not?

A. I said at the time to which you referred, as I understood it, the shipper did not have the right to route, but that that belongs to a by-gone day; that the law has since given him the right to route; he controls his own routing, the carrier does not.

314 Q. Prior to 1906 was there a good deal of shipment of wool from Nevada unrouted to the Atlantic seaboard territory?

A. A portion of the business went that way.

Q. And that unrouted wool——

A. Oh, unrouted? I think none of it went unrouted; I think it was all routed.

Q. Routed by the shipper?

A. Routed by the shipper.

Q. Did none of it go not routed by the shipper?

A. If there was, it would be a very minor portion of it, in all probability; I am giving you the best of my remembrance.

Q. And that wool, up to 1901, was carried largely through El Paso?

A. A large part of it.

Q. Were you in such a position in the business of the company in 1901 as to be able to observe in any general way the effect upon the tonnage carried by the Central Pacific Railroad proportionally, of the opening of the Sunset Line?

A. No.

315 Q. You have no idea of how soon or how extensive the effect was?

A. You see, I was only a year in the service then and knew nothing about it.

Q. The Central Pacific Railway has terminals in Oakland on the waters of San Francisco Bay?

A. Yes, sir.

Q. And has it any terminals in the city of San Francisco?

A. It has not.

Q. The Southern Pacific Railroad has terminals in San Francisco?

A. Yes, sir.

Q. And also has terminals in Oakland?

A. The terminals in Oakland are as one, chiefly Central Pacific, and only in a minor way is there any Southern Pacific terminal in Oakland.

Q. San Francisco freight coming up by the Sunset Route is delivered where?

A. It is delivered in San Francisco.

Q. San Francisco freight coming through Ogden is delivered here?

316 A. In San Francisco; the same terminals. The terminals are used without any relation to where the business comes from.

Q. Is the delivery to the San Francisco terminals made across the water from Oakland or around by rail?

A. Chiefly around by way of Dunbarton Point, which crosses the lower arm of the Bay of San Francisco. Deliveries, whether from the Central Pacific line or from the lines via El Paso are made in San Francisco chiefly by our Dunbarton cut-off, which crosses the lower arm of the bay to Redwood City, and the freight is then carried in over the line of the Southern Pacific from Redwood into San Francisco.

Q. Is any of the freight to San Francisco from or through Ogden carried over the Benicia cut-off?

A. None of the freight moves by the Benicia Route unless in an emergency.

Q. The Benicia cut-off terminates at Port Costa, and your passenger traffic——

A. (Interposing). The Benicia cut-off ends at Benicia. The service from Benicia to Port Costa is rendered by ferryboats.

317 Q. And the trains from Sacramento and points east of that carrying passengers for Oakland or San Francisco run to Benicia and are ferried across physically to Port Costa and then take the tracks again and go to Oakland?

A. Yes.

Q. And the San Francisco passengers then leave the train and go by ferry?

A. They leave the train at Oakland pier.

Q. And go by ferry to San Francisco?

A. They ferry over to San Francisco.

Q. The line that now runs from Los Angeles to San Francisco is alled the "Coast line"?

A. There are two lines, one from Los Angeles by way of Bakersfield to San Francisco, which is known as the "Valley line", and the ther is run by the way of the coast line. They have a common stem rom Burbank to Los Angeles. The lines fork.

Q. And the coast line is the line that we see as the road along the oast on the map here?

A. Yes; the coast line comes up through Santa Barbara to San rancisco direct.

Q. Does any of the freight which comes through El Paso come up er the coast line?

A. It does.

Q. What is the preferential way for carrying it; over the coast line or over the valley line?

A. It is a matter of convenience. For some time we have been rrying it by way of the coast line.

Q. The coast line is an extension of the road originally running Gilroy, is it not?

A. Yes, sir; originally running to Gilroy and southerly to Soled and through Soledad south.

Q. Does the Sunset freight coming from through Bakersfield go up er this Southern Pacific line from Goshen or up this line on the st of the San Joaquin River?

A. It takes whichever routes are, for operating reasons, the most nvenient. It depends on the volume and direction of the traffic.

Q. Is there anything about Goshen to make it a natural railway rminal?

A. Goshen is the junction point for the branch line into the oil lds.

Q. How big a place is it?

A. Oh, it has a few hundred people.

Q. Your first recollection of that line down to Goshen would be in 1882?

A. Yes; about that time.

Q. Was there anything to amount to anything between throp or Goshen, then?

A. As I recollect it, at that time that was about all there was in se days. The intention was to build down the San Joaquin Val-

ley. There are two great central valleys in California. One is the Sacramento Valley, north of Sacramento, and the other is the San Joaquin Valley, south of Stockton. The effort was to get down through the San Joaquin Valley. The Central Pacific built, as I understand it, as far as they could get, and then they resumed the rebuilding south of Goshen, through the Southern Pacific, on their way through San Joaquin Valley and to Los Angeles. I might say, in further answer to your question—I have no knowledge whether it was a coincidence or not—but adjacent to Goshen there is some valuable farming territory, very rich land.

(Whereupon an adjournment was taken until to-morrow, Thursday, September 24, 1914, at 10.30 o'clock a. m.)

320 FOURTH DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 24, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne for the Southern Pacific Company, et al.

WILLIAM SPROULE, the witness under examination at the taking of adjournment, resumed the stand.

Direct examination (continued) by Mr. MCCLENNEN:

Q. Mr. Sproule, will you take the following dates as being correct, subject to correction? I need them in the further examination, and I think you will probably agree with them.

The Central Pacific Railroad Company joined the Union Pacific near Ogden, making a continuous line from San Francisco Bay to Omaha, May 10, 1869.

321 The Southern Pacific Railroad Company reached its junction with the Atchison at Deming in March, 1881.

The Southern Pacific Railroad Company connected, via the Galveston, Harrisburg & San Antonio Railroad, with the Texas & Pacific at Sierra Blanca January 1, 1882.

The through rail from San Francisco to New Orleans via the Central Pacific to Goshen, the Southern Pacific Railroad Company to El Paso, the Galveston, Harrisburg & San Antonio Railroad, the Texas & New Orleans Railroad, the Louisiana Western, and Morgan's Louisiana & Texas Railroad & Steamship Company, was opened for business February 1, 1883, then connecting with a steamboat line

from New Orleans to New York, being the steamship line of the Morgan's Louisiana & Texas Railroad & Steamship Company.

The connection between the Central Pacific Railroad and the Rio Grande Western and the Denver & Rio Grande—these last two having since become the Denver & Rio Grande—was made in the summer of 1883.

The Atchison, Topeka & Santa Fe, in connection with the Atlantic & Pacific and the Southern Pacific rails, reached Mojave in 1885.

The Northern Pacific opened through to Portland in 1883.

The Oregon Short Line and Oregon Railway & Navigation Company reached Portland from the lines of the Union Pacific at either Granger or Ogden in 1884.

The Canadian Pacific reached Vancouver in 1887.

The Great Northern reached Seattle in 1893.

The Rock Island and El Paso & Southwestern reached El Paso in 1902.

The Atchison, Topeka & Santa Fe reached San Francisco over its own rails in May, 1899, except for the distance between Bakersfield and Mojave, between which it used the rails of the Southern Pacific Railroad Company, and which it continued so to use.

The Western Pacific was opened through from its junction at Salt Lake City with the Denver & Rio Grande to San Francisco Bay July 31, 1910.

The San Pedro Line from Los Angeles to Salt Lake, and thence over the Oregon Short Line to Ogden, was opened May 1, 1905.

The San Francisco & Portland Steamship Company, owned and controlled by the Oregon-Washington Railroad and Navigation Company, it in turn owned by the Union Pacific Railroad Company, put on a line of steamers from Portland to San Francisco during the period of the merger, 1901–1913, and this line was extended to San Pedro, the port of Los Angeles, and to San Diego after the dissolution of the merger, and is now running from Portland to San Francisco and Los Angeles.

Now, subject to correction if an error has been made, may we take those dates as correct?

A. I should think so, sir.

Q. The Oriental & Occidental Steamship Company was a company owned one-half by the Southern Pacific Company and one-half by the Union Pacific Company, was it?

A. I think it was owned one-half by the Central Pacific and one-half by the Union Pacific.

Q. During what period did that company operate?

A. I do not know when it began. It was dissolved—I could not tell you when it was dissolved; I did not have anything to do with it, as I see, except simply that we handled the freight if it came to us,

or delivered freight to them. The process of its dissolution I had nothing to do with, and the year I could not tell you. It is easily accessible, however.

Q. For the time being could you approximate either date?

A. I think it was around 1900.

324 Q. That is, that it began?

A. That it was dissolved.

Q. It dissolved around 1900?

A. I think so.

Mr. HERRIN. It was a little later than that, I think.

Mr. MCCLENNEN. It dissolved soon after the merger went into effect, did it not?

Mr. HERRIN. We will get that date for you exactly.

Mr. MCCLENNEN. It would be convenient to have it.

The WITNESS. It may have been 1902.

By Mr. MCCLENNEN:

Q. Roughly, how many years did it run?

A. I would suppose probably twenty years, but I do not know with any positiveness.

325 Q. That line ran between what points?

A. San Francisco and Asiatic ports of call, China, and Japan.

Q. The Pacific Mail Steamship Company has been running for many years?

A. Yes.

Q. And is still running?

A. Still running.

Q. And between what points has that been running and does it now run?

A. Between San Francisco and ports of call in China and Japan including Honolulu and Manila—certain ships.

Q. That line also runs from San Francisco to Panama?

A. It runs also to ports of call on the west coast of Mexico and to Panama.

Q. And has it been on all these routes for many years?

A. Yes.

Q. According to the report of the Southern Pacific Company for 1913 the capital stock of that company at par is $20,000,000, of which the Southern Pacific owns $11,080,000, does it not?

326 A. Yes.

Q. Do you know, in a general way, how the balance of the stock is held?

A. I do not.

Q. Do you know enough to say whether it is generally distributed, r whether it is held in some one or two interests?

A. I don't know anything about it.

Q. How long has the Southern Pacific held the controlling stock f the Pacific Mail Steamship Company?

A. I don't know.

Q. Would it be safe to say that that majority interest was acquired shortly before the merger of 1901?

A. I do not know whether it was before or after the merger. It as been some time since; I know that.

Q. At the present time are there any other lines running from alifornia to the Orient besides the Pacific Mail Steamship Comany?

A. There is the Toyo Kisen Kaisha, which is owned by the Japanse. There is the Dollar Line, which is owned by Robert Dollar nd his associates, and there are other ships that run from time to time.

Q. Those three are the only regular lines?

A. The regular liners in regular trans-Pacific trade, in nnection with steamship lines or the Toyo Kisen Kaisha Line om California.

Q. Do any of the three lines touch California anywhere except San Francisco Bay?

A. At San Francisco Bay. The Dollar steamers I would not be rtain about. They may make other calls.

Q. There are some other lines that run from Puget Sound ports the Orient?

A. Yes; and also the Canadian Pacific steamer lines.

Q. Prior to the advent of the Atchison in California, no freight om anywhere in the East could get into California by rail except er the rails of the Central Pacific Railroad or the Southern Pae; is that correct?

A. That is correct.

Q. Up to the time that the Atchison became powerful, the South- n Pacific virtually controlled the rates for transcontinental busis with California, did it not?

A. In conjunction with its various railroad connections throughout the United States and Mexico. It did not control the rate; it only controlled it as it was a factor in the rate making.

Q. It was, as a practical matter, a controlling factor, was ot?

A. It was one of the controlling factors.

Q. The through rate to California, as a practical matter, could be reduced or raised without the sanction of the Southern Pacific mpany?

A. Without the sanction of every road in the line.

Q. Including the Southern Pacific?

A. Including the Southern Pacific; the Southern Pacific cou not raise nor lower the rate of its own motion.

Q. The Southern Pacific was the only one that controlled through line from San Francisco to the Atlantic seaboard?

A. To New York.

Q. Or anywhere else on the Atlantic seaboard?

A. No. It controlled a steamship line only from San Francis to New York.

Q. I mean there was no other road that controlled any throu line from California to any point on the Atlantic slope; that is tr is it not?

A. I think that is correct.

329 Q. The Southern Pacific had it within its power, with the consent of the other roads, to determine the rate over th through line?

A. Yes and no.

Q. What were the limitations?

A. The Southern Pacific had to consult its rail connections. has not at any time been in a position of independent control of rates, because their great interest in the Central Pacific and th great interest in the railroad situation generally and in the Sun Route itself made it highly inadvisable and, in fact, would have m it a piece of folly for them to undertake to dictate rates by th own line to affect the whole situation. Every railroad has to w with its connections. It is a matter of mutual relation and of re rocal relation in the exchange and interchange of business.

Q. Getting away from the more decorous language of the co room to that used in the rough and tumble of business, is it not t that for years what J. C. Stubbs said as to rates to Califor on transcontinental business went and what he vetoed wo not go?

330 A. Well, the railroad business is not a rough and tum business, and that statement might be a rough and tumblest ment, but it is not true.

Q. Well, is it not pretty nearly accurate?

A. No; it is quite inaccurate; it is not in accordance with the f so far as comes within my knowledge during the period of my experience.

Q. Mr. Stubbs was undoubtedly the most powerful factor in Transcontinental Association conferences and later in the Tr continental Freight Bureau?

A. Mr. Stubbs was a man of powerful personality and would powerful in any body of which he was a member on any subject.

Q. Then, whatever be the elements which produced the result, he was the most powerful element in those gatherings?

A. I do not think so at all. As a matter of fact, the most powerful element in those gatherings produced the transcontinental rate war, and that was the Atchison.

Q. When did the Atchison start its rate war?

A. In 1886, I think.

Q. And how long did that last?

A. I think the greater part of the year. In fact my recol-
331 lection is until the Interstate Commerce Commission came in and put the railroad business on a new basis, in 1887.

Q. Well, there are a great many elements that tend to the voluntary reduction of rates by railroads other than rate wars, are there not?

A. Yes.

Q. Is it not a fact that apart from this rate war of which you speak none of the railroads succeeded in making a voluntary reduction of rates to California against the opposition of Mr. Stubbs?

A. That is not so; it is emphatically not so.

Q. Do you bear in mind instances where they succeeded in making such reduction against the opposition of Mr. Stubbs?

A. Why, the meetings with respect to transcontinental rates lasted sometimes for weeks. It is a give and take question; it is a question of response to mutual needs, to railroad needs, to the economic questions of the time, and it is a question of persuasion or conviction or demonstration, each road with respect to the other, and its connections, and other roads engaged in the same business.

It also has relation to the rates made to and from other Pacific
332 coast ports; and the northern lines, for example, had a distinct influence on the rates made in California. Besides that, the Southern Pacific line was only a part of the through line by its important connections and by the road over which the great volume of the business was done. The Southern Pacific had to give heed to what its connections contended for just as much as they had to give heed to what the Southern Pacific contended for, and it was a question of business negotiation and not a dictatorial stand upon the part of anybody. It was a business question at all times.

Q. Is this an accurate statement, put in the form of question and answer:

"Q. As a matter of fact, could any through all-rail rate be made from the Missouri River or east to California without the consent of the Southern Pacific in the first instance, and subsequently, upon its advent, the consent of the Atchison, Topeka & Santa Fe?

"A. No."

A. Of what period does that speak—before the advent of the Santa Fe?

Q. Before the advent of the Santa Fe.

A. I would answer that a rate could not be made over the Central Pacific Railroad without the consent of the Central Pacific Railroad at that time, and could not be made over the Union Pacific
333 Railroad without the consent and concurrence of the Union Pacific Railroad at that time. A rate could not be made into Chicago without the consent of the Chicago & Northwestern Railroad Company, for example, from Omaha to Chicago at that time. That is true of every railroad over which the rate was operative.

Q. And is the statement which I put to you in the form of question and answer an accurate statement. I will repeat it to you without having it go down on the record again.

(The quoted question and answer were again read by Mr. McClennen.)

A. I was too recently in the service at that time to answer that question from any knowledge of my own, but I will make the statement as I have already made it.

Q. Then you leave it that you do not know whether or not that statement——

A. (Interposing.) Whose testimony is that?

Q. I am reading from the testimony of J. C. Stubbs.

A. I would prefer to stand upon Mr. Stubbs' testimony.

Q. It is at page 3901 of the so-called merger record.

A. As to what occurred at that time, Mr. Stubbs is the authority, not I.

334 Q. Well, there is nothing in your recollection of the situation that would be at all at variance with that answer of Mr. Stubbs's?

A. I was not in a situation at that time; my understanding of the situation is as I haye stated it.

Q. You will notice that this question covers as well the time after the Atchison was in operation. Indeed, it covers certainly every time up to the merger, and by that time you had a position which would put you in the way of knowing the situation?

A. Yes; the rate would not be made over the Southern Pacific without the consent of the Southern Pacific.

Q. Now, dealing with the period as a whole up to 1901, is this statement as Mr. Stubbs has put it correct?

(The statement was again repeated by Mr. McClennen.)

A. I do not construe that the way you construe it at all. I construe him to say——

Q. (Interposing.) You misunderstand me. I am not construing it at all.

Mr. DUNNE. Let him finish.

By Mr. McCLENNEN:

Q. I just read you the question and the answer, and I ask you if it is correct.

Mr. BLAIR. You can ask him whether it is correct, but not whether the construction is correct.

Mr. McCLENNEN. I am not asking him that.

The WITNESS. You asked me whether that statement is correct, as to the Southern Pacific up to the merger period, to 1901. I say, according to my understanding of what that question is, it is not correct, and I make that answer because I can only assume from your question that you do not understand that answer as I understand it.

By Mr. McCLENNEN:

Q. Am I right in understanding you that this statement which I now read to you is not correct, namely:

(The statement was again read by Mr. McClennen.)

A. When the Southern Pacific was the only line, the only road from California to the east, the consent of the Southern Pacific was necessary as one road in the through line. When the Atchison came in there was another road serving California, and the Southern Pacific's consent was necessary after that only with respect to the Southern Pacific lines, the Atchison having control of their own line.

Q. As a practical matter, the interests of the railroads were so interwoven that the Southern Pacific could not reduce its rate prudently against the opposition of the Atchison, or the Atchison against the opposition of the Southern Pacific; is not that true?

A. As a matter of fact, they did make such reductions.

Q. And at the time of the rate war that you speak of?

A. No; I am speaking of from time to time as the interests of each road predominated.

Q. It was the practice of these roads to confer before any changes in rates?

A. As a rule it was. That rule was honored in the breach from time to time.

Q. And Mr. Stubbs, who gave this testimony that I have read to you, was the representative of the Southern Pacific in those conferences?

A. Yes; either personally or through his subordinate officers.

Q. The man better able to judge than almost anyone else in the country of the actual influence of the Southern Pacific in the Transcontinental Association? Is that true?

337 A. As a generalization, I suppose that is so. I do not think it would be at all conceded by the officers of the other railroads, however.

Q. Is this a correct statement, as of the period up to 1901, and after the Santa Fe had got through to San Francisco:

"The Santa Fe forms a line under one management from Chicago and could do as it pleased. It did not have to ask anybody. The Southern Pacific had its own line all the way through to New York and could do as it pleased."

Was that a correct statement?

A. As a matter of dictum, that is correct. As a matter of practice, it is not so.

Mr. DUNNE. To what page are you referring, Mr. McClennen?

Mr. MCCLENNEN. I read from Mr. Stubbs's testimony, page 3901.

The WITNESS. If they were in a world apart by themselves, they could do that, each of them.

By Mr. MCCLENNEN:

Q. Apart from the effect as inviting retaliation, the fact
338 was, on business between New York and San Francisco, the Sunset line had the power to determine what rates and what service should prevail, and was the only line that could actually, effectively speak without the cooperation of other lines as to business between those points. That is true, is it not?

A. As to business between——

Q. (Interposing.) San Francisco and New York City.

A. It was not so much a question of retaliation as a question of alienation. It was necessary to the Southern Pacific that it retain the friendship and good will and influence of its connections east of Ogden chiefly, east of El Paso, and that it retain the good will of the railroads centering in New York, and those grave considerations upon which the welfare of the Southern Pacific's own business depended, would prevent it from taking such independent action between New York and San Francisco as would be inimical to its relations with its rail connections generally.

Q. The most powerful line running west from the Missouri River has always been the Union Pacific, has it not?

A. The most powerful line in transcontinental traffic has always been the Central Pacific and Union Pacific's through line.

339 Q. The Union Pacific could not, as a matter of practical railroad business, prior to 1910, get into California except by the use of the rails of the Central Pacific. That is true, is it not, barring its power to get in over the San Pedro line to Los Angeles after some time, say, in 1905?

A. My recollection is that it was into San Francisco by its own line through Portland in connection with the steamship line.

Q. You mean carrying——

A. (Interposing.) Freight.

Q. Freight by way of Granger or Ogden over the Oregon Short Line?

A. Yes.

Q. And the Oregon Railway & Navigation Company?

A. Using its own steamers from Portland to San Francisco.

Q. And thence from Portland by boat to San Francisco?

A. Yes.

Q. In your opinion as a railroad man was that a practicable line for real business?

A. It was.

Q. Was it a line that was considerably used?

340 A. It was not considerably used.

Q. Was it a desirable line?

A. It was like any mixed rail and water line—not as desirable as a through rail line, other conditions being equal.

Q. Well, as desirable in its territory as the mixed rail and water line of the Sunset line?

A. The conditions were unequal, because the Union Pacific's line stopped at Omaha, you see; it did not have the transcontinental line.

Q. In your opinion, that line through Portland from Ogden to San Francisco was a substantial factor in the competitive conditions for California business, was it?

A. As it happened, it was only temporary. It was potential, but not powerful.

Q. It was potential as soon as the rails from Ogden or Granger to Portland's water front were completed, was it not?

A. It was potential; yes. There were possibilities there.

Q. And that was in the middle eighties somewhere—perhaps 1884?

341 A. It was in the middle eighties. That it was practicable is shown by the fact that the Northern Pacific, the Great Northern, and the Canadian Pacific have all used water routes similarly on San Francisco business.

Q. This is an accurate statement of fact, then, in your opinion, is it:—

"The Portland route was a factor in rate making to the coast, using Portland route as descriptive of this route from Ogden to Portland and by boat to San Francisco."?

A. Using Portland to Puget Sound also, it is correct.

Q. You have been of that opinion for years?

A. It has been a factor for years.

Q. And the opinion which you now express is the opinion which you have had for years?

A. I think so.

Q. If the Union Pacific was dissatisfied with the rates to which the Central Pacific would agree, or with the service which the Central Pacific furnished for the business tendered by the Union Pacific, and in consequence had adopted this Portland route, could it have done so without serious danger of loss of business initiating on the lines of the Southern Pacific?

342 A. That is one of those hypothetical questions in its nature. I think, as a matter of practice and of fact, that no such thing occurred. There was no alienation of the Central Pacific's business from the Union Pacific. But that is a question of recollection.

Q. As bearing upon this competitive factor that we have been speaking about, I am asking you for your opinion as a railroad man.

A. I do not know why I should be asked to guess at a question of fact.

Q. Do you regard the probable effect of putting into operation that Portland route, when it never was put into effect in a very substantial way, as a question of fact?

A. It is a question of historical fact. It is a series of transactions that have all occurred, and I do not know why I should sit here and guess at probabilities growing out of it, when those probabilities have elapsed years ago.

Q. Were you aware of the contention made on behalf of the Southern Pacific Company in the merger suit to the effect that that route, as a practical matter, was not a factor in competition, because if the Union Pacific had attempted to send its freight that way

343 it would have resulted in retaliatory measures by the Southern Pacific Company?

A. No; I had nothing to do with the merger suit.

Mr. HERRIN. That was the Union Pacific's position. We only spoke with "our master's voice" in the case.

The WITNESS. You see, I left the service in 1906 and did not return to it until 1911. I was not in the merger litigation in any way, and have no knowledge of what was testified to.

By Mr. MCCLENNEN:

Q. You give it, then, as your opinion that as a business matter—as a matter of prudence in railroading—that the Union Pacific, if dissatisfied with the treatment given it by the Central Pacific, could have effectively competed by carrying its freight through Portland to San Francisco and then distributing it in California over the local lines there?

A. It would not be a matter of effective competition; it would be a matter of strategem. The competition would not be effective to the same extent as the continued use of a through line would be.

Q. Then, so far as competition by the Union Pacific with the
344 Sunset Line is concerned, it was, as a practical matter, dependent upon some sort of alliance with the Central Pacific, was it not?

A. As the Central Pacific was also dependent on the Union Pacific for the alliance.

Q. Did the Central Pacific route any freight over the Denver & Rio Grande and Missouri Pacific prior to 1901?

A. I think they did.

Q. The Central Pacific had over those lines a means of sending its freight to the Missouri River without the use of the lines of the Union Pacific?

A. Yes.

Q. It used those lines to a very considerable extent?

A. To reciprocate for business that was delivered by those lines to the Central Pacific.

Q. There were times when the freight of the Central Pacific destined to points east of the Missouri River passed over the lines of the Denver & Rio Grande to the extent of more than twenty-five per cent, were there not?

A. That is too close a figure for me to testify to. I know that the vast volume of business went at all times over the Union Pacific. Much the smaller quantity at any time went over the
345 Rio Grande. I would not be surprised if there were times when the volume might reach the figure you name.

Q. And there may have been times when it reached the figure of forty-five per cent?

A. I would regard that as highly improbable, but I can not say from memory.

Q. In other words, for practical railroad purposes, from Ogden to California points prior to 1905, we will assume—assuming that is when the San Pedro was opened—the Central Pacific had a natural rail monopoly?

A. That is not correct. The Santa Fe came into southern California in the year that was named.

Q. I think perhaps you have missed the point of my question. I said from Ogden to California.

A. Oh!

Q. The Central Pacific did have a natural rail monopoly?

A. That was the only road in the line from Ogden to San Francisco.

Q. The Union Pacific has not had a rail monopoly from Ogden to the Missouri River since some time in the early eighties, has it?

A. Since the Rio Grande and connections came to Ogden.

346 Q. In your opinion as a railroad man, dealing with practical railroading, not law or theoretics, was not the control of the Central Pacific over rail freight between California and points east of the Missouri River much more powerful than the control of the Union Pacific prior to 1901?

A. Over California freight?

Q. Yes.

A. To the extent that there was any control, the Central Pacific ought to be the more influential.

Q. The result of that was that the Southern Pacific Company, if it controlled the operations of the Central Pacific and the operations of the Sunset Line, controlled both of the gateways to California, and prior to 1905 all of the rail gateways to California except such as the Atchison could control? That is true, is it not?

A. It is true, depending upon the construction you put upon the word "control"; but "control" is a very large word to use in that connection, because the interstate-commerce act took effect in 1887 and removed from the railroads the control as popularly understood.

Q. The practical movement of transcontinental freight is dependent on the existence of a joint through rate, is it not?

A. Yes.

347 Q. That is, as a practical matter?

A. The law requires that.

Q. I mean that, as a practical matter, if a joint through rate does not exist over a given line and there are other means of transportation on a joint rate, the freight will not move on a sum of the locals?

A. If the sum of the locals exceeds the through rate in force by another practicable line, the freight would not move over the roads that impose the sum of the locals.

348 Q. It is in consequence of that, is it not, that the taking out of a joint rate is described in railroading as closing the gateway?

A. For that piece of business. This closing of the gateway does not mean that the carriers will not receive and transport the freight. For instance, if one line finds, for example, that the lumber rate is too small and it does not want that business it says, "Don't put that rate in by our line, and if it is in take it out." The other lines may keep it in, regarding it as desirable business for them. These lines would keep the gateway open, whereas the other roads would close that gateway.

Q. The trucks would still be open for the freight to pass on the
cal rates?

A. It would not pass, as a matter of fact.

Q. It would not pass? That is the situation, is it?

A. Yes; unless there were means of redress later.

Q. Now, it is true, in your understanding, is it not, that prior to
906 railroads were not obliged by law to maintain joint rates?

A. I think they were.

Q. You think the railroads were, prior to 1906, obliged to file joint rates?

A. And my recollection further is that the law prior to 1906 gave
e Interstate Commerce Commission the authority to open through
ates of their own initiative if there was not already a practicable
ute in existence.

Q. Prior to 1906 if the connecting carriers did not agree on what
e joint rate should be do you know of any way by which a joint
te could be determined?

A. My recollection is that prior to 1906 complaint could be made
the Interstate Commerce Commission and they would determine it.

Q. Not quite expecting this answer I will put the question in this
m: You know of no practical method, do you, except such, if any,
the Interstate Commerce acts may furnish, of instituting a joint
te or maintaining a joint rate over two connecting roads, one
which is unwilling to consent to it; is that true?

A. That is a correct statement. That refers to interstate business. That is correct as to interstate business.

Q. Then, except so far as the Interstate Commerce acts may give relief the Union Pacific as a matter of practical railroading was dependent upon the consent of the Central Pacific to maintain a joint rate, and in consequence to have a practical means of ess to California terminals, prior to the completion of the San dro line; is that true?

A. As a matter of practical railroading, when any line puts in a e all the lines put in the rate as a rule. No one road has the wer to prevent the rate as a matter of practical railroading.

Q. I appreciate what you say they might do, as a matter of busi-s, but I am right in my statement that they were dependent upon consent of the Central to get practical access to San Francisco?

A. As a matter of practical railroading, if necessary, the rate uld be put in by another line; then the Union Pacific-Central Pa-c line would have to put it in anyway, if they did not join to-her in putting it in, as they did frequently initiate rates them-es.

Q. What other line prior to 1905 could, without the consent
the Central, put in a joint rate to cover traffic from Ogden to Cal
fornia terminals?

351 A. Not from Ogden, but I understood you were talking ab
through transcontinental traffic. The Sante Fe could.

Q. No; I was speaking of the Union Pacific's position.

A. In transcontinental traffic?

Q. Yes; in transcontinental traffic the Union Pacific was depe
ent upon having the Ogden gateway to California open was it no

A. Yes; to San Francisco.

Q. And the Union Pacific was dependent on the Central Pac
to keep that gateway open?

A. Yes; they were a through line. Perhaps I should explain, a
matter of practical railroading, two roads do not come and sit do
together in a corner and debate these things the way we are do
here at all. They get together with their various connections
roads interested in the business and consider what is the wisest thi
to do, and proceed to put the rates in effect, or not put them in
effect, as the case may be.

Q. These railroad men are business men?

A. They are business questions.

Q. And they exercise the power that they have in the way th
seems to them best?

352 A. Yes. It is a question of the through line; it is not
question of the road west of Ogden as a competitor, or of
road east of Ogden, because it is not. They are connections; it
one through line, and the line is debating what is the wise thi
to do.

Q. In that respect they are in the same position as any other in
vidual who, even if he has the power to control, may find it wi
not to exercise that in a way that is injurious to the rights of oth
that is about all that means, is it not?

A. Excepting that that power by the nature of things is extrem
limited. The control is a commercial and economic control with
spect to the making of rates.

Q. After the Union Pacific acquired the control of the South
Pacific Company the freight coming over the Central Pacific a
bound to points being east of the Missouri River went almost e
tirely over the Union Pacific to the exclusion of the Denver & R
Grande, did it not?

A. The Southern Pacific and Union Pacific solicited for the Un
Pacific line with the exception of such as went by the other gatew

Q. And the result of that solicitation was to dimin

353 greatly the proportion that had been going over the Den

Rio Grande and increase correspondingly the proportion going
er the Union Pacific?

A. Yes; and a further result was to cause the construction of the
estern Pacific, which diverted since its construction a great deal of
siness from the Union Pacific.

Q. That is, as a means of salvation to the Missouri Pacific and the
enver & Rio Grande they constructed the Western Pacific?

A. Yes.

Q. That change in the passage of the traffic—freight going to a
nsiderable extent over the Denver & Rio Grande to going only to
small extent that way and to a much larger extent over the Union
cific—was accomplished without the closing of any gateway, but
most entirely by the preferential solicitation of the Southern Pa-
fic Company and of the Union Pacific Company, was it not?

A. And their connections.

Q. It was a conspicuous illustration of what solicitation may ac-
complish in determining the routes of freight travel?

A. It was a conspicuous instance of the force of a man of
genius.

Q. What?

A. It was a conspicuous illustration of the force of a man of
nius. If under any other circumstances at any other time that
ntrol had been acquired in a normal way, there might have been no
ch effect on the Union Pacific as there was.

Q. The same kind of influences which turned that traffic so much
r the Union Pacific to the loss of the Denver & Rio Grande has
yed some part in turning freight originating in Oregon and north-
n and central California to the Sunset line; am I right?

A. The solicitation for the Sunset line has been the same with
pect to Atlantic seaboard business during the period of the merger
during the period before and since.

Q. When the Union Pacific obtained control of the Southern Pa-
fic Company there was inaugurated an era of great improvement of
e Central Pacific Railroad, was there not?

A. There was.

Mr. HERRIN. And of the Union?

The WITNESS. And of the Union.

By Mr. McCLENNEN:

Q. Just take it a little at a time. The roadbed of each road
was greatly improved?

A. You mean of the Southern Pacific and the Union Pacific?

Q. The Union and the Central I am speaking of now.

A. Yes.

Q. The service over the rails of the Central-Union was gr
improved?

A. Yes.

Q. The schedules were better kept on the freight trains than
had ever been before?

A. That is not quite uniformly true. The amount of constru
that was going on both upon the Union Pacific and upon the
tral Pacific was not favorable to the best service at the time.
effect of those improvements was, of course, an improvement i
service.

Q. Did the construction of the work over the Central and
Union continue during the whole period from 1901 to 1913 to a
usual extent or were the unusual construction works accomplish
the early part of the period?

A. The heavier construction was in the earlier part of the p
affecting the main line.

Q. After the completion of the work the freight t
356 kept their schedules better than ever before, did they not?

A. I do not know as to that, but I would say that the
of those improvements was an improvement in the service.

Q. To render such an improvement in the service over the
from Omaha to San Francisco Bay required that the Centra
as well as the Union line be in the control of the organizatio
had the policy of making such improvements?

A. Improvements in what, service, did you say?

Q. In service.

A. No; the two properties were operated separately.

Q. But they were operated, although separately—as a ba
matter they were operated under the supervision of the same
of men, were they not?

A. Yes; they were in the same executive control.

Q. Put in another way, the Union Pacific could not make eff
its ambition for really improved service from Omaha to San
cisco Bay without the cooperation of those in control of the C
Pacific Railroad. That is true, is it not?

A. Yes; and that cooperation prevailed before the
357 period and prevails since the merger period.

Q. During the period before the merger was one
duties of the solicitors in the territories which the Southern
desired to serve over the Sunset Route to watch the movem
traffic, and when they found that it was going through Om
follow up the shippers and see whether they could be persu
send it over the Sunset Route?

A. I think that was a common practice among all lines, to
the routing of business over other lines.

Q. Is it true that the Sunset Route is a natural competitor of all other carriers operating between points on the Atlantic st and in the Middle West on the one hand and points on the cific coast and in the Orient on the other?

A. The Oriental business is not sought by the Sunset Route.

Q. Leaving out that part, is that correct?

A. That, as a generalization, is correct. Every road is the natural petitor of every other road, and every route is the natural com- itor of every other route.

Q. And in that sense the Central route, in conjunction with its nections, is, and for many years has been, a natural competitor the Southern?

A. By the "Central route" you mean the through line, of which Central Pacific forms a part?

Q. I said, "With its connections"; yes. The volume of traffic for ich it, with its connections, is a competitor is very large?

A. The Central Pacific-Union Pacific route?

Q. Yes.

A. Yes.

Q. It was apparent to you as a railroad man in 1899 that if the Government lien on the Central Pacific line from Ogden to ramento and from Sacramento to Niles and San Jose, possibly h a break of five miles between Brighton and Sacramento, was closed and the property sold to interests other than the Southern cific Company that would put the Central Pacific Railroad, with connections, in an independent position in this competition, was it ?

A. Whether it would put it in an independent position would de- d upon the outcome of the sale. It would be a capital operation h respect to the Southern Pacific.

Q. You are using the word "capital" in the sense of "execution," in the sense of "bully"?

A. In the sense of "amputation."

(Whereupon a recess was taken until two o'clock p. m.)

AFTER RECESS.

WILLIAM SPROULE, the witness under examination at the taking of recess, resumed the stand for further direct examination.

The WITNESS. Before beginning the session I desire to correct my timony with respect to the Occidental and Oriental Steamship mpany. I find that the Union Pacific was a half owner of that , but neither the Central Pacific nor the Southern Pacific owned other half, which was privately owned.

By Mr. McCLENNEN:

Q. By interests not affiliated with any railroad?

A. It was originally owned, I believe, by the Pacific Improvement Company, which was dominated by what were known as the Big Four. How it was subsequently owned as to that half interest, I do not know. I also find that the liquidation occurred in 1909–1910.

Q. And have you the beginning date?

A. I have not the beginning date; I could not find it.

361 Q. Just before adjournment I was speaking to you about the condition presented by the possible foreclosure of the Central

A. Yes.

Q. There was no way, was there, at that time of preventing the condition except by the acquisition of the railroad, either directly by the Southern Pacific or by some company owned by it?

A. I do not know what was in the mind of the Government at the time, but as I understand it the Government negotiated with the Southern Pacific for the purpose of having the Southern Pacific sponsor for the Central Pacific debt instead of foreclosing, as I take it the Government might have done.

Mr. McCLENNEN. I will ask to have all the answer stricken out after the words "I do not know what was in the mind of the Government," on the ground that it is not responsive to the question and not a statement of the witness's own knowledge.

By Mr. McCLENNEN:

Q. In addition to the objection, I do not think your answer

362 thus far quite answers the question, so I will ask to have it read, if you will follow it, and see if you can give me a direct answer.

A. Don't you desire that the preceding questions be read and the two go together? I want to get that connection.

(The record was produced, and the witness read the questions and answers in connection with this subject, as follows:)

"Q. It was apparent to you as a railroad man in 1899 that if the Government lien on the Central Pacific line from Ogden to Sacramento and from Sacramento to Niles and San Jose, possibly with a break of five miles between Brighton and Sacramento, was foreclosed and the property sold to interests other than the Southern Pacific Company, that would put the Central Pacific Railroad with its connections in an independent position in this competition, was it not?

"A. Whether it would put it in an independent position would depend upon the outcome of the sale. It would be a capital operation with respect to the Southern Pacific.

"Q. You are using the word 'capital' in the sense of 'execution', not in the sense of 'bully'?

"A. In the sense of 'amputation.'"

(The reporter then read Mr. McClennen's question, as follows:)

"Q. There was no way, was there, at that time, of preventing that condition except by the acquisition of the railroad either directly by the Southern Pacific or by some company owned by it?"

The WITNESS. I do not know what was in the mind of the Government. That was the method chosen to dispose of it. What would have happened if the Government had taken that course I cannot tell, but if it were sold and independently owned it would have formed a main shank of railroad as described without feeders or laterals, and would not be an effective railroad system even for purposes of the Government itself or those who might thus become the owners of the road.

Mr. MCCLENNEN. This answer I will also ask to have stricken out as not responsive, as a statement of conclusion of fact and of law, and an attempted interpretation of written instruments which should speak for themselves, and as a statement of matters not of the witness' knowledge.

By Mr. MCCLENNEN:

Q. The line of railroad from Ogden to San Francisco Bay, if independently controlled, would in its natural business association with the Union Pacific be a pretty effective line for San Francisco business from points east of the Missouri River, would it not?

A. That line as described did not reach San Francisco, and would not be an effective line.

Q. I said San Francisco Bay.

A. The line as described would not be an effective line. San Jose three miles from the lower end of San Francisco Bay, and such a line itself would not be an effective line to San Francisco Bay.

Q. In answering you have elected to speak of a different line from the one I put in my last question, and I repeat the question: An independent line from Ogden, or the junction near Ogden with the Union Pacific, to San Francisco Bay at Oakland would be a pretty effective line for freight between San Francisco Bay and points east of the Missouri River, would it not?

A. For business originating at or destined to San Francisco, yes.

Q. Now, the only way of preventing the falling of so much of that line as lay between Ogden and San Jose, with a possible hiatus of five miles near Sacramento, into the hands of independent parties to use as a means of competition on the fore-

closure of the Government lien was to acquire that line directly fo
the Southern Pacific, or by some line owned by the Southern Pacific

A. It seems to me that that is an inference.

Q. Does there appear to you any other way in which that resu
could be accomplished?

A. Unless the Government itself took it.

366 Q. If the Government itself took it, it would be in a positio
to that extent, with eastern connections, to compete with th
Sunset line, would it not?

A. The Government would take the place of the Central Pacific i
its relation to the Federal acts.

Q. The purpose sought to be accomplished by the written co
tracts and conveyances which were made was to prevent the pos
bility of such a condition arising?

Mr. BLAIR. We object to that on the ground that the written in
struments speak for themselves and that this witness has not be
shown to know the purpose of the parties to that transaction.

The WITNESS. As I understand, it was to prevent the Southe
Pacific losing a dominant and highly important part of its syste
without which it would not have been able to give the public ad
quate service.

By Mr. MCCLENNEN:

Q. The Southern Pacific did not at that time own a share of th
stock of the Central Pacific Railroad Company, as far as you kno
did it?

A. That I do not know.

367 Q. In your connection with the various companies it nev
has come to your attention, has it, that the Southern Pacif
Company ever owned any stock in the Central Pacific Railroad Co
pany?

A. My relation with the property was not of a character th
would bring me into touch with these fiscal relations or questions
railroad ownership.

Q. Do you not see, Mr. Sproule, that you have not answered t
question at all? I am simply asking this——

A. (Interposing.) And I do not know what was the stock owne
ship at that time.

Q. Bearing in mind the limitation that you have just stated, it
a fact, is it not, that in your relations of that time, or any subsequ
time, with the Southern Pacific Company it has never come to yo
attention that the Southern Pacific Company ever owned any sto
in the Central Pacific Railroad Company?

A. That I do not know. I do not know whether they owned
stock or not of the Central Pacific Railroad Company.

Q. I have not asked you in this question whether they owned it or not. I have simply asked you if it is not a fact that it has never come to your personal attention in your relations with the Southern Pacific Company at any time?

A. It is not a matter that would come to my attention necessarily.

Q. And it never has come to your attention?

A. It may have come to my attention repeatedly and slipped my memory, but I do not retain memory of it.

Q. I will put the question again. I think you can hardly have followed the last one.

It never has come to your attention that the Southern Pacific Company owned any of the stock of the Central Pacific Railroad Company?

A. I am not trying to evade answering your question at all. I am trying to answer your question. I have already said in three or four different ways that I do not recollect it.

Perhaps I might explain that these properties have been handled as one property; they have not been handled as split-up properties; and it was not necessary for me to know it.

Mr. McCLENNEN. This statement, starting "Perhaps I might explain," I ask to have stricken out as not responsive and as a statement of a conclusion and not of fact.

By Mr. McCLENNEN:

Q. It is customary among connecting railroads over routes that are feasible physically and from a business standpoint to make joint rates, is it not?

A. It is.

Q. And has been for many years?

A. Over practicable routes; yes.

Q. Is it not true that up to 1901 the Union Pacific was absolutely dependent upon the Southern Pacific with respect to through rates, through billing, through cars, through train service into California territory?

A. It is not.

Q. Put in the form of question and answer is this a correct statement:

"What was the position of the Union Pacific with respect to through rates, through billing, through cars, through train service into this California territory?

"A. Absolutely dependent upon the Central Pacific lines."

Mr. HERRIN. Was not that the examination on the part of the defendant in that case that you are reading from?

Mr. McCLENNEN. This was the examination of Mr. Stubbs——

Mr. HERRIN. By defendant's counsel?

Mr. McCLENNEN. By Mr. Dunne, as defendant's counsel, in the merger case.

Mr. HERRIN. I thought so. You remember that we reserved our exception to any change of position in this case to what the Government maintained in the other. We do not need to renew that to every question. I am simply calling attention to it.

(By request the reporter repeated the pending question as follows:)

"Q. Put in the form of question and answer is this a correct statement:

"'What was the position of the Union Pacific with respect to through rates, through billing, through cars, through train service into this California territory?

"'A. Absolutely dependent upon the Central Pacific lines.'"

The WITNESS. As to through rates, rates were made jointly, and they were dependent upon each other for the making of the rates over that line.

As to through billing, that was, in like manner, a matter of joint arrangement.

371 As to through cars: A very large part of the car supply for through business came to the Southern Pacific from the Union Pacific and was necessary to carry that business; and without the Union Pacific cars the Southern Pacific would have been unable to load a large and imporant part of the through traffic. The Southern Pacific was dependent upon the Union Pacific for an important part of its vehicles of carriage.

As to through train service: That has always been by cooperation between the two companies, and the Central Pacific train service was as necessary to the Union Pacific as the Union Pacific train service was necessary to the Central Pacific; and that, again, is an interchangeable relation; that is, the Southern Pacific could not handle that business if it had not been for the cooperation of the Union Pacific. It was not a question of one road being at the mercy of the other. There was no such condition.

By Mr. McCLENNEN:

Q. If it were changed to say that each, the Union and the Central, was absolutely dependent upon the other in these four respects, would that be correct?

A. That would be nearer the condition.

372 Q. That would be absolutely the condition, would it not?

A. Not absolutely.

Q. With what reservation? Why not absolutely dependent, prior to 1901, in those——

A. (Interposing.) Because the Union Pacific had another route.

Q. You now refer to the one through Portland that we spoke of?

A. Yes; which they could use, just as the Northern line used the water route.

Q. With that exception, the statement would be correct?

A. Or could divert their business through their Colorado junctions away from the Central Pacific.

Q. With those exceptions, the statement would be correct?

A. I think the statement is correct.

Q. In the routing of citrus fruits, from 1899 to 1910, the Southern Pacific Company reserved the right to do its own routing, did it not?

A. Yes; that was a condition on bills of lading of all carriers.

Q. That was a plan that was arrived at by the railroads to overcome difficulties due to the rebating by the intermediate carriers?

A. It was a rule arrived at by all the carriers, the Union Pacific, the Southern Pacific, and all the other carriers engaged in the through traffic, originally because of the difficulty of making through routes, and, secondarily, because there was a system in effect in the earlier days of transcontinental business under which the shippers had their freight billed under one set of rates and received a refund on the basis of another set of rates, provided the routing was in the hands of the carriers. That was the original plan, or one of the early plans, worked out by the transcontinental lines to secure business as against the water routes, and a plan which, however, lapsed in the eighties; but the provision in the bill of lading remained uniform through subsequent years, for a long time. It had no significance as to any particular road or any particular route; it applied to all alike.

Q. During the period that the Southern Pacific Company, with the other railroads, as you spoke of, reserved the right to route this traffic, the Southern Pacific Company, by its internal arrangements, used to provide for a certain percentage of it to go through El Paso, and a certain percentage of it to go through Ogden, did they not?

A. As I recall it, not by percentages; or, if it was by percentages, it was based upon the climatic conditions under which experience showed that the business would move. In every year the main volume of the citrus-fruit business has moved through the southern gateways because of the milder climate, and about the middle or toward the end of March, the main bulk of it moves up to the northern gateways, because the southern climate has become hot. The northern gateway in the earlier part of the season is dangerous from frosts and is mild as the springtime comes.

The division of the citrus-fruit business between the southern and the northern gateways has been based upon climatic conditions, at

the instance of the shippers, who, for some years, have done their own routing altogether, and still divide it that way.

Q. You refer to the years since 1910, perhaps?

A. Yes.

Q. It was the regular thing——

A. Oh, long before 1910.

375 Q. Was it?

A. Yes; I left the service in 1906, and it was the rule years before that. The shippers did their own routing. Perhaps I should add that as long back as I was actively connected with the service the shippers did their own routing of oranges, irrespective of the clause in the bill of lading.

Q. That is, the clause reserving——

A. (Interposing.) Reserving the right to route. The carriers did not exercise that right.

376 Q. Well, do you recall that after this plan was put into operation by the railroads, say in 1899, then the Southern Pacific Company used to issue directions, say in February, to their traffic men in the fruit country, saying "On and after March 1st, for instance, route citrus fruits 15 per cent through El Paso and 85 per cent through Ogden?"

A. No, the shippers designated the route. Generally the shipper came to the carriers and arranged for the train service ahead of the movement. At that time the car lines had a good deal to do with the movement because of the icing and ventilator arrangements, and the routing grew out of that combination of general conditions for the purpose of giving the business the best service.

Q. Look, for instance, at what purports to be a print of a letter which I show you here. Were you not aware of such directions as appear in that letter?

Mr. BLAIR. Please state in what pamphlet or volume or book that is.

Mr. MCCLENNEN. I am showing the witness what purports to be a letter of December 29, 1899, on page 599 of the transcript of the record in the so-called "Orange Routing case"; that is No. 1

377 of the October term of the Supreme Court of the United States, entitled "Southern Pacific Company and others against Interstate Commerce Commission", appearing to be a letter addressed to Mr. Charles Selyer, agent Southern Pacific Company, Los Angeles city, and signed by "G. W. Luce."

The WITNESS. That is back in 1899?

By Mr. MCCLENNEN:

Q. Yes.

A. I think you will find, if my recollection serves me right, that that was the signal exception to the rule and was adopted for

purpose of putting a stop, if the carriers could, to the rebating which was then prevalent and which had grown to be such an abuse.

Q. That is, the rebating by the intermediate lines?

A. Rebating by the intermediate lines, and they temporarily revoked that permission to route so as to try to break up the illegal practices which prevailed and which the initial lines desired to take every means to guard against being made a party to.

Q. Well, now, what I asked you was, is it not true that during that period when that plan of as you say breaking up the rebating practice was in operation, the Southern Pacific Company used to issue to its agents instructions from time to time to the effect "Route 85 per cent of the citrus fruit El Paso and 15 per cent through Ogden, beginning at such and such a date"?

A. I think that is true. The endeavor was, as I recollect it, to break up the rebating without doing injury to any of our connections, and it was our connections that called on us and insisted that we must as part of the through line stand with them in taking steps to break up the rebating. We therefore put out such instructions as would give to our connections, so far as was practicable, all the amount of business they would get normally, while not committing them to the predatory practices that were then in force. In other words, it was an act of good will on the part of the carriers concerned as a temporary device to overcome a temporary condition.

Q. And the percentages which the Southern Pacific Company directed to go through the one gateway or the other were varied from time to time by directions from headquarters?

A. As the season would change. It could not send via Ogden at one period of the year the volume that could be sent by Ogden at another period of the year. The same way with respect to El Paso. I have had no opportunity to see anything further than that page before me, and I state now the general bearings as I recall them.

Q. And that practice of directing the percentages to the one gateway or the other on the part of the Southern Pacific Company kept up for a number of years?

A. As I recall it, it kept up for only a limited time.

Q. That was a matter of years, was it not?

A. I think not. My recollection is not clear on that as to how long it lasted. It doubtless continued long enough to serve its purposes, and it was by the desire of all our connections. The same practice was followed by the other initial carriers. It was not of a discriminatory character in any respect except as regards illegality.

Q. The practice kept up surely into the spring of 1903, did it not?

A. It might have done so.

Q. (Showing record to the witness.) In view of what I have just shown you, it would appear so, would it not?

A. It would appear so; and those were arrangements to
380 which the initial carriers and their immediate connections were parties.

Q. If the Central Pacific Railroad were separated and working with the Union Pacific Railroad, they would become active competitors of the Sunset, would they not, as a practical matter?

A. They would.

Q. That would be true of every one of the California terminals, would it not?

A. Every terminal that that road reached, and any other terminals with which they could make suitable traffic arrangements, with the existing roads, including the Southern Pacific.

Q. It would be true of Oakland, San Jose, Sacramento, Marysville, and Stockton, would it not?

A. You are speaking now of the same lines about which you asked me immediately before adjournment for luncheon?

Q. I am speaking now not of the part which Mr. Blair suggests in his opinion is the only part which was subject to the Government lien; I am now speaking of all of the Central Pacific Railroad shown in purple on Exhibit 1.

A. If the Central Pacific were separate, it would compete at Sacramento, as you have stated, Marysville, as you have stated,
381 Stockton, Oakland, and San Jose, and would doubtless have some arrangement for reaching San Francisco.

Q. And this competition would be acute?

A. As acute as any other competition.

Q. It would increase the competition over what it is at present?

A. It would be one more road in the competitive field.

Q. And, as a result, would increase the competition over what it is at present?

A. It would increase the competition of the roads competing; it would not increase the service.

Q. And would have the effect of putting the Sunset line into strenuous competition with it?

A. Naturally.

Q. The tendency in increasing the number of competing railroads is eventually to bring about a reduction in rates to the shipper?

A. It would not change the rate, it would not change the bill of lading, and it would not change any condition except to add one more road. It would tend to impair the service rather than to improve it.

Q. Is not the tendency of a number of railroads competing to reach out to the shipper and reach conclusions with him which do result in reductions of rates?

A. Not in reduction of rates as a rule; that is the exception.

Q. Don't you think it has that tendency?

A. It has that tendency, but no more than a tendency, as a rule.

Q. And the competition in the larger number of railroads is an dvantage to the public?

A. That is debatable.

Q. In your opinion.

A. What is the question?

Q. In your opinion——

A. (Interposing.) Would increasing the number of railroads what? (The question was repeated by the reporter.)

The WITNESS. If by that you mean the splitting up of existing ilroads into smaller ones, on the general principle that an increase the number of railroad companies is an advantage to the public, I ould say no. If the advantage were to any public it would be pre-ninently to the public of California, which would most be affected, d the public of California strenuously insists that it would be eatly to their disadvantage, and the railroad commission of the State of California so holds.

Mr. MCCLENNEN. I ask to have the last part of the answer stricken out; the last two or three clauses.

The WITNESS. I can not eliminate these things from my opinion.

Mr. MCCLENNEN. I ask to have the last part of the answer stricken t, which begins "and the public of California strenuously insists at it would be greatly to their disadvantage", on to the end of the swer.

Mr. DUNNE. On what ground do you ask to have it stricken out?

Mr. MCCLENNEN. The very obvious ground that it is not at all lled for by the question; on the ground that it is a statement of a nclusion and a statement of a matter which is wholly immaterial to is case, matter not within the personal knowledge of the witness, d such other grounds as may seem to the court proper ones for iking out such an answer.

By Mr. MCCLENNEN:

Q. In your opinion such competition as would be brought about by e severance of the Central Pacific from the Southern Pacific and operating with the Union Pacific, would be an advantage to the public?

A. That is a difficult question to answer, because it involves a good many considerations. The mere separation from the uthern Pacific and addition to the Union Pacific would not be a atter of consequence to the public.

Q. What elements would be required to make that competition vantageous to the public?

A. The service would be rendered as now, the same bills of lading would be issued as now, the same in terms. The tariffs would be handled in the same way as now. There is no particular respect in which the public would be advantaged by it, while the Southern Pacific would be distinctly disadvantaged in the dismemberment of its own system, and the public would be participants in the disadvantages of that dismemberment, in that the Southern Pacific would then have to hook up its lines, to re-create itself a system, and the Union Pacific, in possession of the Central Pacific, would have also to engage in construction in order to give them access to the territory they would require to make a system out of their newly acquired lines, all of which the public would have eventually to pay for.

Q. You have been of opinion at times, have you not, that the competition which I have described in my question would be of advantage to the public?

385 A. I have said at all times that in my opinion the Central Pacific and Southern Pacific should remain as one property, and that when the effort was made to meet the views of the Government by separating them it was only because of our being in a condition of crisis, at which time the United States could have dissolved the merger, at which time we were under the hand of the Government, at the same time to sell the Central Pacific property, and we made at that time the best bargain we could for the sale of the Central Pacific, and we do not conceive that sale to be against the public advantage.

Q. On the contrary, you conceive of it as being to the public advantage?

A. I do not think you will find that my views at that time would bear that construction; that is, there were phases of it in which it might be construed as to the public advantage and other aspects in which it may be against the public advantage.

Q. You were of opinion at that time that the condition which it would produce would be to the public advantage, were you not?

A. I do not believe that that was my attitude at that time.

386 Q. Don't you think that at that time you were——

A. (Interposing.) My attitude at that time was that we had pursued that negotiation because of the difficulty under which the company was laboring and in preference to finding ourselves subsequently compelled, perhaps, to put the Central Pacific on the bargain counter, and the Southern Pacific itself being without funds; and if that condition were to ensue it would have been against the public advantage, and it was more to the public advantage that we should yield to the conditions and crisis of the times, and we made the best trade we could, and made it in such a way as to serve the public interests and increase the competition at the same time.

Q. You were of opinion, were you not, that that sale would result in increasing competition, which would be of advantage the public?

A. If by the mere fact of competition you hold that to be an vantage to the public, that inference would follow; but that was t the general trend of the times.

Q. You personally were of that opinion at that time, were you t?

A. That competition——

Q. (Interposing.) Was to the public advantage?

A. Generally speaking, that competition is to the public advantage.

Q. And that the competition which would be made by that arrangement would be to the advantage of the public?

A. The atmosphere at that time and the trend of the commission's views at that time was that the trade that was being made was some way collusive and that it was not a bona fide separation of properties, and they were examining me as to what the effect of separation would be; and I pointed out to them what the effect uld be, and whatever I said in that respect is true; that is, where there is now but one road there might in some points be two. On the other hand, there are many places which now have the advantage of a service via Ogden and via El Paso h, which would then be cut off from that facility. To-day Stockn, for example, is on the lines east and west bound, north and south nd, but in the event of the separation the Central Pacific would ve a monopoly of Stockton, one of the terminals; and there is a riety of local conditions there, all of which would have to be gone o in some detail to determine the question of the benefit of that mpetition.

What I was going into at that time, however, was not so much the efit of competition; I was going into the bona fides of the transion.

Q. But at the time you were of opinion that, viewed as a whole, the mpetition which would be made by that severance of the Central m the Southern and its operation with the Union would be an vantage and not a disadvantage to the public?

A. I do not think that I dwelt upon the question of advantage. I d that it would not be to the disadvantage of the public, and I do not conceive now that it would be to the disadvantage of the public, except to the extent that the separation of the Central Pacific from the Southern Pacific properties would leave the thern Pacific properties dismembered; they would have to spend e money in building lines, and so would the Union Pacific, in the avor to re-create the public service by means of two systems in ifornia, where now it is served by one system; but that that would

be of advantage to the public is an affirmative part of the question which might be debated. The public would have to stand the additional charges, of course. The public would have to stand the incidental disadvantages. But whether the sum total of that would be an advantage to the public as a whole was then, and still remains, a legitimate question for differences of opinion.

Q. What I ask of you is whether you were not of opinion, within that range, if any, of difference of opinion, that that particular increase of competition would be, on the whole, of advantage to the public.

A. No; my position in the question was that if it were left to my own judgment, I would not do it.

Q. You expressed, did you not, to the commission the view that that arrangement would bring a competition which, even with
390 such disadvantages as it might bring, would be of advantage, on the whole, to the public?

A. I said it would increase the competition. I said that by the time we had whooped up our railroads and completed our new construction and made the necessary traffic alliances, that when that time came our competitors would find that we still had a pretty good railroad, notwithstanding our loss of the Central Pacific.

Q. And you supplemented that by saying that that competition would be an advantage to the public?

A. To the extent that competition may be an advantage to the public.

Q. And, of course, it is needless to say that the views that you express were precisely your views?

A. If you will project my views into the atmosphere of that time, yes.

Q. You were of opinion that the Southern Pacific might, notwithstanding the loss of the Central, still expect to get a greater percentage of the revenue, because it would be in a position to bargain with other railroads and get more than a mileage pro rate on the interstate business which it carried?

A. I think that is true only with respect to the busi-
391 ness interchanged between the Central Pacific and the Southern Pacific. Under unified ownership as it exists the business is handled as the business of one system, and always has been; and it is, generally speaking, on a basis of mileage; but if the systems were separated, if the system was divided into two parts, for example, there would no longer be a reason for interchange of business on that basis. It is not usual and would not be proper. In fact, it was stipulated that that question was to go to arbitration, in the agreement between the Union Pacific and the Central and the Southern

Pacific at that time, which failed because of the action of the Colorado Railroad Commission.

Q. You were also of opinion that this separation of the Central from the Southern would leave the Southern in a better position to compete with the water lines around the Horn and over Tehuantepec and over Panama?

A. Yes. We were speculating at that time on what we would do as against the Panama Canal. That speculative condition, however, has changed into a condition of reality now, for the canal is open; and we find that things we hoped we might do it is utterly impossible to do.

Q. By the way, that leads me to ask you: Is there any other regular line running from California to Panama except the Pacific Mail Steamship Company?

A. You mean to Panama or through the canal? The Pacific Mail only runs to Panama. It can not go through the canal under the law. Would you like me to tell you the lines that are going through the canal?

Q. Yes.

A. The American-Hawaiian Steamship Company, the Luckenbach Line, and Grace & Company.

Mr. BLAIR. The Luckenbach Line was running to Panama prior to the opening of the canal, was it not?

The WITNESS. Yes; and so were Grace & Company, and so was the Cosmos Line, before the German war broke out; and there are other companies figuring in that trade also. In fact, I think, at the present time, there is a considerable number that had figured on going through the canal that will not go through on account of the war, but that is a temporary condition. Competition by the canal is so active that it has made it hopeless for any railroad line to expect to take any business of consequence away from the water routes.

Mr. BLAIR. Does that apply to a mixed rail-and-water line like the Sunset?

The WITNESS. The mixed rail-and-water line by the Sunset I include with the rail lines.

By Mr. MCCLENNEN:

Q. Is this a fair statement of the policy of the Southern Pacific Company with reference to California territory north of Tehachapi prior to 1901, namely:

"The agents of the Southern Pacific Company solicited—at least those were their instructions—all freight; first, via the Sunset-Gulf route if it could be handled that way; secondly, if the territory was far enough east, via New Orleans, in connection with either the Illinois Central or the Queen & Crescent and for a while the Louisville

& Nashville. The next favored route was via El Paso on those co
modities which were not perishable, in connection with the Texa
Pacific, and we had some preferred routing with the Missouri, K
sas & Texas"?

A. That is, from south of Tehachapi?

Q. North of Tehachapi.

A. That is only with respect to the El Paso route. You have
read the instructions with respect to the Ogden route.

394 Q. This is correct as far as it goes, is it?

A. That I take to be a mere segregation of whatever p
of the business would go by El Paso, is it not?

Q. No; this statement is a general statement of the conditions

A. There could not be a general statement that would omit
Ogden route.

Q. Well, the routes named in that statement were, prior to 1
preferred over the Ogden in the Southern Pacific Company's sol
tations, were they not?

A. I should say not.

Q. Was not this order of preference, contained in the statem
that I have given to you, ahead of the Ogden route? That is,
not the effort to get these routes which I have mentioned, and
Ogden route only if these could not be placed?

A. By reading a fragmentary document of that kind, I can
subscribe to that statement.

Q. I show you the whole, so that you may have the context as w
[exhibiting book to the witness].

A. It reads here, you see [reading]:

395 "A. Now, I will have to confine myself, Mr. Chairman,
the conditions north of Tehachapi.

"Q. The conditions which you know, Mr. Sanborn.

"A. Because I was only at Mojave station, which was a jo
agency with the Santa Fe in those days, about nine months, an
short time at Santa Barbara, a very short time at Santa Barba
the rest of my work was all in northern California."

I do not know who this is that is giving this testimony, but
routing instruction that omit the Ogden route would not reflect
attitude of the company at that or any other time.

Mr. HERRIN. That was Mr. Sanborn.

The WITNESS. Yes; somebody by the name of Sanborn.

By Mr. MCCLENNEN:

Q. Do you know who Mr. Sanborn is?

A. The name is not here.

Q. It is shown in the index.

A. Yes; H. H. Sanborn. I think that is the Mr. Sanborn who is connected with the California Commission.

Mr. HERRIN. He is the rate expert of the California Commission, and was formerly with the Southern Pacific.

The WITNESS. He was formerly with the Southern Pacific.

By Mr. MCCLENNEN:

Q. He was formerly freight solicitor in the employ of the Southern Pacific Company?

A. I do not know, but I think that is the man. You will recollect, of course, that I am not cognizant of that testimony; was not with the company at that time, and do not know what this man was doing at that time; but I take it it is the same man.

Q. Have you any knowledge of the various agreements of the railroads composing the Transcontinental Association relative to the division of business or the method of conducting relations with each other?

A. Yes; I did have, when I was freight traffic manager, a good deal to do with it.

Q. Did you know of this agreement, Exhibit 18, of September 28, 1883 [exhibiting book to the witness]?

A. I had some knowledge of it, yes; but that was in the early days of my service with the company. I entered the company's service in 1882.

Q. Did you know of this supplemental agreement, Exhibit 19, of November 8, 1883?

A. I knew of it in a general way, simply as a clerk in the office.

Q. Did you know of this agreement of October 1, 1889, Exhibit 14, between the roads composing the Transcontinental Association?

(NOTE.—"1872" with reference to this exhibit, occurring on page 231 of the record, should be "1889.")

A. I recall that somewhat remotely. It was an agreement with which I had nothing to do at that time.

Q. Do you happen to remember the period when James Smith was chairman of the Transcontinental Association?

A. He was chairman for a very short time, as I recall it, in the early eighties. As I recall it, it was only for a brief period.

Q. He may have been as late as 1889, may he not?

A. I could not tell you.

Q. Do you know whether or not the Southern Pacific's copy of these three contracts that I have shown you is still in existence?

A. I do not know. If they were filed in San Francisco, they are burned; that is, everything that we had in San Francisco during

the great fire of 1906 was destroyed. The building itself was
398 destroyed, and all the vaults in it proved not to be fireproof, as we had supposed they were.

Q. In the ordinary course that would have been either in the company's office in New York or else in San Francisco?

A. Yes; in one place or the other. They may have been destroyed in the Equitable fire here, possibly. We were unfortunate in both our headquarters being burned out.

Q. That is, it is probable that if they were not burned in San Francisco they were destroyed in the Equitable fire in New York?

A. Yes; it is possible that they were destroyed in the Equitable fire in New York.

Q. In administering these properties, as president of the Southern Pacific Company you have done it with a consciousness, have you not, of the probability that the holding of the Central Pacific by the Southern Pacific was contrary to the Sherman Act?

A. No, sir; I do not regard it as probable.

Q. You have been so advised by able counsel of your own selection, have you not?

A. I am not so advised.

Q. Were you not so advised by Mr. John G. Johnson, of Philadelphia?

399 A. I was not present at that conference, as I testified; and I testified as to what I thought, and I was afterwards told that I erred. My testimony was in error in that particular.

Q. That is, in some thus far inscrutable way you got the impression that John G. Johnson had advised that the holding of the Central by the Southern was contrary to the Sherman Act?

A. I was told that at the conference with Mr. Johnson he had stated that the Southern Pacific under its Kentucky charter could not buy its own stock, even for the purpose of retiring it; and as to the rest of what he discussed I find my inferences were mere hearsay and erroneous.

Q. But you did get the impression which you now say was erroneous?

A. Whatever I testified to.

Q. That he had advised that it was contrary to the Sherman Act?

A. Whatever I testified to.

Q. You testified to that in substance, did you not? You testified to this effect, did you not:

"Q. Now, with respect to the position of the Attorney Gen-
400 eral, did the Southern Pacific directors or executive committee take the opinion of outside counsel on any of these questions

"A. They called in as an independent counsel Mr. Johnson; I forget his initials.

"Q. Johnson, of Philadelphia?

"A. Johnson, of Philadelphia.

"Mr. McCUTCHEN. John G. Johnson?

"A. John G. Johnson, of Philadelphia, and submitted the matter to him.

"Mr. HERRIN. They submitted first the question as to whether the Southern Pacific could take its own stock?

"A. First whether it could take its own stock, and his opinion confirmed the opinion of our Kentucky counsel, Judge Humphrey, that we could not take our own stock, directly or indirectly. The second point upon which he was asked to advise the executive committee was whether there was reasonable ground for the Attorney General's position, and as to what would be the probable result of action by the Government as outlined by the Attorney General, and his conclusion was that it was improbable that the Southern Pacific could retain the Central Pacific.

"Q. He thought there was enough question about it to justify our going on with this trade?"

A. That is what I testified to.

Q. Of course you so understood at that time?

A. I so understood at that time. It was all in view of this trading. That was my understanding, as I said. I was afterwards informed that I was mistaken about it.

Mr. HERRIN. You have since been informed that you were in error in a part of it?

The WITNESS. As to the latter part.

Mr. McCLENNEN. I think that is all.

Cross-examination by Mr. HERRIN:

Q. This routing of citrus fruit to which your attention has been called has no reference to any competition between the Sunset and the Central routes, has it?

A. None whatever; climatic conditions and distribution are the governing quantities.

Q. You were asked about the Southern Pacific controlling the rate, and I think your answers set forth your views upon that subject; but I would like to ask you if at any time the Southern Pacific was ever in a position to absolutely dominate the rate or the division of rates between the connecting companies, the Union Pacific, or any connecting company?

A. No one company can dominate the rate or even the divisions of the rate.

Q. Do you know anything about the arrangement of division of those rates as between the Central Pacific and the Union Pacific and connecting lines which was made at the opening or at the beginning of the Central route, as to whether or not the Southern Pacific made that division what it wanted it or not?

403 A. Mainly those divisions that were made at that time continue in effect.

Q. They continue in effect?

A. To this day. They never have been satisfactory to the Central Pacific in the beginning or to the Southern Pacific since, where based on mileage pro rate with the Union Pacific. I did not have anything to do, of course, with the original fixing of them, but I do know that from time to time there have been discussions about them, and before I took hold they were the subject of discontent, and afterwards, too.

Q. You know that the company was not satisfied at that time or since?

A. The company contended for higher divisions.

Q. Because of the mountainous grades which were surmounted by the Central Pacific as against the more liberal grades of the eastern roads?

A. They had to climb the Sierra Nevadas. There is another consideration, also. We had all the terminal expenses, whereas the Union Pacific was for most of the business in the nature of a bridge on business originating east of them or being destined to points

404 east of them, so that they were merely a road in transit. They had expensive terminals we had to maintain.

Q. You were asked about the diversion of business from the Denver & Rio Grande after the merger. Was that not in part produced by the superior service of the Union Pacific? Was not the Union Pacific largely improved shortly after that merger by the straightening of its lines and the reduction of grades?

A. During the merger the Union Pacific was improved, and so was the Central Pacific. The Union Pacific was then put in as first class condition as it is to-day and did draw business from its competitors undoubtedly.

Q. That was a factor, was it not?

A. That was a factor.

Q. Now, was not the Sunset line also improved after the merger and during the merger?

A. All the Southern Pacific lines were improved by all roads. Mr. Harriman's general policy was a policy of improvement.

Q. It covered all these lines?

A. All these lines.

Q. You do not recall any discrimination in favor of any one as against the other?

A. No; our Sunset line was improved also, and our Shasta line was improved, likewise. The Southern Pacific lines in California were improved.

Mr. HERRIN. That is all.

Redirect examination by Mr. MCCLENNEN:

Q. The mileage which determined the pro rate between the Central and the Union was the original mileage?

A. Yes.

Q. There has never been any change in the pro rate on the shortening of the lines?

A. On the shortening of either line.

Q. On the shortening of either line; you simply took the old figure?

A. Yes; it has been regarded as a subject that belongs to the past.

Q. The highest elevation between San Francisco and Omaha on the rails is on the rails of the Union Pacific?

A. It is not a question of elevation; it is a question of grade.

Q. I am afraid you are a little argumentative. I would like to know whether that is not the fact?

A. My recollection is that it is.

Q. Somewhere about Sherman is the highest point?

A. Yes.

Recross-examination by Mr. HERRIN:

Q. Referring to the grade, you start at Sacramento practically at sea level, do you not?

A. Sacramento practically at sea level.

Q. And elevate yourself right up to the top of the Sierras in 100 miles?

A. Yes; over 7,000 feet.

Q. And then you descend on the other side of the Sierras to the plateau of the Nevada and Salt Lake Basin, which is 4,000 feet elevation?

A. Yes.

Q. And then you have only to lift yourself from that 4,200 feet to 3,000 feet over the Rockies, with a very long, gradual, easy grade down to Omaha?

A. Yes; easy grades and long tangents.

(Whereupon an adjournment was taken until to-morrow, Friday, September 24, 1914, at 10.30 o'clock a. m.)

407 FIFTH DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 25, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClenn and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, a Mr. Dunne, for the Southern Pacific Company, et al.

Mr. MCCLENNEN. Please note on the record that in conformity t the testimony of Mr. Sproule, on page 210, the red lines on the ma petitioner's Exhibit No. 1, running from Grants Pass in southweste Oregon, toward the coast have been erased, and that the red line fro Fernlee, in the western part of Nevada, to and through Susanvill in the eastern part of California, which was shown on petitione Exhibit No. 1 in red, has, in accordance with the same page of M Sproule's testimony, been changed to purple.

408 HENRY RUHLANDER was called as a witness on behalf of t petitioner, and, being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your residence?

A. New York City.

Q. Your address?

A. 15 East Forty-eighth Street.

Q. You are connected with the firm of Speyer & Company?

A. A member of that firm.

Q. Exhibit B of defendants' answer in this case sets out a plan readjustment contemplating, among other things, the deposit securities with Speyer & Company in the matter of the Central P cific Railroad Company. Have you with you the record of Speye Company, showing the stock certificates in the Central Pacific Ra road Company which were deposited in 1899 with Speyer & Co pany?

A. Yes.

Q. Is this book the record?

A. Yes, sir; that is the record.

409 Q. Let me see if I properly understand the meaning of This first column indicates the date on which the deposit made?

A. Correct.

Q. The next column entitled "Depositor and address", indic the name of the depositor and his address?

A. That is right.

Q. The next column headed "Number of shares deposited" indicates the number of shares which that depositor deposited?

A. Yes.

Q. And the next column, "Dates and number of the certificates", indicates the number of the certificate and the date which the certificate bore?

A. Correct.

Q. The next column headed "Date of deposit with Central Trust Company" indicates the date on which Speyer & Company redeposited the particular certificates with the Central Trust Company?

A. Yes.

Q. What is the significance of the entries on the right hand page against the entries under the columns which I have read?

410 A. There were certificates deposited, issued to the depositors, for the Central Pacific stock deposited under this plan. Those are the numbers of the certificates of deposit issued. The second note indicates the date on which the assessment of two dollars per share was paid. This marginal note does not mean anything; it is merely the checking of the record by the clerk.

Q. Then the information given by the book, if we read the line across, is the date of deposit, the name of depositor, his address, number of shares deposited, number on the certificate, date on the certificate, date of redeposit, number on Speyer & Company's certificate of deposit issued to the depositor, and the notation of assessment paid or not?

A. That is correct.

Q. This description that you have given seems to cover the consecutive written pages; then it appears that your book has a large number of blank pages. Then I find new entries starting. Can you tell me in general what that means?

A. I can tell you in a general way that after this was completed, these additional shares came in, after it was looked upon as if 411 it had been completed; and, so far as I can recall—you see, this is a long time ago, fifteen years ago—it shows additional deposits after that came in, from various sources.

Q. So that the entries on these isolated dates that I find here are of the same character as the others?

A. Absolutely.

Q. Following that page which you have just described there is another series of blank pages and then a page which has some entries. Can you tell us what those entries are, trifling in amount?

A. I can not give you an actual description, but I imagine—this is only a guess on my part, because, as I say, it is fifteen years ago—those are people who thought they would take the original stock,

take stock—you see, under the plan, people had the right to take what is known as "nonassenting"; they did not care to sell their stock to the Central Pacific. They had such a right, my recollection is, and some of them, after they had exercised that right to keep the new Central Pacific stock, changed their minds, but I do not want to make that as a positive statement, because it is too long ago to remember.

412 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 29 the record book just referred to in the examination of the witness.

(The record book referred to was thereupon marked "Petitioner's Exhibit No. 29, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It is agreed that this Exhibit No. 29, after being copied by the examiner, is to be returned to the witness and the copy used in lieu thereof.

You may cross-examine, gentlemen.

Mr. BLAIR. We have no questions.

OSCAR L. COLES was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Oscar L. Coles.

Q. And your residence?

A. Bayside, Long Island.

Q. And your address in New York City?

413 A. 54 Wall Street, the Central Trust Company.

Q. You are connected with the Central Trust Company?

A. I am.

Q. In what capacity?

A. As transfer clerk in the reorganization department.

Q. It has appeared from the testimony just given by Mr. Rollander that stock certificates in the Central Pacific Railroad Company, deposited with Speyer & Company, were perhaps wholly and at least to some extent redeposited with the Central Trust Company. Have you here the record of the certificates that were deposited with the Central Trust Company?

A. No.

Q. What record did you keep with reference to that transaction?

A. We kept them in a lump sum only, as they came to us.

Q. Have you a record of the total of the deposits of the Central Pacific Railroad Company certificates?

A. I think we have.

Q. Is that here?

A. No. This does not represent the actual stock that come to us in bulk. This represents the certificate of deposit issued by Speyer for that stock.

Q. By "this" you mean the book now before you?

A. The book now before me, yes.

Q. The numbers on your record, then, refer to the numbers not on e certificates of stock of the Central Pacific Railroad Company, but e numbers on the certificates of deposit issued by Speyer & Com-ny?

A. That is correct.

Q. Will this record enable you to state the total number of shares presented by those certificates of deposit which were presented to e Central Trust Company?

A. This record shows the amount of Southern Pacific delivered ainst certificates of deposit issued by Speyer & Company in New ork City.

Mr. BLAIR. Southern Pacific stock, you mean?

The WITNESS. Southern Pacific stock against Speyer's receipts.

By Mr. MCCLENNEN:

Q. That is, the amount of Southern Pacific stock issued through e Central Trust Company in return for the certificates of deposit Speyer & Company for Central Pacific Railroad Company shares.

A. Yes.

Q. Does the record show the total number of shares of outhern Pacific Company stock that were so issued?

A. It does.

Q. And what is the total?

A. 370,154 shares.

Mr. DUNNE. You mean of Southern Pacific stock?

The WITNESS. Yes; to these various parties.

By Mr. MCCLENNEN:

Q. Then am I right, inferentially, that this figure 370,154 indicates at the number of Speyer & Company's certificates of deposit for ares in the Central Pacific Railroad Company which were pre-nted to the Central Trust Company, against which the Central ust Company issued certificates for shares in the Southern Pacific mpany, was 370,154?

A. That is correct.

Q. Did the Central Trust Company have anything to do with any the deposits of Central Pacific Railroad Company stock or the ue of Southern Pacific Company stock against it, except that

which passed through Speyer & Company as indicated and as represented by this figure 370,154 shares?

416 A. Not as far as I know. I will verify that, as there are some entries here where stuff was sent abroad that was delivered to various parties in New York.

Q. Am I correct that, in addition to the 370,154 shares represented previously by certificates of deposit of Speyer & Company in New York, you have on your book a memorandum indicating that Speyer Brothers in London had issued certificates of deposit additional to the ones above mentioned, against which there was issued by some one 219,941 shares of Southern Pacific Company's stock?

A. I think so.

Q. In the same way, have you a memorandum on your books indicating that there was issued, additional to the above two totals, 79,910 shares of Southern Pacific Company's stock against certificates of deposit for Central Pacific Railroad Company stock which had been deposited with Teixeira de Mattos Brothers?

A. Yes.

Q. Just for convenience, it is true, is it not, that 370,154 plus 219,941 plus 79,910—the three figures which you have mentioned—amount to 670,005?

A. They seem to.

417 Q. The dates on your book indicate, do they not, that you began to receive the certificates of deposit of Speyer & Company, the New York concern, October 9, 1899?

A. That is correct.

Q. And that, up to January 1, 1900, the certificates so received were representative of 362,058 shares?

A. Yes.

Q. And that by January 1, 1901, the deposit had increased this figure to 368,573 shares?

A. That is correct.

Q. And that by January 1, 1902, that figure had increased to 369,711 shares?

A. Yes.

Q. And that there were scattering receipts thereafter up to February 29, 1912, the deposit on that date completing the above-given total of 370,154?

A. Yes.

418 Q. It appears from your record that the 219,941 shares represented by Speyer Brothers' London certificates, with the exception of 80 shares, were received by the Central Trust Company February 26, 1900?

A. Yes.

Q. The same record indicates that the certificates of deposit of ixeira de Mattos Brothers, representative of 79,910 shares, were, th a scattering few exceptions, received by the Central Trust Com- ny December 7, 1899?

A. Yes.

Q. And the indications from your record are that the 79,910 shares presented by the certificates of deposit issued by Teixeira de Mattos others were covered by 7,991 ten-share certificates?

A. To the best of my knowledge.

Q. The certificates of deposit of Speyer Brothers, of London, con- ted of a large number of different groups of certificates, each group itself being consecutive in numbering, and each certificate being ten shares; is that right?

A. I think so. Well, they could not all be for ten shares, be- cause 861 could not come out in multiples of ten; but ten, I think, is the largest certificate in that group, and there are a what we call blank lots, odd amounts.

Q. The certificates of deposit of Speyer & Company, of New York re very numerous?

A. Yes.

Cross-examination by Mr. BLAIR:

Q. In reference to the certificates which you refer to as Speyer & mpany's New York certificates, there appear in your record vari- names representing the certificate holders?

A. Yes.

Q. And many of those names for large amounts you recognize as names of prominent bankers in New York?

A. Yes.

Q. And in reference to the certificates which you have referred to certificates issued by Speyer Brothers in London, it appears from ur record that Speyer Brothers were also the holders of all the tificates presented?

A. Yes.

Q. Does this statement in the second column as to the certifi- cate holder afford any proof as to who was the actual owner of the stock represented by the certificate?

A. I should think not. It might represent the owner. The cer- cates were issued in bearer form.

Q. Do you know whether or not it was customary at that time for owners to have their stock represented by bankers or brokers or er agents?

A. Well, I should suppose that. So far as I know, this would rep- nt the holders of the certificates.

Q. And it did not necessarily represent the owners of the certificates or the stock represented by the certificates?

A. No.

Redirect examination by Mr. McCLENNEN:

Q. To make that a little more specific, if an imaginary person John Brown, held one of these certificates of deposit and took it in to N. W. Harris & Company, of Boston, with instructions to exchange it for the new Southern Pacific Company stock, and N. W. Harris & Company sent it forward to you, the only name that you would have would be N. W. Harris & Company? Your records would not show John Brown at all?

421 A. According to the instructions of the latter, it would depend entirely.

Q. The certificates of deposit on their face were all bearer certificates?

A. As I remember, yes.

Q. So that they bore no evidence on their face, when they came to you, of who the owner was?

A. No.

Q. The only information you would have would be what was communicated to you by the depositor?

A. Yes.

Q. And the new stock was issued in the name of the person presenting the certificate, or as he might, by letter or otherwise, direct when he deposited the certificate?

A. Yes; according to this record.

Q. The names in the case of the New York Speyer & Company certificates of deposit are very numerous?

A. Yes.

Q. In the case of Speyer Brothers, of London, the new certificates were all issued in that name?

A. That I do not know. I am not sure that we issued that stock.

Q. And would your last answer apply equally to the German stock?

A. Yes.

Mr. McCLENNEN. That is all.

422 ANGUS D. McDONALD was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Angus D. McDonald.

Q. Your residence?

A. Montclair, New Jersey.

Q. And your business address?
A. 165 Broadway, New York City.
Q. What is your relation to the Southern Pacific Company?
A. I am the comptroller of the company.
Q. Do you bear any relation to the Southern Pacific Railroad Company?
A. I think I am also comptroller of that company.
Q. And the same with reference to the Central Pacific Railway Company?
A. Yes, sir.
Q. And the same with reference to the Central Pacific Railroad Company?
A. No, sir.
Q. Have you any relation to the Central Pacific Railroad Company?
A. Not that I recall; no, sir.
Q. You have been comptroller of all these three companies the same length of time, have you?
A. No, sir.
Q. Then, will you state the period as to each company?
A. I was appointed comptroller of the Southern Pacific Company April 1, 1913. I do not recall the exact date of the appointments in the case of the other companies; some time during the year 1913.
Q. What, in general, are your duties as comptroller?
A. I have general charge and supervision of the accounting and treasury departments, under the direction of the chairman of the executive committee.
Q. What, if any, class of books, accounts, and papers do you have custody of?
A. I have immediate charge of the accounts in New York City, which include the journals, cash books, records of equipment purchased in New York, and detailed records that are connected therewith.
Q. Does that cover all?
A. No. I omitted the record of vouchers covering payments made through the New York office.
Q. Does this have reference to all three of the companies?
A. No, sir; only the Southern Pacific Company.
Q. What do you have custody of, so far as the Southern Pacific Railroad Company and the Central Pacific Railway Company are concerned?
A. I have no records of those companies under my immediate charge.
Q. How long have you been associated in any way with any of these companies?

A. I entered the service of the Southern Pacific——
Q. (Interposing.) That is, the Southern Pacific Company?
A. The Southern Pacific lines, I would say, in 1901.
Q. In what capacity?
A. As a clerk of the G. H. & S. A. Railway in Texas.
Q. You remained in that position how long?
A. Until December, 1904.
Q. Were you located in Texas during that period?
A. Houston, Texas.
425 Q. From 1904 where were you, and in what capacity?
A. January 1, 1905, I was appointed chief clerk of the a counting office of the Southern Pacific Company at San Francis I remained in that position until December, 1907, when I was a pointed auditor of the Los Angeles Pacific Company, which is a electric line at Los Angeles, controlled by the Southern Pacific Co pany.

I remained in that position until December, 1908, when I was a pointed auditor of the Pacific Electric Railway Company, also a electric line at Los Angeles, owned by the Southern Pacific Co pany—that is, now owned by the Southern Pacific Company.

On January 1, 1910, I was appointed auditor of the Southern P cific Company at San Francisco. I remained in that position un February 1, 1913, when I was appointed deputy comptroller of t company, with headquarters in New York. I remained in the po tion of deputy comptroller for a period of two months. I was th appointed comptroller April 1, 1913.

Q. Have you stated where you were located between 1907 a 1910?
A. At Los Angeles.
426 Q. You were in San Francisco at the time of the 1906 fi
A. Yes, sir.

Q. Do you know, from your connection with the offices of t various companies, what class of records of these various compan were kept in San Francisco? I now refer to the Southern Pac Company, the Southern Pacific Railroad Company, the Central P cific Railway Company, and the Central Pacific Railroad Compa

A. You refer to the period during which I was located at S Francisco?

Q. Yes.

A. I am familiar with the records.

Q. I want to get the best information I can from you as to t kinds of records of these four companies that were in San Francis and so, presumably, destroyed by the fire, as distinct from reco which were kept elsewhere.

A. The records of the Southern Pacific Railroad Company and the Central Pacific Railway Company—that is, the general books of the company—have always been kept in San Francisco, to the best of my knowledge.

427 Q. And that undoubtedly applies also to the books of the Central Pacific Railroad Company, I suppose?

A. I do not know. That company was operating prior to the time that I came to the company.

The records of the Southern Pacific Company, located in San Francisco, were merely what we call operating records; the general books of the company are kept in New York City.

Q. The books of the other two companies—that is, the Southern Pacific Railroad Company and the Central Pacific Railway Company—which were kept in San Francisco, would also include the corporate records of those two concerns?

A. Yes, sir.

Q. Where were the formal contracts of these various companies kept?

A. During what time?

Q. At the time of the fire in San Francisco.

A. Almost all of them were located in the accounting department at that time.

Q. As the papers of the companies were kept, is it probable that the agreements connected with the Transcontinental Association, so far as the Southern Pacific Railroad Company was a party to them, or the Southern Pacific Company was a party to them, were in the San Francisco fire?

428 A. I do not know as to that.

Q. You have no knowledge of the probabilities, one way or the other, as to that?

A. It has always been the practice for the traffic department to keep whatever traffic contracts are made. They never have been filed in the accounting department.

Q. Where was the headquarters of the traffic department of the Southern Pacific Company in 1906?

A. Mr. Stubbs, who was the director of traffic at that time, was located in Chicago.

Q. Did his office in Chicago extend up to 1906?

A. I think the office remained in Chicago until some time during 1911, when it was transferred to New York.

Q. What officer of the Southern Pacific Company at the present time would, in the ordinary course of business, have custody of such agreements, if they are still in existence?

A. What do you mean by "such agreements"?

Q. I refer to an Exhibit 18 and Exhibit 19, which were agreements of 1883 between the Southern Pacific Railroad Company and various other railroads, for the formation and operation of the Transcontinental Association; Exhibit 24, an agreement of
429 October 1, 1889, between the Transcontinental Association and the Pacific Mail Steamship Company; Exhibit 25, an agreement of December 16, 1895, between the Panama Railroad Company and the Pacific Mail Steamship Company; Exhibits 26 and 27, agreements of June 11, 1902, between the Panama Railroad Company and the Pacific Mail Steamship Company.

A. As I stated before, agreements covering traffic arrangements are generally kept by the traffic department. I could not say whether they were kept in the office of the traffic manager, the general freight agent, or the director of traffic.

Q. Who are the gentlemen who hold those respective offices at the present time?

A. Mr. L. J. Spence is director of traffic; Mr. G. W. Luce is freight traffic manager of the Southern Pacific Company; Mr. Thomas Graham is assistant traffic manager.

Q. And their respective offices are where?

A. Mr. Spence is located in New York City, and the other two gentlemen named are located in San Francisco.

Q. Were you in New York at the time of the Equitable Building fire?

A. I was not.

430 Q. Do you know what classes of books and papers of any of these four companies were kept in the Equitable Building at that time?

A. I think the methods in effect at that time were the same as they are today; that is, the general books of the Southern Pacific Company are located in New York City. The general books of the Southern Pacific Railroad Company and the Central Pacific Railway Company were kept in San Francisco.

Q. Am I right in understanding that in one or the other of these fires the records of the company that would make it possible to give exact statements as to the volume of freight moving through different gateways, and the revenue therefrom, were destroyed?

A. Such records we kept in San Francisco, and they were destroyed in the fire of 1906.

Q. Were the minute books of the stockholders and directors meetings of the Southern Pacific Company kept in San Francisco at the time of the fire, or in New York, or elsewhere?

A. I am not a competent witness as to that point, but I think they were kept in New York City.

431 Q. The same question with reference to such record books of the other three companies, the Southern Pacific Railroad Company, the Central Pacific Railroad Company, and the Central Pacific Railway Company?

A. I think those records have always been kept in San Francisco.

Q. So that the probability is that all of those records prior to 1906 are destroyed?

A. Yes, sir.

Q. Have you any information with reference to the records of any of these four companies showing the stockholders therein from time to time?

A. That is outside of my jurisdiction. I know nothing whatever of records of stockholders.

Q. You do not know where they were kept for any of these companies?

A. I will qualify that in this way: That the present records of the stockholders are kept in the transfer office. The transfer office is now a part of our treasury department, and the treasury department is under my jurisdiction. So I therefore have indirect control over the records showing the present stockholders of the company.

432 Q. How far back do the records within your control shed any light upon who were the stockholders in any one of these four companies?

A. I do not know as to that. I could not answer without examining the records.

Q. Have you got the transfer books, stock ledgers, or certificate books of the Southern Pacific Company for any period back of 1900 in your possession?

A. I do not think so. My understanding is that practically all of the records of the New York office were lost or impaired in the Equitable fire.

Q. Have you any knowledge or any means of arriving accurately at the names and amounts of holdings of stock in the Southern Pacific Company prior to 1900?

A. I do not know of any way of arriving at it.

Q. Is the same true of the Central Pacific Railroad Company and the Southern Pacific Railroad Company?

A. That is, for the period prior to 1900?

Q. For the period prior to 1900.

A. As to the Southern Pacific Railroad Company, I do not know of any records in existence that will show the stockholders prior to 1900. The same is true of the Central Pacific Railway Company.

433 Q. And is the same true of the Central Pacific Railroad Company?

A. Yes, sir.

Q. I think perhaps your answer covers it, but I will make sure. Have these records, as to any of these companies, for the period prior to 1900, been duplicated to any extent from any source, so that there would be means of getting the information from such duplicates?

A. I could not answer as to that. The organization was changed somewhat in 1913. Prior to that date the transfer office was a part of the secretary's office; that is, the transfer office of the Southern Pacific Company. In 1913 it was made a part of the treasury department, and therefore came under my indirect control. The secretary's records, stock books of the Southern Pacific Railroad and Central Pacific have never been transferred to the transfer office. They still remain under the control of the secretaries of the respective companies.

434 Q. And any such duplicates, if they existed as to the Southern Pacific Railroad Company and the Central Pacific Railroad Company, would under this arrangement be in the possession of the secretaries of those companies in San Francisco?

A. That is my understanding.

Q. And were so at the time of the fire?

A. Yes.

ARTHUR A. TOPPING was called as a witness on behalf of the petitioner, and, being first duly sworn, testified as follows:

Direct examination by Mr. GANN:

Q. What is your residence?

A. Washington, D. C.

Q. And your occupation is what?

A. Clerk in the division of tariffs of the Interstate Commerce Commission.

Q. How long have you been connected with the commission in the division of tariffs?

A. Seven years.

Q. And what positions have you held in that time, generally speaking?

435 A. I was a clerk all the time.

Q. You are a clerk in the office?

A. Yes.

Q. And have you brought with you from the division of tariffs in Washington statements of various rates which were requested by counsel for the Government to be prepared by the division of tariffs?

A. Yes.

Q. I call your attention to a statement showing the rates on various commodities from New York City to California terminals via water and rail by Gulf route, as compared with rates by other routes, and ask you if that statement was prepared in the division of tariffs of the Interstate Commerce Commission?

A. It was; yes.

Q. Was it prepared under your supervision?

A. Yes.

Q. And you have knowledge of the tariffs from which it was prepared?

A. Yes.

Q. Does that statement show in detail a number of commodities shipped in carload lots?

486 A. Yes.

Q. Does the statement show the dates on which various tariffs were effective, beginning in 1888 and down to the present time?

A. Continuing up to May 27, 1914, the date these statements were compiled.

Q. The statement shows the rate in cents per hundred pounds except as specifically designated otherwise?

A. Yes.

Q. It also shows the comparison between the rates effective by way of the Morgan Line, the Sunset Route, and the Southern Pacific Company, as compared with other all-rail routes, does it?

A. Yes.

Q. Beginning with the first date of the tariff, effective September 1st, 1888, have you made a computation as to the number of items shown in that tariff where the rates applicable over the Morgan Line and Sunset-Gulf Route, generally speaking, were lower than those rates applicable by way of the all-rail route? Have you made such a computation?

A. Yes.

487 Q. Have you the number of rates effective by the Morgan Line, which are lower than the all-rail route?

A. On that date they were the same.

Q. That is, there were no rates in effect on the Morgan Line which were lower than the all-rail route?

A. Not on that date.

Q. Take the next date, May 10, 1893, have you made a computation as to that?

A. Yes, sir.

Q. What was the number of commodities where the rate by the Morgan Line was lower than the all-rail rates?

A. Sixty-six commodities.

Q. The next date, June 24, 1897, have you made a computa
as to that?

A. Yes.

Q. What is the number of commodities where the rates over t
Morgan Line are less than by the other lines?

A. One.

Mr. HERRIN. What was that commodity, please?

The WITNESS. That applied on shoe blacking other than as pr
vided under dressing, the rate being 75 cents via the Morgan Li
and $1.08 by the other routes.

438 By Mr. GANN:

Q. What was the number of commodities shown on Ju
18, 1900, where the rates were lower over the Morgan Line?

A. 94.

Q. The next date?

A. The dates vary between January 18, 1900, and January 1
1899.

Q. As shown in that table headed "Dates as noted", how ma
commodities were there where the rates over the Morgan Line we
lower than by the all-rail routes?

A. These rates were effective on various dates during that perio
and there were 102 commodities that were lower via the Morgan
Mallory Line than the other.

Mr. BLAIR. Was that at all times or some particular time?

The WITNESS. Not necessarily at all times; they were chang
more or less during the period.

By Mr. GANN:

Q. And they were compiled in that form for the sake of conv
ience rather than making it so elaborate?

A. Yes.

Q. The number was what?

439 A. 102.

Q. Take the next date, January 1st, 1909; how many co
modities were there?

A. 21.

Q. October 10, 1910?

A. 17.

Q. And April 15, 1913?

A. 7.

Q. Referring to the table headed May 10, 1893, were there a nu
ber of commodities where the rates via the Morgan Line were ma
rially less than by the all-rail route?

A. Yes.

Mr. HERRIN. That is a little indefinite. What is meant by "materially"?

Mr. GANN. Where the disparity between the rates effective over the Morgan Line and the all-rail rate amounts to a considerable figure in dollars and cents.

Mr. HERRIN. That is still indefinite.

Mr. MCCLENNEN. Give some illustration.

By Mr. GANN:

Q. Take the rate, for instance, on nails or spikes, cut or wire,
440 n. o. s. in boxes or kegs; what was the rate over the Morgan Line?

A. 30 cents per hundred pounds.

Q. What was the rate by other routes?

A. 70 cents per hundred pounds.

Q. Take the rates on billets, blooms, ingots, muckbar and scrap steel under the heading of iron and steel articles; what was the rate by the Morgan Line?

A. 30 cents per hundred pounds.

Q. And the other rate by other routes?

A. 75 cents.

Q. Referring to the item "ship chandlery, pitch and tar", what was the rate over the Morgan Line?

A. 30 cents.

Q. And over the other route?

A. $1.06.

Q. Look at the item of cement, building or paving; what was the rate over the Morgan Line?

A. 30 cents.

Mr. BLAIR. What year are you referring to?

Mr. GANN. May 10, 1893.

By Mr. GANN:

Q. And by way of the other route?

441 A. $1.10.

Mr. GANN. The petitioner offers in evidence as Exhibit 30 a statement showing the rates on various commodities from New York City to California terminals via water and rail, via gulf routes, as compared with rates by other routes.

Mr. BLAIR. So that we may determine whether there is a legal objection to the offer, I will ask what is the purpose of the offer?

Mr. GANN. Simply to show comprehensively the same things that the witness has been stating.

Mr. DUNNE. But what is the purpose of showing the difference in rates?

Mr. McCLENNEN. To show that the Southern Pacific Company by the Morgan Line was making lower rates than were made by all rail

Mr. DUNNE. For the purpose of showing that it was soliciting and taking the business at these lower rates?

Mr. McCLENNEN. For the purpose of showing whatever the statement would be probative to show.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 30, September 25, 1914", and will be found in the volume of exhibits.)

(Whereupon a recess was taken until 2 o'clock p. m.)

442 AFTER RECESS.

ARTHUR A. TOPPING, the witness under examination at the taking of recess, resumed the stand.

Direct examination (continued) by Mr. GANN:

Q. Mr. Topping, the statement marked Exhibit No. 30 shows rates applicable on commodities from New York City to California terminals. What are California terminals? That is a technical term, and we may as well have it described in the record.

A. They are set forth here, in attachments to the exhibit, by photographic pages.

Q. Were those pages photographed from the original tariffs on file with the commission in Washington?

A. They were photographed from one of the transcontinental tariffs.

Q. Which was in effect at the time these statements were compiled?

A. Yes, sir.

Q. Name some of the principal California terminals shown on the list before you.

443 A. We have San Pedro, California; Los Angeles, California; San Francisco, California; Sacramento, California; Stockton, California; San Jose, California; San Diego, California; there are in all probably fifty or more—Oakland, California; Berkley, California; Alameda, California; Marysville, California.

Q. They are all in California unless otherwise noted, are they not?

A. All California terminals are in the State of California.

Q. It happens that this rate territory does not extend out in other States?

A. No, sir.

Q. This statement as compiled is correct, to the best of your knowledge and belief?

A. It is; yes, sir.

Q. I show you another statement, Mr. Topping, which was prepared by the Division of Tariffs upon request of counsel for the Government, which purports to be a statement showing the rates

various commodities from California terminals to New York City by way of the Southern Pacific Railroad Company and the Morgan Line Steamship Company as compared with rates via other
444 routes. Was that statement prepared under your supervision?

A. Yes, sir.

Q. And this statement is the supplement or complement of the statement which we have just talked about, is it?

A. The other statement is westbound; this is eastbound.

Q. The same general observations about the headings will apply in this case, will they not?

A. Yes, sir.

Q. The tariffs from which these rates were taken cover a period from what date?

A. From June 17, 1895, up to May 22, 1914.

Q. The date the statement was compiled in the Division of Tariffs?

A. Yes, sir.

Q. Take the first period shown in the statement, June 17, 1895: Have you made a computation as to how many rates there were in effect via the Morgan Line which were lower than the rates in effect via other all-rail lines?

A. Yes, sir.

Q. How many are there?

A. Four.

445 Q. As the number is so limited, will you state what they are?

A. Beans via Morgan Line, fifty; via other lines, one dollar per hundred pounds.

Green coffee in sacks via Morgan Line, twenty; other lines, one dollar.

Strained honey via Morgan Line, seventy-five; other lines, $1.10.

Alfalfa seed via Morgan Line, seventy-five; other lines, $1.25.

Q. Take the next date, January 10, 1898: How many commodities were there in effect on that date which carried a lower rate by the Morgan Line or Mallory Line than by other all-rail routes?

A. Seventeen.

Q. What are the principal ones?

A. Barley in sacks.

Q. What was the rate by the Morgan Line?

A. Seventy-five; and by other lines, one dollar.

Green coffee, seventy-five, Morgan Line; other lines, one dollar.

Glue, seventy-five via Morgan Line; $1.20 by other lines.

446 Rice, in packages, seventy-five cents via Morgan Line; other lines, one dollar.

Q. That is sufficient for illustration. Take the next date, July 15, 1898: How many commodities which took a lower rate via the Morgan or Mallory Lines than were applicable over the all-rail routes?

A. One.

Q. And that was what?

A. Infusorial earth; via the Morgan Line the rate was sixty, while by the other routes it was one dollar.

Q. The next date, January 18, 1900: How many were there where the commodities applicable via the Morgan Line carried a lower rate than via the all-rail routes?

A. One.

Q. And that was what?

A. Wool in grease; eighty via the Morgan Line, and via the other lines the rate was a class rate.

Q. And, as a general rule, the class rate is higher than the commodity rate?

A. As a rule; yes, sir.

Q. You do not know what the class rate is in this instance, do you?

447 A. I could not say what class was applicable on wool at that date.

Q. Take the next date, October 12, 1903; how many commodities were there where the rates via the Morgan and Mallory Lines were lower than the rates via the all-rail routes?

A. One.

Q. What was that?

A. Whole barley; by the Morgan Line the rate was fifty cents, and the rate via the other lines was seventy-five.

Q. And on January 1, 1909, what was the number of commodities where the rate was less over the Morgan and Mallory Lines?

A. Three.

Q. What are those?

A. Barley, sixty-five via the Morgan Line, and by other lines seventy-five.

Alfalfa seed, via the Morgan Line, the rate was $1.20, and the rate via the other lines was $1.25.

Rice: The rate via the Morgan Line was sixty, and the rates via the other lines were class rates.

448 Q. And as in the other explanation you made about class rates, the presumption is, generally speaking, that the class rates are higher than the commodity rates?

A. Yes, sir.

Q. You do not know what the class rate on rice in packages at that date was, do you?

A. No, sir.

Q. What does the last column represent as to date?

A. The date seems to have been omitted in the last column.

Q. By inadvertence?

A. I assume that it was.

Q. Are there any rates, assuming that the heading for that column should have been the same as the others, which were lower by the Morgan and Mallory Lines than were applicable via the all-rail routes?

A. The rates are the same.

Q. So there are no commodities which took a lower rate?

A. No, sir.

Q. Is that statement correct, to the best of your knowledge and belief, Mr. Topping?

A. Yes.

449 Mr. GANN. Petitioner offers in evidence, as Exhibit No. 31, statement showing rates on various commodities from California terminals to New York City via the Southern Pacific Railroad and the Morgan Line, as compared with rates in effect via other routes.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 31, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

450 Q. I show you Southern Pacific Company joint freight tariff No. 426, I. C. C. 3088, issued November 20, 1908, effective January 1, 1909, and ask you if that is the original tariff filed by the Southern Pacific Company with the Interstate Commerce Commission at Washington, as is required by law.

A. Yes.

Q. What is the number, in the filing system which the Interstate Commerce Commission uses, designating this particular tariff, and the date when it was received in the office of the commission?

A. The filing number is 146691; the filing date is November 25, 1908.

Q. I show you a copy of Southern Pacific Company joint freight tariff No. 426, I. C. C. 3088, issued November 20, 1908, effective January 1, 1909, and ask you if you have compared this tariff with the original tariff which was on file in Washington?

A. Yes.

Q. Is it a facsimile copy?

A. Yes.

Q. On page 22 of this tariff there are rates shown on what commodity?

451 A. Wool in grease, carloads.

Q. With a minimum weight of what?

A. 20,000 pounds.

Q. The rates, wool in grease in carloads, minimum 20,000 pounds, are applicable from what points, as shown by the pages of the tariff?

A. From Corinne, Utah, and Marmol, Nevada.

Q. And from what other points?

A. Certain other points taking group 3, as shown on pages 6 and 7 of the tariff.

Q. What are those points, some of them?

A. Cobre, Nevada; Elko, Nevada; Humboldt, Nevada; Winnemucca, Nevada; Balfour, Utah; Blue Creek, Utah; Bovine, Utah; Dathol, Utah; Gartney, Utah; Hansen, Utah; Kelton, Utah; Kelmar, Utah; Lake, Utah; Matlin, Utah; Metaurus, Utah; Monument, Utah; Ombey, Utah; Peplin, Utah; Promontory, Utah; Rozel, Utah; Stokes, Utah; Surbon, Utah; Terrace, Utah; and Umbria Junction, Utah.

Q. To what points are these rates on wool in grease, carload minimum of 20,000 pounds, applicable from the stations you have just named?

A. New York, N. Y., and Boston, Mass.

452 Q. And what is the rate as carried by this tariff which you have?

A. $2.07½ cents.

Q. Per hundred pounds?

A. Per hundred pounds.

Q. By what route are these rates applicable?

A. Via Southern Pacific, via Rio Grande, New Mexico, and Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company, via New Orleans, La.; Southern Pacific Company's Atlantic steamship lines—Morgan Line—and New York Pier. Or Galveston, Harrisburg & San Antonio Railroad Company via Galveston, Texas; Southern Pacific Company's Atlantic steamship lines—Morgan Line—and New York Pier.

Q. I will ask you whether, from your knowledge, you know the location of the station designated Rio Grande, New Mexico.

A. Yes; Rio Grande is located near the State line of the States of Texas and New Mexico, just outside of the corporate limits of El Paso, Texas, and is the western terminal of the Galveston, Harrisburg & San Antonio Railway.

453 Mr. GANN. Petitioner offers in evidence as Exhibit No. 8 Southern Pacific Company's joint freight tariff No. 426, I. C. C. 3088, issued by the Southern Pacific Company; the Arizona-Colorado Railroad Company; Arizona Southern Railroad Company; Bocas & Loyalton Railroad; Eureka & Palisade Railroad Company; Gila Valley, Globe & Northern Railway Company; Nevada & California

Railway; Nevada-California-Oregon Railway; and the Sierra Valley's Railway.

(The tariff referred to was thereupon marked "Petitioner's Exhibit No. 32, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. GANN:

Q. Do you know if the rates named in this tariff are effective by way of Ogden and the Union Pacific Railroad from the tariffs which you have brought with you?

A. I have nothing here that would show that.

Cross-examination by Mr. DUNNE:

Q. Exhibits 30 and 31, as I understand it, are compilations which you made from tariffs on file in the office in which you are employed?

454 A. I didn't make them personally.

Q. They were made by somebody?

A. They were made by a clerk in the office.

Q. It was a clerical operation from the tariffs on file?

A. Yes.

Q. New York, as mentioned in these exhibits as a place of origin and destination, means New York City strictly, does it not?

A. The rates are not confined to New York City. I think the exhibits show that the rates are applicable to and from New York and common points.

Q. I do not so understand the exhibit, and I will ask you to look at it, please [showing witness Exhibit No. 30].

A. The caption on the exhibit does read "New York, N. Y." It does not include anything further than that.

Q. So that these exhibits, so far as their face discloses, are addressed to New York City on the one side and California terminals upon the other?

A. That is correct; yes.

Q. Now, do these Exhibits 30 and 31 involve a comparison between the Morgan or Mallory Line and any other routes except all-rail routes?

455 A. They involve the Morgan or Mallory Line on the one hand and all other available routes on the other.

Q. Will you please indicate to me the text of the exhibit which conveys that idea?

A. The heading of Exhibit 30, which I am looking at here, states——

Q. Read it, please.

A. It states "Mallory Line; other routes."

Q. Other routes. It don't say "all other routes", does it?

A. No, sir.

Q. And you are not now prepared to say that this exhibit furnishes a comparison between the Morgan and Mallory Lines upon the one side and any routes upon the other side, except all-rail routes, are you?

A. Well, I can only say—it say the rates of the Morgan Line on the one hand and the other routes on the other.

Q. Other routes?

A. Other routes.

Q. Are you prepared to say that the term "other routes" as used in the captions of these exhibits includes any routes except all-rail routes? Are you prepared to say that?

456 Mr. McClennen. There is no contention at present that the phrase "other routes" has reference to anything other than all-rail routes.

Mr. Dunne. Please note that the phrase "other routes" has no other contention except the phrase "all-rail routes", and that will suspend all further examination on that point.

By Mr. Dunne:

Q. Another thing, does the selection of the particularly numbered years in these exhibits carry any signification to your mind beyond the circumstance that you were requested to furnish the data for those years?

A. That is all.

Q. Were you requested to furnish the data for those selected years or your associate or assistant?

A. Yes; he was.

Mr. Herrin. For those particular dates?

The Witness. Those particular dates.

Redirect examination by Mr. Gann:

Q. Were those requests so specific, as counsel would indicate
457 that for a particular day of a particular year which is shown on the statement you were requested to file these statements, or were you asked to prepare rate statements from a period beginning in 1888 and continuing to the present time?

A. These particular dates shown in these headings were not shown in the request; we were asked to compile these rates from 1888 up to the present time. These date headings show the various tariff changes.

Q. So there is no significance in the particular date at the head of the statement other than that there was a change in the trans-continental tariff of that date; is that true?

A. That is true; yes.

Mr. GANN. That is all. Any further questions?
Mr. DUNNE. That is all.

ROBERT S. LOVETT was called as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:

Direct examination by Mr. ORR:

Q. Your name and address?

A. Robert Scott Lovett; business address, 165 Broadway, New York City.

Q. Your present occupation?

A. I am chairman of the executive committee of the Union Pacific Railroad Company and of the companies controlled by it through ownership of stock.

Q. How long have you been engaged in the railroad service of one kind and another?

A. Well, railroad service of a kind I commenced in 1878. I have been connected with railroads, principally as attorney, ever since that time, except one period of about a year.

Q. When did your connection as attorney start; I mean for the railroads?

A. In June, 1883.

Q. With what company?

A. The Houston East & West Texas.

Q. Was that at that time a part of the Southern Pacific system?

A. No; it was not.

Q. Is it now?

A. Yes.

Q. Will you kindly state the experience and railroad connections you have had since that date to the present time?

A. Since the date I became attorney for the Houston East & West?

Q. Yes; if you please.

A. I was attorney for the receivers of the Houston East & West Texas Railway Company from 1885 to 1889; assistant general attorney for the Texas & Pacific Railway Company about a year; and then general attorney of the Texas & Pacific Railway Company until October 1st, 1892. I then became a member of the firm at Houston, Texas, that were at that time general attorneys for one of the Southern Pacific lines, and for the Missouri, Kansas & Texas Railway Company, and perhaps some other minor companies. I afterwards became general attorney for all the Southern Pacific lines in Texas, and as a member of that firm I gave my time chiefly to the railroad business. We were general attorneys, and in that position were also counsel and the advisors of the railroad officers in the State. I left Texas January 1st, 1904, and came to New York as counsel for the Southern Pacific Company and the Union

460 Pacific Company, and of the companies controlled by them, and soon after coming to New York—I do not recall just how soon, but I think within a year—I became a director of the Union Pacific Railroad Company and the Southern Pacific Company and many of the companies controlled by them, and a member of the executive committee. I was in very active connection with the management of the Union Pacific Railroad Company and Southern Pacific system after that, up to the time of Mr. Harriman's death, in September, 1909. Shortly before his death, I do not remember just how long, but probably some time in 1908, I was vice president of the Union Pacific and Southern Pacific Company and many companies controlled by them, and in September, 1909, following Mr. Harriman's death, was elected chairman of the executive committee, and some days later, probably within a month or so, president both of the Southern Pacific Company and of the Union Pacific, and of practically all the companies controlled by those two systems. I held that position as chairman of the executive committee and president until—I think it was December, 1911—when, with the approval of the board of directors, I reorganized the management by resigning as president of the Union Pacific and the Southern Pa-
461 cific companies and of many of their subsidiary companies and we elected a local man, largely, as president; I retained the chairmanship of the executive committee and remained chief executive officer until after the decision of the Supreme Court in what is commonly referred to as the Union Pacific and Southern Pacific merger case, when I resigned as chairman of the executive committee and director of the Southern Pacific Company and of all other companies controlled by it. I think that occurred in January, 1913. Since then I have retained the position of chairman of the executive committee of the Union Pacific Railroad Company and of the companies which it controls.

462 Q. You are actively in charge of that property as such, are you?

A. I am the chief executive officer.

Q. You are familiar, are you not, with the lines of the Southern Pacific and Central Pacific and Union Pacific Railroads?

A. Yes, sir.

Q. Their location, I mean?

A. Yes, sir.

Q. I will ask you to examine this map, which has been put in the record as Exhibit 1. The Union Pacific lines are colored in blue, the Southern Pacific lines other than the Central are colored in red, and it is intended that the Central Pacific lines should be colored in purple. Will you examine that map and state, in a general way, if it fairly represents their location?

A. Referring, first, to the lines of the Union Pacific Railroad Company, this map shows the company as operating a line from St. Joseph, Missouri, to Hastings, Nebraska, by way of Marysville. That is not a Union Pacific line.

Q. That is the St. Joseph & Grand Island?

163 A. The Union Pacific owns the majority of the stock, but not all.

Q. But it does not operate it?

A. It does not operate it. The St. Joseph & Grand Island, as shown on that map, runs from St. Joseph, Missouri, by way of Marysville and Hastings, to Grand Island, Nebraska. Otherwise, I believe the map correctly shows the lines owned and operated by the Union Pacific Railroad Company. It does not, however, show the lines of the Oregon Short Line Railroad Company nor of the Oregon & Washington Railroad and Navigation Company.

Mr. BLAIR. Is not that a part of your system—those two lines?

The WITNESS. We consider it a part. They are operated by the companies that own them; that is, the Oregon Short Line Railroad Company operates the lines that it owns, and the Oregon & Washington Railroad & Navigation Company operates the lines that it owns. The Union Pacific Railroad Company owns all the stock in both those companies, and we consider them, in ordinary speech, as a part of the Union Pacific system.

By Mr. ORR:

Q. As to the lines represented on the map in purple, being

164 the Central Pacific, what do you say about that being a fair representation of its mileage?

A. The purple colors correctly represent the lines now owned by the Central Pacific Railway Company.

Q. And the Southern Pacific in red, and the steamship line?

A. The Southern Pacific Company operates, under lease, all of the lines shown in red, extending from points in Oregon and California, Arizona and New Mexico, with certain exceptions. There are some lines—for instance, I think the line down to Coos Bay, which is represented on that line, I do not think has been constructed.

Mr. MCCLENNEN. That is a hatched line, I think.

The WITNESS. I believe it is. There is a hatched line in Sacramento Valley that I do not understand has been constructed, and in Arizona there are some small lines that I do not think are now operated by the Southern Pacific Company, the Arizona Eastern—they are branches, however, as shown on this map. The other lines—that is, the lines lying east of the boundary line between Texas and New Mexico, just west of El Paso—those lines are operated by the companies that own them, the Texas and Louisiana corporations; but

the stock of all those companies in Texas and Louisiana
465 which operate the lines shown in red on this map, except some shares held by directors, and perhaps a few others, an insignificant number, are owned by the Southern Pacific Company.

Q. As to the steamship line from New Orleans?

A. The Southern Pacific Company operates lines of steamers between New York and New Orleans and New York and Galveston substantially on the routes shown in red.

Q. The Southern Pacific Company controls, either through lease or stock ownership, practically all of the mileage represented in red there?

A. Yes; all of it.

Q. And operates it all?

A. No. It operates itself only the steamship lines and the railroad lines in Oregon, California, and New Mexico. It does not operate any lines in Louisiana and Texas.

Q. But it controls those lines through stock ownership?

A. Through stock ownership.

Q. Describe, if you will, what is known as the Sunset Route.

A. It is a line made up of the steamship lines from New York to New Orleans and Galveston and the lines controlled
466 by the Southern Pacific in Louisiana and Texas and westward through Arizona and New Mexico and California—you cannot draw the line exactly in California as between what is called the Ogden Route and the Sunset Route—but the line by way of El Paso is what is commonly referred to as the Sunset Route.

Q. Does the Southern Pacific Company own any of the stock of the Central Pacific Railway Company?

A. My best information up to the time of my relinquishment of my connection with the company was that it owned all of the stock.

Q. And it has owned all of it since the organization of the company, if it does now?

A. I know that only historically back of 1899. In that way I know it has owned all of it ever since it was issued, in 1899.

Q. Are you acquainted with certain divisions of the country for traffic purposes known as Central Freight Association territory and Atlantic Seaboard territory and Western Trunk Line territory?

A. I understand that in a general way.

467 Q. You know in a general way the territory covered by these different designations?

A. Yes, sir.

Q. Are you informed through your various connections and associations as to the manner in which freight tonnage originating either in the Atlantic Seaboard territory or in California was solicited by the Southern Pacific Company?

A. When?

Q. In April, 1901?

A. I know it only by reason of my connection with those matters since January 1, 1904. I had no connection with the Central Pacific Railroad Company prior to 1904 and I had a very limited connection with the Southern Pacific Company prior to that time—limited to service in Texas. I know it, however, as I might say, in a historical way from my connection with the company since 1904.

Q. You know it also in a historical way, as you stated, prior to 1901, do you not?

A. In the same way only.

Q. You may state, if you will, the manner in which that traffic was solicited by the Southern Pacific Company and the route it would take in shipment if they got it.

Mr. HERRIN. At what time?

Mr. ORR. Prior to 1901.

Mr. HERRIN. We object to that. I do not see why we should put all witnesses who knew the matter of their own knowledge at that time, or why we should deal with Judge Lovett, who says he only knows it in a historical way. I do not object to anything that comes within his actual knowledge, but as to anything prior to 1904, I understand Judge Lovett to say that he does not know except in a historical way.

By Mr. ORR:

Q. You may speak of your knowledge of that subject after 1904 and not prior to 1901.

A. Beginning with 1904 all traffic in Atlantic Seaboard territory, or California, was solicited by the Southern Pacific representatives on the Sunset Route.

Q. Would that mean water lines to New Orleans and Galveston, or Galveston and from there by rail to California?

A. Yes, sir.

Q. Is that the rule up to the present time?

A. It is.

Q. Is that solicitation now active or passive?

A. I have no doubt it is very active.

Q. Take shipments, if you know, originating or ending in Central Freight Association territory. Do you know how they were solicited and have been since 1904 up to 1913—up to the time of what we call the unmerging of the Union Pacific and Southern Pacific?

A. Up to the time of the unmerging it was solicited preferentially via the Ogden gateway.

Q. And since that time?

A. Not knowing all about the views of both parties since the unmerging, I do not know positively. My information is, from the best information I can get——

Mr. BLAIR. We object to testimony based on information.

The WITNESS. I should state, however, that I conceive it to be my business to find out how the solicitation is done, and make inquiries of our traffic officers as to how it is done, and get reports occasionally. That is the information that comes to me in an official way. That is the information that I have.

Mr. BLAIR. But, really, we should have a chance to examine these traffic officers ourselves, and hear what the conclusion is as to how this business is solicited.

By Mr. ORR:

470 Q. Will you answer as to how it was solicited since the unmerging?

A. My information, acquired in the way I have stated, is that the business north of the Ohio River—not Ohio River points—and west of Pittsburgh and Buffalo, is solicited by the Ogden gateway to Central California. I think there is some doubt—at least I have some doubt—as to just how far that is true of points nearer Pittsburgh and Buffalo—Cleveland, Ohio, for example. I am not as certain about that as I am about the situation farther west, like Chicago.

Q. Is any of the business solicited to be sent through the New Orleans or El Paso gateway as far west as Chicago that you know of?

A. By the Southern Pacific Company?

Q. Yes.

471 A. Lines leading to New Orleans and to various junctions in Texas, like Beaumont, Houston, Shreveport, Dennison, Fort Worth, El Paso, Texas, solicit that business via those junctions. The Southern Pacific solicitors, even in Chicago, do not, as far as I have been able to ascertain, work against the solicitation of those lines. Acting independently in Chicago, I think the Southern Pacific solicitors would solicit by way of the Ogden gateway to central California. The Union Pacific acts upon the presumption that they would do that. We work preferentially with the Southern Pacific.

Q. You are working for the business that way yourself?

A. Yes; exclusively.

Q. Do you know of any instance where the Southern Pacific has assisted your solicitors in getting the business that way, through the Ogden gateway?

A. No. I would not know of particular instances of solicitation. It is general policy that I speak of, that I understand governs.

Q. You assume, from the fact that you are working the business that way as far as you can control it or influence it, that that is so—that that is the reason the Southern Pacific is assisting, if it ever has, in that direction?

A. I know that is one reason. We work everything that we can for Central California in connection with the Southern Pacific through the Ogden gateway, and we expect them, from all that territory, to do the same thing; and if they do not—I do not know what our position would be. We are assuming that from this territory they are working preferentially the Ogden gateway, in connection with our line. I should say that I do not know how active their solicitation in that territory is.

Q. I understood you to say that the Central Pacific stock is owned entirely by the Southern Pacific Company. Does the Southern Pacific Company control the operation of the Central Pacific lines?

A. Yes; it operates them.

Q. Describe, if you will, an all-rail route commencing at San Francisco or Oakland, over the Central Pacific Railway, and from there east to the Atlantic seaboard, such as would be used in case of an all-rail shipment.

A. One which is actually used under existing conditions?

Q. The shortest all-rail route that you know.

A. The Southern Pacific Railroad from Oakland by way of Benicia to Sacramento; the Central Pacific from Sacramento to Ogden, Utah; the Union Pacific from Ogden to Council Bluffs—I am not sure as to the shorter line from Council Bluffs to the Atlantic seaboard, but the lines actually used, and the distances are approximately the same—the Chicago North Western from Council Bluffs to Chicago, or the Chicago, Milwaukee & St. Paul from Council Bluffs to Chicago, or the Illinois Central from Council Bluffs to Chicago, or the Burlington between the same points, or the Rock Island between the same points, or the Chicago & Great Western between the same points; thence the various trunk lines from Chicago to the Atlantic seaboard—the New York Central, Pennsylvania, Erie, Baltimore & Ohio, and other lines that have connections with some of the eastern lines, like the Lehigh Valley and the Delaware, Lackawanna & Western.

Mr. DUNNE. I assume that Judge Lovett has it in mind, without actually expressing it, that San Francisco was the initial point. Am I right?

The WITNESS. Oakland; that was the question asked.

By Mr. ORR:

Q. He stated from Oakland by way of Benicia.

A. Of course that is not the only line. I am trying to give what I understand to be the shortest line.

Q. Has the Central Pacific a line from Oakland which could take the place of the Southern Pacific to Sacramento?

A. Yes; the Central Pacific from Oakland by way of Niles and Lathrop and Stockton to Sacramento, and thence east over the other lines I have described.

Q. How would the route you have just described, being all rail, compare in distance with what we know as the Sunset Route, part water and part rail, between the points you have named; that is, between San Francisco and New York City?

A. That is easily obtainable from tables. From memory I should say that it would be about 1,500 miles shorter than the Sunset Route, by way of Galveston and New Orleans. I do not mean to be exact about that, but that is my recollection of about what the difference in distance is.

Q. Does the Union Pacific Company solicit passenger and freight traffic over the line you have described between the two coasts?

475 A. It does, very actively.

Q. In its solicitation of business does it take the Central Pacific line from Oakland to a connection with the Union Pacific?

A. Our connection at Ogden is physically with the Central Pacific. The Southern Pacific Company is the lessee. Our business is done with the Southern Pacific Company and not with the Central Pacific.

Q. I am speaking not of the company that operates it but of the rails.

A. It moves both ways. The business as actually moved goes over the line that I first described—that is, by way of Benicia; and also it goes by way of the Niles-Stockton line; that is, freight business. I do not know how much passenger business goes that way.

Q. The business solicited by the Union Pacific is solicited over that route generally, whether it goes by Niles or Benicia?

A. Yes.

Q. Is there much competition between that route and the Sunset Route for the business described?

A. Between the Union Pacific and the Sunset Route?

476 Q. Yes; the Union Pacific—that route; yes—and the Sunset Route.

A. There is between the Union Pacific part of that line. Of course there is no competition between the Central Pacific end of it and the Sunset Route, because it is controlled by the same company; that is not competition in the sense in which I use the term. There is competition between the Union Pacific and its eastern connections and the Southern Pacific Company by way of the Sunset Route—that is, its El Paso gateway and its connections—for that business.

Q. You mean there is competition in the sense of effort to get the business?

A. Yes; and all that competition implies.

Q. If the Central Pacific were separated from and independent of the Southern Pacific control, what effect would that have in the matter of competition on the route you have described?

A. Of course, assuming that the Central Pacific is controlled by the motives that ordinarily control people, it would work very actively for that business by way of the Ogden gateway and its connections east, while the Southern Pacific would work very actively for it by way of the El Paso gateway.

Q. Much more so than is now the case?

Mr. BLAIR. This is a very intelligent witness, and it is not necessary to lead him.

Mr. ORR. I appreciate that.

The WITNESS. As I stated a moment ago, that portion of the line west of Ogden—that is, what is now the Central Pacific, that is controlled by the Southern Pacific—does not work the business from the Atlantic seaboard territory by way of the Ogden gateway at all, except, perhaps, where it can not get it by way of the Sunset line; then it would work it by way of Ogden, but it works preferentially by the Sunset line. The Central Pacific is not a factor in it at all, because it is not an operating company; and if the Central Pacific were independent, undoubtedly it would work very actively in California. It would be a new factor in that competition.

Q. Are you able to state, from your acquaintance with the business and localities, the natural course shipments of freight would take originating north of Tehachapi, California, destined to the Atlantic seaboard, or east of the Missouri River and St. Louis or at St. Louis?

Mr. HERRIN. What do you mean by "natural route"? The shortest?

Mr. ORR. I mean whose territory would that be considered? What would be the shortest and best route, if distance and time were considered and the route it would naturally take if not solicited some other way?

The WITNESS. Your question relates to shipments by rail as against shipments by way of the canal?

By Mr. ORR:

Q. I will ask the question to apply as against any other route.

A. Why, the shortest and most direct route would be the Central Pacific and Union Pacific and their connections east.

Q. Describe briefly, if you will, about what territory in California on the west coast that would cover.

A. I should say that it would cover everything north of Tehachapi, which is about midway between San Francisco and Los Angeles;

perhaps it is a little nearer Los Angeles and north of Santa Barbara up to the Oregon boundary. Mojave or Bakersfield—Mojave, I should say—is the best way to identify the point that I mean by the Tehachapi.

479 Q. Some objection was made, perhaps not in the form of an objection, but it seems to be objectionable to counsel for the defendant, to the form of a question I propounded to you, asking you what would be the effect upon competition if the Central Pacific were separated from the control of the Southern Pacific.

Mr. BLAIR. Does anything appear on the record in regard to the views of counsel for the defendant in regard to that question?

Mr. ORR. I believe so.

Mr. BLAIR. I do not recall it.

(By request of counsel for the petitioner, the reporter repeated the pending question.)

Mr. ORR. I did not mean "effect", but "extent."

Br. Mr. ORR:

Q. I ask, would it be much greater? I will ask you to give your views again, if you will, on the extent of that competition and the effect of it.

A. Well, at this time the Southern Pacific, through its control of the lines of the Central Pacific and the Southern Pacific Railroad Company and some other companies, controls all of the rail

480 transportation in Central California, except that controlled by the Santa Fe and Western Pacific; and it naturally prefers the route that affords it the longest haul or the most revenue—not always necessarily the longest haul, because sometimes the difference in the division is not great enough to justify the difference in the length of the haul; and, controlling the Central Pacific as well as the Southern Pacific, it directs the policy of all of those properties and their management. If the Central Pacific Railway Company were operating its own railroad, independently of the control of the Southern Pacific, it would have no interest in sending any of this business through the El Paso gateway, as far as I can see. Its interest would be to pull all that it can, or all that it could control, through the Ogden gateway; while the Southern Pacific and Southern Pacific Railroad, no longer having any interest in sending any of that business through the Ogden gateway, would put it all south or southeast through the El Paso gateway. There would then naturally be that struggle between the Central Pacific and the Southern Pacific in this central California territory.

481 Q. You may state, if you will, whether in your opinion the separation of the Central Pacific from the control of the

Southern Pacific would tend to better service or what, if any, benefit would be derived by the shipper from the separation.

A. Well, I do not know that I can answer that; that is going rather far afield, Mr. Orr. I can only assume that there would result the things that usually follow the action of corporations acting in their own interest. There would be competition between the Central Pacific line and the Southern Pacific line where there is none now. As to how far competition is beneficial that is another question. There would be competition where there is none now, or practically none.

Q. Are you informed and able to state anything in connection with the movement of wool originating on the lines of the Central Pacific Railway as far east, we will say, as Corinne?

A. I know in a historical way. By that I mean the knowledge I have acquired of those matters since 1904, how it was handled prior to 1901, and how it was handled during what is called the merger. During the merger it moved through the Ogden gateway as far as possible to the east. I know this only in a historical way.

Mr. BLAIR. We object to this statement of the witness as to how it was moved prior to 1901.

The WITNESS. I have not stated that.

Mr. HERRIN. There is any number of witnesses who know these facts. There is no reason to trouble Judge Lovett as to what he does not know.

By Mr. ORR:

Q. You may state what, in your opinion, from your knowledge of the situation, would be the effect upon the competitive power of the Union Pacific Railroad Company in competing for transcontinental business or other business reaching in the territory served if there was a separation, if the Central Pacific Railway Company were separated from the control of the Southern Pacific Company.

A. The Union Pacific now is merely a connection of the Southern Pacific Company at Ogden, and is not as dependent on the Southern Pacific Company as it formerly was for the business it gets; but the Southern Pacific Company is in the position, by reason of its ownership of the Central Pacific, to divert a great deal of business from there to the Union Pacific. If the Union Pacific had its own line into Central California it would not be dependent on any other line, but would have its own line to come directly in contact with the shippers. I am not prepared to say, however, that we could get any more business then than we get now.

Q. You say the Union Pacific is not as dependent now as it formerly was; why not?

A. Well, perhaps I could do better by contrasting the situation now with what it was when the Union Pacific acquired control of the Southern Pacific. At that time the shipper had no right to route his traffic. That was in the hands of the carrier. There was only one railroad between Ogden or Utah and California. That was in 1901. The Union Pacific was absolutely dependent on the Southern Pacific for its California business. It had no line of its own, and there was no other line. Since 1901 what is commonly referred to as the Clark road has been constructed between Salt Lake City and Los Angeles and San Pedro. The Union Pacific has a half interest and equal voice in the management of that line. That was open for business in 1905. That affords the Union Pacific an entrance into Southern California where it is a competitor with the Southern Pacific Company. The Western Pacific line has
484 been opened from Salt Lake City to central California; that is, to Sacramento, Stockton, Oakland, and San Francisco, and some other points, and the Union Pacific, or the Short Line, connects with it at Salt Lake City, and, while I do not want to throw stones at it, it is not as good a railroad as the Central Pacific in any respect.

Mr. HERRIN. Which road is that?

The WITNESS. The Western Pacific. That has been opened, it is a railroad and it is there, but it was not there in 1901. So, with those considerations, the building of the line from Salt Lake City to Los Angeles, opened for business in 1905, the passage of the Hepburn Act in 1906, which gave the shipper the right to route his freight, and the opening of the Western Pacific, the Union Pacific is not dependent to the same extent now as it was formerly on the Central Pacific; but the Central Pacific is far and away the best connection for the Union Pacific to Central California. It is the shortest line and the best railroad in every sense of the word. Does that answer your question?

By Mr. ORR:

Q. Yes; thank you. The Western Pacific was opened for business in 1910, was it not?

485 A. It is my recollection; it did not make any great impression on the business of the Union Pacific or Central Pacific but I think it was about that date.

Q. You may state whether, in your opinion, solicitation of business has much or little effect on the securing of business.

A. It has some; service has more than any other now. Conditions have changed very much in recent years in that respect.

Q. What now controls the selection of routes principally?

A. First, service; and, next, personal idiosyncrasies of the shipper. I should say next to that is solicitation.

Q. Would you say that because of the all-rail route you have described from the east to the west coast and the reverse it would be in position to give better service than the Sunset Route on the same business—transcontinental business?

A. Would it be in position?

Q. Yes.

A. I think it is in position now.

Q. Well, could that be increased or in any manner changed by the separation of the Central from the Southern Pacific control?

A. I would not like to say that, because I think the Southern Pacific Company is working now, and has been ever since the merger, as it certainly was during the merger, the Ogden gateway very effectively. How long it will continue to do that I do not know. Of course during the control of the Southern Pacific Company by the Union Pacific Company the Union Pacific Company's policy dominated the Southern Pacific in that respect, and the Union Pacific was naturally in favor of the Central Pacific line, with a due sense of responsibility for the entire Southern Pacific system, and because the two systems had the haul from the Missouri River to the Pacific. Perhaps I am going further than the question calls for; I want to make my position clear on that. I can not say that the situation would be improved beyond what it is now by the Southern Pacific, because up to this time, whatever it may do in the future, the Southern Pacific is working the Central Pacific very efficiently.

Q. What I intended to convey by my question was whether the increase of effort in the way of competition for the competing traffic would have the tendency to increase the quality of service. You say service is what induces the business, and my inquiry was as to whether the increase in competition which you have described would be likely to increase the quality of service.

A. That, according to my observation, is what always has been the result of competition—improvement in service.

Mr. ORR. You may cross-examine.

Cross-examination by Mr. BLAIR:

Q. You have spoken of solicitation from and to points in Central California being made by the Union Pacific through the Ogden gateway. How does the Union Pacific preferentially route the traffic for Southern California?

A. By way of Salt Lake City and the so-called Clark route.

Q. Is that the San Pedro, Salt Lake & Los Angeles road?

A. Those words are in its name. I believe its correct name is the San Pedro, Los Angeles & Salt Lake Railroad Company.

Q. That is an affiliated line of the Union Pacific?

A. The Union Pacific owns a half interest.

488 Q. You do not see that line on the Government map?

A. It is here.

Q. But it is not colored?

A. It is black.

Q. It is not observable to the naked eye from where I am.

Mr. McCLENNEN. That is assertive rather than interrogative.

By Mr. BLAIR:

Q. I believe you also called attention to the fact that this line from Granger, I believe, to Portland is not on the map.

Mr. ORR. You mean on this map?

Mr. BLAIR. By map I mean the map produced by the petitioner as Exhibit 1.

The WITNESS. It is on the map, but in small lines, the same as the other railroads.

By Mr. BLAIR:

Q. Like all other railroads in the country.

A. It is not in brilliant colors, like the others.

By Mr. HERRIN:

Q. The ordinary rule, of course, which these railroad com-

489 panies follow is their own interest, I suppose, by routing as far as they can influence routing; they influence it the way they get the most revenue?

A. That is the result of my observation.

Q. And hence we have the long haul preferred as against the shorter haul?

A. By railroad companies, yes, in those cases where they get more revenue for the long haul, which they usually do.

Q. So that if a company had the same interest, whether freight went one way or the other, two lines that form an alternative line have practically the same interest, it would not make much difference to that company which way that freight went?

A. Not except for trading purposes, with connections.

Q. But so far as the routing is concerned, it would be the same to the company whether it went one way or the other? If, for example, the Southern Pacific Company owned a line down on the Sunset Route for about the same distance that the Central Pacific runs on the Central run it would be practically neutral, would it not, as to whether the freight came one way or the other?

A. Yes; except in so far as the service that some con-

490 nections afforded might enable it to get traffic as against some competitor.

Q. That is true; but we were talking about the influence of this long haul or short haul?

A. Yes.

Q. If it had the same interest only in one road as in the other it would be indifferent as to whether it came one way or the other?

A. That is true, except, as I say, possibly the question of trading with connections and service beyond.

Q. We do not want to get into that, because I do not know where it would lead.

A. I don't know either.

Q. If the Southern Pacific Company had no interest except the Sunset Route it would have a good deal less interest than it has in the Central route, because it owns the Central Pacific line, so it has a substantial interest in that railroad, has it not?

A. The Central Pacific?

A. Yes.

A. Yes; it controls the Central Pacific—owns the Central Pacific.

491 Q. I say, it has a substantial interest in that route?

A. Yes.

Q. As it owns the line to Ogden?

A. Yes.

Q. And comparatively the investment in the Central Pacific line almost approximates the investment in the Southern Pacific line, does it not, the Sunset line, the rail line?

A. I do not think so.

Q. There is not very much difference when you come at it. Now, so far as it has an interest in the Central line that neutralizes, does it not, just to that extent its effort to push business over the Sunset line?

A. Yes; certainly.

Q. It would do that, would it not?

A. Yes.

Q. If a man had a one-fourth interest in that line and a three-fourths interest in the other, the one-fourth interest would have its effect in neutralizing the use of the long line?

A. That would seem plain enough.

493 Q. So that if you take the Central Pacific away from the Southern, leaving it no interest in the Central line, it would undoubtedly increase its efforts to force business over the only line it had?

A. It would increase its efforts to force business——

Q. (Interposing.) Over the only line it had, which would be the Sunset line?

A. Undoubtedly.

Q. Then, if the Union Pacific had the Central, you say you would increase your efforts? You could increase them?

A. Yes. I also stated that I was not certain by any means that we would get more business than we are getting now.

Q. I am coming to that. So that this question of mere solicitation in and of itself does not cut much figure, does it, under the law? For instance, suppose the Union Pacific should not solicit at all; it would not violate any law, would it, if it kept its road running?

Mr. McCLENNEN. My objection to the question is that it calls for an opinion of law, and I do not want the judge to go on record unless I know his opinion in advance as to what the law may be.

493 Mr. HERRIN. I do not care about taking up time on that; it is not very important, except that the judge has stated—well, I do not know that I care to go any further.

By Mr. HERRIN:

Q. You say you do not know whether you would get as much or more business than you are now getting over the Central route, or that all this change might not actually affect materially the actual cost of traffic?

A. Do you want me to answer that?

Q. Yes.

A. Of course, there is a large field here, if you want me to go into it.

Mr. ORR. Go ahead, if you will.

By Mr. HERRIN:

Q. I only wished to say that you spoke a moment ago and said that you might not get as much business——

Mr. ORR. That is not the question. I ask that the witness be permitted to answer.

The WITNESS. My opinion is that we would not get as much business for a good while, if we had the Central Pacific, as we do now.

By Mr. HERRIN:

Q. You can develop it.

494 A. I can give the reasons for it.

Q. That is obvious. Since the law has given to the shipper the right to route, he is apprised of that. They generally understand that they can route their freight.

A. I think they do.

Q. And as far as your experience goes, the shippers are quite alive to their own interest, as to the routes that should be selected. I mean the shipper would not consent to route freight against his own interest.

A. No; I think as to that, Mr. Herrin, that the shipper has for many years been very much alive to traffic conditions. I do not think he has the same interest in it now that he had formerly. Formerly he got rebates and concessions, and it was a question of bidding for his business. He did not have the right to route at that time. Now, it is largely a question of service.

Q. Now he is confined to service?

A. Yes.

Q. And he would be naturally prone to select the route that would give him the best service?

A. It has a good deal to do also—the question of location, 495 the line on which the man who controls the business is located is of importance. I do not care whether he is the consignee or the consignor; the man who controls the routing, whether consignor or consignee, his location has a good deal to do with his choice of routes.

Q. And that is what you group under the heading of idiosyncrasies? You used some such word.

A. I should say this as a matter of interest; what I should say, as a matter of personal idiosyncrasies, is where it is practically immaterial to him which way it goes. He may dislike some officer of some particular line and turn his freight away from that, because he has no interest in it, no interest to be gained. There are situations like that—or personal likes or personal friendships; that applies a great deal where the rates and service are equal. That is what I referred to by "idiosyncrasies"; but the matter to which you refer is more a matter of substantial interest, the location of the shipper on the tracks or on the line where he may want a good many favors, service, and such things.

Q. Well, that goes to service?

A. But it may not be that particular shipment, but other shipments.

496 Redirect examination by Mr. ORR:

Q. In answer to a question of Judge Herrin's, you stated that you might not get so much business for a while. State what you intended to convey by that answer; what did you mean?

A. I meant that most of the business in Central California—that is, in California north of Mojave and Santa Barbara—originates on the tracks of the Southern Pacific Railroad Company, not on the tracks of the Central Pacific. The Southern Pacific Company, controlling all of these lines, now sends a great deal of the business through the Ogden gateway, because it has an interest in the Central Pacific. It has that inducement. If it did not own the Central Pacific—if, for example, the Union Pacific owned it, or if the Cen-

tral Pacific were independent—the Southern Pacific would not send any business through the Ogden gateway that it could send through the El Paso gateway; but most of the construction in recent years in Central California has been done by the Southern Pacific Railroad Company and not by the Central Pacific, and unless the Central Pacific could make some trade with the Southern Pacific on
497 divisions that would almost buy that business from it, it would perhaps have to do a lot of building of branches and spend a lot of money that way to get that business, and during that period most of the business would go the other way; that is what I meant.

Q. Does the Central Pacific, even now, send any business through the Ogden gateway, in transcontinental business, that it can control over the Sunset Route to Atlantic coast territory?

A. You mean to the Atlantic seaboard?

Q. Yes.

A. No; I think not.

Q. You would not lose any of that business?

A. We would not lose any of that.

Q. You have not quite answered the question yet. What did you mean when you limited your increase of business to "a while", as you stated—"we might not get it for a while." What did you mean by that, that there would be a time when you would get it?

A. I think that anybody who owned the Central Pacific Railroad, if the Southern Pacific did not own it, I think the Central Pacific alone, or in the hands of somebody else, unless it did some
498 extension, would be very much in the situation of the Western Pacific, because the extensions in California for many years have not been done by the Central Pacific; the Central Pacific would have to either do a lot of construction or would have to make a trade with the Southern Pacific.

Q. Well, the Central Pacific is not precisely in the condition that the Western Pacific is in regard to having no feeders, is it?

A. No; but it has not as many as it would need, if it were independent of the Southern Pacific, unless it got proper divisions from the Southern Pacific—I mean liberal divisions.

Q. Have you any knowledge of the extent, by way of comparison, of the transcontinental business with that of the business other than transcontinental that would be affected by the Southern Pacific sending it another way?

A. In the event that the Central was separated from the Southern Pacific?

Q. Yes.

A. I can not give any figures of percentages; I speak only in a general way as to the effect of that situation.

Q. What I want to know is whether it would affect a very large percentage of the business?

A. Why, if the Central Pacific were separated, if it were independent, both the Central Pacific and the Southern Pacific would be in San Francisco, Oakland, Jan Jose, Stockton, Sacramento, Fresno, and all other towns and places in Central California, contending for traffic, one for the Ogden gateway and the other for the El Paso gateway, and it would affect all that competition and would make competitive practically all the traffic of that territory going east.

Q. Yes; but you have stated, I believe, that none of the Atlantic seaboard business is routed by the Southern Pacific through the Ogden gateway that it can control through the New Orleans gateway; that is the fact, is it not?

A. Yes.

Mr. ORR. That is all.

Mr. BLAIR. No questions.

(Whereupon an adjournment was taken until Tuesday, September 29, 1914, at 10.30 o'clock a. m.)

SIXTH DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 29, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Railroad Company, et al.

JOHN B. DEFRIEST was called as a witness on behalf of the petitioner and, being first duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your full name?

A. John Becker DeFriest.

Q. And your residence?

A. 411 West 115th Street.

Q. New York City?

A. New York City.

Q. What is your occupation?

A. General eastern agent of the Union Pacific Railroad.

Q. You have occupied that position about how long?

A. Six years.

Q. Prior to that what was your position?

A. General agent in Philadelphia of the Union Pacific.

Q. For how long?

A. Three years.

Q. And prior to that?

A. Chief clerk in the Union Pacific New York office.

Q. For how long?

A. Seventeen years.

Q. That makes a total, then, of your connection with the Union Pacific in seaboard territory of 26 years?

A. 26 years.

Q. What are your duties as general eastern freight agent?

A. Soliciting freight for the Union Pacific.

Q. Personally, or through other solicitors?

A. Personally and through the help of other soliciting agents.

Q. What is the territory in which you solicit or which
502 is under your supervision?

A. Atlantic seaboard territory east of Harrisburg and Buffalo and north of the Virginia-North Carolina State line, and including all New England.

Q. That is, north of the southern boundary line of Virginia?

A. Yes.

Q. And running west as far as Harrisburg, Pennsylvania, and Buffalo, New York?

A. Yes.

Q. Does that mean to include Harrisburg and Buffalo or exclude them?

A. It includes them.

Q. Your duties, then, and of the men under you require the obtaining of such California and Pacific slope freight for the Union Pacific as you can by legitimate means?

A. Yes.

Q. In working that freight do you have any preference, or does the Union Pacific Railroad have any preference as between the different lines east of Omaha?

A. Not very material, except the Milwaukee & Northwestern are our most direct connection.

503 Q. And how is the freight routed beyond Ogden?

A. Southern Pacific.

Q. That is, the rails which in this case we speak of as the Central Pacific rails?

A. Yes.

Q. In soliciting Atlantic seaboard freight, are you brought into contact with the representatives or solicitors of the Southern Pacific Company?

A. We are brought in contact with them; they are our connecting line and we refer to them quite frequently.

Q. Are you brought into such relation with them as to know how they are seeking to route Atlantic seaboard freight for California, Oregon, and Nevada?

A. Yes.

Q. What do they seek?

A. They try to get it through the New Orleans gateway wherever possible.

Q. Failing that, what is their next preference?

A. Well, that is a question; they have got a good many connections, and, so far as I can see, they are rather neutral as to the different gateways through which the freight passes.

504 Q. In your efforts to get freight for the Union Pacific, do you have any cooperation from the solicitors of the Chicago & Northwestern and the Chicago, Milwaukee & St. Paul?

A. Yes.

Q. Do you get any cooperation from the solicitors of the Southern Pacific?

A. Not that I know of; in other words, their soliciting men do not go right out with our soliciting men and work for business that way.

Q. You have been speaking, I take it, as of the present time in your answers. How far back has the condition which you have just been describing existed?

A. Since the segregation of the Union Pacific and Southern Pacific.

Q. That is, in 1913?

A. No; it was before that, wasn't it? I don't remember just how long ago it was since the segregation.

Q. The decision was in December, 1912, as I recall it, and the actual decree a little later. How does the situation which you have described as existing since that segregation, which we will call 505 for convenience the unmerging, compare with the condition that existed in seaboard territory prior to the merger with the Union Pacific in 1901?

A. I think the situation now is about the same as it was before the merger.

Q. What is the normal freight time from California points over the rails of the Central Pacific-Union Pacific and eastern connections to New York City?

A. I think that depends entirely upon the commodity that is moved. If they have a freight train of green fruit, they would move it much quicker than they would a train of dead freight.

Q. Take the green fruit first; what is the ordinary time eastbound over the line I have indicated on that?

A. About ten or eleven days.

Q. The next ordinary freight in carload lots?

A. I should judge about fourteen days. I do not watch the eastern movement very closely, because outside of the fruit business we do not trace very many shipments.

Q. Now, the same question in the reverse direction, westbound?

A. It will average up about thirteen days.

506 Q. Do you experience many instances, either eastbound or westbound, of stoppages in transit and in the switching yards?

A. No, sir.

Q. I was using the term stoppage as indicating delay, not a legal stoppage.

A. We do not have any trouble unless the cars are in bad order.

Q. What do you mean?

A. If they break down or something happens to them in transit.

Q. How long has that been true, that the cars have been running through without delays?

A. Well, I know for the past three years we have not had any trouble at all.

Q. How far to the west and south do you come in contact with the solicitation by the Southern Pacific preferentially by the Sunset Route through New Orleans?

A. Well, the most of their solicitation for the New Orleans gateway is, well, I should say out as far as Harrisburg and down as far as Baltimore; below that they do not get so much for the New Orleans gateway; that is, via the Morgan Line.

507 Q. They absorb the local into New York, do they?

A. No; that is part of the through rate. On some roads they have a regular division, and on others there is a local charge into New York.

Q. I am not sure that I have that clearly. Take from Rochester, New York, going by New York and Sunset to New Orleans, does that travel from Rochester to San Francisco at the same rate as it would travel from New York City to San Francisco?

A. Yes.

Q. You do not have anything directly to do with the Central Freight Association territory yourself?

A. No, sir.

Q. In this seaboard territory is the volume of freight for which you are competing against the Southern Pacific large or small?

A. It is quite heavy.

508 Cross-examination by Mr. BLAIR:

Q. Competition for this business which you have been describing is not confined to the Ogden route and the Sunset Route, is it?

A. No, sir.

Q. There are a number of other lines at the same time striving to get this traffic?

A. Yes, sir.

Q. The American-Hawaiian Line is an active competitor for this traffic, is it not?

A. Yes, sir.

Q. It goes after all business in Atlantic seaboard territory?

A. Yes, sir.

Q. During the merger between the Union Pacific and the Southern Pacific was not freight preferentially sought for the Sunset Route?

A. Yes, sir.

Q. In about the same way that it is since the "unmerger"?

A. Yes, sir.

Q. You spoke of the through rate from Rochester being the same as from the port of New York. You were not asked whether that rate from Rochester to New York was absorbed by the water line. What do you know about that?

A. It is a part of the through rate, and the lines divide the rate via the Morgan Line—that is, from Rochester to New York and New York to San Francisco—the same as the all-rail lines from New York by the Ogden gateway or any other gateway divide the rates.

Q. So that the rail line from Rochester to New York has a division of that through rate?

A. As I understand it; yes.

Q. Which is paid by the shipper?

A. Yes, sir.

Q. Do you know what the normal time for the movement of traffic by the Sunset Route is?

A. It is supposed to be the same as via the Ogden gateway.

By Mr. DUNNE:

Q. I understood you to say that the conditions were the same now as during the merger when you were answering Mr. McClennen in respect of the solicitation by the long haul.

A. No.

Q. Please explain that.

A. During the merger if anything was lost or they could not secure the business via the New Orleans gateway they tried to get it in connection with the Union Pacific road via Ogden.

Q. What are the affiliated lines of the Western Pacific between Salt Lake and San Francisco?

A. The D. & R. G. and the Missouri Pacific.

Q. And what is the Missouri Pacific's gateway?

A. St. Louis.

Q. The Santa Fe has a road all the way from Chicago to San Francisco, has it not?

A. Yes, sir.

Q. So that Atlantic seaboard business—business originating in seaboard territory and bound for California—may go through the St. Louis gateway by the Missouri Pacific, the D. & R. G., and the Western Pacific?

A. Yes, sir.

Q. Which is a through affiliated line from the St. Louis gateway to California?

511 A. Yes, sir.

Q. Similarly, business originating in the seaboard territory and passing through the Chicago gateway, may go by the Santa Fe all-rail from Chicago to San Francisco?

A. Yes, sir.

Q. And those lines that I have mentioned are actively competing for Atlantic seaboard business, are they not?

A. Just as hard as anybody else; yes.

Q. And in the event of successful competition by those lines for the business, none of that business moves by the Southern Pacific between Ogden and San Francisco?

A. No, sir.

Q. How many all-rail lines are competing in Atlantic seaboard business for the all-rail movement of that business? Can you name some of the principal lines?

A. There are seven trunk lines from New York to Chicago that are working for it; all of the Iowa lines working via Chicago and Omaha or Kansas City, and also from St. Louis to Kansas City, and all of the rail lines working from the Missouri River to San Francisco. Combining them, altogether there are quite a number.

Q. That is an extremely active and persistent state of

512 competition, is it not?

A. Yes, sir.

Q. Is it to the interest of the Southern Pacific Company, in the event that it is unable to procure the long haul by way of the Morgan line, to have that freight move through the Chicago gateway and by way of Ogden to California?

A. Yes.

Q. Why is it to the interest of the Southern Pacific to have it move that way?

A. In order to get the haul on the business from Ogden to San Francisco.

Q. And that is against the adverse and competitive movement of the same freight by the Santa Fe out of Chicago, or by the Missouri Pacific and its affiliated lines through the St. Louis gateway, is it not?

A. Yes, sir.

Q. The American-Hawaiian Line is an all-water line, practically, is it not, from New York to San Francisco?

A. Yes, sir.

Q. Is that line in active competition, and has it been for some time, as well with the all-rail lines that you mentioned as with the Sunset line of the Southern Pacific?

A. It is.

Q. Does that competition promise to become, if anything, more active in the future?

A. If they get more boats; yes, sir.

Q. Are there any other water lines out of New York soliciting Atlantic seaboard business?

A. Yes, sir.

Q. Please name them.

A. All-water?

Q. If there are any all-water, name them.

A. An all-water line is the Luckenbach Steamship Company, and W. R. Grace & Company.

Q. Between what ports?

A. Between New York and San Francisco and other Pacific ports. The Mallory Line of steamers between New York and Galveston, and the A., T. & S. F.

Q. The Mallory Line, in connection with the Atchison, Topeka & Santa Fe, is a mixed water and rail service by way of the Gulf, is it not?

A. Yes.

Q. So that there are two competing mixed rail and water services from and to Atlantic seaboard territory via the Gulf of Mexico?

A. Yes.

Q. Namely, the Mallory Line with its rail connections, and the Morgan Line with its rail connections?

A. Yes, sir.

Q. Is there any Atlantic seaboard business moving by all-rail through New Orleans or any other southern gateway to California?

A. Some; yes.

Q. What is the southern gateway through which it moves?

A. It moves sometimes through Shreveport, sometimes through Dennison, and it also moves through New Orleans direct.

Q. Is that business relatively considerable?

A. I could not give you any idea of the tonnage that moves.

Q. No; I am simply asking you if it is relatively considerable. I mean, relatively to the takings of the all-rail trunk lines and the mixed rail and water service by the Gulf.

A. No.

515 Q. Why?

A. Because I do not think they can make the same time rail as they are making by the Morgan Line. In other words, it ta the all-rail line longer to get to New Orleans with their freight.

Q. It is not a practicable or a reasonable method of doing business?

A. Oh, yes; they are doing quite some business that way.

Q. But it is relatively inconsiderable, measured up against takings of these through transportation routes?

A. Yes.

Mr. DUNNE. That is all.

Redirect examination by Mr. MCCLENNEN:

Q. Have you any knowledge of the tonnage carried by the Mall Line as compared with the tonnage carried by the Sunset from N York to California, and the reverse?

A. We have no records at all. The only way I can tell is thro the solicitation. There is a good deal more business moves by Morgan Line and Southern Pacific than by the Mallory Line the Santa Fe.

516 Q. Is the Mallory Line exclusively Santa Fe on Califo business, or is it an independent line?

A. The bulk of the California business moves by the Santa Fe do not think there is hardly any moves by any other line.

Q. That is, you mean the bulk of the Mallory Line business?

A. Yes.

Q. Do you know whether any of it moves in connection with Texas & Pacific?

A. We seldom hear of any moving by way of the Mallory L and the Texas & Pacific.

RALPH MILLER JOHNSON was called as a witness on behalf of petitioner, and being duly sworn testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. What is your name?

A. Ralph Miller Johnson.

Q. And your residence?

A. New York.

517 Q. And your address?

A. 57 West Forty-eighth Street.

Q. What is your occupation, Mr. Johnson?

A. General eastern agent of the Chicago & North Western R road.

Q. How long have you occupied that position?

A. Seven years.

Q. What railroad experience had you had prior to that, and where located?

A. I have had a varied experience—from bill clerk, station agent, traveling agent, general agent, general eastern agent, twenty years, of which eleven years have been in the seaboard territory.

Q. So far as the interests of California business are concerned, where do the lines of the Chicago & North Western run?

A. Between Chicago and Omaha.

Q. What are your duties in your present position?

A. To try to secure as much freight as we can for our system lines. I speak of "our system"; it is the Chicago, St. Paul, Minne-
518 apolis & Omaha as well as the Chicago & North Western.

Q. To shorten this: Have you heard the direct examination and the cross-examination of Mr. De Friest, just completed?

A. I have.

Q. Do you agree with the testimony that he has given on direct and cross-examination?

A. Absolutely.

Mr. McCLENNEN. That is all.

Cross-examination by Mr. DUNNE:

Q. Just one question: What is the mileage haul of your company involved in the transportation between the Atlantic seaboard and California?

A. About 500 miles.

Q. What is the mileage haul involved in the Southern Pacific link in that through line between Ogden and California?

A. I can not say offhand.

Q. I will not press that question, because the record shows it.

519 WILLIAM W. HALL was called as a witness on behalf of the petitioner, and being duly sworn testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your name?

A. William W. Hall.

Q. And your residence?

A. Cranford, New Jersey.

Q. What is your address?

A. 117 Cranford Avenue.

Q. What is your occupation, Mr. Hall?

A. General agent of the Chicago, Milwaukee & St. Paul Railroad.

Q. How long have you occupied that position?

A. Four years.

Q. Located in New York City?

A. Yes.

Q. What railroad experience had you prior to that?

A. New England freight and passenger agent for three and a half years in Boston.

Q. Of the same line?

520 A. Yes, sir. General agent of the Chicago, Milwaukee & St. Paul Railroad at Chicago for four years prior to that. General agent at Pittsburgh, Cleveland, Cincinnati prior to that. Before that traffic freight agent.

Q. Your duties at the present time cover what territory?

A. East of Oswego, Syracuse, and to Scranton and Wilkes-Barre, with a line then drawn through Trenton, north of that to the seaboard, and Hudson River north and south. I have nothing to do with New England.

Q. Within that territory your duty is to get such business as you can for the Chicago, Milwaukee & St. Paul?

A. Yes, sir.

Q. As far as affects Atlantic seaboard-California business, where do the lines of the Chicago, Milwaukee & St. Paul run?

A. Chicago to Omaha and Council Bluffs.

Q. You have heard the testimony just given by Mr. De Friest and Mr. Johnson this morning?

A. Yes, sir.

Q. Do you agree with the testimony on direct examination and cross-examination that they have given as expressing your

521 understanding of the situation?

A. Yes, sir.

Mr. McCLENNEN. That is all.

Cross-examination by Mr. DUNNE:

Q. What is your mileage between Chicago and Omaha?

A. 491 miles, I believe.

Mr. DUNNE. That is all.

(Whereupon an adjournment was taken until to-morrow, Wednesday, September 30, 1914, at 10.30 o'clock a. m.)

522 SEVENTH DAY.

ROOM 720, CUSTOM HOUSE,
New York City, September 30, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dune, for the Southern Pacific Company, et al.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 33 memoranda prepared by Mr. J. C. Stubbs for use in the case of the United States against the Union Pacific Railroad Company, and introduced in that case June 11, 1908, and appearing at printed page 3397, showing the method used to divide (distribute) transcontinental freight rates as between the different connecting roads between certain points shown in the memoranda, it being agreed by counsel that these memoranda, subject to corrections, may be deemed as duly proved.

(The memoranda referred to was thereupon marked "Petitioner's Exhibit No. 33, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

523 Mr. McCLENNEN. It is agreed by counsel for petitioner and counsel for defendants that for the purpose of showing at any time the statutory law of the State of California, both as to public acts, private acts, general acts, or special acts, or the absence of any such acts, the printed volumes of such laws may be referred to and deemed to be in evidence, so far as material, without any further proof.

Saving the question of materiality, it is agreed by counsel for petitioner and counsel for defendants that Exhibit No. 17, the certified copy of the record of the meeting of April 12, 1898, of the stockholders of the Central Pacific Railroad Company shall have the same force and effect in evidence as the original record of that meeting shown on the books of the company would have, subject to correction if the original be found and any errors in the copy be shown to exist.

The petitioner puts in evidence as Exhibit No. 34 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of earnings and expenses of property leased from the Central Pacific Railroad Company by the Southern Pacific Company from January 1, 1888, to June 30, 1913.

524 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 34, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 35 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of gross operating income, operating expenses and net operating income of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, for the fiscal years ending December 31, 1880, 1883, 1888, 1893, and June 30, 1899, 1901, and 1913.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 35, September 30, 1914," and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 36 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the operating income, operating expenses and net operating income of the Southern Pacific Company and of the proprietary lines, both in respect to lines leased and not leased, for the fiscal years ending December 31, 1893, June 30, 1899, June 30, 1901, and June 30, 1913.

525 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 36, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 37 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenses of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, for maintenance of way and structures for the years 1887 to 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 37, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 38 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenditures for maintenance of way and structures on the lines of the Southern Pacific Railroad Company and connecting through lines in Texas and Louisiana to New Orleans, making up the through Sunset Route from San Francisco, for the years 1887 to 1901, inclusive.

526 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 38, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 39 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenditures for additions and betterments, not including expenditures for construction of new lines, of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, from January 1, 1887, to June 30, 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 39, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. Petitioner puts in evidence as Exhibit No. 40 a statement prepared under the supervision of counsel for defendants at the request of counsel for petitioner, of expenditures for additions and betterments, not including expenditures for construction of new lines, on the Southern Pacific Railroad Company's lines and on connecting through lines in Texas and Louisiana to New Or-

527 leans, making up the through Sunset Route to San Francisco, from March 1, 1885, to June 30, 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 40, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McClennen. The petitioner puts in evidence as Exhibit No. 41—which, by agreement of counsel for defendants, may be taken as duly proved, subject to correction if errors be found—a statement of dividends declared and paid by the Central Pacific Railroad Company and the Central Pacific Railway Company, respectively, from 1861 to 1913, and compiled, as to the period prior to 1887, from the statement of E. H. Miller, Jr., then secretary of the Central Pacific Railroad Company, as set forth in 5 Pacific Railway Commission Report, page 2547; and, as to the period subsequent thereto, from the annual reports of the Central Pacific Railroad Company to the Interstate Commerce Commission.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 41, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

528 Mr. McClennen. The petitioner puts in evidence as Exhibit No. 42, a list prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the dates of opening for operation of the various portions of the Central Pacific Railroad and Southern Pacific Railroad and subsidiary lines, to the extent appearing on the exhibit, and subject to correction if any error appears to have been made.

(The list referred to was thereupon marked "Petitioner's Exhibit No. 42, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

(Whereupon the taking of testimony in this cause was adjourned to Wednesday, October 7, 1914, at two o'clock p. m., at the Federal Building, Chicago, Ill.)

529 EIGHTH DAY.

Room 606, Federal Building,
Chicago, Ill., October 7, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.

Mr. McClennen. The petitioner puts in evidence as Exhibits Nos. 43 to 58, inclusive, tonnage and revenue statements covering freight between different points therein stated and prepared under the super-

vision of counsel for defendants at the request of counsel for petitioner.

Mr. BLAIR. Counsel for defendants reserve the right to make any objections to which, in their opinion, these exhibits may be subject when the same are ready to be filed.

(The statements referred to were thereupon marked, respectively, "Petitioner's Exhibit No. 43, October 7, 1914", to "Petitioner's Exhibit No. 58, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

530 Mr. MCCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 59" the copy certified by the Assistant Secretary of the Interior of the acceptance by the Central Pacific Railroad Company of the act of July 1, 1862.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 59, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. MCCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 60" a copy certified by the Assistant Secretary of the Interior of the acceptance by the Union Pacific Railroad Company of the act of July 1, 1862.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 60, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. MCCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 61" a photograph of a certificate of stock of the Central Pacific Railroad Company, and it should be noted that the original certificate from which this is photographed has at the bottom lines such as are made by cutting off with scissors.

Mr. BLAIR. Have you any objection to stating the purpose or the relevancy of that certificate?

Mr. MCCLENNEN. It is offered for the purpose of showing

531 at least among other things, the form of certificate that was issued by the company, which enabled stockholders to receive their dividends by the submission of dividend warrants, without the necessity of obtaining a transfer of stock into their own name on the books of the company, from which it will be argued, among other things, that the ownership of the stock in the company changed at an earlier date than would be shown by the transfer dates appearing on the books of the company into new names; so that the beneficial holders of the stock exceeded in number and differed in name from those appearing on the stock books of the company, in some instances.

(The photograph referred to was thereupon marked "Petitioner's Exhibit No. 61, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

532 BENJAMIN T. BOOZE was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your full name, please?

A. Benjamin T. Booze.

Q. Your residence?

A. Chicago.

Q. And your address?

A. My business address, 608 South Dearborn Street.

Q. You are connected with the Transcontinental Freight Bureau?

A. I am chief clerk of the Transcontinental Freight Bureau, yes.

Q. Some days ago did you receive from counsel for the Government in this case a request directed to Mr. Countiss, joint agent of that bureau, to make investigation for certain original contracts?

A. We did.

Q. And among others so requested were the originals of the
533 contracts of September 28, 1883, of the Trancontinental Association, and November 8, 1883. Have you made an investigation in an effort to see whether you could find those contracts?

A. We did, sir, and could not find them.

Q. You are the official of that bureau who would have access, and the ability to get those contracts, if they were in the possession of the bureau?

A. Yes, sir.

Q. The transcontinental Freight Bureau succeeded to the Transcontinental Association?

A. No, sir; not direct. There was a Transcontinental Freight Rate Committee between the two, that existed for about three or four years.

534 Q. So far as the old papers of the Transcontinental Association are still in existence and in normal custody they are, are they not, in the possession of the bureau?

A. What were left; most of them were destroyed, I understand. There are very few of the old Transcontinental Association records with us at the present time.

Q. Your investigation was such as to enable you to say that the bureau has not those originals?

A. Yes; our investigation was such that we know we have not got them.

Q. You were also asked to search for an agreement of October 1st, 1889, between the Transcontinental Association and the Pacific Mail Steamship Company. Did you make an investigation for that?

A. Yes, we did.

Q. Did you find that you had or had not that?

A. We found the original agreement, yes.

Q. Will you let me have that agreement?

A. Yes, sir. [Hands paper to counsel.] The papers showing the date of withdrawal and cancellation of contract are also enclosed with those papers.

535 Mr. McCLENNEN. The petitioner offers in evidence as Exhibit 62 the agreement just referred to by the witness, that is, the agreement between the Transcontinental Association and the Southern Pacific Company and others dated October 1st, 1889.

May it be agreed that instead of the original the present Exhibit No. 24 may be used with the same effect as the original if it proves to be a true copy, and otherwise that the examiner may make a copy and the original be returned to Mr. Booze.

It should be noted that this original contains in pencil along the margin of the first sheet the words "Withdrawn ninety days after September 30, 1902" (which the witness states was intended to be 1892).

It has attached to it by a filing pin a letter of September 30th, 1892, on the letterhead of the Pacific Mail Steamship Company, signed W. W. Lane, secretary, acknowledging the receipt of a letter of September 27th from the Transcontinental Association, notifying of termination 90 days after September 30th, 1892, of the agreement between the Transcontinental Association and the Pacific Mail Steamship Company bearing date the 1st day of October, 1889.

There is also attached by the same pin a copy of a letter
536 on the letterhead of the Transcontinental Association, St. Louis, Missouri, dated September 27, 1892, addressed to the Pacific Mail Steamship Company and signed E. P. Vining, chairman of the Transcontinental Association, announcing the intention of that association to terminate in ninety days after September 30th, 1892, all contracts and agreements now in force between the Transcontinental Association and the Pacific Mail Steamship Company, particularly the agreement bearing date of the 1st day of October, 1899.

(The papers referred to were thereupon marked "Petitioner's Exhibit (Booze) No. 62, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Q. Have you with you any other agreements between the Transcontinental Association and the Pacific Mail Steamship Company discovered by you in the course of the investigation requested by the petitioner?

A. I have only a copy, and our records do not show that this agreement ever went into effect. It is not signed, and it is dated January 1st, 1888. I have another one here that is signed later than

that. Our records do not even show that that ever went into effect, the old records there; they do not show that that ever went into effect.

537 Q. The unsigned draft I will return to you. Will you let me have the other contract which you have just referred to, that was signed?

A. That is the one I turned in there, the later [referring to Exhibit 62]. That is the one you asked for, too.

Q. What additional papers have you with you for which we requested a search?

A. Of those you requested we have only the old Transcontinental Association agreement; the only one that could be found that would be located in our records was one dated September 1, 1887, to take effect January 1, 1888, and that is the original document.

Q. May we have that?

A. Yes. [Hands paper to counsel.] That took effect January 1, 1888.

Mr. McClennen. The petitioner puts in evidence as Exhibit 63 the agreement just referred to by the witness, namely, the agreement dated December 1, 1887, between the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, and the Central Pacific Railroad Company, and numerous other companies; and this agreement has noted in pencil on the first page, "Notice of

538 withdrawal effective 12–31–92."

It is agreed by counsel that after this agreement has been copied into the record the original may be returned to the witness and the copy used with the same effect as the original.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 63, Booze, October 7, 1914", and will be found in the volume of exhibits.)

By Mr. McClennen:

Q. Did you make this pencil endorsement of withdrawal on this agreement?

A. I did; yes.

Mr. Herrin. And it is correct, is it?

The Witness. Yes; that is correct.

By Mr. McClennen:

Q. When did you make that endorsement?

A. I made it within the last forty-eight hours, since looking over the papers.

Mr. Herrin. You confirmed the fact from your records?

The Witness. Yes.

By Mr. McCLENNEN:

539 Q. Was the pencil endorsement that appears on Exhibit 61 also made by you?

A. Yes; it was.

Q. And when was that made?

A. That was made at the same time; when I was looking for these papers I wrote it on, and it should have been 1892.

Q. Exactly when did you make these endorsements?

A. Let me see, this is Wednesday; it was Monday, if I remember correctly, after receiving you letter. Monday afternoon; that is right. I went through all our records myself and dug them out.

Mr. HERRIN. These endorsements correctly state the time when those contracts were terminated?

The WITNESS. December 31, 1892. One of them I made 1902, which is incorrect.

By Mr. McCLENNEN:

Q. Did you consult with anyone in reference to making such endorsement before making it?

A. I did not; our records showed that.

Q. Why did it occur to you at this particular day and year of grace for the first time to make that endorsement?

A. Well, you will notice that Pacific Mail agreement there—I brought you the papers showing that that was withdrawn De-

540 cember 31, 1892, and when that was withdrawn I also found papers, part papers, that the Transcontinental Association members had served notice on the association at the same time, or practically the same time, withdrawing from the association.

Q. My question was not directed quite so much to the fact of the endorsement as to why you happened to take this particular occasion to make it. Why was that?

A. Well, actually and truly to familiarize myself with it, as I was going through a great bunch of old papers, and I wanted to put it down there as a statement of fact, so that I would know exactly after I got through.

541 Q. In the inquiry which led to your search was there any request made of you to investigate as to the dates when these agreements were withdrawn or terminated?

A. None whatever; no, sir. It was for my own information that I put that down.

Q. Was it possibly that a native sensitiveness as to the character of the agreements led you to preserve at just this time the evidence of their mortality?

A. Not at all, sir; not at all. I might, by way of explanation, say that I hold a great many records at the Transcontinental Freight

Bureau, and to save myself looking over a great many records I put that down as I came to the proper papers, so that I can swear to it that it is correct; and to make myself perfectly satisfied I generally put down in pencil such notations. I go through papers every day down there, you might say—not legal papers, but other papers, rate matters, and so forth.

Q. Was I correct in thinking that you appealed to Mr. Herrin in the hearing here after my request for the production of these papers and before you handed them to me and obtained his gracious approval before actually handing them to me?

542 A. Well, I thought there were probably two parties in a case, and I had not said anything to the other parties, so naturally I wanted to see if it was agreeable to them before I handed them over to you. There are generally two parties to a case, as I understand it.

Mr. ORR. In some cases, but not in this case.

The WITNESS. I may be wrong—absolutely wrong.

Mr. BLAIR. I think possibly you will find that you are right.

Cross-examination by Mr. HERRIN:

Q. Did I ever speak to you on the subject of these papers?

A. No, sir.

Q. Did I ever speak to you in my life before just this time?

A. I think not.

Q. Did I ever see you before, as far as you know?

A. I have seen Mr. Herrin in San Francisco ten years ago or more, but I do not know that you knew me—no; I am sure you did not know me.

Q. For the comfort and assurance of Mr. McClennen, you do mean to say that I never spoke to you on this subject or had any communication with you?

543 A. Absolutely, sir.

Q. And no knowledge of it from you, or communication with you in any way?

A. I did not know that Mr. Herrin was connected with this case at all.

Q. And I was quite indifferent upon the subject?

A. Yes.

Redirect examination by Mr. MCCLENNEN:

Q. And you have the good judgment to be appreciative of the privation you have suffered in not enjoying Mr. Herrin's acquaintance until to-day?

A. I have.

Mr. HERRIN. But you can not say as much as to Mr. McClennen?

The WITNESS. May I mention that all of these papers were i effect or produced long before Mr. Countiss was agent of the bureau before he was in charge or before I was connected with the bureau so our records are very incomplete, and we understand that the o transcontinental association records, almost all of them, were burn up. We have very few of them. That is why we were able to pr duce so few of the papers.

544 By Mr. MCCLENNEN:

Q. But we may proceed with the understanding and wi the definite assurance that all the agreements between the membe of the Transcontinental Association and all the agreements betwe the association and the Pacific Mail Steamship Company, whatev their date, which are in the possession of the Transcontinent Freight Bureau or its control, have now been produced?

A. Yes, sir; you may rest assured of that.

Mr. MCCLENNEN. That is all.

WILLIAM H. CONNOR was called as a witness on behalf of t petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. What is your full name?

A. William H. Connor.

Q. And your residence?

A. Wyoming, Ohio.

Q. What is your address?

A. 411 Walnut Street, Cincinnati, Ohio.

Q. What is your occupation?

545 A. General agent of the Union Pacific Railroad Compan

Q. How long have you been connected either with the Uni Pacific or the Southern Pacific Company?

A. I will give you a brief history. My railroad experience start in 1877 as a youngster; and until 1879 I was with the Chicago Alton Railroad as an operator and clerk, ticket agent, bill clerk, various places in those capacities.

September 1, 1879, I went to St. Louis with the St. Louis, Keok & Northwestern Railroad as city ticket agent and clerk. I remain there until the fall of 1880.

I then went to Keokuk, Iowa, as chief clerk in the general freig and passenger office of the same road. I remained in that capaci until May 30, 1887.

I then went to St. Paul and took a position with the St. Pa Minneapolis & Manitoba Railroad in their advertising departme

I remained there until November 30, the same year. Then I wa to Cincinnati, Ohio, and took a position with the Southern Paci

Company as contracting freight agent. I continued as contracting freight agent until April 1, 1889, when I succeeded to the
546 position of commercial agent. I continued in that position until August 31, 1901, when the Union and the Southern Pacific offices in Cincinnati were merged.

On September 1 I became general agent of the consolidated offices. I continued as such until January 31, 1912——

Q. Do you mean January 31, 1912?

A. 1913; on which date the Union and Southern Pacific offices were separated. On February 1 I then continued as general agent of the Union Pacific Company, to date.

Q. And located, still, at Cincinnati?

A. Yes, sir.

Q. If I follow you, you have been twenty-seven continuous years located at Cincinnati, first with the Southern Pacific Company and then with the Southern Pacific Company and the Union Pacific Railroad Company, and then with the Union Pacific Railroad Company alone?

A. It will be twenty-seven years the first of the coming December.

Q. Did you, at the petitioner's request, secure and produce this map which I show you?

A. Yes, sir.

Q. By whom is that map published?

A. It is published by Mr. L. A. Lowrey, secretary of the
547 Central Freight Association, Chicago. It is an official map of railroad freight classification territories and freight traffic association territories of the United States.

Q. And the various divisions of freight territory, according to their nomenclature among railroad men, are shown upon the face of this map?

A. Yes, sir; divided into Trunk Line, Central Freight Association, and Transcontinental Freight Association, as well as numerous others specifically shown thereon.

Q. On the face of this map have you drawn the division line between the Central Freight Association territory and the Atlantic seaboard territory?

A. Yes; known as the Trunk Line, from a description as published by the Central Freight Association. It is an exact reproduction of their line.

Q. And that is this black line which begins at Niagara Falls on Lake Ontario?

A. Yes.

Q. Passes through Buffalo and irregularly down through Pittsburgh, and irregularly to Kenova, West Virginia?

A. Yes; that is just a little junction point on the river.

548 Q. Apart from that line, the map is as officially published?

A. Yes, sir.

Mr. McCLENNEN. The petitioner puts in evidence, as petitioner's Exhibit No. 64, the map just referred to by the witness.

(The map referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 64, October 7, 1914.")

By Mr. McCLENNEN:

Q. Will you bound Central Freight Association territory?

A. Yes. It is bounded on the east by a line drawn from and including Buffalo, N. Y., via Erie Railroad, through Dayton to Salamanca, N. Y.; thence via Pennsylvania Railroad through Craydon and Warren to Oil City and Franklin, Pa.; thence via the Pennsylvania Railroad to Parker, Pa.; thence via B. & O. through Washington, Pa., and Wheeling to Bellaire, Ohio; thence via Ohio River to and including Kenova, West Virginia; thence via the C. & O. Railway to Ashland, Charleston, and Gauley, West Virginia, including all points thereon.

On the north by the north route of the Grand Trunk to and including Toronto to Ft. Gratiot, Michigan; thence via the north

549 and west shores of Lake Huron and Lake Michigan to Chicago, including all points located thereon.

On the west by a line from Chicago through Joliet and Streator to Peoria, Illinois; thence via T., P. & W. to East Burlington; thence via the east bank of the Mississippi River to its junction with Ohio River, including all points on above-described line.

On the south by and including points on the north bank of the Ohio River from Cairo, including Louisville to Coal Grove, Ohio, inclusive.

Q. During this time that you have been located at Cincinnati, what has been the territory under your supervision?

A. When I first went to Cincinnati it was pretty much in its primeval state, as far as the territorial lines were concerned. It was the first agency that they had west of New York City, and it had been there but a short time prior to my going to Cincinnati. I think the first territorial line that was issued to the Cincinnati office was May 28, 1889, and it started at Cleveland, including the same; thence west of a line drawn to Akron Valley Junction, and on the line of the C. & M. R. R. to Marietta, including all of those cities; west on the north side of the Ohio River to Cincinnati, Louisville,

550 and in that vicinity, to and including Frankfort, Lexington, and other whiskey shipping points nearby; continuing on the north bank of the Ohio River to the Mississippi River, and thence to and including St. Louis; north to and including Keokuk; thence

south of a line drawn to Springfield, Decatur, and Paris, Terra Haute to Indianapolis; thence to Logansport, to a line drawn east of Goshen, Indiana; thence on the line of the Lake Shore & Michigan Southern Railway at Toledo, north to and including Detroit; thence east to and including Cleveland.

That was the first boundary line of the Cincinnati territory, and it was followed by the establishment of agencies in Pittsburgh, St. Louis, and Kansas City, and likewise the readjustment of the territory.

In the original days the New Orleans office looked after territory as far north as the Ohio River. That was all modified when the additional agencies were established; and the final territory that I looked after I could best outline by reading a second circular, if you care to have it; and it was likewise the territory that was reassigned to me by Mr. Stubbs at the time of the merger.

Q. In 1901?

A. In 1901.

Q. And what is that territory?

A. That territory was from Cleveland, Ohio, to Akron by the Pennsylvania Company and Cleveland, Akron & Columbus Railway, including points thereon; thence to Marietta, inclusive, by Baltimore & Ohio and Pensylvania Companies and points thereon; thence to Parkersburg, West Virginia, inclusive, by Baltimore & Ohio, including points thereon; thence an imaginary line to Charleston, West Virginia; thence to Clifton Forge, Virginia, inclusive, via C. & O. Railway, including points thereon; thence points west of Norfolk & Western Railway, Roanoke, West Virginia, and Bristol, Tennessee, not inclusive; thence from the State line of Tennessee and Kentucky to Guthrie, not inclusive; thence following the line of the Louisville & Nashville Railroad to Wabash River, but not including Louisville & Nashville Railroad stations except Evansville, Indiana; thence via Indiana-Illinois State line, including points thereon of Wabash Railroad; then Wabash Railroad, Detroit line, to Ohio-Indiana State line; thence on said line to the intersection of the Michigan State line; thence by Ohio & Michigan State line to, but not including, Toledo; thence via south shore of Lake Erie to Cleveland.

That boundary continued absolutely without a change until July 1, 1910, when we put a representative in the city of Cleveland. The northeastern boundary was modified to the extent that it took about thirty miles east of Cleveland off of the Pittsburgh territory and put it into my territory; but the shipping points east thereof were nothing to speak of. At the same time the city of Toledo at that date was taken out of the Detroit agent's territory and put under my

jurisdiction. So that since July 1 I have had the city of Toledo that I did not have from 1901 until 1910.

Mr. DUNNE. July 1 of what year?

The WITNESS. 1910. That was the date that they put Donald Stubbs over there as representative.

Mr. DUNNE. 1910, you say?

The WITNESS. Yes.

By Mr. MCCLENNEN:

Q. This last long description, apart from the modifications
553 you have mentioned, covers what you customarily call your territory?

A. Yes; known as the Cincinnati territory.

Q. And you call that the Cincinnati territory?

A. Yes, sir; it is so understood.

Q. In speaking of Cincinnati shipments do you use the term as covering that whole territory?

A. Yes; that includes, of course, Cincinnati proper.

Q. You have spoken of your assignment to the joint agency at the time of the merger in 1901?

A. Yes.

Q. At that time were you furnished by the Southern Pacific Company and the Union Pacific Railroad Company with a statement of the proportional income to the combined companies on freight moved through the different gateways?

A. Yes, sir; through New Orleans and Missouri River channels.

Q. Is this paper which you have before you the statement?

A. Yes, sir.

Mr. MCCLENNEN. The petitioner puts in evidence as Exhibit 65 the statement thus referred to.

Mr. BLAIR. We object to it as incompetent, immaterial, and irrelevant to any issue in this cause.

554 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 65, Connor, October 7, 1914", and will be found in the book of exhibits.)

By Mr. MCCLENNEN:

Q. Did you, in the course of your business, have prepared a statement showing the movement of freight from the Cincinnati territory via the Sunset Route?

A. Yes, sir.

Q. Have you that paper before you?

A. Yes, sir; I have.

Q. When was that paper prepared?

A. At the close of our business in 1899.

Q. For what purpose?

A. It was for the purpose of submitting to my immediate superior, and likewise keeping a record in the office for my own benefit of the business we were doing.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 66 the statement just referred to.

Mr. BLAIR. We object to that statement as incompetent and immaterial evidence and irrelevant to any issue in this cause.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 66, Connor, October 7, 1914", and will be found in the volume of exhibits.)

By Mr. McCLENNEN:

Q. This statement, I understand, was made under your supervision as a part of your ordinary business?

A. Yes, sir.

Q. Let me make sure that we clearly understand what it covers. This first page, am I right, states the number of carloads moving from your territory via New Orleans and the Sunset Route to all territories?

A. To California and other territories.

Q. And the figures indicate the number of carloads a month that moved from your territory in this way in each month of the years 1890 to 1899, inclusive?

A. Yes, sir.

Q. This does not include the movement of freight into your territory, does it?

A. No, sir; outbound only.

Q. Am I right in understanding that this second sheet shows the same carloads which appear on the first sheet, only, instead of being arranged by months they are arranged by destination points and for the several years?

A. Destination points and States; destination points in California; and the others are by States.

Q. For instance, this second page means that 659 carloads moved in 1890 to California points, including therein a few cars to Oregon and Nevada, and 702 cars moved to Texas, New Mexico, and other southern points?

A. Southwestern points.

Q. And, in the same way, in the year 1898, for instance, from your territory there moved to California, Oregon, and Nevada 1,942 cars via the Sunset, and to Texas, New Mexico, and other southern points 35 cars?

A. Yes.

Q. During that period, 1890 to 1899, or, for convenience, from 1889 to the fall of 1901, did you have any records showing the movement of freight from your territory to California points by any line other than New Orleans and the Sunset Route?

A. No, sir.

557 Q. In the course of your business did you have occasion to investigate the quantity of freight moving from your territory which did not pass over the Sunset Route?

A. In my general solicitation I went against and became acquainted with more or less freight that I could not get over the Sunset Route that I lost.

Q. From your general knowledge of the situation, in charge of that office, what percentage, as nearly as you can state it, of the freight from your territory to California points, total freight, moved via New Orleans and the Sunset Route?

A. I believe it reached as high as 65 per cent.

Q. During the period from 1889 to the fall of 1901 were you in charge of all the solicitation in your territory for the Southern Pacific Company?

A. Yes, sir.

Q. What was the policy which you and the solicitors under you carried out with reference to the routing of traffic from California points to your territory?

A. We devoted our exclusive time and attention to the securing of that freight for our New Orleans gateway. We bent every

558 effort with everybody that could lend any assistance. Our receiving agents and solicitors in California, if it was controlled there, were notified and appealed to for assistance. If the control rested at Chicago, St. Louis, Pittsburgh, New York, or any other point we went after it through our representative there. If it was controlled in my territory I looked out for it there, and we all pulled together all the time and worked every means known to influence and secure that shipment for the Sunset Route. We never let up until the shipment was on and the cars moving.

Q. What was the method of movement to the New Orleans gateway?

A. Principally the Queen & Crescent. They were considered our first connection, and at times we used the Louisville & Nashville, and at other times the Illinois Central, and at times all three.

Q. When you use the expression "New Orleans gateway", you have reference to what?

A. The Sunset Route of the Southern Pacific Company, absolutely.

Q. What, if any, effort was expended by you or the representatives of the Southern Pacific Company toward getting freight from your territory through Ogden?

A. None whatever. We looked upon the gateway, or at least the connections up to Ogden, and other connections east of the Missouri River as competitors of the Sunset Route, and so treated them and they have so treated us.

Q. What were the methods pursued in solicitation in your territory? What was done to get the shippers to ship via the Sunset Route through New Orleans?

A. Well, I think the Southern Pacific was a very powerful road, and I think they were looked upon as such by the receivers in California and by the shippers in that territory, and we cultivated them; we tried to do everything we could for their interest and build up their confidence in our road. We traced their freight, we gave them reports on its movement and route, and in that way we kept them more than satisfied. And, again, the Southern Pacific Company in California is a very influential road. If there were any new industries or industrials being located out there, if they were on local territory requiring sidings the Southern Pacific Company naturally had to put them in. If they were around the city, around the Bay of San Francisco, and needed any sidings the Southern Pacific had to put them in. If there was any material to be moved from the east to complete these industrials and plants it was one of the first things our Southern Pacific solicitors did, to see that the business was routed to the greatest extent by our long haul.

Q. What was done in that period with reference to rates?

A. Well, there were times during that period when the rate situation was not altogether on a tariff basis. In other words, there was manipulation, manipulation resulting in—if I can so express it—pure and simple cutting of rates, and at the same time the Southern Pacific Company was never the instigator of any of the cut rates.

Q. What did it do, if anything, with reference to meeting rates when cut by their competitors to Ogden?

A. When we found that the cut-rate situation was on we made use of our position and then met it. We felt that we were justified in any cut rates we ever made.

Q. To be specific, suppose that the Southern Pacific Company learned that A B, a shipper in Cincinnati, had shipped a carload via Ogden to California; what was the ordinary course? What did you do?

A. We would immediately notify our Pacific coast representatives, if it was controlled there, to prevail on that consignee to change to the Sunset Route.

Q. Suppose the routing was controlled by the consignor in your territory?

A. I should leave nothing undone to secure that business and have it changed to the Sunset Route. Failing to do so I would look upon it as lost and so would my superiors at that time.

Q. Was anything done by way of furnishing any special equipment in your territory for use through New Orleans and over the Sunset Route to California?

A. In the early nineties there were built by the Southern Pacific Company—I believe the exact number was, oh, fifty, or between 50 and 60—buggy cars, cars for the accommodation of buggies and furniture, of special dimensions to better accommodate that class of trade. Those cars were put into Ohio and Cincinnati trade exclusively through our New Orleans gateway. The cars were placed at my special disposal. If I needed any such equipment, I would have the Queen & Crescent place a requisition upon the Southern Pacific Company at New Orleans for the cars. They would be moved to Cincinnati and there held subject to distribution on my order.

562 That same applied with the Louisville & Nashville road, and in turn the equipment was placed by me at various manufacturing points and firms for return loading through the New Orleans gateway.

563 Q. During this period was freight moving from California via New Orleans to your territory?

A. Yes.

Q. In what volume?

A. In the season it was quite heavy volume. What I mean by "season" is that in the fall and early winter there was a very heavy movement of such products as canned fruits, dried fruits, lima beans, dried fish, and that class of commodities. Wine, likewise, was a heavy commodity.

Q. When you came into charge of the joint office of the Union Pacific and Southern Pacific in Cincinnati on the 1st of September, 1901, was there any change in the policy laid down or carried out by you?

A. Yes; there was quite a radical change.

Q. What was the change?

A. Shortly after the consolidation instructions were issued to the effect that a line was drawn from Cincinnati following the Ohio River down to the Mississippi River at Cairo; that the points thereon and south thereof should be worked preferentially by the New Orleans gateway. Secondly, by the Missouri River and Union Pacific—Ogden gateway. All territory north of that line for

564 points in California were to be worked preferentially by the

Union Pacific from the Missouri River through Ogden, by Southern Pacific Company to what we would call central California; points north of Mojave; and for territory south of Mojave, southern California, it would be Union Pacific and Salt Lake route to Los Angeles.

Q. Do you happen to bear in mind when the Salt Lake route was opened?

A. No; I haven't got the exact year. I think it was 1905 or 1906.

Q. Prior to those instructions of the fall of 1901, had you ever received any instructions to favor the Ogden gateway primarily on any freight, or secondarily on any freight?

A. No; we had not; we did not look upon the Ogden gateway, for my territory, as one that was to receive any of that business that could possibly be influenced through New Orleans.

Q. Have you a memorandum of various mileages affecting your territory?

A. Yes.

Q. Was that made up by you?

A. Yes; by my assistant, and checked over by me.

Q. And it is correct, is it?

A. Yes; that represents the short lines.

Q. The short line mileages?

665 A. Yes.

Mr. McCLENNEN. The petitioner puts in evidence, as petitioner's Exhibit No. 67, this table of mileages just referred to.

(The table referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 67, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. What is the natural and best route between your territory on the east and points in Nevada and California north of Mojave and Tehachapi on the west?

A. I would consider the channel to Chicago, any one of the various lines leading west to Council Bluffs; thence the Union Pacific to Ogden, and Southern Pacific Company to destination.

Q. Do I understand you that you are not aware of what company owned the rails west of Ogden?

A. I know that the Central Pacific line extending from Ogden to California is owned and operated by the Southern Pacific Company; that is the general knowledge I have.

Q. And in describing the line west of Ogden, is that the line which you mean?

666 A. That would be the Central Pacific line to California destinations.

Q. What is the comparative mileage to San Francisco, for instance, from Cincinnati via that line, and via the Sunset Line?

A. In round numbers, about 800 miles longer via New Orleans than via Omaha and Ogden to San Francisco.

Q. Looking at your table, exactly how many miles is it by the short rail line from Cincinnati to San Francisco?

A. To be exact, it is 764 miles shorter from Cincinnati to San Francisco via the Chesapeake & Ohio Railroad to Chicago; Chicago & Northwestern to Omaha; Union Pacific to Ogden, and Southern Pacific Company to San Francisco, making a total of 2,559 miles, as against Queen & Crescent, Cincinnati to New Orleans, 836 miles; New Orleans to San Francisco, 2,487 miles; total, 3,323 miles, the difference being 764 miles.

Q. Put in another way, after the freight has traveled 836 miles to get down to New Orleans, how much nearer to San Francisco is it than it was when it started?

A. Seventy-two miles.

567 Q. Mr. Gann calls to my attention that the term "Queen & Crescent" needs some explanation. What is the Queen & Crescent?

A. The Queen & Crescent is known as the Cincinnati Southern, Cincinnati to Chattanooga; Alabama Great Southern, Chattanooga to Meridian; and New Orleans and Northeastern, from Meridian to New Orleans. They compose the Queen & Crescent.

Q. Have you prepared a statement of the California carloads moving from your territory via New Orleans and Sunset Route, and via the Union Pacific and Central Pacific route, since September 1, 1901?

A. Yes.

Q. Is this the statement?

A. Yes.

Q. Was that made up under your supervision?

A. Yes; that is correct.

Q. When?

A. It has been compiled from year to year during 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

Q. Does that correctly state the carloads going from your territory by those two routes?

568 A. Yes; and when I say "year", I wish to state that the year commenced on the date of the consolidation of my offices, September 1, 1901, which would be twelve months to September 1, 1902. Those were the twelve month periods which this represents.

Mr. DUNNE. From September to September?

The WITNESS. Yes; that is the way I made up my year.

Mr. McCLENNEN. This statement just referred to the petitioner puts in evidence as Exhibit No. 68.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 68, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Am I right in understanding that the first figure under the date in each column represents the number of carloads going from your territory via Ogden?

A. Yes.

Q. And the figure under it the number of carloads going from your territory via New Orleans and Sunset Route?

A. Via New Orleans and the other Texas junctions of the Sunset Route.

Q. It would make it all inclusive if I said going from your territory via El Paso to California, would it?

569 A. Yes.

Q. For instance, the year beginning September 1, 1905, there moved out of your territory via Union Pacific and Central Pacific 4,243 cars and via the Sunset Route 830 cars?

A. Yes.

Q. Have you any figures showing the eastbound tonnage?

A. No, sir.

Q. What can you say, from your general knowledge, as to the extent of it?

A. It was very heavy in seasons from central and northern California points. When the fruit and hop and wine season was on it was heavy by the Sunset Route.

Q. Have you a statement showing the number of carloads moving from your territory to California during the calendar year 1912?

A. Yes; I have it before me.

Q. Was that prepared under your supervision?

A. Yes.

Q. Does that correctly set forth the movement?

A. It does.

Mr. McCLENNEN. This statement just referred to petitioner 570 puts in evidence as Exhibit No. 69.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 69, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Am I right that this shows that there moved to California via the Union Pacific from your territory in the year 1912, 2,356 cars?

A. Yes.

Q. Via El Paso or Deming, 1,239 cars?

A. Yes.

Q. Via New Orleans or Shreveport, 671 cars?

A. Yes.

Q. And via other junctions, enough to make up 4,647 cars?

A. Yes.

Q. And otherwise stating those same figures, 2,356 cars moved Union Pacific?

A. Yes.

Q. And 2,291 cars moved Southern Pacific Company and not through Ogden?

A. Yes.

Q. El Paso means delivery to the Southern Pacific Company at El Paso?

571 A. The Southern Pacific system at El Paso; yes.

Q. Deming means delivery to the Southern Pacific system at Deming, New Mexico?

A. Yes. That is another junction with the Santa Fe.

Q. New Orleans means the regular Southern Pacific route through New Orleans?

A. Yes.

Q. Shreveport means what?

A. Houston, East & West Texas down to Houston; thence Southern Pacific Company, the Houston, East & West Texas being part of the Atlantic system of the Southern Pacific Company, so considered.

Q. How many different commodities are there moving from your territory from time to time to California points in large quantities?

A. Oh, the carload commodities are very numerous and extensive; a great variety of commodities from my territory, one hundred or more carload propositions, and a multiplicity of less than carload commodities—innumerable.

Q. Since February 1, 1913, you have worked exclusively for the Ogden gateway on all California freight from your territory?

572 A. Yes.

Q. Have you a memorandum of carloads of freight from your territory moving to California recently in carload lots?

A. Yes.

Q. Was that made up under your supervision?

A. Directly so; yes.

Q. And does that correctly state the movement?

A. Yes.

Q. This, I understand you, includes things moving only in carload lots?

A. Yes; the carload proposition only.

Mr. McCLENNEN. The statement just referred to petitioner puts in evidence as Exhibit No. 70.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 70, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. This statement which you had before you when answering a moment ago, Exhibit 70, I understand you is west bound only?

A. West bound only.

Q. This first column indicates the commodity?

573 A. Yes.

Q. And the numbers in the three columns indicate the number of carloads of that commodity moving in carload lots from your territory to California in July, August, and September, of 1914?

A. Yes.

Q. And the last column is merely the total of the three?

A. Yes.

Q. You now have no direct statistics, I assume, as to the movement of freight from your territory via New Orleans?

A. No, sir.

Q. From your general knowledge of the business in your territory, can you state with any certainty what is now moving via New Orleans and Southern Pacific Company to California from Cincinnati, and via the various routes to El Paso and thence Southern Pacific Company to California?

A. From Cincinnati and Ohio River points and south thereof there is a good business and it is quite extensive in tonnage in the aggregate, and is represented by a great many carloads. I know that from past experience in working the New Orleans gateway, as well as my efforts at present to secure it for the Union Pacific, and

574 I know that the volume that is going through New Orleans is of quite some moment.

Q. In the period 1889 to 1901 did you have any knowledge as to Southern Pacific Company solicitation as to movement of freight from Pittsburgh to New Orleans and thence to California?

A. I had this knowledge, that as to every carload of freight that was forwarded from Pittsburgh, routed through Cincinnati or Louisville to New Orleans en route to California, our Pittsburgh agent advised me of it with a view of having it expedited through my territory and the city of Cincinnati en route to New Orleans. I had occasion to report to the Pittsburgh agency the arrival and passing of that carload at Cincinnati and reported to our New Orleans office in turn its arrival and passing Cincinnati en route to New Orleans.

Q. How did the tonnage passing that way from Pittsburgh territory to California compare with the tonnage from your territory during the same period?

A. It was much heavier, in my judgment.

575 Mr. DUNNE. What period are you speaking of?

Mr. MCCLENNEN. 1889 to 1901.

By Mr. MCCLENNEN:

Q. Can you inform us whether or not the rails from California via the Central Pacific, the Union Pacific, and eastern connections to Cincinnati are naturally competitive with those via the Sunset Route—New Orleans and thence to Cincinnati—using "competitive" in the sense of ability to carry freight between common territories?

A. They are decidedly competitive westbound, and I believe they are also eastbound, but not so much.

Q. With the rails of the Central Pacific Railroad and the rails of the Southern Pacific Railroad both under the control of the Southern Pacific Company, as you have observed it from year to year in business, has there been competition between the Central Pacific and the Southern Pacific, the one against the other, to get that business?

A. Not in all my experience working straight Southern Pacific Company there was not.

Q. What are a few of the important commodities moving in large quantity from your territory to California?

A. A commodity called Crisco——

576 Mr. DUNNE. What is Crisco?

The WITNESS. A substitute for lard, used in cooking, manufactured by Procter & Gamble Company in Cincinnati. It is a vegetable product, a by-product of cotton-seed oil. Whiskey, automobile trucks, plate steel, galvanized iron, packing-house products, tin cans, automobiles, street cars, machinery, furniture, tile, paper, iron pipe, canned goods, wire, lamp chimneys, belting, fruit jars, bridge iron, road rollers——

By Mr. MCCLENNEN:

Q. I will interrupt you. It is not necessary to make it comprehensive. What would the annual tonnage from your territory to California which you could and did secure either for the Southern via the Sunset line or the Union amount to?

A. I can answer that two ways. Take lean years and it would be much less than when business was good; but I think we have handled as high as 200,000 tons—175,000 to 200,000 tons of stuff, all commodities, in a real good year.

Q. Do you have in mind what the average total revenue per ton would be on the freight moving from your territory to California points?

A. No, sir; I could not answer that with sufficient accuracy to go on record. It is a matter that I never handled in my office, as to the earnings of the commodities that moved.

Q. Take the territory in California north of the Tehachapi on the one hand and your territory on the other: If the freight was not artificially controlled by one route or the other by solicitation or otherwise, how much of it would naturally pass through the Ogden gateway and how much of it through New Orleans?

A. From the territories outlined I believe if you were to eliminate all solicitation on the coast as well as in the eastern territories that inside of three years, by allowing the freight to seek its own channel—and I mean by that the routings over which it would be best cared for—I venture to say that 75 per cent of it would go through the Ogden gateway to Cincinnati territory.

Q. And how much over the Atchison or through New Orleans?

A. I think the other 25 per cent would then flow through the Atchison, Western Pacific, and the El Paso and New Orleans gateways.

Q. When did the Atchison, Topeka & Santa Fe Railroad become an important factor in the freight business between Central California and points east of the Missouri River?

A. If I remember correctly they went into San Francisco over their own rails about 1898 or 1899. That is subject to correction. And immediately thereafter they became quite an important factor in the westbound California traffic, but never to the degree that the Southern Pacific has been.

Q. It has appeared already in the record that the date to which we refer is May, 1899. Prior to that date what effect did the Atchison have upon the central or northern California freight and your territory?

A. By our system of checking up any car or cars that the Santa Fe have it was not very flattering to the agent in charge of the territory to let any single car even go on to the Santa Fe as far as Mojave. The Fe immediately proceeded to issue adverse routing advice of cars delivered to the Southern Pacific at Mojave, and we would proceed to immediately look after the shipper, if it was controlled in the east, and they did the same in the west, to see that the thing was not repeated.

Q. Do you know over what route the peculiarly valuable freight from San Francisco, such as silks and teas from the Orient, now moves?

A. I do not care to and can not, from my own knowledge and belief, answer that question. There is no silk coming into my territory, and what I know about it is, necessarily, hearsay.

Q. Do you know about the fruit traffic?

A. The deciduous fruits?

Q. Yes.

A. No.

Q. Do you know about the citrus fruits?

A. No. It is a commodity, I might say, that is never solicited by the local representatives in the eastern territory. To my knowledge and information it is a proposition that is controlled in the West very largely by the originating points of the business.

Q. In your connection with the business prior to 1901 did you observe any discrimination by the Southern Pacific Company against the Union Pacific Railroad on those commodities which could be influenced or controlled via the Sunset Route?

A. The same adverse routing reports that I mentioned in connection with the Santa Fe at Mojave were issued on freight reaching the Union Pacific at Ogden, and we were expected to look after
580 and treat it as a lost proposition and to see if we could not get the futures for the longer haul, the Sunset.

Q. Was this occasional or systematic?

A. Systematic.

Q. Was it on the occurrence of observing particular shipments, or was it preconcerted?

A. Preconcerted.

Q. How long, as you observed it, stated in terms of months or years, did that systematic and preconcerted discrimnation continue?

A. It continued up to the consolidation of the Union and Southern Pacific officers and railroads.

Q. By what methods was this systematic and preconcerted discrimination against the Union Pacific carried out?

A. On the arrival of the car, say, in the city of San Francisco, if it originated in my territory and traveled through Ogden, we had a prescribed blank that was filled out by our commercial or general agent, giving me the originating point, the name of the shipper, the commodity and the consignee, and how it was routed, with a further notation, with an interrogation point, as to why it moved that way, and what about the future cars; and that invariably brought forth correspondence, if there was more than one car to follow.

581 Q. Were you aware, in the course of your business, of the change in the course of freight from the Central Pacific rails which previously had gone over the Denver & Rio Grande eastbound before the merger?

A. No, sir; I am not familiar with that.

Q. But after you learned that a particular shipment had gone the way that you say, what methods did you pursue with the shipper

to get him to send no more by Ogden but to send it by New Orleans?

A. We would immediately call upon the shipper and learn if he had any further business to move. If it was controlled by him, I put forth my personal and greatest efforts to prevail upon him to make the change to the Sunset Route, frequently being able to point out to him the service that we had been able to give in the past, the satisfaction which he had obtained, both himself and his consignees or customers; and in that way frequently we could prevail upon him to, in turn, use the Sunset Route for any further cars.

Q. If it was controlled by the consignee what course did you pursue?

A. Our representation at destination——

Mr. BLAIR. I object to any statement by the witness about the representative at destination. He can not have personal knowledge of that.

By Mr. MCCLENNEN:

Q. Proceed with your answer.

A. Our procedure would be for the agent at destination to pursue with the consignee any means or method at his command to prevail upon him to change the routing to the Sunset Route.

Q. Did you receive and transmit these instructions east and west from time to time?

A. Yes, sir; constantly.

Q. And did you have personal knowledge of the course that was being pursued at the time?

A. Oh, I was handling it personally.

(Whereupon an adjournment was taken until to-morrow, Thursday, October 8, 1914, at 10 o'clock a. m.)

NINTH DAY.

ROOM 606, FEDERAL BUILDING,
Chicago, Ill., October 8, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClennen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.

WILLIAM H. CONNOR, the witness under examination at the taking of the adjournment, resumed the stand.

Direct examination (continued) by Mr. MCCLENNEN:

Q. Mr. Connor, prior to the consolidation, September 1, 1901, did the Southern Pacific Company and its representatives, within your

knowledge, give to the Union Pacific Railroad Company and its representatives any, and, if so, what, assistance to secure freight via Ogden which could be secured for the Sunset Route between California points on the west and your territory, the Cincinnati territory, or the Atlantic seaboard territory on the east?

A. I can not speak for the Atlantic seaboard territory.

584 From my own territory we exchanged no communications with them.

Q. Do the other connections of the Union Pacific Railroad Company afford its representatives any assistance in procuring freight via Ogden?

A. To the best of my knowledge they do.

Q. Will you state, by way of illustration, some of the railroads that assist in this way?

A. The Chicago & North Western; the Chicago, Milwaukee & St. Paul; the Illinois Central; the Chicago Great Western; and the Chicago & Alton are roads that lend assistance constantly to the Union Pacific in the securing of freight traffic by their cooperation.

Q. You have spoken of the attitude of the Southern Pacific Company prior to the merger and during the merger. Let me now direct your attention to the period since February 1, 1913, and ask you whether, in view of the conditions and possibilities that have existed since that time, you have been able to form a judgment of what the settled policy of the Southern Pacific Company is to be, with respect to freight passing between your territory on the east and California territory on the west.

585 A. From my observance and information at hand, the Southern Pacific Company are giving the Union Pacific a limited amount, to a good extent, of their efforts for the working and interchange of business from territory north of Tehachapi, central California, and northern California; but, at the same time, I do not think or believe we are receiving the undivided support; and this largely attributable to the fact that other eastern representatives of roads connecting with the Southern Pacific Company at El Paso and other Texas junctions have their representatives in California seeking business north of Tehachapi, and I feel satisfied that they are receiving support from the Southern Pacific Company in California.

Q. As a practical matter, prior to the entrance of the Atchison, Topeka & Santa Fe into San Francisco, to what extent, if at all, was the Southern Pacific Company in control of the rate situation with respect to California transcontinental traffic?

A. To the best of my knowledge and belief they were in absolute control.

Q. What were the facts, so far as they came under your observation, which perfected that control?

A. The absence of competition.

Q. Up to 1905, when the San Pedro route was opened, was there any way, other than by the Atchison, by which freight could get into or out of California by rail, other than over the two lines the operations of which were controlled by the Southern Pacific Company; that is, the Central Pacific Railroad and the Southern Pacific Railroad?

A. It was possible to reach there, of course, via Portland.

Q. Was there any other way?

A. No, sir; no other.

Q. To what extent, if at all, did transcontinental freight reach California via Portland?

A. During my twenty-six years' connection with the Southern Pacific and Union Pacific Companies I never knew of a pound moving by the Union Pacific, Portland, and Southern Pacific to San Francisco.

Q. Prior to the opening of the Western Pacific Railroad in 1910, to what extent, if at all, was the Union Pacific Railroad dependent on the Central Pacific Railroad for through service and through billings?

A. They were wholly dependent on them, being their only outlet.

Q. Was the same true with reference to through cars and through rates?

A. Yes, sir.

Q. Conversely, what means of exit did the Central Pacific Railroad have through Ogden from California?

A. They had two lines, the Rio Grande Western and connections west and the Union Pacific and connections east.

Q. The Rio Grande Western has now become a part of the Denver & Rio Grande?

A. Yes, sir.

Q. And the opening of that route was prior to your entrance into the business, was it not?

A. Yes, sir.

Q. To what extent, if at all, have the Northern Pacific Railroad and the Great Northern Railroad and the Canadian Pacific Railroad, as a practical matter, affected the California transcontinental business?

A. To California State none; to the territory north, such as the Puget Sound territory, such as they serve, they were very material factors.

Q. What is the average freight time from Cincinnati territory to and from San Francisco via the Sunset Route and also via the Ogden route?

A. During my connection with the Sunset Route we were delivering freight in 14 to 17 days via New Orleans. At the same time via Missouri River-Union Pacific through Ogden we were delivering freight in 12 to 14 days.

Q. In the trip via New Orleans what, if any, methods were adopted to hasten the freight from your territory to California?

A. The Queen & Crescent, for instance, had a fast-freight schedule of 56 hours from Cincinnati to New Orleans. California freight was always handled by that through train. Every car that left Cincinnati our New Orleans office was so advised to reach out and

589 look after it and see that it was not detained in the yards at New Orleans; in the old days, when the Morgan Line ships from New York delivered their California cargoes at New Orleans the Cincinnati freight, as a rule, was put in the California special freights that were made up for that cargo and sent through to San Francisco on expedited time, the very best schedule time that could be made.

Mr. DUNNE. Are you speaking of the time when the Morgan ships took the freight to New Orleans in distinction from the subsequent period when they took it to Galveston?

The WITNESS. I have reference to the time when the Morgan Line delivered the cargoes to New Orleans.

By Mr. MCCLENNEN:

Q. Am I right in understanding you that to some considerable extent the Cincinnati territory freight was incorporated at New Orleans into trains that ran through to California without break?

A. Without break; yes. They were usually solid trains to California.

Q. What effect upon that arrangement did it have when the Southern Pacific began to take its New York freight through Galveston instead of New Orleans?

590 A. It proved that the time was a little longer, but not very materially so. It was longer because at Houston it was then usually picked up. If they had sufficient freight to make up a train it was put in a California train from Houston.

Q. You mean that it made the Cincinnati territory freight a little longer than it had been when it traveled through New Orleans?

A. Yes.

Q. The attachment of that freight at Houston to the trains from Galveston meant attaching it to trains that had traveled some 350 miles or so from Houston?

A. Yes.

Q. I do not know whether you have in mind—if so, state it—when the Galveston route was opened?

A. I could not tell you the exact year now; it has slipped my memory just when they sent the vessels to Galveston with that California freight.

Q. The Southern Pacific Company's New York boats still ply to New Orleans also?

A. I understand they have semiweekly sailings to New Orleans and triweekly to Galveston.

Q. Are these times which you have stated in your earlier answers applicable over all the period of your existence?

A. The schedule times?

Q. Yes.

A. No; I would say that during the latter periods our service was improved, was shortened, was lessened.

Q. Was the relative time as between the Sunset Route and the Ogden Route about the same or different through the entire period?

A. I think there was an improvement shown by both routes.

Q. You have spoken now of this two or three days better time via Ogden than via the Sunset Route in the matter of schedule. What was the situation with reference to the actual day to day running of the trains? Was there the same two or three days or less or more advantage in it in the Ogden Route in the actual running of the trains?

A. I would say it continued day in and day out.

Mr. DUNNE. What period are you speaking of?

Mr. MCCLENNEN. During the entire period of his experience with the road.

Mr. DUNNE. You mean from 1890 to the present?

Mr. MCCLENNEN. Well, I think it was 1887.

Mr. BLAIR. To the present time?

Mr. MCCLENNEN. To the present time.

Mr. DUNNE (to the witness). Is that the period you are covering? I think the record ought to show that.

Mr. MCCLENNEN. Now, Mr. Dunne——

Mr. DUNNE. I will withdraw my inquiry. I do not think I should have interrupted, but I think the record ought to show.

By Mr. MCCLENNEN:

Q. As you observed the running of trains coming from Chicago to your territory through Ogden and in the opposite direction, what did you observe as to delays in terminals or junctions?

A. Any unusual delays in terminals or junctions were usually caused by congestion of freight, precipitated at times also by climatic conditions or storms, so that the congestions and delays were applicable very largely to all junctions at various periods, but there was nothing regular at all in that respect.

It was a matter, if it occurred, that the operating department did their utmost immediately to remedy.

Q. Can you inform us how frequently there was any appreciable delay—failure to keep the schedule—over the Ogden Route?

593 A. Not on that account I could not, because it occurred at such different times that I do not think I could answer that correctly or definitely.

Q. Are you speaking of a matter that occurred daily or weekly or monthly, or once a year?

A. The unusual delays that I have reference to would occur once a year. I would not say they occurred once a year either; there might be intermissions of months between occurrences. I think the last great big delay that was very serious occurred in 1907, when I believe there were big congestions in Chicago and St. Louis in the belts and yards, and there were big snowstorms that winter, and these delays were very serious, and that applied to freight routed by all routes.

Q. Do you bear in mind any occasion since then?

A. No; I can not say that I do, to give it in detail.

Q. Do you recall any occasions prior to that occasion?

A. Well, I have just cited some delays up north here and what caused them. I believe it was in 1912 we had trouble down in Louisiana, unavoidable trouble, on account of the Mississippi overflowing its banks; it broke the Southern Pacific line west of New Or-

594 leans and caused unavoidable delay and congestion. Those are the two most recent and vivid delays that I have in view.

Q. This last one was on the line between New Orleans and El Paso?

A. New Orleans and Houston, over there in Louisiana somewhere.

Q. In these answers that you have been giving as to schedules, conformity to schedules and delays, how long a period have you been covering, from what time to what time?

A. First during the period of the consolidated agencies, when I was placed in direct contact by the handling of freight and schedules through both the New Orleans and Ogden gateways. Prior to that time, when I was handling the Sunset Route exclusively, I naturally made it my business to know what schedule times were being made by the Ogden gateway.

595 Q. And this last answer carries you back to what date?

A. 1887 to 1901; that period.

Q. Apart from rates and service, what is or are the important elements determining the routing of freight?

A. My experience in the Cincinnati territory, where the freight was controlled there, was that it was altogether personal solicitation of the man.

Q. How effective have you found solicitation to be in directing the course of the movement of the freight?

A. I think the freight solicitation, particularly if backed up with a great big powerful road, like I was with the Southern Pacific Company, for instance, is an important factor.

Q. Is there any more important factor than that?

A. Well, we brought pressure to bear in California through the receivers at that time and the consignees—brought things to bear upon them that made it, I think, to their interest to favor us with business that might not have been done otherwise.

Q. As between the initial carrier, the connecting carrier or carriers, and the delivering carrier, the solicitation of which of the three is the most important in directing the routing of the freight?

A. I always thought that it was the terminal line. That was my experience.

Q. And how, as between the initial and the connecting, in relative importance?

A. I do not believe the initial line, on through freights to the Pacific coast, has ever attempted to show any partiality; and it was then up to one of the many intermediate lines to either work with the representatives of the delivering line or with the shipper, in whichever case the routing rested, at destination or originating points.

Q. What was the situation in this respect with regard to eastbound California transcontinental freight?

A. On eastbound California goods, such as we handled very largely into my territory, consisting of fruits, hops, wine, and beans, as a Pacific coast representative I was in contact with the wholesale grocer or the broker or the warehouse or anyone else, either one or all, that might have a control or express a preference for the routing of their goods, and prevailed upon them to give me, for filing with the consignor, or issue to them direct, routing instructions on behalf of the route that I used to designate to them, always giving them consideration for the terminal delivery that they might prefer; and I would then, for the New Orleans route, divide that business preferentially Q. & C., Louisville & Nashville, and Illinois Central; and that through the Ogden-Omaha channel would be divided between the Chicago & North Western,

Chicago, Milwaukee & St. Paul, Illinois Central, and the delivering line preferred, Chicago to destination.

Q. In what way, if at all, is the solicitation of freight made of service to the shipper?

A. It is a very important factor nowadays.

Q. What, if anything, does it include that is of help to him?

A. Well, there is a lot of this stuff that is purchased and sold on a declining or rising market, and there is a great deal of money tied up in a carload of freight—dried fruit, for instance—and the consignor naturally wants to get that freight to destination as quickly as possible, and thereby receive his money for it with as little delay as possible.

Q. What, as a practical matter, do the solicitors do to bring about the result and to assist the shipper?

A. I am pointing out to them the fact that we have got the
598 shortest, quickest, and best route from California to my territory, and have been quite successful in impressing upon them that that is the fact, and have succeeded in getting a great deal of their business routed that way.

Q. Do the solicitors take any part, either personally or through passing it on to other employees, in tracing the shipments to their destination, notifying the shippers and making provision before shipment by furnishing cars and otherwise?

A. Yes, sir. Those are accommodations that they appreciate very much, and a solicitor that makes it a point to trace freight cars keeps his patrons advised of its whereabouts in transit and final delivery is considered very useful and beneficial to the shipper, and on such satisfactory service and information it is made pretty easy for him to call again and get more freight.

Q. Would the release of the Central Pacific road from the control of the Southern Pacific—controlling also the Southern Pacific Railroad and the Sunset Route—produce, as a practical matter, a competition between the Southern Pacific Railroad and the Central Pacific Railroad on transcontinental California business?

A. The Central Pacific would immediately, then, become an
599 independent line, officered with president, vice president, general manager, freight traffic manager, auditor, purchasing department, and on down in the lesser capacities to freight solicitors, all of whom would have a reputation to maintain and a record to make. Their entire influence and efforts would be exerted constantly in behalf of the Central Pacific road. The industrial and commercial interests served by that line would receive one hundred per cent of their efforts and all of the important cities and towns and territory served by the road would benefit to the same extent.

Q. What effect would this have upon the tonnage of the Union Pacific Railroad?

A. I believe it would have a tendency to show a decided increase in a short time after the organization was effectively working.

Q. Would this separation reduce the accommodations to the shipper?

A. To the contrary, I think they would not only be as good as they are to-day, but there would be every incentive to improve them.

Q. As a matter of practical railroading, what effect upon the improvement or injury to service does competition have?

600 A. I think competition is the foremost factor in stimulating service, and that were it not for competition the service would be down to a minimum.

Q. Does it have any, and if so what, ultimate effect upon rates?

A. Competition most certainly has an effect upon both rates and classifications, and always will have. There are times when the interests of the competing line would be better served if they were in a position to make their classification and rates unhampered; so I think it would have a very decided influence over the making of rates.

Cross-examination by Mr. DUNNE:

Q. Mr. Connor, will you give me again the year when you began your service as Cincinnati agent of the Southern Pacific Company?

A. Commercial agent, Mr. Dunne, since April 1, 1889.

Q. And you continued in that capacity without interruption from April 1, 1889, until some time in 1901, was it?

A. To be exact, they consolidated the offices September 1, 1901.

Q. And at that time you became the consolidated agent?

601 A. The general agent.

Q. The general agent, still at Cincinnati?

A. Yes, sir.

Q. And you continued in that capacity from September, 1901, until some time in 1913 or 1912, was it?

A. 1913, Mr. Dunne; February 1 the separation took place.

Q. Then on the 1st of February you became the agent at Cincinnati of the Union Pacific?

A. Yes, sir.

Q. And you have been continuously in the employ of the Union Pacific in that capacity at that place?

A. Yes, sir.

Q. I think I understood you to say that Pittsburgh was not a part of your territory as general agent resident at Cincinnati?

A. It never has been.

Q. Did your Cincinnati territory extend as far north as the shore of Lake Erie?

A. Always.

Q. And, to identify it by some familiar points, did it include Cleveland and Toledo, for example?

A. Yes.

602 Q. I suppose it also included Columbus and Indianapolis?

A. Yes, sir.

Q. Columbus and Indianapolis are rather to the south and proximate to Cincinnati in distinction from Toledo and Cleveland upon the north at the shore of Lake Erie?

A. Yes.

Q. Was Detroit also in your territory?

A. No, sir.

Q. Where is Detroit situated geographically in reference to Toledo?

A. Let me perhaps correct you and correct myself, Mr. Dunne—

Q. By all means.

A. You asked if Detroit was in my territory. It was in my territory while I was straight Southern Pacific representative, and after the merger of the offices it was taken away from me.

Q. Where is Detroit situated geographically with reference to Toledo?

A. Sixty miles due north of Toledo.

Q. And during your incumbency as general agent of the Southern Pacific Company resident at Cincinnati, prior to 1901,

603 was the trend of the business from Detroit, Cleveland, Toledo, Indianapolis, and such points towards the New Orleans gateway, so far as you worked it preferentially?

A. Yes, sir; so far as I worked it preferentially.

Q. Did that business move to any considerable extent during that period out of Detroit towards the New Orleans gateway?

A. No, sir.

Q. It did not?

A. It did not.

Q. It moved in large by the northern gateways?

A. Yes, sir.

Q. During that period you were an active and vigorous solicitor for the New Orleans gateway, were you not?

A. I am afraid you flatter me a little, Mr. Dunne.

Q. I do not wish to flatter you at all, Mr. Connor.

A. Well, yes; I tried to be active.

Q. I understood you to say yesterday that you were for the New Orleans gateway first, last, and all the time?

A. Yes, sir.

Q. Why was it, under those circumstances, with your activi-
604 ties and your energies in behalf of the New Orleans gateway, that the business of Detroit in large moved by the northern gateways?

A. The shippers preferred it the other way.

Q. Why did the shippers prefer it the other way?

A. They looked upon it as too far north to send via New Orleans from Detroit.

Q. And you did not succeed by your solicitation in changing the attitude of the shippers, so far as the large movement from Detroit was concerned?

A. I never knew of this large movement that you speak of from Detroit.

Q. I mean relatively speaking, of course.

A. Yes. No, sir; I did not change it.

Q. What were the considerations that moved the shippers to prefer the northern route and which gave the business its trend northward instead of southward by the New Orleans gateway?

A. The western connections had local representatives in Detroit; the manufacturers were located on the lines that had no interest in the Toledo-Cincinnati gateway. They had, to the contrary, their sole interest in the long haul through Chicago and St. Louis. The influence brought to bear by those representatives in the solicitation outweighed that which I was able to bring upon them in behalf of the New Orleans gateway.

605 Q. What did you mean by saying that Detroit was too far north?

A. That last answer will answer that.

Q. In other words Detroit was too far north to be within the sphere of your influence, if I may so express it?

A. Yes.

Q. Can you give any estimate, approximate or rough, as to the percentage of Detroit business during your ten years incumbency as Cincinnati agent that moved by the New Orleans gateway in comparison with the northern gateways?

A. In view of my explanation that I did not succeed in securing freight from Detroit I do not think it amounted to anything at all.

Q. Now, taking Cleveland. That was within your territory, as I understand it?

A. Yes.

Q. And was worked by you preferentially and wholeheartedly for the New Orleans gateway?

A. Yes.

Q. What were the principal rail lines out of Cleveland between 1890 and 1901?

A. The same lines that there are to-day.

606 Q. Mention them, please.

A. The Lake Shore & Michigan Southern, the New Yor Chicago & St. Louis, the Pennsylvania Road and the B. & O. Ra road; those are the four principal ones.

Q. Where did those four railroads meet these southern lines g ing from Cincinnati territory to the New Orleans gateway?

A. Both Cincinnati and Louisville.

Q. That is upon the Ohio River, is it not?

A. Yes.

Q. Did these principal lines out of Cleveland, for example, to the Chicago and St. Louis gateways? Take the Pennsylva for example?

A. The Pennsylvania did, the Lake Shore did, the Nickle Pl did, and the B. & O. did, and the Big Four did, in, I might call a roundabout way.

Q. Was the haul for these initial lines radiating from Clevel to the Chicago & St. Louis gateways, as compared with the ot haul to the Ohio River gateways, was that their long or short ha

A. Cincinnati would be their short haul.

607 Q. Did these initial lines prefer the long or short haul u that business?

A. The line that I worked preferentially, the short haul.

Q. What line was that?

A. The Big Four—Cleveland, Cincinnati, Chicago & St. Louis.

Q. What about the other lines?

A. It did not have a great deal to do with the other lines.

Q. Will you say, with your experience of business in that territ that these three other lines did not prefer their long haul to Chic and St. Louis gateways on Cleveland business?

A. They preferred their long haul; yes.

Q. They preferred the long haul?

A. Yes.

Q. Was that a casual preference for the long haul, or a system preference?

A. Why, it would be a systematic preference.

Q. Was it an accidental preference or a preconcerted preferenc

A. For those lines leading to Chicago and St. Louis?

608 Q. Yes.

A. No accident in it at all.

Q. Is it anything unusual in railroading that a carrier should fer its long haul as against its short haul?

A. No; not that I am aware of.

Q. What were the principal lines—take Cleveland business or other business north of the Ohio River; what were the principal lines to the New Orleans gateway from the Ohio River?

A. The Queen & Crescent, the Louisville & Nashville, and a line that was formed from Cincinnati to Louisville, known as the B. & O. to Louisville, thence Illinois Central to New Orleans. Those were the three competing lines between Cincinnati and New Orleans.

Q. And you worked principally, as I understood you, with the Queen & Crescent?

A. Yes.

Q. Was there any movement southbound of business originating in Cincinnati territory by Texas junctions other than New Orleans during the period from 1890 to 1901?

A. Very little, Mr. Dunne. If you will let me correct that—
609 in so far as the El Paso gateway enjoyed some of that business; that is, through the St. Louis to El Paso lines channel.

Q. Just mention those lines a little more definitely.

A. The Gould Line from St. Louis.

Q. How did the Gould line from St. Louis reach the Texas junctions?

A. Over the St. Louis, Iron Mountain & Southern division of their road. I believe it was Texarkana or Fort Worth—make it Fort Worth; thence Texas Pacific to El Paso.

Q. When was the Rock Island line opened to El Paso?

A. I do not know the exact year.

Q. Just approximately?

A. I believe it is a matter of record here, if you want it.

Q. We can prompt you; it was about 1902.

A. I should say about 1902 or 1903.

Q. Has that line been opened and doing business since that time through El Paso junction?

A. Yes.

Q. And from 1890 to 1902 the Gould line was operating Texas junctions through Fort Worth and Texarkana, and since 1902
610 uninterruptedly the Rock Island has been operating through El Paso, has it not?

A. Yes; I so understand.

Q. I call your attention, just for a matter of brief explanation, to Exhibit No. 66 and the expressions in this exhibit of business handled from the territory of W. H. Connor, commercial agent. Those are expressions by way of carload, are they not?

A. Yes.

Q. Have you any accessible data by which these carload expressions may be rendered into terms of tonnage?

A. No, sir.

Q. By the way, where did you get the data, or where are the data from which these exhibits were compiled?

A. They were compiled in my office at the time the business moved and from the records we were then keeping of carload freights.

Q. Where are those records now?

A. I don't know.

Q. Did I understand you that this Exhibit 66 was one of the files of your office and is as old as the year 1899?

A. Yes.

Q. So that you have withdrawn these from the files of
611 your office for the purposes of this case?

A. I do not know why it was not destroyed; but this record was kept, and knowing I was coming up here on this case I looked this up.

Q. I do not think you get my mind about that. My mind is simply this, that the data behind this statement are not now available or accessible to you?

A. I should say not.

Q. You do not know of their whereabouts?

A. No, sir; if they are in existence, I know of their whereabouts.

Q. Where would they be?

A. In the storeroom at Cincinnati.

Q. At Cincinnati?

A. Yes.

Q. And accessible to you?

A. Oh, yes; they would be naturally.

Q. So that there would be no objection to our having access to those records?

A. No, sir; you are perfectly welcome to them.

Q. I notice the exhibit is headed "Ten years' statement of
612 business handled from territory of W. H. Connor, commercial agent." That means, of course, Cincinnati territory?

A. Oh, yes.

Q. Does it mean business handled exclusively through New Orleans?

A. Yes.

Q. Does it include any business that was handled through El Paso?

A. Not in the sense that it did not go through New Orleans. Every carload was delivered to the Southern Pacific Company at New Orleans.

Q. So that this exhibit does not indicate what business, if any, passed through the El Paso gateway which did not go through the New Orleans gateway?

A. It does not include it; no.

Q. Does this statement include business to California as a whole?

A. Yes.

Q. Is any distinction made in this statement between northern and southern California?

A. No, sir.

613 Q. I notice also in this statement certain merchandise cars are listed?

A. Yes.

Q. Does that mean anything more than that certain shipments of merchandise were consolidated into carloads and shipped in that way?

A. Our modus operandi was to solicit this merchandise from points north of the Ohio River as well as Cincinnati and concentrate it there, load it into a solid car for California, and it was then despatched, without further breaking of bulk at New Orleans, to destination.

Q. Does this statement indicate how much of the business handled originated in Cincinnati on the Ohio River and south and how much originated north of the Ohio River?

A. The statement does not so indicate.

Q. Does this statement indicate to what points these merchandise cars were consigned?

A. We billed all of them on San Francisco or Los Angeles; that was a billing matter. The cars contained freight for all destinations in southern California, and the billing would indicate.

Q. Does this statement indicate the ultimate destination of

614 that merchandise freight, whether from Los Angeles as the point of departure or from San Francisco?

A. No, sir; it does not.

Q. I notice also on this statement a compilation of carload business moving to Texas, New Mexico, and Arizona and other southern territory exclusive of California. That was compiled, I apprehend, in the same way, was it not?

A. Yes, in the same way from the same records.

Q. I call to your attention, I may want to ask you a question or two about Exhibit 68, which is headed "California carloads, September 1st, 1901", and proceeds year by year to and inclusive of the year 1907. Was that statement compiled in the same way as the exhibit we have just been speaking about?

A. Yes.

Q. Where are the data from which this statement was made up? Are they accessible or available?

A. If they are in existence they are, Mr. Dunne.

Q. Can you ascertain for us whether they are in existence, and advise us?

A. Yes; I will be very glad to do so.

Q. I notice this statement stops at 1907; was that because
615 the statement, as you found it in your office, did not extend beyond 1907?

A. Yes.

Q. So that for the period between 1907 and the present time you have no such statement or data?

A. Up to the last year; we had it for 1912. You will find it.

Q. We will come to that later?

A. Yes.

Q. But year by year from 1907 to 1914 you have not made up any statement similar to this?

A. With that one exception.

Q. With that exception?

A. Yes. When I say it was not made up, that we did not make it up—it was made up, but what became of it I do not know.

Q. At all events you have not got it?

A. I haven't it.

Q. And it is not produceable so far as you are concerned?

A. No, sir.

Q. When was this memorandum terminating in 1907 made up? Was it made up about 1907?

616 A. At the close of 1907.

Q. Now, then, bearing this exhibit in mind and calling your attention to the heading, "California carloads", does this exhibit refer to the business of northern California alone, or to southern California alone, or is it designed to exhibit business moving in California as a whole?

A. To California as a whole.

Q. Calling your attention now to the tabulation in this statement against the initials S. S., I suppose that means Sunset?

A. It signifies "Sunset."

Q. I notice that for the years 1901 to 1907, inclusive, there is a specification of carload movement for each year against the Sunset; does this statement refer exclusively to carload business moving by the New Orleans gateway?

A. Mr. Dunne, following 1901 there were divisions of rates to California put into effect through the Shreveport gateway, through north Texas junctions, and through, I believe, Alpine, but I am not positive on that; and that S. S., Sunset, represents all cars that reached some portion of the Atlantic system through one of those different gateways.

617 Q. Does it include carload business that reached the Atlantic system through the El Paso gateway?

A. No, sir.

Q. So that this statement does not show or disclose the business that would move through the El Paso gateway via the Rock Island?

A. No, sir.

Q. Have you any means accessible to you of indicating what that carload movement was?

A. It is made up of all classes of commodities. Oh, you mean the Rock Island?

Q. Have you any means, supplementing this statement, of showing the carload business that moved through the El Paso gateway over the Rock Island as a connection at El Paso?

A. I have no knowledge whatever of Rock Island movements.

Q. After the Rock Island was opened in 1902 or 1903 did you receive reports of business passing through the El Paso gateway coming from the Rock Island?

A. No, sir.

Q. You received no reports of that business?

A. No, sir.

618 Q. Then, so far as you are concerned, you are not in a position to state the carload business or furnish us with the carload business up to 1907 that moved off the Rock Island through the El Paso gateway?

A. No more than I could tell you what moved over the Santa Fe.

619 Now, then, between 1901 and 1907, during those years, for what gateway was the Union Pacific-Southern Pacific preferentially working on this business?

A. From points north of the Ohio River preferentially Missouri River, Union Pacific, Ogden, and Southern Pacific.

Q. And for points north of the Ohio River?

A. For points on and south of the Ohio River preferentially through New Orleans.

Q. And for business having a destination in southern California how did you work the business preferentially?

A. What territory?

Q. Business originating in Cincinnati territory and for destinations in southern California.

A. In Cincinnati territory north of the Ohio River southern California business was preferentially worked by Union Pacific to Ogden and Salt Lake route to destination.

Q. When was that Salt Lake route opened?

A. You may correct me on this—1904, was it?

Q. 1905. Now, on business originating at Ohio River and points south the business was routed preferentially by the southern gateway, was it?

A. Yes.

620 Q. And whether that business had destination in southern California or northern California made no difference?

A. It made no difference, and all this routing was in conformity with instructions emanating from the traffic officials.

Q. In so far as this exhibit relates to business moving since the opening of the San Pedro route in 1905, does it represent under the caption "U. P." business that moved principally and preferentially by the San Pedro route in distinction from the detour by way of Ogden and Sacramento?

A. On the opening of the Salt Lake route instructions carried that the southern California business should move that way, and it was only in an exceptional case that it did not move that way.

Q. How does that route compare with the route by way of Ogden, Sacramento, and over the Tehachapi Mountains into southern California?

A. Well, from Ogden it would have the comparison of being about 400 miles shorter by the Salt Lake route than by Sacramento.

Q. Has it been consistently the preferential route of the

621 Union Pacific on southern California business since it was opened?

A. Yes.

Q. I call your attention to Exhibit 69, which is headed "January 1st, 1912, to December 31st, 1912." This is a carload statement, is it not?

A. Altogether.

Q. And in the recapitulation the carload business attributed to the Southern Pacific Company includes as well all other Texas junctions as the New Orleans gateway, does it not?

A. Yes; New Orleans; and Shreveport, you will notice, is added in there.

Q. I understand; but I notice other Texas junctions, besides.

A. Yes; I mention Shreveport because that is a Louisiana point.

Q. Now, Exhibit No. 70 appears to be a compilation of commodities moving in carloads to California from Cincinnati territory for three months of the year 1914; you recall that, do you?

A. Yes.

Q. Have you any other compilation or figures over and above this exhibit?

622 A. No, sir.

Q. This exhibit refers to carload movement of those commodities into northern California, does it not?

A. The State of California.

Q. Is it not exclusive of Los Angeles and southern points?

A. No, sir.

Q. What is the meaning of this statement—possibly it may be my misunderstanding—"Carloads to California, exclusive of Los Angeles and southern points, from Cincinnati territory"?

A. I stand corrected; it excludes Los Angeles; it is exclusive of Los Angeles.

Q. It is exclusive of Los Angeles and southern points?

A. Yes.

Q. Have you a statement similar to this and applicable to Los Angeles and southern territory in California?

A. I have not, but it is available.

Q. It is available?

A. Yes.

Q. It can be prepared?

A. It can be compiled and prepared.

Q. Would you have any objection to compiling a similar statement for southern California territory and furnishing it to us?

A. I will compile it and show you southern California as well as central California.

Q. If you please.

A. I will try to do that; it was an oversight to exclude Los Angeles and make it refer to central and southern California only.

Q. What are the western connections of the primary lines operating out of Cincinnati territory to the Chicago and St. Louis gateways between 1890 and 1901 and since.

A. Well, I will take Cincinnati and St. Louis first; the Baltimore & Ohio, the Cleveland, Cincinnati, Chicago & St. Louis, and the Pennsylvania Company were the three roads extending from Cincinnati to St. Louis over their long haul.

Q. You are dealing now with the St. Louis gateway?

A. Yes.

Q. What were the western connections then?

A. To Kansas City, Mr. Dunne?

Q. To Kansas City and beyond.

A. From St. Louis to Kansas City, the Chicago & Alton, the Missouri Pacific, the Wabash, the Rock Island, the Frisco Line, the Missouri, Kansas & Texas, and the St. Louis, Iron Mountain & Southern. That is all.

Now, then, Cincinnati to Chicago——

Q. One moment; what are the connections of those lines west of Kansas City and making for California destinations?

A. Those lines terminating at Kansas City have western connections such as the Union Pacific, the Chicago, Rock Island & Pacific, the Atchison, Topeka & Santa Fe, and the Missouri Pacific.

Q. To what points west do those lines go that you have just mentioned?

A. They have western termini at Denver, Colorado Springs, Pueblo, Ogden, Oakland, San Francisco, Los Angeles, Deming, and El Paso.

Q. With what lines do they connect at those western termini for California destinations?

A. Those through Ogden and Salt Lake connect with the Southern Pacific and Western Pacific; those at El Paso with the Southern Pacific Company.

625 Q. Is there any other line through Salt Lake or Ogden with which they connect besides the Southern Pacific and Western Pacific?

A. Not to my knowledge.

Q. How about the San Pedro line?

A. I beg pardon—that also.

Q. That should be included?

A. Yes; that should be included.

Q. Take the primary lines from Cincinnati territory making for the Chicago gateway; will you name those lines?

A. The Cleveland, Cincinnati, Chicago & St. Louis; the Pennsylvania Railroad; the Chesapeake & Ohio of Indiana; the Cincinnati, Hamilton & Dayton; and the Monon Route—those form the Cincinnati-Chicago lines.

Q. And with what lines at Chicago do they make connections for the farther transit west?

A. The Atchison, Topeka & Santa Fe first; the Chicago, Rock Island——

Q. If I may interrupt: Has the Atchison, Topeka & Santa Fe a line of its own all the way from Chicago to southern and northern California?

A. To both San Francisco and Los Angeles.

626 Q. Excuse my interruption. Proceed.

A. The Atchison, Topeka & Santa Fe; the Chicago, Rock Island & Pacific; the Chicago, Burlington & Quincy; the Chicago & North Western; the Chicago, Milwaukee & St. Paul; the Illinois Central; the Chicago Great Western; and the Chicago & Alton. Those are all through Missouri River lines, and extending beyond the Missouri River, connecting with them——

Q. Did you mention the Wabash?

A. Include it if I did not, please.

Q. To what points west do those lines proceed?

A. I beg your pardon?

Q. What are the western termini of those lines out of Chicago?

A. Missouri River points.

Q. Missouri River points? For example?

A. For example, Council Bluffs, St. Joseph, and Kansas City.

Q. What are the lines out of the Missouri River points with which they connect for California points?

A. The Union Pacific. That is the only one.

Q. Are there any others?

A. No, sir.

Q. The Union Pacific as far as Ogden?

A. Yes, sir.

Q. That is, from Omaha and Kansas City?

A. Yes, sir.

Q. Is there any other line out of Kansas City or Omaha that goes west besides the Union Pacific?

A. I mentioned those before, but I will repeat them: The Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Missouri Pacific; the Atchison, Topeka & Santa Fe.

Q. The Missouri Pacific is affiliated with the Denver & Rio Grande?

A. Yes; it is known as one of the Gould lines.

Q. Where is the western terminus of that Gould line?

A. Let me understand you, please. Do you mean the Gould line extended through to California?

Q. No; as far as Ogden.

A. The Missouri Pacific proper extends to Pueblo and there connects with the Denver & Rio Grande, another Gould property, to Salt Lake and Ogden.

Q. And at what point does it connect with the Western Pacific?

A. Salt Lake City.

Q. The Missouri Pacific, the Gould line, also has a line by the south, through the Texas gateways, into California, has it not?

A. Yes, sir.

Q. So that the Gould line has two lines, one by the north and one by the south, on California business?

A. Yes, sir.

Q. As I understood you, between 1890 and 1901, you, as the Southern Pacific agent in Cincinnati territory, were working the business preferentially, or, to use your own expression, "first, last, and all the time" for the New Orleans gateway?

A. Yes, sir.

Q. Since 1901 and until February, 1913, how did you work this business preferentially?

A. Per instructions, the territory was divided; that portion of it from Cincinnati to Cairo along the Ohio River, points thereon and south thereof, was worked preferentially Sunset Route; that portion of the territory north of the Ohio River was worked preferentially Missouri River, Union Pacific, Ogden, and Southern Pacific Company.

Q. Is that the significance that attaches to this first exhibit
629 that was offered in evidence on your testimony yesterday, showing the earnings by the gateways?

A. I do not know that I touched upon earnings.

Q. Divisions, I mean, by the gateways.

A. Yes, sir.

Q. That was the significance of it?

A. Yes, sir.

Q. Then, as I understand you, from 1901 until what has been called here the "unmerger" the business north of the Ohio River was worked preferentially by you as the joint agent for the northern gateways?

A. Yes, sir; to central and northern California via Ogden and the Southern Pacific to southern California via Ogden and the Salt Lake route.

Q. Since 1912, or February 1, 1913, the Southern Pacific and the Union Pacific agents have been separate personalities in that territory, have they not?

A. Yes, sir.

Q. With respect to the Cincinnati territory business north of the Ohio River, do you know how the Southern Pacific agent has preferentially worked that business since February, 1913?

630 A. I think he has shown his preference for the Ogden gateway.

Q. And with respect to business originating on the Ohio River and south of the Ohio River, he has preferred the New Orleans gateway?

A. Naturally.

Q. Taking that same Southern Pacific agent, since February, 1913, and upon business originating in the Cincinnati territory and having a destination in southern California, how has he preferentially worked that southern California business?

A. He would have many gateways to work it, and many connections to work it with.

Q. Do you know whether he has preferentially worked that southern California business since February, 1913, by the New Orleans gateway?

A. I would think that competition would force him to work it preferentially through El Paso gateway connections.

Q. What competition?

A. The fact that the service to southern California, I think, is far better through St. Louis and Chicago and El Paso or Ogden than it would be possible to procure through New Orleans.

Q. Then the superiority of the service, as between St. Louis and New Orleans, would in your judgment force him to work it by the El Paso gateway in distinction from the New Orleans gateway?

A. It would be a factor, yes; but not altogether the controlling factor on all shipments.

Q. Well, you have answered my question, Mr. Connor. What would the competition be that he would be met with from the Union Pacific on that business into southern California? By what route?

A. Union Pacific, Ogden, and the Salt Lake route to destination.

Q. Did the Union Pacific solicit or seek to work any business preferentially by the Ogden-Sacramento gateways in contradistinction from the San Pedro?

A. During what period? Any period?

Q. After the San Pedro had gone into operation as a working line.

A. In accordance with instructions I had, it was not so worked via Sacramento.

Q. Which is the better line on southern California business—the line by way of the Union Pacific and Salt Lake, or by way of the Union Pacific with the detour by way of Ogden and Sacramento and over the Tehachapi Mountains?

A. The Ogden and Salt Lake Route.

Q. Does any business, to any substantial extent, originating in Cincinnati territory and having destination in southern California, move by the circuitous route through Sacramento and over the Tehachapi, as against the San Pedro Route and the southern route that you have been speaking of?

A. A very, very small volume, if at all.

Q. Do you recall when the Santa Fe got into San Francisco? It was 1898 or 1899, was it not?

A. I think it was 1898; the latter part of 1898 or 1899, I have forgotten which.

Q. Since that time has the Santa Fe been an important factor in the transcontinental business?

A. So considered; yes.

Q. You so consider it, do you not?

A. Yes.

Q. I call your attention to the following statement made by you yesterday at page 577:

"Q. Take the territory in California north of the Tehachapi on the one hand and your territory on the other: If the freight were not artificially controlled by one route or the other by solicitation or otherwise, how much of it would naturally pass through the Ogden gateway, and how much of it through New Orleans?

633

"A. From the territories outlined I believe if you were to eliminate all solicitation on the coast, as well as in the eastern territories, that inside of three years, by allowing the freight to seek its own channel—and I mean by that the routings over which it would be best cared for—I venture to say that 75 per cent of it would go through the Ogden gateway to Cincinnati territory."

Calling your attention to that testimony, I will call your attention to the further statement that you made on the same page:

"Q. And how much over the Atchison or through New Orleans?

"A. I think the other 25 per cent would then flow through the Atchison, Western Pacific, and the El Paso and New Orleans gateways."

Calling your attention to that testimony, I would like to ask you how much of that other 25 per cent you would assign to the Atchison Topeka & Santa Fe?

A. At the time the Santa Fe got into San Francisco they were without terminals, they were without branches, they were without anything except two streaks of rails; they had no standing in California to speak of, and I do not think that they were in a position to control or influence more than a very small percentage of the business over their rails. If the business was left to itself, on account of the Southern Pacific Company's long and original standing, covering the valleys as they did and originating the business they did, I do not think there is any question of doubt but what the business would naturally have moved over that line and it would not have gotten on to the Santa Fe rails at all, under any conditions.

634

Q. Do you recall making the following statement yesterday, on page 578, speaking of the Santa Fe:

"A. If I remember correctly they went into San Francisco on their own rails about 1898 or 1899. That is subject to correction"?

A. Yes.

Q. (Continuing reading.) "And immediately thereafter they became quite an important factor in the westbound California traffic but never to the degree that the Southern Pacific has been." Is that a correct statement?

A. They became an important factor in the solicitation of westbound business. There is no statement there that they got

635 Q. Now, I will ask you again the question: This is the y

of grace 1914. In the year of grace 1917, three years from now, how much of that 25 per cent that you spoke of yesterday would you assign to the Atchison, Topeka & Santa Fe?

A. That 75 per cent and 25 per cent business I am satisfied would continue, and the Santa Fe would divide it the best they could with the Western Pacific.

Q. That still does not answer my question. I am anxious to pursue your analysis a little further. Again, I ask you, Mr. Connor—please do not think I am pertinacious: How much of that 25 per cent in the year 1917, in your judgment, would be assignable to the Santa Fe?

A. Twenty per cent.

Q. The other five per cent, then, would be divisible among the other transportation routes that you mentioned, would it not?

A. No, sir; I do not think so. The other five per cent would fall to the Western Pacific, if it fell to anybody. I do not think it would be possible for any El Paso gateway or any New Orleans gateway or any Texas junction gateway to enjoy or participate in that division of business that would be created by taking away the entire solicitation.

636 Q. Then, as I understand you, the 25 per cent would be assigned, in your judgment, 20 per cent to the Santa Fe and the other 5 per cent would be assignable to the exclusion of the El Paso route. Is that correct?

A. It would be assignable to the Western Pacific road.

Q. Please explain to me, if you will, why freight in moving from Cincinnati territory to northern and central California by the Ogden gateway, the Union Pacific and Central Pacific, would be seeking its own channel. Why?

A. I think it would be along the line of least resistance, first——

Q. What do you mean by that?

A. Let me answer, please.

Q. Certainly. I beg your pardon for the interruption.

A. It would be along the line of least resistance, and I think it would pass over roads that were able to give it the best first-class service, and those would be the two important factors. The least resistance would be the shortest line; and I think the Central Pacific, the Union Pacific, the Northwestern, the Pennsylvania road, to the city of Cincinnati or points east of Chicago, would form that kind of a line.

637 Q. What do you mean by saying that that is the routing over which the freight would be best cared for? What do you mean by that?

A. Any freight that passes over first-class roads in every way that receives first-class service in every way, that is expedited to the very best all the time, that is what I mean.

Q. That is a generalization, I think, that we shall all accede to.

A. Yes.

Q. Why would this particular route, by way of Ogden, Union Pacific, and Central Pacific, be the routing over which the freight would be best cared for?

A. I believe that that would be the line selected by any shipper that knew anything about railroads leading from California to Cincinnati in preference to competitors.

Q. In other words, that is the natural route, is it?

A. Absolutely.

Q. And that is the best route?

A. Yes.

638 Q. That is the route which the Southern Pacific solicitor since February, 1913, has been preferentially soliciting business for from Cincinnati territory, is it not?

A. The Southern Pacific representative in Cincinnati territory, I believe, has information—not to my personal knowledge but from hearsay—to use that line. The Southern Pacific representative in Cincinnati territory, on the other hand, at the same time, would not turn down a solicitor or representative of an El Paso gateway connection that came to him to look after some freight originating in that same territory. So that we are not getting the undivided support of the Southern Pacific solicitor in Cincinnati.

Q. I will ask you again if it is not the fact, so far as you know, that the Southern Pacific solicitor in Cincinnati territory, to-day and since February, 1913, has been working the Ogden gateway preferentially on that business for northern and central California?

A. I believe that by far the greatest amount of business is moved that way, and that would naturally mean that the greatest efforts have been put forth that way; but, at the same time, the other competition is there through the El Paso gateway against that central traffic moving by the Union Pacific.

639 Q. With respect to Southern California business since February 1, 1913, has the Southern Pacific solicitor been soliciting that business preferentially by the Southern gateways?

A. Altogether.

Q. What is the competition that he meets by the northern gateways on business into southern California?

A. Such competition as I, the representative of the Union Pacific, can put up against him.

Q. In connection with the San Pedro line, is it not?

A. Yes.

Q. And not in connection with the Central Pacific line via Sacramento and the Tehachapi?

A. Eliminating the Central Pacific.

Mr. DUNNE. I have no further questions.

Redirect examination by Mr. McCLENNEN:

Q. On direct examination you referred to the systematic and preconcerted discrimination which had been exercised by the Southern Pacific Company against the Union Pacific Railroad, and on the cross-examination you answered in the affirmative to Mr.
040 Dunne's inquiry as to whether it was an unusual thing in the railroad business that a railroad should prefer its long haul; and this leads me to ask you this question, namely: Leaving out of consideration the Central Pacific Railroad and the Southern Pacific Company which are under consideration in this case, do you know, in the history of railroading in this country, or, indeed, anywhere else, any other railroad which controls a long-haul route and at the same time controls a short-haul route built under acts of Congress imposing upon it a duty, and perhaps an assumed obligation, not to discriminate against another railroad built under acts of Congress; and if you know of any other such instance will you name the railroads?

Mr. DUNNE. I object to the alleged question upon the ground, first, that it is not a question but a speech. I object to it upon the ground, secondly, that it is entirely argumentative, it does not call for any evidential fact, and it is not a proper way to elicit evidence. And I must object, in the third place, to the assumption in the question that this witness is responsible for the polysyllables "preconcerted and systematic discrimination." In the testimony yesterday they emanated from our indulgent and fluent friend on the other side,
041 and, as I recall the proceedings, were acceded to by the witness. That is all.

(By request of counsel the reporter repeated the pending question.)

The WITNESS. I do not know and cannot name any railroads.

Mr. McCLENNEN. That is all.

Mr. DUNNE. That is all.

Mr. McCLENNEN. It is agreed by counsel that Exhibits Nos. 63 to 70, after being copied into the record, may be returned to the witness. Having regard to the additions to the record since Exhibits 22 and 23 were introduced in evidence, the petitioner now puts in evidence those parts of those exhibits which were read or referred to in the testimony and constitute pages 32 to 53, inclusive, thereof, as admissions of the officers of the defendant Southern Pacific Company and Central Pacific Railroad Company, as declarations showing
042 state of mind, purpose, and intent bearing upon the character

of acts otherwise proved in evidence; as evidence of the limited stock holdings of Messrs. Stanford, Huntington, Hopkins, and Crocker, respectively; and as evidence for any other purpose so far as they may be material or relevant to this case.

Mr. BLAIR. Counsel for the defendants renew their objection heretofore made to the admissibility of such evidence, both in form and substance, that the same is incompetent and immaterial, not binding upon the defendants, or any of them, in this case, and irrelevant to any issue in this cause.

Mr. MCCLENNEN. The petitioner puts in evidence the fact that on September 22, 1914, a letter was delivered by petitioner's counsel to counsel for the defendants, phrased as follows:

"In addition to the pending requests, we shall be pleased if you would furnish us the following:

"50. The production of the Southern Pacific Railroad Company's original of the Transcontinental Association contracts of September 28, 1883, and November 8, 1883, copies of which were introduced in
643 evidence yesterday from volume 7, Pacific Railway Commission Reports, pages 4258 to 4261, or an agreement that these copies may be used with the same effect as the original."

To this request counsel for the defendants reply that they know nothing about these agreements and have no one at present whose knowledge extends back that far to consult with reference thereto.

(Whereupon a recess was taken until 2 o'clock p. m.)

644 AFTER RECESS.

JOHN A. MUNROE was called as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:

Direct examination by Mr. MCCLENNEN:

Q. Your residence?

A. Omaha, Nebraska.

Q. Address?

A. Care of the Union Pacific, Omaha.

Q. What position do you hold with the Union Pacific?

A. Vice president.

Q. How long have you been connected in some capacity with the railroad?

A. Since and including 1883.

Q. First in what capacity?

A. Assistant general freight agent.

Q. Until what time?

A. Until October, 1884, when I was made first assistant, with headquarters at Kansas City. From there I was brought back to Omaha

as general freight agent in 1886, and continued later as such
645 until some time subsequent to 1888—I do not recall the date now—when I was made assistant general traffic manager. Then, after 1890, as I recall it, I was made freight traffic manager, which position I held until about three years ago, when I was made vice president; so that I have been identified all that period with the traffic department of the Union Pacific lines.

Q. Have you been stationed at Omaha all the time or were you part of the time at Kansas City?

A. Except 15 months at Kansas City?

Q. Did you receive a request from counsel for the Government to produce, if possible, the Union Pacific Railroad Company copy of a transcontinental agreement of September 28th, 1883?

A. I did.

Q. And also of a similar agreement of November 8, 1883?

A. I did.

Q. Did you have a search instituted to see whether the originals could be found?

A. I did.

Q. What did you find to be the fact in that regard?

646 A. I was unable to locate the original agreement, but I found a printed copy of a supplemental agreement, dated Topeka, Kansas, November 8, 1883. That is the only original I could find.

Q. Did you also find a typewritten copy of the agreement of September 28th, 1883?

A. Yes; I also located that.

Q. In what custody were those two agreements which you found?

A. With the auditor of the Union Pacific, as custodian.

Q. What has been done with such original agreements of this character as the Union Pacific Railroad had prior to, say, 1906?

A. They were all sent on to New York for filing in the New York office.

Q. And that office was situated where?

A. At that time in the Equitable Building, 120 Broadway, and subsequently burned; now the office is at 165 Broadway.

Q. Did the Equitable fire burn the files of the Union Pacific Railroad Company?

A. It is my understanding that it did.

Mr. McClennen. Petitioner puts in evidence as Exhibit 71
647 the typewritten copy just referred to by the witness of the agreement of September 28, 1883.

Mr. Blair. The defendants object on the ground that there is no proof that it is a correct copy.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 71, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 71 the agreement of November 8, 1883, just referred to by the witness.

Mr. BLAIR. To which counsel for the defendants make the same objection.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 72, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It appears from inspection that Exhibits 71 and 72 are the same as Exhibits 18 and 19, and it is agreed that they need not be separately copied, but that these original agreements may be returned to the witness and the copies already in the record used with like effect as the originals.

By Mr. McCLENNEN:

Q. Were you asked to make some investigation with reference to freight tonnage interchanged at Ogden between the Central Pacific Railroad and the Union Pacific Railroad?

A. I was.

Q. And have you a statement for certain years in respect to that?

A. I have a statement covering the years 1906 to 1914, inclusive, and by the term "year" I mean the fiscal year ending June 30th. It shows the tonnage received from the Southern Pacific at Ogden by the Union Pacific, and the tonnage delivered by it to the Southern Pacific, the total interchange for each year referred to.

Mr. McCLENNEN. Petitioner puts in evidence the statement just referred to, as Exhibit 73.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 73, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Let me see that we correctly understand this statement. First, am I right that this does not include any tonnage coming from California via the San Pedro route?

A. It does not.

Q. The first column obviously indicates the year. The next column—am I right?—is the number of tons in each year which the Union Pacific received from the Central Pacific; that is the eastbound tonnage?

A. That is correct.

Q. The next column indicates in dollars the revenue accruing to the Union Pacific only on that tonnage?

A. Correct.

Q. The next column indicates the tonnage delivered by the Union Pacific to the Central Pacific?

A. It does.

Q. That is the westbound tonnage?

A. Correct.

Q. And the next column indicates the revenue only of the Union Pacific upon that tonnage?

A. Correct.

Q. The next column is the total of the preceding tonnage columns, and the last column is the total of the preceding revenue columns?

A. That is right.

Q. This tabulation was prepared under your supervision?

A. It is our regular accounting department form, and I had this specific statement taken from same. The statement is furnished by our auditor each year. This is just a compilation of accounting department statements, Form 925.

Q. What circumstances led to including the years 1906 to 1914 by?

A. In asking for the statement I asked for about a ten-year statement. I did that for the reason that we have had fires in Omaha, too, and I thought I could go back ten years easily, but might have difficulty in going back farther. I am not sure whether we could go back farther or not, but I asked for ten years, and this is what they gave me.

Q. Approximately what revenue per ton accrued to the Union Pacific on the average?

A. A little over seven dollars a ton.

Q. This tonnage included in this statement is the local as well as transcontinental tonnage?

A. Everything interchanged with the Southern Pacific at Ogden.

Q. Are you able to state with any degree of accuracy how much of that westbound tonnage was transcontinental?

A. I would put it at upwards of 80 per cent; and by transcontinental traffic I mean this, traffic having origin or destination east of the Missouri River on the one hand, and destination or origin west of Ogden on the other, because the minute we pass Ogden we enter what we call the transcontinental zone.

Q. Or, to put it in another way, you have used it to indicate tonnage which neither originated nor was delivered upon the rails of the Union Pacific. Is that correct?

A. No; there is some exception in the case of the points on the Missouri River where we do originate and terminate a lot of this traffic. A large amount of it comes from points east of the Missouri River and goes to points east thereof.

Q. You have given 80 per cent as your estimate in the case of the westbound tonnage; what do you say with reference to the eastbound?

A. Well, the eastbound would probably be even larger; that is for the reason that the States west of the Missouri River, natural consumers of California products, have a very limited population as compared with the consumers east of the Missouri River of the same articles, so the bulk of it would be to points off the Union Pacific rails on eastbound to an extent greater than westbound, although they would both be a very large percentage.

652 Q. How would the total revenue of the Central Pacific for this same tonnage compare with the total revenue of the Union Pacific therefor?

A. It would probably be a little less, for the reason that—take, for instance, Omaha as the basic point on the east and Sacramento as the typical central California one on the west. The percentages are 54 to the Union and 46 to the Southern Pacific for the Central Pacific service. These per cents also obtain in the case of the other points on the Missouri River and the other central California terminals. There are some deductions made for the Missouri River bridge at Council Bluffs and for the Bay Transfer on the west, at San Francisco, before prorating; but there would be a limited amount of the traffic going to points outside of the 46 per cent zone, both to the north and south, but I would say, offhand, as a rough estimate, that the Central Pacific earnings—that is, the Southern Pacific Company earnings—would be 90 per cent of those of the Union therein named, to which would be added for them what we call back locals or differentials on westbound traffic going to interior points taking higher than the westbound terminal rate. I am speaking in

653 that estimate simply of the traffic which is subject to 54 per cent east and 46 per cent west of Ogden.

Q. About how would the total revenue of all lines for moving the freight covered by this Exhibit 73 compare with the revenue of the Union Pacific for the same?

A. Well, I could not give you an answer to that question, because I have not the figures of the many roads competing. My answer would simply be that no single one of them probably would equal the pickings of the Union Pacific, but in the aggregate—you see it involves so many that I am not able at this time to give you an estimate of that.

Q. Did you have some investigation made at the request of counsel for the petitioner with reference to the movement of Nevada wool?

A. I did.

Q. What did you find to be the fact with reference to the time during which wool rates through Ogden from Nevada to the Atlantic seaboard have been in effect?

A. I found that on September 14, 1909, rates on wool from Winnemucca and points east thereof were first published via Ogden, and that on June 25, 1910, rates were also published from points
654 west of Winnemucca, and that prior to September 14, 1909, rates via Ogden were published only from Elko and east, Elko being the dividing line at that time. West of that point the rates were via the western gateway of Sacramento and east via the Sunset Line to the Atlantic seaboard. Our figures show a very limited movement of wool via Ogden prior to 1909 and a gradual change in the situation since, the tendency being to route all rail, apparently.

Q. Do you know from your general observation of conditions where the heavy part of the wool tonnage from Nevada originating contiguous to the Central Pacific rails and destined to New York or Boston traveled?

A. Very largely from central Nevada; I mean in territory west of Elko and east of a point, we will say, a couple of hundred miles west of Winnemucca, within a zone of, say, 650 miles of Ogden.

Q. How does the great bulk of that wool reach New York and Boston?

A. By way of the Sunset, boat to New York, and then transferred and sent likewise to Boston.

Q. That is hauled west from Nevada to Sacramento and then through El Paso to the Gulf ports?

654a A. Or New Orleans, as the case might have been.

Q. To New York or Boston?

A. Yes.

655 Q. When you first had to do with the Union Pacific Railroad, what were the naturally competitive rails, if any, from California to the Atlantic seaboard and to the Central Freight Association territory?

A. The Ogden route and the Mojave route, and Deming and El Paso.

Q. What do you mean by the Mojave route?

A. The line of the Southern Pacific in connection with the Atchison; the Deming route, also similar; the El Paso route, Southern Pacific on the west, various connections east, notably Texas & Pacific.

Q. For convenience, you are speaking of what year?

A. I am speaking of my early connection with the Union Pacific, in 1883 or 1884, or right around there. I am not sure but in the case of Mojave the Atchison entered there later; but I think that the Deming route was in force in 1883. That is my recollection of it.

Q. The Deming route, speaking from the east, was over the Atchison to Deming, New Mexico, and thence by Southern Pacific Railroad to California?

A. Yes.

Q. The Mojave route was via what is now the Atchison to

656 Mojave?

A. Yes; then it was either the Atlantic & Pacific or the Southern Pacific owned it from Mojave over to Yuma, as I recall it. It was afterwards, I think, leased to the Atchison.

Q. When you say Yuma, do you not mean Needles?

A. Needles, yes.

Q. Do you bear in mind about when the Atchison acquired that piece of road from Needles to Mojave from the Southern Pacific?

A. No; I do not recall the date.

Q. It was along somewhere in the eighties, it is safe to say?

A. That is my recollection of it, yes. I think it is a matter of record in the record.

Q. At this time, in 1883, the Ogden route meant Central Pacific Railroad only west of that point?

A. It did.

Q. And what were the possibilities east of Ogden at that time?

A. Prior to 1883 the Union Pacific was the sole Ogden route east. In 1883 the Rio Grande reached there, and formed connection

657 with the Southern Pacific, making two prongs to the fork as to speak, east of Ogden.

Q. Prior to 1885, do you recall that the operations of the Central Pacific Railroad were conducted under the name of Central Pacific Railroad?

A. That is my recollection.

Q. You recall that in 1885 the Southern Pacific Company began to operate that line?

A. About that time, yes. I do not know the exact date.

Q. And that the Southern Pacific Company also operated the Southern Pacific Railroad and the Sunset Route?

A. Yes.

Q. So far as other connecting rails are concerned, was there any material change in the situation after the Atchison reached Mojave somewhere in the eighties, up to the time that the Atchison got into San Francisco over its own rails?

A. Nothing material in the territory north of Tehachapi, as I recall it. Their strength commenced upon the opening of their through line, and they became the Santa Fe all the way to the territory north as well as the territory south and east of Mojave.

Q. It has appeared already in the record that the Atchison

658 got into San Francisco on their own rails in May, 1899. How

soon after that did that railroad become a substantial factor in the business of California north of Tehachapi?

A. We commenced noticing it right off, first in one field and then in the other. As I recall it, it took them a little while to get a strong foothold at that time and to very materially increase their takings; but their growth was gradual from the day they went north. To-day, of course, they are, as we all know, a strong factor.

Q. How much of an influence had the Atchison exerted on the California freight north of Tehachapi prior to the time when they got into San Francisco?

A. A very limited influence, I have always thought.

Q. The next change in the rail situation was the opening of the San Pedro route from San Pedro and Los Angeles to Salt Lake, and there connecting with the Oregon Short Line and the Union Pacific; is that correct?

A. Yes.

Q. Do you bear in mind that that was somewhere about 1905?

A. 1905.

Q. The next change was the opening of the Western Pacific Railroad in 1910 from Salt Lake to San Francisco Bay?

A. Yes; that is correct.

Q. Did the San Pedro route affect the freight situation in California north of Tehachapi?

A. It did not.

Q. What has been the effect of the Western Pacific on the territory north of Tehachapi, or any part of it?

A. It has increased the competition.

Q. Do you have any reliable knowledge of the extent of their takings of freight?

A. Not in detail as to commodities, except in occasional instances now and then. I know their earnings ran about $500,000 a month, or something of that nature. We watch their movement and get such information as we can from time to time, but I could not tell you how many cars per day they had or of what commodities.

Q. You mean their proportion of the revenue amounts to the figure which you have mentioned?

A. My recollection is that their statements which they give out to the public show about $500,000 a month—in the neighborhood of $6,000,000 a year.

Q. That is, their gross freight receipts?

A. That is, the earnings of their company, the gross earnings.

Q. Does that include their passenger business as well?

A. I so understand.

Q. Do you have any knowledge as to how those earnings divide as between freight and passenger?

A. In their case?

Q. Yes.

A. I have not.

Q. Since the Southern Pacific Company assumed the operation of the Central Pacific Railroad and the Southern Pacific Railroad what, if any, competition has there been between those two lines?

A. None.

Q. Prior to the merger of the Southern and the Union, September 1, 1901, what did you observe as to the effort of the Southern Pacific Company with reference to freight between California points on the west and Atlantic seaboard and Central Freight Association points on the east?

A. In the case of the Atlantic seaboard a most substantial, active, working preference for the Sunset Route. In the case of the Central Freight Association territory a similar activity as to the southern portions of it; and by that I mean on and south of a line, say,
661 from, as I recall it, St. Louis via Terra Haute and Danville and the Wabash up to Detroit. South of that line they work very actively for their southern haul. North of that line they co-operate in common with the Union Pacific and their other connections in favor of the Ogden route.

Q. South of that Detroit line did the Southern Pacific Company's representatives furnish the Union Pacific Railroad any assistance in getting freight via Ogden which could be controlled via the Sunset Route?

A. Their first effort was first, last, and always with the Sunset. If they found by investigation that a shipper south of this line was not inclined to go by their long haul, and there was danger of losing him if they so insisted, and especially if they got a pointer from the Union Pacific people of the shipment being in sight, in that case they would cooperate; but their effort was, of course, in favor of their longer haul via the southern gateways.

Q. Does that answer apply both to westbound and eastbound?

A. It does.

Q. What effect upon this solicitation did the merger between the Southern Pacific and the Union Pacific in 1901 have?

662 A. It changed the policy of the Southern Pacific's solicitation to the extent of preferring the Ogden route in the territory north of the Ohio River. The southern gateways remained preferential south of the Ohio River, and the Ohio River itself was more or less neutral, taking into consideration facilities existing thereon, owned by companies operating out of such points as Cincinnati and Louisville. For instance, the Queen & Crescent and the

Louisville & Nashville were vitally interested in the southern haul, and a northern line might be similarly interested in the northern haul. In that case deference was had to the local conditions somewhat in the solicitation.

Q. What is the natural route between California, north of Tehachapi on the west and Central Freight Association territory and Atlantic seaboard territory on the east?

A. The short route via Ogden, Omaha, and Chicago.

Q. Between those respective territories, from 1883 to 1914, how has the ordinary time actually made by freight trains by this southern route compared with the time by this Ogden route?

A. It has been better by the Ogden route to that section. By "better" I mean a little quicker; the mileage being shorter.

Q. In terms of days, how much better?

A. I would say, on an average, one to two and a half days.

Q. These answers, I take it, are all directed toward freight. We were not speaking of passenger service at present.

A. Exclusively; yes.

Q. What has been the situation on the Ogden route with reference to freight trains keeping or failing to keep their schedules from time to time?

A. No freight train on any line can be operated with clock-like precision; but the Ogden-Omaha route of the Union Pacific has always had a very good record on performance, and while there have been some delays, they have been the exception and not the rule; simply such as are incidental in the ordinary course of transportation; and, relatively, the Ogden-Omaha line has been the equal of any ever since I have known anything about the Union Pacific; and by "any" I mean any of its competitors.

Q. What has been the effect upon freight which would naturally move over the Union Pacific, of the solicitation and effort of the Southern Pacific Company since controlling the Central Pacific Railroad?

A. There is no question but what the efforts of the Southern Pacific have been the means of controlling a large volume of traffic via their Sunset Route which, if they had not so put forth their efforts, would have gone by the Ogden route and the Union Pacific.

Q. How extensive and of what duration have these efforts been?

A. Ever since the opening of the Sunset line in 1883, as I recall it, the Southern Pacific has been remarkably well organized, very active, and have built up a very handsome business via the Sunset route to and from the East; and their strength has been very pronounced along those lines. We can not help but admire the way

they have controlled the traffic. We do not like to compliment our competitors, but we must give them their due.

Q. Will you indicate in some way by what means they have accomplished this control of freight away from the Union Pacific Railroad?

A. Part of the best testimony I have seen on that particular question was that given by Mr. Stubbs, setting forth in detail the reasons for the success of the Sunset Route. I am speaking now solely from memory. He pointed out the fact that——

665 Mr. BLAIR. We object to this endeavor to incorporate into the testimony indirectly the statements of a man who is not on the witness stand.

Mr. DUNNE. I think, Mr. Munroe, you had better, being the witness, give your own testimony. I think it would be more responsive to counsel's questions, too. You are here to tell what you know, and we shall appreciate it if you will confine yourself to your own knowledge.

The WITNESS. In their efforts in behalf of the Sunset the Southern Pacific have put forth every effort they possibly could, in connection with the transaction of business, to influence patrons to their route and to hold them as clients. There are a thousand and one ways, so to speak, in which a common carrier can have influence with a patron. The local situation has a large bearing as to where the freight originates, the ability of the carrier to serve the patron on other than the traffic specifically involved and in question, the disposition to accommodate, and a lot of little things of that kind, all going to have influence with the shipper; and when pressed by the carrier the shipper naturally desires to cooperate as far as he can consistently, without jeopardizing his own interests; and in the case of the

666 Sunset the reforms instituted in the way of prompt settlements of claims, expedited service, special attention to specific traffic all tended to strengthen that route at the expense of all of the all-rail carriers overland, conspicuous and first of which was the Union Pacific.

By Mr. MCCLENNEN:

Q. Have you any means of putting in terms of percentage how much was diverted from the Central Pacific-Union Pacific route to the Sunset Route?

A. I have not.

Q. Was it a small or a large volume?

A. It was a large volume of traffic, both east and west bound, particularly between California points on the one hand and points on the Atlantic seaboard on the other.

Q. How long has this method of diversion kept up?

A. Up to the present time.

Q. And began when?

A. With the opening of the Sunset Route.

Q. Prior to the merger in 1901 was there any eastbound traffic over the Central Pacific Railroad destined east of the Missouri River, which passed over the Denver and Rio Grande from Ogden?

A. Prior to what date?

Q. Prior to the merger in 1901.

A. Yes.

Q. What happened with respect to that traffic when the merger occurred in 1901?

A. The efforts of the Southern Pacific Company were directed toward favoring the Union Pacific with traffic which it could control as against the Rio Grande east of Ogden, the Union Pacific's competitor.

Q. Did that have any effect upon the percentage of the eastbound Ogden tonnage which went over the Denver and Rio Grande?

A. It did.

Q. How did those methods which were pursued to accomplish that result differ from those which were pursued by the Southern Pacific Company to accomplish the diversion to the Sunset Route from the Union Pacific?

Mr. DUNNE. We object to this as calling for a conclusion from the witness, and without repeating this objection we will make the objection to this whole line of inquiry. The witness has been dealing in generalities—I say it with great respect to him—from the beginning, and has not been stating concrete evidentiary facts or figures beyond the table that he has submitted, and we shall object to the wholesale conclusions and generalities of the witness as not being evidence tending to support any issue in this case.

The WITNESS. Substantially similar.

Mr. DUNNE. I would like to add to the objection that it does not appear that the witness was an officer of the Southern Pacific Company at any time.

By Mr. MCCLENNEN:

Q. In view of the objection and the appended assertions of fact, in which we can not concur, I will put this question: Will you please describe the methods which were pursued to divert freight from the Union Pacific to the Sunset Route, and the methods which were pursued to divert freight, after the merger, from the Denver & Rio Grande?

A. Active and persistent solicitation.

669 Q. Had there been any classes of freight passing between California and points east of the Missouri River of a character to require more than the usual expedition of freight trains?

A. Yes.

Q. Will you state by way of illustration some of those classes?

A. First, deciduous fruits, then the citrus fruits, and then Asiatic inbound traffic; those are three illustrations that occur to me at this time.

Q. What were the characteristics of the Asiatic eastbound traffic which required expedition?

A. The extreme competition both via the Suez and the northern routes; and by northern routes I mean the Canadian Pacific and the lines operating to the ports of Seattle and Tacoma, made it necessary to put forth extraordinary effort to hold that traffic to the United States lines. Take for instance silk, the most high priced and important item transported, averaging in value frequently $200,000 a car. That was moved across the continent in about four and a half to five days, handled in baggage cars especially equipped with passenger train trucks and expedited
670 from coast to coast.

Mr. DUNNE. Is that all rail?

The WITNESS. All rail. And fruit, I am speaking now of deciduous fruit, naturally, from its perishable nature that required expedition to market, and we have always had fruit schedules faster than the ordinary freight train schedules. The same principle obtains on citrus fruit, even though the citrus fruit is not so perishable as the deciduous, but it has always been felt, so far as we were concerned, that we could not differentiate in the schedule between the deciduous of northern California and the citrus of southern California. And a limited amount of live stock, but that would be the exception as compared with the other commodities mentioned.

Q. In the case of those commodities where the character of the commodity or the state of outside competition required the greatest and best service, over what route has the freight moved?

A. The Ogden route.

Q. What are the facts, so far as they have come to your knowledge, which led to this eastbound Nevada wool traveling west
671 and south in order to get to its eastern destination at New York or Boston?

A. Shippers' response to the efforts of the Southern Pacific to favor them with the long haul.

Q. Now, if the Central Pacific Railroad and the Union Pacific Railroad had been operated as one continuous line, how would the freight have moved?

A. Via Ogden and Union Pacific.

Q. There was a time in the history of these roads, was there not, when the representatives of them used to meet together as the Transcontinental Association?

A. Yes.

Q. Did you have anything to do with those meetings?

A. I have attended a number of them.

Q. Who was the representative of the Southern Pacific Company at those meetings?

A. Executives—that is, their traffic officials, notably Mr. Stubbs, during his life Mr. Smurr, Mr. Luce, and their freight-traffic officials.

Q. Mr. Luce is one of the gentlemen we have the pleasure of having with us to-day?

A. He is.

672 Q. Prior to the entrance of the Atchison into San Francisco, in May, 1899, what was the control, if any, of the Southern Pacific over transcontinental rates with reference to central and northern California and north of the Tehachapi Mountains?

A. Practically exclusive with the Southern Pacific. They had more influence than any other one interest, and Mr. Stubbs was looked upon as the father of the Transcontinental Association from his long association with that business, and he was and is a strong, potent factor. The Southern Pacific had more voice in the policy than any other interest.

Q. Prior to the opening of the Western Pacific in 1910 did the Union Pacific have any, and if so what, practicable way of getting freight into California other than over the lines of the Central Pacific Railroad?

A. The Union Pacific depended solely upon the Southern Pacific as its California connection for all territory north of the Tehachapi; and, in fact, it depended upon it for all territory in California prior to 1905. Upon the opening of the San Pedro route in 1905 the Southern California route was the preferred one.

673 Q. What was the condition of the way and structures of the Central Pacific Railroad prior to the merger in 1901 and of the Union Pacific Railroad?

A. Well, you understand that I am not an operating officer, and not qualified to speak with precision on matters physical, as they could; but as far as the Union Pacific is concerned, it has always been a line second to none between the Missouri River and Ogden, and by second to none I mean everything which attaches to a railroad in its facilities. It has been progressive in the adoption of modern improvements. I think in that respect it has been in advance of the Central Pacific until more recent years. By that I mean it had heavier rails and heavier bridges and was a little in advance in that respect. In the last few years, of course, there have

been a great many improvements made on both properties, and they are nearer alike to-day than they ever have been, and the Central Pacific has been improved marvelously between Ogden and the West.

Q. The improvements to the Central Pacific of which you have just spoken were undertaken and carried out during what period?

A. Very largely subsequent to 1901.

Q. What, if anything, would be the effect upon competition
674 in transcontinental business if the Central Pacific Railroad were operated free from the control of the Southern Pacific Company or any company having another through transcontinental line?

A. A marked increase in competition in everything that that word implies.

Q. Would there be any, and if so what, reduction of the accommodation of shippers resulting from the relieving of the Central Pacific from the control of the Southern Pacific Company?

A. Competition naturally tends toward helping the shippers, and that undoubtedly would be the case in the future as much as it has been in the past.

Q. In dealing with the question of rates on transcontinental freight from and to California have you observed what were the factors influencing the Southern Pacific Company, and, if so, what?

A. My observation is that they have always first regarded their Sunset interests and, based on their diagnosis of them, they move afterwards.

Mr. McCLENNEN. That is all.

675 Cross-examination by Mr. DUNNE:

Q. Mr. Munroe, you are the vice president in charge of traffic for the Union Pacific Railroad, are you not?

A. I am.

Q. Mr. William H. Connor, the witness who testified yesterday and this morning, is one of the commercial agents of the Union Pacific, is he not?

A. He is.

Q. Stationed at Cincinnati?

A. Yes.

Q. And in a general way he reports to you? You are his superior officer?

A. No; he would report to the traffic manager more directly than he would to me.

Q. I quite understand that, but you are over the freight traffic manager?

A. Yes.

Q. I quite understand. Were you present in this room during the morning session and during the entire cross-examination of your subordinate, Mr. Connor?

A. Yes.

676 Q. Now, you have been asked some questions about wool; a good deal of time has been devoted to this question of wool. Were you a witness in the Union Pacific merger case?

A. I was.

Q. Did you give the following testimony in that case?

A. Whatever the record shows.

Q. You had better let me state it. I will invite your attention to it. You were asked the following question by Mr. Severance, and I think during that interesting case I asked you some questions, as this record will develop. Mr. Severance, as counsel for the Government, asked you as follows:

"Q. You have answered to Mr. Dunne that you would not regard a route to Ogden by way of the Southern Pacific around to California as competitive with the Union Pacific system. Is it not a fact that there has been and is still in force a tariff on wool by the Sunset route to Boston which is exactly the same as the tariff over the Union Pacific and its eastern connections from Corinne, Utah, right north of Ogden, and has not business moved on that tariff?

"A. I rather think that tariff is in effect.

677 "Q. It has been in effect for many years; it may have been renewed from time to time.

"A. It has been in effect so long that it has become a dead letter. I know that.

"Q. Now, is that true, that it has become a dead letter? Was not that tariff or a new tariff of that kind filed in the spring of 1909 by the Southern Pacific Company according to this record?

"A. I do not know; but if it had been, it would not be at all strange to me. Everybody knows, everybody familiar with the wool traffic in that section, that the Sacramento route cuts no figure whatsoever, and has not for years, on any wool from any point in Utah to any point on the Atlantic seaboard. Now, we have traffic departments, tariff departments; we have inheritances in the way of rate bases; and unless something was said to the contrary, a tariff, once in effect, is reestablished from time to time, but in actual movement the tariff amounts to nothing and we pay no attention to it.

"Q. Years ago traffic did move that way, did it not, and was competed for actively as between the Union Pacific interests and the Southern Pacific?

"A. Why, I do not think there was any material movement 678 of the wool traffic that way. There may have been an occasional shipment, but——

"Q. Now, do you know anything about it?

"A. I do know something about it, because we have always had a very respectable eastbound traffic from that section, and I can not recall a case where we were ever influenced in any of our actions by any rate via Sacramento on any Utah wool.

"Q. How about north Nevada and southern Idaho?

"A. I do not think that any rate made on Nevada wool by the Southern Pacific ever had any material effect upon wool from opposite points on the Oregon Short Line, but on that question I am not as well prepared to testify as some others here who have been in direct touch with it; but all the reports made to me indicate that it never has amounted to more than talk out there at Salt Lake."

Did you give that testimony in the merger case?

A. I did; and I would like to repeat every single word of it now with emphasis. I want to call your particular attention to this feature of it: The maximum part of your quotation there refers

679 to Utah wool. They did install this tariff from Utah, and we never paid a particle of attention to it as a Utah proposition. I recognize, as set forth in my testimony here, in Nevada the conditions were different—they did take Nevada wool via Sacramento. As to the effect of the Nevada rates upon the Oregon Short Line, I am prepared to state now what I was not perhaps prepared to at that time, but it confirms all that I have said; the rates were lined up on the Meridian principle, but I am not aware of a single case—certainly no report has been made to me indicating that any point in Nevada on the Southern Pacific has during the past few years—and I will say for "the last few years", to make it specific, the last 15, drawn any wool of moment from territory, halfway points, or nearer the Oregon Short Line Railroad.

680 Q. Then, Mr. Munroe, I am justified in saying, and I understanding you to say, that you repeat with emphasis what you said in that testimony as well with respect to Nevada as to Utah wool?

A. Yes.

Q. Now, Mr. Munroe, the relations between the Union Pacific and the Southern Pacific at Ogden for a number of years have been intimate and friendly, have they not?

A. Yes.

Q. Before and after 1901?

A. Yes.

Q. The divisions were always satisfactory to you?

A. Some divisions were and some were not.

Q. I speak of the prevailing division at Ogden—54 and 46.

A. Satisfactory.

Q. In respect to the Sunset line, Mr. Munroe, I understand you to say, or—at all events, it was incorporated in the question of counsel on the other side—that the Sunset line had moved a controlling amount of Atlantic seaboard traffic as against the all-rail lines from the Atlantic seaboard. Do you wish to be understood as gen-
681 erally and year in and year out making that statement?

A. I mean this, that the Sunset have put forth every effort within their power to control to their long line every pound of freight between the Atlantic seaboard points on the one hand and points in California on the other.

Q. You miss the point of my question, Mr. Munroe. Has the Sunset line, in respect to its takings, enjoyed the control, or a larger part of that tonnage, year in and year out, from Atlantic seaboard territory as against the all-rail lines or any other line, water or water and rail, engaged in the business?

A. I do not know the percentage relation which the Sunset takings bore to the whole traffic via the New Orleans routes and gateways.

Q. Do you know whether the takings have been, relatively speaking, diminished takings year in and year out in that business?

A. I understand that they have been diminishing, especially during recent years, and from causes perfectly natural, so that no blame could attach to anybody in charge of the Sunset properties for losing the business.

682 Q. What are those perfectly natural causes that you have in mind?

A. Take one case, that of dried fruit eastbound from Oregon, San Joaquin Valley, Fresno and vicinity, moving to the Atlantic seaboard territory; by that I mean all territory east of Buffalo and Pittsburgh—suppose it is going to Boston. If it starts for Boston via the Sunset Route, it comes down and is transferred to the Morgan line boat and goes to New York and is reshipped to Boston. When it gets to Boston it is at its destination. The broker, or whoever may be handling it in Boston, may have wanted to put that car out at Worcester or Springfield, or some other point on the Boston & Albany road. In response to a natural commercial demand the transcontinental lines have given the permission to divert the shipments in transit, and that has a marked effect in the routing of edibles. Take the case of green fruit, citrus fruit, and the Asiatic inbound business of which I spoke; I eliminate those entirely from my mind when I consider traffic as between the Sunset and the Union Pacific quite competitive; and that case of dried fruit is one that comes to me as typical.

Q. What other perfectly natural causes have been factors in the relative shrinkage of Sunset takings to the Atlantic seaboard?

683 A. The improvement of the all-rail service, the adoption

of modern methods by all links in the through all-rail rails, th
greater interest taken in transcontinental traffic by lines in Trun
Line and Central Freight Association territory; the united effor
extreme solicitation on the part of the all-rail lines to build up th
business, coupled with the fact that there is a large traffic eastbound
notably this deciduous fruit, moving through all-rail by the Ogde
and other routes, and thereby creating in the Atlantic seaboard citi
equipment available for through carriage right to the west. Al
those things have been factors in the building up of the all-rail traf
fic and in reducing the tonnage of the Sunset, and of latter years
more active factor. The Sunset has been on the firing line, so t
speak. They have been right up against the extreme water com
petition on the Atlantic seaboard of the American-Hawaiian, th
Panama route, the Tehuantepec route, and, of course, the Cape Ho
route, as long as it existed.

Q. To what extent will the intensity of the water competition h
reflected by the Panama Canal, if at all?

A. Of course it is problematical what the effect of the Panam
Canal is going to be. We are having a very keen object less
684 this week in rates so extremely low offered by the water ca
riers that it is very doubtful whether the rail lines can retai
in a large amount of the low-rated traffic.

Q. Just one further question: What is the water route, if yo
know, that will be adopted and used by the American-Hawaiian Co
pany, of whose intense competitive activity you have spoken, on th
opening of the canal?

A. Why, they use the canal route.

Q. Yes. In the earlier days of the Sunset Route, when the ta
ings were larger, was the magnitude of the Sunset takings explai
able by reference to the negligent attitude of the transcontinent
railroads, the all-rail lines, in respect to that business?

A. Partly.

Q. That was a factor, was it not?

A. One of the factors.

Q. To the extent that the Sunset line is a rail line now, is t
Sunset line a competitor of the Union Pacific-Ogden route
Chicago territory business to and from California?

A. It is a competitor in the sense of its power to take a certa
amount of the traffic, but in actual experience we do not regard,
instance, the Illinois Central line to New Orleans and
685 Southern Pacific line west as a competitor worthy of
recognition on San Francisco and central California busin
As I think I stated in one hearing held here in Chicago, when
start from Chicago and get to New Orleans you are farther a

from San Francisco than you were when you started, and I could not reconcile my mind to looking upon that line as a competitor; I mean a competitor in the sense of being able to take away traffic from us. There are occasional shipments that way from causes entirely foreign—facilities and things of that nature—but we do not regard it as an active competitor.

Q. You do not regard the Sunset line as a competitor on Chicago business, and you never have so regarded it?

A. No; in practice we do not.

Q. Why not?

A. It is too roundabout.

Q. What would be the rail routes by which freight would move from Chicago and over the Sunset rails into California?

A. The most direct route, I would say, would be the route of the Rock Island System and the El Paso & Southwestern from here to El Paso, connecting there with the Southern Pacific. I do not believe there is any route between here and New Orleans, or junctions
668 in that immediate vicinity, that could hold its own as against the El Paso route of the Southern Pacific or the Albuquerque route of the Atchison, or the Salt Lake route of the Union Pacific.

Q. Is the long haul of the Illinois Central from Chicago to New Orleans?

A. It is.

Q. Has the Illinois Central a line all the way from Chicago to New Orleans?

A. It has.

Q. Is it a connection at New Orleans of the Southern Pacific?

A. It is.

Q. And the reason why the Sunset line, in respect to Chicago business, is not a competitor, and you have never regarded it as such, is that that route is too roundabout?

A. Too roundabout. I would like to add as a matter of information that the Illinois Central has a line also to Omaha. They cover two sides of the square, so to speak, the longer line being to New Orleans, and they endeavor to fairly apportion their territory so as to give the best service to the patron. I do not think you would find them trying to work the New Orleans as against the Omaha one on a shipment from a point in Illinois, we will say, a
687 couple of hundred miles south. When you get down south of there they would try it; but they have to have regard to the service possible by their competitors via the Missouri River gateways.

Q. That is the thought and that is the factor which they have in mind, is it not?

A. Yes; they can not make a success of the New Orleans route. That is true, undoutedly. That is one of the reasons.

(By request, the reporter repeated the question, as follows:)

"That is the thought and that is the factor which they have in mind, is it not?"

The WITNESS. I think so. One of them.

By Mr. DUNNE:

Q. Mr. Munroe, has there been competition south of the Ohio River—as to points south of the Ohio River—between the Ogden gateway and the southern routes?

A. Yes.

Q. To a large or to a limited extent?

A. Not as active as north. The southern route has a decided advantage down there and the northern lines can not get very much of that business.

Q. It would be correct to say, then, that the competition
688 was only to a limited extent?

A. Limited south of the Ohio River.

Q. North of the Ohio River does not the business move naturally by the northern gateways? Is not that the natural and normal traffic course of the business?

A. We think so.

Q. Since the establishment of the San Pedro line, in 1905, that has been the Union Pacific's preferential route on southern California business, has it not?

A. It has.

Mr. DUNNE. I think that is all I care to ask you.

By Mr. BLAIR:

Q. You spoke of the opening of the Sunset Route in February, 1883. That was the date, was it not?

A. I was not clear as to the month; but it was in 1883, according to my recollection.

Q. I believe you said that from the date of its opening it was the policy to preferentially route to and from California to the Atlantic seaboard territory by that Sunset Route?

A. Yes, sir.

Q. That Sunset Route, as you understand, went down to El Paso and then into New Orleans and then by boat to New York?

689 A. Yes.

Q. That Sunset Route was under a unified management at that time?

A. It was.

Q. The same management as the Central Pacific?

A. Yes.

Q. So that the Central Pacific from Ogden to San Francisco and the Sunset Route from the time that it came into existence, in 1883, was under a unified management or control?

Mr. McCLENNEN. We note an objection to the question, that it is prefaced by an assertion of fact which, we submit, is not borne out by the evidence and as calling for matter which in the nature of things can not be within the personal knowledge of the witness.

(By request, the reporter repeated the pending question.)

The WITNESS. That is my understanding.

Mr. McCLENNEN. We note an objection to the answer as stating a conclusion and an inference, not a fact.

Mr. BLAIR. The witness is yours.

690 Redirect examination by Mr. McCLENNEN:

Q. You have said, in response to one of Mr. Dunne's questions, that the great success of the Sunset Route may have been due in some measure to the negligence of the all-rail routes, and I shall be obliged if you will inform me whether the Central Pacific Railroad was one of the all-rail routes whose negligence so contributed.

Mr. DUNNE. I object to the question, upon the ground that in so far as it attempts to reproduce the testimony of the witness in respect to the Sunset Route the verbiage of the question does not correspond to the testimony, and does not reproduce it.

The WITNESS. The Central Pacific is one of the links in the all-rail chain from the Atlantic coast to San Francisco, although when I made the answer I did not have that company at all in mind. What I referred to was this: The Union Pacific and all its connections east of Council Bluffs through Chicago have always been and are to-day actively interested in this transcontinental traffic. The negligence to which I referred was due to the extremely heavy traffic and rapid growth in Trunk Line territory a few years ago,

691 which taxed their energies to the utmost, and they therefore had a minimum of time and attention to devote to the transcontinental traffic. That was due to causes which were temporary. Upon the removal of those causes the Trunk Line and the Central Freight have been actively responding in interest to the through service.

By Mr. McCLENNEN:

Q. The negligence which you had in mind was a period of some wo years ago, if I understand you?

A. Partly then, and periodically in times of trouble and congesion; they did not seem to appreciate the volume of the Pacific coast raffic.

Q. Can you define any more definitely the periods to which you efer?

A. I would say it referred to periods more prior to two years ago than since. We had a depression, of course, in 1893 to 1898, and we saw some of that feeling then; but for the last five years—I do not know but for the last ten years; I think I could safely say ten—that feeling has disappeared and we have no cause to complain of negligence upon the part of any of our eastern connections. I do not believe they were ever wilfully disposed to be negligent, but they carelessly lost sight of certain business in which we were
692 vitally interested.

Q. During the period when the Southern Pacific Company was urging the Sunset Route to the extent that you have testified, did the Central Pacific Railroad, or those in control of it, put forth efforts to make the all-rail route a better competitor with the Sunset Line, and if so, what effort did they put forth?

A. I am not aware of any action ever taken by the Southern Pacific in the administration of the Central Pacific looking to the betterment of the Central Pacific route as against the Sunset. There have been improvements of various kinds and character installed on the Central Pacific in common with the Union Pacific; but they have not been controlled for or against by the Sunset conditions.

Q. Your attention has been called to the competition now presented by the American-Hawaiian Line traveling through the canal, through the Isthmus of Panama; was there, prior to the existence of the American-Hawaiian Line, a route from San Francisco via the Isthmus of Panama to New York?

A. Yes.

Q. And that was composed of what?

693 A. Pacific Mail ships on the west coast and the Panama road as the intermediary, and ships on the Atlantic coast.

Q. Has that, up to the opening of the canal, and in years past, been any substantial business?

A. It has always been a factor in the business.

Q. Do you know by what the Pacific Mail Steamship Company link in that line has been controlled?

A. They have their own separate organization, with R. P. Schwerin, as I recall it, as president—I think that is his title—of the Pacific Mail Steamship Company. Naturally they are very closely in touch with the owners of the property, one of whom is the Southern Pacific, I believe.

Q. Do you know whether or not the all-rail lines from time to time bought a definite space in the boats plying between San Francisco and Panama, and Colon and New York?

A. I know that years ago there was, for a time, what was called a space-rental arrangement between the transcontinental lines and

the Pacific Mail Steamship Company, and there was certain traffic thrown to them under that arrangement.

Q. Under those arrangements did the rail lines pay for the space whether it was occupied or not?

A. My recollection is that they did.

694 Q. Did the rail lines contribute towards those payments according to their division of the rail transcontinental rates?

A. I do not recall the factors obtaining as to the subdivision, but I rather imagine some basis of that kind.

Q. The incentive to the railroads in doing that was to prevent the competition made by that line?

Mr. BLAIR. We object to that as plainly leading and suggestive.

The WITNESS. To minimize the competition and to preserve the rail revenues.

By Mr. McCLENNEN:

Q. In view of the objection, I will ask you if you will state what the purpose of the railroads was in making those arrangements.

Mr. BLAIR. Counsel call attention to the fact that the evil effect of the question is already had, as is obvious, and counsel do not accept the tardy correction as any answer to the original objection.

(By request the reporter repeated the pending question.)

The WITNESS. To protect their revenue.

695 By Mr. McCLENNEN:

Q. Was the Southern Pacific Company one of the companies cooperating in those arrangements?

A. It was.

Q. Those agreements with the component parts of the Panama Route covered what periods of time? Do you remember?

A. I do not recall the year, but my recollection is that it was prior to the taking effect of the interstate law.

Q. That would be 1887?

A. The interstate law took effect April 4, 1887, as I recall it. I understand there were no legal objections at the time to that sort of an agreement or arrangement. If there had been, of course, the roads would not have gone into it.

Recross-examination by Mr. DUNNE:

Q. Was the Union Pacific a party to that Panama agreement?

A. It was.

Q. Has that agreement been in force for the last thirty years, in round figures?

698 A. The number of years I do not know; but it has not been in force since 1887, practically twenty-seven years.

Q. The Pacific Mail Steamship Company, at the time the Southern Pacific Company became interested in it, was plying between the port of San Francisco and the ports of call in the Orient, was it not?

A. Yes.

Q. And prior to the time the Occidental & Oriental Steamship Company had been plying between the port of San Francisco and the ports of call in the Orient, had it not?

A. Yes, sir.

Q. That inbound Asiatic business that you spoke of moved all rail through the Ogden gateway to its overland destinations, did it not?

A. It did.

Q. Were the Union Pacific and the Southern Pacific Company partners, using the term freely, in the Occidental & Oriental Steamship Company?

A. They were.

Q. If your testimony has conveyed the impression that the
697 negligence of the railroad companies which has been suggested here as an explanation to an extent more or less of Sunset takings—if your testimony has conveyed the impression that that negligence was of recent years, are you not mistaken about that?

A. I said that it was more a case of prior to two years ago than it was since that date; and I did refer more particularly to prior to ten years ago, and so stated in the record.

Q. I will carry you back still further than a decade, and I will ask you if the negligence of the railroads as a factor in the taking of the Sunset line does not go back to the earlier and pioneer days of the Sunset line in Atlantic seaboard business?

A. I did not come in contact with it so much in the very early and pioneer days as I did afterwards, but it may have obtained just the same, because when I first went with the Union Pacific I was assigned especially to traffic other than transcontinental, and devoted the major portion of my time to that, and only had a limited amount on the transcontinental traffic. Later I became more closely affiliated and associated with the transcontinental traffic.

698 Q. Do you not recall that in the early days of the Sunset Route, when it was first launched, its takings of Atlantic seaboard business reached 80 or 85 per cent, and it was in those days that the railroads were negligent in respect of the traffic, and that that large percentage was attributable to that very negligence of the railroads?

A. No; I could not subscribe to that. I do recall, now, that at a period the rail lines withdrew from the Atlantic seaboard traffic account of the extremely low rates being made by competitors what might have been termed the apathy of the trunk lines, and Southern Pacific was used to fight that battle, so to speak, and af

wards, when peace was declared and conditions changed, the all-rail lines got back into the business; and during that period, of course, the Sunset built up a traffic, and held afterwards a good share of what they did build up.

Q. And the rates went back?

A. And the rates went back.

Q. As a witness in the Union Pacific merger case, did you give the following testimony:

"Q. Now, the Southern Pacific by its Sunset Route was carrying at times, according to the testimony here, 80 or 85 per cent of
699 the business from New York pier to San Francisco. If you had cut that rate by Portland and thereby caused a cut all along the line, as you say, the Southern Pacific, through its enormous tonnage over the Sunset Route, would have suffered very severely in revenue, wouldn't it?

"A. I don't think the Southern Pacific's 85 per cent takings were due entirely to the rate. I think they were due more to negligence of the all-rail overland carriers."

Did you give that testimony?

A. If the record says so.

Mr. DUNNE. That is all.

By Mr. BLAIR:

Q. Just one more question: You say that at a certain period the Sunset Route was used by the railroads. What railroads?

A. I said the all-rail routes. My recollection is this: That the all-rail lines canceled their through tariffs very largely from the Atlantic seaboard to the Pacific and confined their tariffs temporarily to Chicago and west; and that resulted in the through rates via Chicago being very much higher than those obtaining via the Sunset. In other words, the all-rail lines did not make any attempt to
700 meet the rate conditions, but the Sunset did.

Q. You said something about the Sunset having to bear the brunt of the fight?

A. Yes; I spoke of that looking upon the Sunset as one of the members of the Transcontinental Association.

Q. You said something about the Sunset being used to bear the brunt of the fight. Used by what interest?

A. The Southern Pacific stayed in the field and used their Sunset weapons to fight the battles against the competitors in common of the overland carriers.

Q. In other words, the fight was on against the Sunset Route and the all-rail lines on the one side and some water competitors on the other hand.

A. No; the fight was the Sunset against the field.
Q. What was the field?
A. All water carriers or any other line going across the——
Q. What year was that?
A. I do not recall.
Q. Was it not about 1893?
A. I do not recall the year. I would have to look up the records.
701 Q. Was it not initiated by the water lines?
A. My recollection of the whole transaction is more or less hazy.
Q. I think so.
A. I just simply happened to think of it after Mr. Dunne had pointed the matter out.
Q. Then your statement of the facts in connection with that—I do not use the expression in any offensive sense—is not entirely reliable?
A. I would not want to offer in evidence here my memory as being perfect.
Q. Especially when you said you were hazy about the transaction?
A. It is not clearly impressed on my mind.
Q. And you do not know how the controversy started?
A. I have a very distinct recollection of one conference about the matter held here in Chicago, at which I think Richard Gray was present; and as a result of that the Sunset undertook to meet the competition which the transcontinental lines were face to face with and the overland carriers practically withdrew from the business.
Q. You say "undertook." At the request and suggestion
702 of the all-rail lines?
A. It was done with the full knowledge and consent of the all-rail lines.
Q. And at their request?
A. I do not know whether they made the first suggestion or not but they acquiesced in it at all events.
Q. And in their interest?
A. We thought so at the time. We learned afterwards, however hindsight being better than foresight, that if we had to do it over again perhaps we would not have done it.
Q. Well, that would open a long question. That is all.

By Mr. McCLENNEN:

Q. This matter of the Panama route and Panama agreements something to which your attention had not been called prior to your taking the stand; am I right?
A. You are right.
Q. And you are speaking without having had any opportunity to investigate dates?

A. That is correct.

703 Q. You have not had called to your attention even that the agreement between the railroads composing the Transcontinental Association and the Pacific Mail Steamship Company, put in evidence in this case as petitioner's Exhibit 24, is dated October 1, 1899?

A. No; I had not had my attention called to it at all. My impression was that it was prior to 1887.

Mr. McClennen. That is all.

Mr. Blair. That is all.

Mr. Dunne. I have no further questions.

(Whereupon an adjournment was taken until to-morrow, Friday, October 9, 1914, at 11.30 o'clock a. m.)

704

TENTH DAY.

(The hearing set for Friday, October 9, 1914, in Chicago, was adjourned subject to notice.)

Room 1620, 90 West Street,
New York City, November 4, 1914.

Before Special Examiner Frank R. Hanna.

No appearances.

The petitioner puts in evidence as Exhibit No. 74 a skeleton plan of through lines.

Counsel for defendants object to Exhibit No. 74 as incompetent evidence.

(The plan referred to was thereupon marked "Petitioner's Exhibit No. 74, November 4, 1914.")

The petitioner puts in evidence as Exhibit No. 75 the copy certified by the Assistant Secretary of the Interior of the acceptance filed with the Secretary of the Interior by the Southern Pacific Railroad Company of the act of Congress of July 27, 1866.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 75, November 4, 1914", and will be found in the volume of petitioner's exhibits.)

705 The petitioner puts in evidence as Exhibit No. 76 the copy certified by the Assistant Commissioner of the General Land Office of the acceptance filed with the Secretary of the Interior by the Southern Pacific Railroad Company of the act of March 3, 1871.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 76, November 4, 1914", and will be found in the volume of petitioner's exhibits.)

(Whereupon a further adjournment was taken subject to notice.)

X

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 2.

DEFENDANTS' EVIDENCE.

Pages 394 to 872, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Monday, March 1, 1915.

The hearing was resumed, pursuant to notice, at 2 o'clock p. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., and Garrett McEnerney, Esq., for the Southern Pacific Company.

707 Mr. HERRIN. I wish to make this preliminary statement before beginning the examination of a witness:

The Southern Pacific Company, the Central Pacific Railway Company, and the individual defendants having made the pleas in bar and estoppel set forth in paragraphs 9 and 10 of the answer herein and desiring and intending to insist upon said pleas, and desiring and intending further to rely upon the said record proceedings, and decree referred to in paragraph 10 of the answer and the argument of counsel as conclusive proof of the existence, prior to the merger in 1901 between the Union Pacific Company and the Southern Pacific Company, of competition between the two companies and the want of power in the Southern Pacific Company to prevent such competition via the Ogden route now state that they rely upon said pleas and each of them and do not waive nor intend to waive their rights under such pleas or either of them by reason of any evidence which they may introduce in the case, and that all such testimony is taken and introduced without waiver of, but subject to and with reservation of, their said pleas and contentions. And to save useless repetition they ask that this objection and reservation be considered as made to all such

708 testimony and evidence, and they give notice that said objection and reservation are so made.

Mr. MCCLENNEN. The petitioner does not, by its silence at this time, concede any of the facts set forth in the foregoing notice.

WILLIAM HOOD was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your name?

A. William Hood.

Q. And your official relation to the Southern Pacific Company defendant?

A. Chief engineer.

Q. How long have you been chief engineer?

A. Essentially since the organization of the Southern Pacific Company.

Q. In 1885?

A. In 1885.

Q. Mr. Hood, I present to you a map marked "No. 1", which is intended to show the construction of Southern Pacific
709 lines prior to January 1, 1870, indicating in different colors the ownership of the Central Pacific bond-aided lines, other Central Pacific lines, and all other Southern Pacific lines, and also lines subsequently acquired by the Southern Pacific Company. I will ask you if you know whether that map correctly represents what it purports to show?

A. It correctly represents what it purports to represent.

Mr. HERRIN. I wish to introduce that map in evidence.

(The map referred to was received in evidence and marked "Defendants' Exhibit (Hood) No. 1, March 1, 1915", and will be found in the volume of defendants' exhibits.)

Mr. MCCLENNEN. These red hatched lines, noted "Lines subsequently Southern Pacific", is that intended to mean that the lines were in existence January 1, 1870, but had not then become Southern Pacific?

Mr. HERRIN. That is right. They show the lines as they existed at that time, and that they were subsequently acquired is indicated by the red hatched line.

(By request of the witness the last answer was read as follows:)

"A. It correctly represents what it purports to represent."

710 The WITNESS. Allow me to add: So far as my personal knowledge of the matter extends, which is from May, 1867.

By Mr. HERRIN:

Q. What does that date refer to?

A. That is the date that I commenced working for the Central Pacific Railroad—May 3, 1867.

Q. And you continued thereafter with the Central Pacific Railroad until you became chief engineer of the Southern Pacific in 1885?

A. I was with the Central Pacific, the Southern Pacific Railway, and various corporate-named railroads until I finally became chief engineer of the Southern Pacific Company, as indicated heretofore.

Q. I also present to you a map marked "No. 2", purporting to show the construction of Southern Pacific lines prior to January 1, 1875, with ownership indicated in colors, according to the previous map, and ask you if that map correctly represents what it purports to show in regard to those matters?

A. Irrespective of whether it was Central Pacific or Southern Pacific railroad or railway or other corporate construction.

Q. And in the same way these red lines indicate the lines, whether in the ownership of the Southern Pacific or in the ownership of the Central Pacific?

A. Yes.

Q. Which were then operated by the Southern Pacific?

A. Yes.

Mr. McCLENNEN. With your statement as to your intention to call this witness again, I will not cross-examine any further at the present time.

Mr. HERRIN. Yes; we will recall him on some very important testimony.

716 JAMES HARVEY STROBRIDGE was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age, Mr. Strobridge?

A. Nearly eighty-eight; eighty-eight in April.

Q. Where do you reside?

A. I reside at Haywards, Alameda County.

Q. Did you ever do any work for the Central Pacific Railroad Company?

A. Yes.

Q. Where did you begin on that work?

A. I commenced in Sacramento.

Q. What date, about?

A. I think that was in 1864.

Q. What were you doing?

A. The first work I did for the Central Pacific was to raise the grade on Front Street and grade up I Street toward the American River.

Q. What did you do afterwards?

A. I then took charge of laying the track from Sacramento

717 eastward, about fourteen miles, to a place about Antelope.

Q. You may continue stating what you did after that on the Central Pacific, all the way through.

A. After that?

Q. Yes.

A. I then took up the work of building the Central Pacific at New Castle as an entirety, excepting the bridging, and continued it until it met the Union Pacific near Ogden.

Q. What particular thing were you doing; you were in charge of what?

A. I was superintendent of construction.

Q. Who employed you to do that work?

A. For the first portion of that work I was employed by Charles Crocker & Company, until we got, I think, near Colfax; then from that through there was the Contract & Finance Company.

Q. What individuals did you deal with in doing this work?

A. More particularly with Mr. Crocker.

Q. Charles Crocker?

A. Charles Crocker. Occasionally I got orders from Leland Stanford, C. P. Huntington, and sometimes from Mr. Hopkins.

718 Q. Mark Hopkins?

A. Mark Hopkins.

Q. Did you let any contracts for masonry or anything of that sort?

A. Yes; sometimes I let the work for masonry and sometimes Mr. Charles Crocker did it.

Q. When did you finish this line, this main Central Pacific line?

A. The last rail was laid on the 10th of May, 1869.

Q. Was Mr. Crocker frequently on the ground?

A. Yes.

Q. So far as you observed, what individuals controlled the matter? In giving orders to you and instructions concerning this work, what individuals controlled it?

Mr. McCLENNEN. We note an objection to that as calling for a conclusion from the witness.

A. Well, Mr. Crocker more particularly; sometimes C. P. Huntington and sometimes Leland Stanford and sometimes Mark Hopkins did.

Q. Do you remember any particular case where Mr. C. P. Huntington had anything to do with it?

A. Very little; he was seldom on the work, if I recall.

719 At one time I was working for Mr. Crocker at Sacramento, and we had a strike, and Mr. Crocker was out of town; but Mr. Huntington was there, and he said that he would act, perhaps, for Mr. Crocker if he knew what was to be done; and he inquired what the proposition was, and I told him what plans I had, and he said, "All right; go ahead. I will take the responsibility."

Q. After you finished the Central Pacific main line, what work did you do next?

A. I took the contract on my own account to build from Niles to Oakland—to do the grading that was.

Q. You took a contract as a contractor?

A. Yes.

Q. To do the grading of this line from Niles to Oakland?

A. Yes.

Q. Whom did you arrange that matter with?

A. I arranged that with Mr. Stanford.

Q. Leland Stanford?

A. Leland Stanford.

Q. You did not arrange that with Mr. Crocker?

A. No.

Q. Where was he when you did that?

720 A. At that time he was in Europe.

Q. Did you ever have any talk with him afterwards about it when he returned?

A. Yes; he came home and inquired what was being done, and Stanford told him that the contract was let to me. And he asked, "What were the prices?" And Stanford had forgotten pretty much, and he called for me, sent for me to tell what the contract was, and Crocker said that that was all right, that was satisfactory.

Q. Did you tell Crocker what the contract was?

A. Yes.

Q. And he said it was satisfactory?

A. Yes.

Q. Was that contract in writing?

A. No, sir; it was verbal.

Q. It was oral?

A. Yes.

Q. What work did you next do?

A. Next I built from Marysville, the California & Oregon, to Sesma.

Q. That is near what town that you now know—across the river from what town?

721 A. Well, I did know, but I have forgotten.

Q. May I ask if it was Tehama?

A. Yes.

Q. Whom did you arrange that contract with from Marysville to Sesma?

A. They were all there.

Q. Who are "all"?

A. Mr. Crocker, Charles Crocker, Leland Stanford, Mark Hopkins, and Mr. Huntington.

Q. C. P. Huntington?

A. Yes.

Q. And they all had to do with the letting of that contract, did they?

A. They all had to do with it.

Q. Was that contract in writing?

A. No, sir; it was oral.

Q. Verbal?

A. Yes.

Q. What, if you remember, was your next work in this railroad building?

A. I went to Lathrop and built south from Lathrop in the valley.

722 Q. South from Lathrop?

A. Yes.

Q. How did you do that work—as a contractor?

A. That was a contract; yes.

Q. Whom did you make the contract with?

A. Well, I am not certain whether they were all there or not; Mr. Crocker more particularly, I think.

Q. Was that contract in writing?

A. No, sir.

Q. How far did you build on that line?

A. That was about twenty miles.

Q. South of Lathrop?

A. South of Lathrop, but I can not think of the river.

Q. To the Stanislaus?

A. To the Stanislaus.

Q. What was the next contract you took?

A. I continued that from the Stanislaus River to Merced.

Q. What did you do after you had reached Merced?

A. The work was suspended there, and I went to Gilroy and built to Tres Pinos.

Q. From Gilroy to Tres Pinos?

A. Yes; twenty miles.

723 Mr. GANN. Can you give us the date of that?

Q. Do you remember what year that was?

A. I will have to stop and think, I guess. 1871, I think.

Q. You built from Gilroy to Tres Pinos; and was there any other section you built near there?

A. Yes; I then built from Gilroy to Pajaro. This was also contract work.

Q. You were the contractor?

A. I was the contractor; yes.

Q. And with whom did you make the contract to do those two jobs at Gilroy?

A. That was made with Leland Stanford and Mark Hopkins.

Q. After that, where did you go? After you finished Gilroy to Pajaro?

A. I then went to Merced and took a contract to build to Tipton.

Q. Tipton is south of Goshen?

A. Yes.

Q. With whom did you arrange that contract?

A. That was made with Leland Stanford and Mark Hopkins.

Q. Was it in writing?

A. No, sir.

724 Q. Verbal?

A. A verbal contract.

Q. For what company was that road built from Merced south?

A. From Lathrop to about Goshen was the Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes, sir.

Q. And the road south of Goshen was for what company?

A. The Southern Pacific.

Q. The Southern Pacific Railroad Company?

A. Yes.

Q. Is there anything that reminds you, any fact that you remember, which reminds you of the difference in those companies, that the road south of Goshen was not built for the Central Pacific but was built for the Southern Pacific?

A. Yes.

Q. What is it?

A. They had to build a twenty-mile section on the Southern Pacific to comply with their arrangement with the Government—the franchise.

Q. They had to build a twenty-mile section for the Southern Pacific prior to what date?

725 A. That had to be completed the 1st day of July, 1872.

Q. Was that done?

A. That was done.

Q. Was it one oral contract covering the road from Merced to Tipton, or did you divide and make two contracts, one to Goshen from the north, and the other from Goshen south to Tipton?

A. It was all one contract.

Q. All one contract?

A. Yes, sir.

Q. Whom did you arrange that contract with, if you have not stated?

A. That was arranged, as I recall it, with Leland Stanford and Mark Hopkins.

Q. That was a verbal contract, not in writing?

A. No; all my contracts with the company were all verbal.

Q. Now, in any of those contracts that you have mentioned, do you remember that any of the prices were left to be arranged after doing the work?

A. Yes.

Q. In what case was that?

A. That was building from Gilroy to Pajaro, we arranged
726 for the earth work, and the rock work was left until after the road was completed, because then we could ascertain better what the price should be, as it would show; it was uncovered in places, and it would show after the work was completed, where we could not see before, and we agreed to make the price on that after it showed what it was.

Q. After it was completed did you make a price for the rock work?

A. Yes; we did.

Q. Whom was that fixed with?

A. I think they were all there at that time, Leland Stanford, Mark Hopkins, Mr. Crocker, and C. P. Huntington. Mr. Huntington said, "What price do you expect for this work"? and I named a price that I thought I ought to have, and he said, "Don't you think that is high, in comparison with the earthwork"? and I thought it was not, and after considerable talk he said, "All right; I guess that is right; go ahead."

Q. And did they all agree to it?

A. They all agreed to it; they said that was satisfactory.

Q. Did that apply, that case where you omitted to fix a price
727 for the rock work, did that apply for the sections Gilroy to Tres Pinos and also Gilroy to Pajaro?

A. Both, I believe. There was very little rock on the Tres Pinos line.

Q. For what company were those sections built from Gilroy that you have mentioned?

A. That work was done for the Contract & Finance Company, I think; I think so.

Q. If you remember, what railroad company took the road?

A. I think that was on the Central Pacific.

Q. The Central?

A. I think so. I would have to stop and think a little bit; it has been a good while.

Mr. McClennen. I suppose there is no difference between us as to the fact, is there, that that was really the Southern Pacific?

Mr. Herrin. No; there is not. It was the Southern Pacific. The Central Pacific did not extend there.

Q. But you do not recall as to that?

A. I am not certain.

Q. It was pretty hard to tell, when the same crowd were doing everything, what you were doing and for which particular company?

728 A. Yes.

Q. What did you do next in this railroad work?

A. After we got through at Tipton I had to go to Los Angeles and build a line from San Fernando Mission to Spadre.

Q. Do you remember when you finished that work, or when it had to be finished?

A. That was to be done before the 1st day of January, 1874.

Q. In 1874?

A. I think so.

Q. Was there any other work being done there at that time?

A. There was a short line that I contracted for with somebody down below Los Angeles; I can not tell the place. It was six or eight miles.

Q. I mean was there any other work being done on this line when you went there?

A. When I went there they had commenced work. They had one of my old men there, but it was not satisfactory, and Stanford said, "He will not get there on time", and he wanted I should go
729 down and take charge of that work, and I did, and built that. It had to be done before the 1st day of January, 1874.

Q. How many men did you send down to finish the line?

A. Well, I came back here and sent down 400 men, and I went down there and stayed there and took hold of it and finished the work before the 1st day of January.

Q. How was that work done; by contract or by any construction company?

A. I think it was the Contract & Finance Company.

Q. The Contract & Finance Company?

A. Yes; I think so.

Q. Whom did you take instructions from in doing that work?

A. Mr. Stanford more particularly, and Mark Hopkins had something to do with it.

Q. And you were acting as superintendent of construction?

A. Yes.

Q. What was the next work you did?

A. I did not do any other work until, I believe, I commenced at Yuma and built south from Yuma.

Mr. McCLENNEN. He said "superintendent of construction."
730 Does that mean he was not the contractor?

Mr. HERRIN. It was not his contract; he was working for the Contract & Finance Company as superintendent of construction.

Q. When you went to Yuma and built the line east and south, with whom did you arrange that matter?

A. I arranged that with Leland Stanford.

Q. Did you take the contract?

A. No, sir.

Q. How was it done?

A. I went there as superintendent of construction.
Q. For what company?
A. The Pacific Improvement Company.
Q. Well, was or was not that company organized to do that work?
A. It was organized at that time.
Q. And what official position did you hold in that company?
A. I was superintendent of construction and president of the Pacific Improvement Company.
Q. Did you have full charge of the work then?
A. Yes; I did.
781 Q. How did you get along with that work?
A. Well, we built to Casa Grande.
Q. In Arizona?
A. In Arizona; and then the work was suspended for a time.
Q. How long was it suspended, do you remember?
A. Yes; about a year.
Q. And what did you do then, during the time that was suspended?
A. I came to Oakland and built the Oakland Mole.
Q. For what company?
A. The Central Pacific.
Q. The Central Pacific Railroad Company?
A. Yes.
Q. And did you build any other line up here in California?
A. Yes; I built a short line into Monterey from Castroville; that was a contract.
Q. Then did you return to Casa Grande?
A. I returned to Casa Grande the next year and took up the work with the Southern Pacific again, building south.
Q. How far did you build from Casa Grande before you
782 stopped?
A. We went through Arizona and New Mexico and into Texas as far as the Pecos River.
Q. How far is that east of El Paso, about?
A. Well, nearly 500 miles, as I recall it.
Q. I think it is 418, isn't it?
A. Something like that.
Q. Did you make any reports of the progress of that work to anyone, and if so, to whom?
A. Yes; I reported to C. P. Huntington. Soon after, or about the time—excuse me, I don't know whether it is proper to answer any further.
Q. Yes; go on.
A. About the time we commenced work at Casa Grande I got instructions from Mr. Huntington to report the track laying to him

at New York every night, which I did, until the work was completed to the Pecos River.

Q. How did you make the reports?

A. By telegraph.

Q. You sent him a telegram every night of the mileage of track laying done during the day?

A. Yes; so many feet every day.

733 Q. Do you remember about when it was that you got to the Pecos River?

A. No; I can't remember.

Q. During the time you were doing this work from Casa Grande to Pecos River how were you paid—how were the men paid off—do you know by what means? Was there any pay car sent down?

A. A pay car was sent down, and everybody paid in cash.

Q. What pay car was it—of what company?

A. Well, Mr. Redington was paying all over the system, I believe, for the Central Pacific and the Southern Pacific.

Q. It was the pay car, though, of what company? Which company's pay car was it? Mr. Redington, whom you mentioned, what company was he paymaster of?

A. I think he was the paymaster for both of them; he did the paying. Mr. Hanford was the paymaster of record.

Q. Well, was that for the Central Pacific Railroad Company?

A. Yes; he was.

Q. Do you remember whether it was for one company or the other?

734 A. I do not know whether he was or not. I think that Captain Hanford was paymaster for both companies, as I recall it, and Mr. Redington was the deputy who went on the road and paid the men.

Q. Now, when you completed any section of this road from Goshen south, and you turned it over for operation, what company did you turn it over to?

A. Well, it was turned over to the operating department.

Q. Of what company?

A. Well, Mr. Towne was superintendent of the Central Pacific and the Southern Pacific also, and he was the man that the work was turned over to.

Q. Do you know what company operated the Central Pacific Railroad, the main line from Ogden, when it was first opened?

A. The Central Pacific, as long as I had anything to do with it.

Q. I mean the company that first took it over.

A. That was the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company took that over and operated it?

A. Yes.

Q. Now, didn't it also operate the line from Lathrop to Goshen?

735 A. Yes.

Q. Didn't it also operate the line south of Goshen, as fast as that was turned over?

A. Yes; it was turned over to the operating department, and Mr. Towne was the general superintendent and took charge of the work as it was turned over.

Q. You were instructed, were you not, as soon as those sections were completed and ready to turn over for operation, to turn them over to Towne as operating manager?

A. Yes; to turn them over; and I notified him when it was ready for them to take it.

Q. You notified Mr. Towne that a section of line, describing it, was ready to be turned over?

A. Yes.

Q. And Mr. Towne took charge of it and operated it from that date?

A. Yes.

Q. Now, the pay car that came down and paid you off monthly, was a pay car of what company; a pay car of the company that was operating the line?

A. Yes.

736 Q. Because it would pay off the men on the operating part of the line, and then continue on to the front and pay off your men; is that so?

A. Yes; that is right.

Mr. McCLENNEN. I will not put this in the form of an objection, but I think I ought to say that you are going pretty far toward leading.

Mr. HERRIN. Yes; I know. I will try to avoid that.

Q. After completing the work to the Pecos River, where did you go to do any further work?

A. I had orders to go to Redding and build the California & Oregon road.

Q. To build a line to Oregon?

A. Build a line to Oregon; but before we got part of our force up there, orders came to stay at Mojave and build a road to the Needles, 250 miles.

Q. Did you do that?

A. I did that.

Q. How did you do that work, as a contractor or otherwise?

A. Oh, that was done for the Pacific Improvement Company.

Q. And you were acting in what capacity?

737 A. I was acting the same as I did before, as superintendent of construction.

Q. When you completed the line from Mojave to the Needles, then did you go north?

A. Then I went north to Redding and built the road from there over the Siskiyou Mountains to Rogue River.

Mr. HERRIN. That is, the Rogue River Valley; to Ashland properly.

Mr. MCCLENNEN. I understand his building covered all the way from Mojave to the Needles?

Mr. HERRIN. Yes.

Q. Do you remember whom you got your orders from when you were moving north to the Oregon line, and when you were told to stop at Mojave? Who instructed you to stop building the line from Mojave to the Needles?

A. I think that order came from Leland Stanford.

Q. Now, you have described your work over these lines, first on the Central Pacific out to Ogden, next from Lathrop south to Goshen, and from Goshen south to the Pecos River, and also other lines in Oregon.

A. Excuse me; I do not know but I have got mixed there. Will you read that again?

738 Q. You have described your work that you have done, first on the Central Pacific to Ogden; next on the Southern Pacific line from Goshen to Pecos River?

A. No, sir.

Q. I do not mean in order.

A. Oh, in order?

Q. I mean you did that work?

A. That was not the next.

Q. No; I don't mean that; I mean that you had worked on the Central Pacific line, main line; that you had worked also on the Southern Pacific main line from Goshen to Pecos River. Was there any difference in the people you were working for in one line as contradistinguished from the other?

Mr. MCCLENNEN. That I object to as calling upon the witness to draw a conclusion on facts which he has already stated, indicative of the companies for which he was working in different operations.

The WITNESS. Shall I answer that?

Q. Yes.

A. No, sir; I took my orders from Charles Crocker, Leland Stanford, Mark Hopkins, and C. P. Huntington, and no one else.
739 Their order, from any of them, was always good to me.

Q. Was it the same on the Southern Pacific Railroad Company as it was on the Central Pacific Railroad Company? That is the question I would ask.

Mr. McCLENNEN. The same objection, and as leading.

A. It was the same.

Q. Did you use the same outfit, the same implements, on the one line that you did on the other?

A. Yes.

Q. What constituted your outfit?

A. We had horses and carts, teams and wagons, plows and scrapers.

Q. In doing all this work didn't you move substantially that same outfit around on the different sections of line that you have described?

Mr. McCLENNEN. Please note the same objection, and as leading.

A. Always.

Q. In other words, you did not have one outfit for the Southern Pacific and another outfit for the Central Pacific?

Mr. McCLENNEN. The same objection.

740 A. No, sir. Lots of the tools and horses that we used on the Central went on to the Southern.

Q. And back again when you did work for the Central at last?

A. They came right back; moved back.

Q. When did Mr. Hopkins die?

A. Mr. Hopkins died some time in 1872, I guess.

Q. No.

A. Well, I disremember; I can not tell. Those records all went into the office, and then I was through with them.

Q. Do you remember when Mr. Crocker died? He died after Mr. Hopkins, did he?

A. Oh, yes; several years. I can not tell that offhand.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. The Southern Pacific Railroad had been built as far as Gilroy before you had anything to do with it?

A. Yes.

Q. It ran from where to Gilroy when you first knew it?

A. From San Francisco to Gilroy, you mean?

Q. From San Francisco to Gilroy?

741 A. Yes.

Q. You first had anything to do with the Southern Pacific Railroad some time in 1870?

A. I forget the date.

Q. Let us work it back. You finished up at Ogden on May 10, 1869?

A. 1869; yes.

Q. And then there was some little time elapsed before you went over to Gilroy?

A. Yes.

Q. So that would make it, pretty surely, as late as 1870 before you began at Gilroy?

A. Oh, yes; even later than that, I think.

Q. As nearly as you can carry it out, what would you fix as the date when you began to extend from Gilroy that Southern Pacific line that then ran from San Francisco to Gilroy?

A. Let me think a moment.

Q. Don't hurry.

A. Well, I can not tell. I should think it was in 1871 or 1872. I have no records and there are a good many things to remember.

742 Q. In 1871 or 1872, or whenever that date was, Mr. Huntington was some kind of an officer of the Southern Pacific Railroad Company, wasn't he?

A. Yes; so I understand.

Q. And Mr. Crocker was also?

A. Yes.

Q. And Mr. Stanford was also?

A. Yes.

Q. And Mr. Hopkins was?

A. Mr. Hopkins was a director as long as he lived.

Q. Do you remember who any of the other officers of the Southern Pacific Railroad Company were when you began to work for it in 1871 or 1872?

A. There was no one in authority that I ever took orders from but those four men.

Q. Well, you did happen to see another director around occasionally, did you not?

A. Oh, yes; they seldom came on the work after we were building south. Occasionally, that was all.

Q. All the time that you worked for the Central Pacific Railroad Company, those same four gentlemen were officers of the company?

743 A. They were the directors, yes.

Q. And occupied other positions also—president or treasurer or vice president or what not?

A. There was the president and vice president, and the other two, I guess, were directors. None of the secretaries, or any of them ever came near me.

Q. Except so far as these four gentlemen might interfere with you, you were boss of the situation?

A. Yes; I guess I was.

Q. This Contract & Finance Company, that was another corporation, was it?

A. Yes; that was the corporation that took the contract from the railroad company.

Q. And did that corporation have some officers, too?

A. Yes.

Q. Who were the officers of that company?

A. Charles Crocker, Leland Stanford, Mark Hopkins, and C. P. Huntington.

Q. Then there was another company, after awhile, called the Pacific Improvement Company?

A. Yes, sir.

Q. And who were the officers of that company?

744 A. I was the president of that company and W. E. Brown was the vice president.

Q. Did Mr. Huntington have any position in that company?

A. Not as an officer of that company, I think.

Q. Did Mr. Stanford have any position in it?

A. I think not.

Q. And Mr. Crocker?

A. I think not.

Q. Or Mr. Hopkins?

A. Mr. Hopkins had died prior to the organization of that company.

Q. Was there any Pacific Improvement Company besides you and Mr. Brown?

A. There were some directors. Mr. Douty was a director; and I do not believe I can remember who they were. Of course there was—no; I can not tell who they were.

Q. Did you keep the records of that company?

A. No, sir; those records were kept in the office. Mr. Douty was our secretary, and the pay rolls and all the reports went right into the office at that time.

Q. From time to time you used to get working directions

745 from Mr. Crocker?

A. Yes, sir.

Q. And sometimes you would get working directions from Mr. Huntington?

A. Yes, sir.

Q. And in the same way from Mr. Stanford or Mr. Hopkins?

A. Yes, sir. As I say, not from Mr. Hopkins, because Mr. Hopkins had died prior to the organization of that company.

Q. When any one of those gentlemen gave you directions, you did not care particularly whether he was doing it as president of the Southern Pacific Railroad Company or the Central Pacific Railroad Company or the Contract & Finance Company or the Pacific Improvement Company?

A. They were authoritative.

Q. Then you did not know at any particular time in which capacity they might be talking with you?

A. They talked to me as owners.

Q. You paid no attention to the particular corporation that they happened to be representing or acting as at any given time, did you?

746 A. No, sir.

Q. Your business was entirely construction business?

A. Yes.

Q. You knew nothing directly about the operation of the railroads after they were turned over to the operating department?

A. No, sir.

Q. Mr. Towne was at the head of the operating department?

A. Yes, sir.

Q. Of both the Central Pacific Railroad and the Southern Pacific Railroad?

A. Yes, sir.

Q. And when you turned over a line of track to Mr. Towne you would not know particularly which railroad he was taking it up to operate for?

A. No; not of my own knowledge.

Q. This construction outfit that you spoke of, I understood Mr. Herrin to say that you used the same outfit throughout, and you assented to that. You did not mean it quite that way, did you?

A. Well, a good deal of the outfit of the Southern Pacific had been disposed of before we went there.

747 Q. I suppose a good many of those picks and shovels, and even the horses that you began with, had got rather useless before you finished up, had they not?

A. Worn out.

Q. And when you say that you used the same outfit you mean that when you finished up one job if you had any outfit for construction purposes left you moved that outfit on to the next job you went on to do construction work?

A. Yes; in this way: While I was working by private contract I bought a great deal of that stuff; but that was all disposed of, and never went any further. Then, when they started again the orders were to Ben Crocker, who bought horses and wagons and all the

sort of thing for the Central Pacific, to ship that to Yuma. There was lots of stuff that had been used—well, lots of that stuff had been used in building from Goshen to San Fernando that I had not used, and that stuff, as I understood it, what there was that was suitable, was sent to Yuma when I started that work.

Q. Did that outfit have any labels on it?

A. That stuff when it was shipped to Yuma was shipped to me, I guess.

Q. I mean did you have your shovels or picks stenciled
748 with any name?

A. No; I do not think so.

Q. Did your work cars have any particular name on them?

A. Yes.

Q. Did they have the name of the Pacific Improvement Company on them?

A. I can not tell whether that was the Pacific Improvement Company that was on our working train, or whether it was Southern Pacific, as we went south. I do not remember.

Q. When you were working on the route up to Ogden, were the cars marked "Contract & Finance Company" or were they marked "Central Pacific"?

A. I do not know; I forget.

Q. You say that you stopped working on the Central Pacific Railroad at Goshen because the Southern Pacific had to build twenty miles in order to save its franchise?

A. Yes, sir.

Q. Did the twenty miles that was built from Goshen hitch right on to the Central Pacific at Goshen?

A. Yes, sir.

Q. Was there anything by which you could tell where it was Central Pacific and where it was Southern Pacific?

749 A. I knew when we built it where it was.

Q. I mean, you knew because somebody told you that from here on it was Southern Pacific?

A. Yes.

Q. Did the Central Pacific stop at any particular place at Goshen? Was it at the station?

A. I can not tell. It was about there.

Q. That was about 1872, was it not?

A. Yes.

Q. Was Goshen any place at all?

A. Nothing.

Q. Nothing at all?

A. Nothing.

Q. So that the Southern Pacific rails fastened on to the Centr Pacific rails practically right out in the middle of the wildernes

A. Yes, sir.

Q. And they did it because they had got to get twenty miles Southern Pacific built before January 1st?

A. Before the 1st day of July.

Q. Before the 1st of July?

A. Yes.

750 Q. I see. And you understood that was because of so provision in the franchise of the Southern Pacific that th must build so many miles of road before a certain date?

A. That was it.

Q. Did you know anything about the leases that were made by t Southern Pacific to the Central Pacific or by the Central Pacific the Southern Pacific?

A. Not of my own knowledge.

Q. You never had any written contract at any time, did you?

A. Never.

Q. Did you know anything about the contracts between the Co tract & Finance Company and the railroad? Did you know wheth they had any contracts or not; any written ones?

A. I don't know.

Q. When you were president of the Pacific Improvement Compa did that company then make any written contract with the railroa

A. Yes; I think so.

Q. They made a regular written contract, then?

A. I think so; yes.

Q. I suppose you do not know anything about where th

751 contract is?

A. No.

Q. What is the last that you knew of it?

A. That is all I knew about it. When I completed the work turned it over. That was the last I knew of that, and as for the off work, I knew very little of it. Although I was president of t company I was in the construction end of it.

Q. You were the construction president of the company?

A. Yes.

Q. Did you know anything about the books of the company?

A. Very little.

Q. Did they have any?

A. Oh, yes.

Q. Did you ever see any more than the outside of them?

A. Well, yes; I have seen more than that, but I knew very lit of them.

Q. Did you ever see the books of the Contract & Finance Company?

A. I do not think I did.

Q. You say that you used to report to Mr. Huntington in New York every day by telegraph the amount of track you had
752 laid down in Texas?

A. That day; yes.

Q. Did you know why you did that?

A. Well, in a way. There was a strife at that time between Huntington and Tom Scott; between the Southern Pacific and the Texas & Pacific; and Tom Scott, as they told me, went before the Senate committee and swore that there was not a man working in Arizona on the Southern Pacific; that there was nothing being done; and Huntington wanted me to telegraph that every night.

Q. It was a sort of a race between you and Tom Scott as to who would get to any place first?

A. I think Mr. Huntington telegraphed me once and said that they had agreed on a meeting at Sierra Blanca, if I could get there in time. I thought I could get there in time. I told him if I didn't do it there wouldn't be a live Chinaman left in western Texas.

Q. When Mr. Crocker went to Europe, at that time you have spoken of in your testimony, he severed his connection with all these enterprises, did he not?

A. I think not.

Q. If such was the fact, you never heard of it?

753 A. No. As soon as he came home he wrote to me to know what was being done.

Q. And you never knew that he had been out of these enterprises at all in the interval while he was away?

A. No.

Q. It was at Sierra Blanca that you met the Texas & Pacific?

A. Yes.

Q. And the Texas & Pacific was the road that Tom Scott was instrumental in building?

A. Yes.

Q. He was the president of the Pennsylvania Railroad?

A. I believe so.

Mr. McClennen. That is all.

Mr. Herrin. That is all.

Of course it is understood, Mr. McClennen, that the same rule applies to witnesses called on behalf of the defendants as was applied to witnesses called on behalf of the petitioner, namely, that witnesses shall not be required to sign their testimony unless special request to that effect is made to the examiner by counsel within twenty-four hours from the time the witness was excused.

Mr. McCLENNEN. Yes; the same provision that applied to our witnesses.

754 HENRY CLAY MARTIN was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside, Mr. Martin?

A. San Francisco.

Q. What is your business?

A. I am a machinist. At present I am master mechanic of the Belt Railroad for the State board of harbor commissioners.

Q. In San Francisco?

A. Yes.

Q. How long have you been there?

A. Nearly twelve years.

Q. Did you ever have anything to do for the Southern Pacific Railroad Company?

A. Yes, sir. I was a locomotive engineer for them a good many years, and conductor——

Q. What was your first work that you did for them?

A. My first work? When I came out I could not get on as engineer at first, and I went to work for Ben Crocker at
755 Sacramento. He needed a hand, and I went in as a handy man around his shop in Sacramento.

Q. What shop was that? The Central Pacific shop?

A. Well, it was his own shop. He did some contracting work for the Central Pacific; it was all work for the Central Pacific that he was doing.

Q. What was the first that you did for the Central Pacific Railroad that you remember?

A. The first work that I did for the Central Pacific Railroad—that is, for the operating department—was this: through Ben Crocker I got on to work as locomotive engineer, and I was sent out to Carlin.

Mr. McCLENNEN. Where was that?

The WITNESS. Carlin, Nevada; Humboldt division. Then from there I was sent to the Ogden division, at Terrace, Utah.

Q. You were locomotive engineer?

A. Yes.

Q. Making your run first with headquarters at Carlin?

A. Yes.

Q. And later——

756 A. Later at Terrace, Utah. Then back to Wadsworth, running on the Truckee division, from Wadsworth to Truckee. Then, from there I came down to Sacramento and ran over on the Sacramento division.

Q. Did you run an engine on the Sacramento division?

A. Yes, sir.

Q. Do you remember what year that was?

A. It was 1874 when I was running out of Sacramento.

Mr. McClennen. 1874?

The Witness. No; I think it was 1873 when I came back on the Sacramento division from Wadsworth.

Q. What did you do next for any of these companies?

A. While I was on the Sacramento division I was on a work train for the track department, and they thought I was an exceptionally good man, so they—Mr. Stevens was general master mechanic, and he had orders to send me down to the front.

Q. Where was that?

A. The front was near Sumner, where Bakersfield is now, I guess. It was all sagebrush prairie then.

Q. What did you do down there?

A. I was engineer and conductor on the construction train.

757 Mr. Orr. Did you give the year when you went to Bakersfield?

The Witness. That was along in 1875. I think it was late in the summer. Everything was burnt up.

Q. You worked there as engineer and conductor of a construction train during the building of the line from the front, as you call it, to Los Angeles?

A. We made connection at Lang station.

Q. At what time?

A. That was the 6th of September, 1876.

Q. Your connection at Lang means you connected the line between Los Angeles and Bakersfield at Lang?

A. Yes, sir.

Q. And you were on that work of construction?

A. Yes, sir.

Q. From Bakersfield to Los Angeles?

A. Yes, sir.

Q. And finished the line and made connection September 6, 1876?

A. Yes.

Q. At Lang?

A. Yes.

758 Q. What did you do next?

A. I stayed on work trains, riprapping the road up through the canyon there——

Q. Which canyon?

A. The Soledad Canyon, between Mojave and Los Angeles. We had some washouts there. Then the outfit was moved to Indio. We built from Indio to the Colorado River right opposite Yuma.

Q. You worked as engineer and conductor on the construction train in that work?

A. Yes. I think we got to the Colorado River the 14th of June, 1877.

Mr. McCLENNEN. That is the Yuma——

Mr. HERRIN. Colorado River, he says. They had to build a bridge afterwards.

Mr. McCLENNEN. Yes.

The WITNESS. It took about a year to build the bridge.

Mr. HERRIN. Yes. It was a year afterwards before they got across.

Q. Then what work did you do next, after you got down to the Colorado River?

A. Then the outfit was moved up, some of it to Oakland
759 and some of it to Suisun, and built across the marsh there, from Suisun to Benicia and from Bay Shore and San Pablo to Tracy. We called it Corral Hollow then.

Q. Where did you go next?

A. I think the outfit was moved to Yuma.

Q. Yuma, Arizona?

A. Yes; after we finished up there.

Q. Who did you work under there?

A. J. H. Strobridge.

Q. The witness who has just testified?

A. Yes, sir.

Q. What did you do there?

A. I was in the same capacity, engineer and conductor of the train.

Q. What work did you do? How far did you build the road from Yuma before you stopped?

A. To Casa Grande, 182 miles.

Q. From Yuma?

A. Yes; from Yuma.

Q. Did they suspend work there?

A. Yes; for about a year.

Q. Then where did you go?

760 A. Well, I went back to Los Angeles and took a position as passenger conductor.

Q. But did you at any time afterwards go back to Casa Grande and build the road on?

A. Yes; about, I think it was, eleven months after that I started up again. I went back with Mr. Strobridge then, with the same job I had before.

Q. How far did you go east or south of Casa Grande before you stopped?

A. To Pecos River, in Texas.

Q. How far?

A. 418 miles east of El Paso.

Q. Do you remember when you finished that work at Pecos River and made connection?

A. It was Christmas Day, 1882, or the day after, we started back.

Q. Was there anything that impressed the fact on your mind as to that date?

A. Well, the boys went out and got a lot of wild turkeys for Christmas dinner. There were plenty of wild turkeys along the Rio Grande then.

761 Q. In addition to being a mere engineer and conductor of a construction train, were there any other construction trains used in this work except the one you were running?

A. Oh, yes. We had eighteen pile-driving trains driving piles. You see, in constructing the road there were a good many washes that we fixed up temporarily with ties, and then the pile-driving outfits came along and put in permanent work, so there were times when we built over four miles of road in a day.

Q. So that you had several other construction trains?

A. Yes.

Q. Did you have anything to do with them?

A. I had everything to do with them, with everything that ran on the construction track, before we turned it over to the operating department.

Q. What were you doing with it?

A. I was train dispatcher, train master; every night I had a system of having each train—they supplied them with a train operator and they reported per orders at eight o'clock each night——

Q. I do not want to go into too much detail. Mr. McClennen can ask for that if he wants it. To make a simple statement, you had charge of all these other trains?

762 A. Yes.

Q. Do you remember sending any telegrams to Mr. Huntington about the track laid during the day, during this work?

A. There were times when Mr. Strobridge was not on the work, and he cautioned me not to forget to report the station—you see, each 100 feet of road had a station number——

Q. Yes.

A. (Continuing.) Not to forget to report the station each night as it was reached, the number of feet and the station, to Mr. Huntington.

Q. Did you do it?

A. Yes.

Q. You sent a telegram in the absence of Mr. Strobridge?

A. Yes.

Q. To whom?

A. To C. P. Huntington.

Q. In New York City?

A. Yes, sir; 20 Broad Street, I believe it was.

Q. Did you know Mr. Charles Crocker?

A. Yes.

Q. Did you see him during the time of this work from Yuma to Pecos River?

763 A. Yes. He used to come down very often.

Q. Did he have anything to do with the work?

A. Yes, sir. We thought that he was the whole head of the outfit.

Q. Well, did you take any orders from him?

A. Yes, sir.

Q. How often did you see him during this work at the front?

Mr. McClennen. This is Mr. Huntington you are referring to?

Mr. Herrin. No; Mr. Crocker.

A. Charles Crocker. Oh, when he was on the coast; sometimes it would be a month or six weeks, or something like that, and then he would come down.

Q. Did he give any orders or directions when he came out to the front?

A. Oh, he always wanted to know how we were getting along.

Q. Did you know Mr. Leland Stanford?

A. Yes.

Q. Did he have anything to do with this?

A. Yes. He was not down there as often as Mr. Crocker

764 was.

Q. Did you know C. P. Huntington?

A. Yes.

Q. Did you see him at any time at the front during this work?

A. Just once; when we were near Sierra Blanca he came out. That is the only time; that is, on that part of the work.

Q. In building this line, as fast as you completed a section of it, was it turned over to any company for operation?

A. Yes; it was turned over to the Central Pacific Railroad Company, Mr. Towne.

Q. Mr. Towne was general superintendent of that company?

A. Yes. Sometimes he would come out a few days before, when we would notify him when he could have the road, and make a trip over it and bring his division superintendents that were going to operate it, to look out and see how many sidings we had provided for him, and the like of that.

Q. Do you remember from whom you ordered your supplies in doing this work?

A. The supplies for the rolling stock?

765 Q. Anything you wanted.

A. All of our supplies came from the Central Pacific Railroad Company.

Q. Do you remember whether they had any purchasing or supply agent that you corresponded with or store house from which you got any supplies?

A. Well, Ben Crocker supplied the camp at the time with supplies, teams, and the like of that. A. J. Stevens and Ben Welch supplied any parts for repairing locomotives.

Q. That was Stevens?

A. Yes.

Q. Who was Stevens?

A. He was general master mechanic of the Central Pacific Railroad Company.

Q. Where was he located?

A. Sacramento.

Q. Sometimes you had to have your locomotives repaired, did you not?

A. Yes.

Q. Where were they sent for repairs?

A. To Sacramento.

Q. At the Central Pacific Railroad Company's shops?

766 A. Yes.

Q. And your cars and other equipment used, were they repaired in the same way?

A. Yes.

Q. At the same place?

A. At the same place. Ben Welch had charge of the repairs of the cars in Sacramento.

Q. He was working for what company?

A. He was master car builder of the Central Pacific Railroad Company.

Q. After you left the Pecos River, where did you go?

A. We moved the same outfit to Mojave.

Q. Then what did you do?

A. We built from Mojave down to the Needles. We got through at the Needles on the 22nd of June, 1883.

Q. Then where did you go?

A. We went to Redding, California.

Q. What work did you do there?

A. We started in on what we called the Oregon & California Extension.

Q. How far did you build from Redding?

A. To Ashland.

767 Q. To Ashland, Oregon?

A. Yes.

Q. And to what company were those sections of the road, when completed, from Redding north to Ashland, turned over for operation?

A. To the Central Pacific.

Q. Mr. Towne was general superintendent?

A. Yes.

Q. Just the same as in the case of the road down in Arizona and New Mexico and Texas?

A. Yes, sir.

Q. Then did you have anything to do with building any part of the Southern Pacific Railroad Company's line from near Soledad?

A. Yes.

Q. What part of it?

A. From Soledad to San Margarita.

Q. What year was that, if you remember?

A. I think that was in 1886, if I recollect correctly, or 1887.

Q. Who were you working for down there?

A. The same outfit. No change.

768 Q. The same men?

A. Yes, sir; the same officials.

Q. The same men you were working for in Arizona, New Mexico, and Texas?

A. Yes.

Q. The same men you were working for from Redding to Ashland?

A. Yes.

Q. And you had the same outfit?

A. Yes.

Q. It was just a continuation of the same outfit of engines, and so forth?

A. Yes; all Central Pacific equipment.

Q. It was all Central Pacific Railroad?

A. Yes.

Q. Who was your paymaster during all of this work?

A. The same paymaster. Part of the time he was Mr. Hanford, and sometimes it was C. H. Redington.

Q. What company were they acting for?

A. We did not know any other but the Central Pacific Railroad Company.

Mr. HERRIN. You may take the witness.

769 Cross-examination by Mr. MCCLENNEN:

Q. When were you last connected with construction?

A. When we built from Monterey to Lake Majella. That was a short branch.

Q. When was that?

A. That was in 1890.

Q. And under whom did you do that?

A. Under Mr. Strobridge and the same outfit.

Q. You are using the term "outfit" to mean the people?

A. The people; yes, sir; the same people.

Q. Well, what railroad paid you for your work?

A. The Central Pacific. We were supposed to be working for the Pacific Improvement Company, however. The pay roll read "Pacific Improvement Company."

Q. Did not the Pacific Improvement Company pay you?

A. No, sir.

Q. Did you distribute any money yourself?

A. No, sir.

Q. You simply got your own pay?

A. Each man was paid separately, right at the pay car window.

770 Q. Who was the man who paid you?

A. Later, in late years, Mr. Redington, Charlie Redington.

Q. Take it along in 1890, the last of your work; you were paid at the Central Pacific pay car?

A. Yes.

Q. You supposed you were getting money from the Central Pacific Railroad for doing the work?

A. Yes.

Q. Did you used to see the trains that were run on the finished part of the road in those days?

A. Oh, yes. I connected with them at whatever commercial station we had.

Q. How were they marked?

A. Well, first off everything was C. P. R. R., until later, in the late eighties, there was rolling stock, locomotives and engines marked "S. P."

Q. But this pay car that you spoke of used to be marked "Central Pacific"?

A. Oh, yes.

Q. Away along to 1890?

A. Yes.

771 Q. Did some of the other rolling stock used to continue to be marked "Central Pacific"?

A. Oh, yes, yes.

Q. How were the engines marked down on that road?

A. Some of them were marked "Southern Pacific", some of the new rolling stock, before we finished up down in Texas, was marked "S. P. of N. M."—Southern Pacific of New Mexico and S. P. of Arizona.

Q. After you had finished the road from Yuma through Arizona and that road was operated, along in the beginning of the eighties, say, 1881, how were the cars marked? Were they marked "S. P. of Arizona"?

A. Some of them were.

Q. Then did you have some marked "S. P. of New Mexico"?

A. Yes, sir.

Q. How did they used to be marked over in Texas after you got beyond El Paso?

A. We used the same ones.

Q. The same?

A. Yes.

Q. Did you have S. P. of Arizona cars over there?

A. Yes.

772 Q. And S. P. of New Mexico?

A. Yes; and Central Pacific Railroad.

Q. And some central Pacific Railroad?

A. Yes. We had more Central Pacific Railroad than any other.

Q. Did you have any Galveston, Harrisburg & San Antonio?

A. No, sir.

Q. Did you ever see that name on any cars?

A. Not before connection was made.

Q. That is, not until you got to the Pecos River?

A. That is right. Then I left. The next day, when we got through down there, I came back to Mojave. I did not go back into that country for several years.

Q. So that, as far as you know, you personally never saw any railroad cars marked Galveston, Harrisburg & San Antonio?

A. Not up until that time.

Q. Have you ever since?

A. Oh, yes.

Q. You have since?

A. Yes.

Q. Where have you seen them?

773 A. Out of El Paso. I went back there—I went to running out of El Paso, Texas, in 1895, as an engineer on the G., H. & S. A.

Q. And they used to have their rolling stock marked G., H. & S. A.?

A. Yes.

Q. All of it?

A. Yes.

Q. Do you mean that in 1895 you were working directly for the G., H. & S. A.?

A. Yes.

Q. You got your pay from them?

A. Yes.

Q. And they were operating the road?

A. Yes.

Q. And the G., H. & S. A. operated from what point to what point?

A. They operated from Houston to El Paso?

Q. Did you run east of Houston?

A. No, sir; I never ran east of Del Rio. That constituted the El Paso division, from El Paso to Del Rio, Texas.

Q. Mr. Towne was general manager of the Southern Pa-
774 cific Railroad and of the Central Pacific Railroad, was he not?

A. Yes, sir. Well, the passes and letterheads were headed "Central Pacific Railroad Company and leased lines."

Q. How late do you remember seeing passes and the letterheads in use at the time bearing those words?

A. Oh, up until 1890.

Q. As late as 1890?

A. Yes.

Q. Do you remember any of them after 1890?

A. I was not on the road directly after 1890. I went into the Del Monte Hotel, as chief engineer, in Monterey. I quit the road.

Q. Take it along in 1890; what part of the road was being run by the Central Pacific?

A. From Ogden to El Paso, Texas.

Q. That is, the Central Pacific, from Ogden through Sacramento to San Francisco Bay?

A. Yes.

Q. And from San Francisco Bay down through California to El Paso, Texas?

A. Yes, sir.

775 Q. How late did the Central Pacific Railroad continue to operate both those lines?

A. I could not tell you. I could not tell you that; but while I was working on the road I know that their letterheads and passes that were issued were headed "Central Pacific Railroad Company and leased lines."

Q. As late as August 1890, was that so?

A. Well, as late as June—May and June.

Q. How do you fix the time as May and June?

A. Because I was at that time conductor and engineer of a little local train that ran from Del Monte Hotel out to Lake Majella, and used to get passes issued by Mr. Towne, headed "Central Pacific Railroad Company and leased lines." I took up those passes as conductor on the train.

Q. Did you stop on that line in June, 1890?

A. I think it was September when I went into the hotel.

Q. September, 1890?

A. Yes.

Q. Was the Central Pacific Railroad operating both those lines up to September, 1890?

A. I could not say whether it was up to September or not. The reason I say June, 1890, is this: Mr. Towne gave a pass, and I
776 did not want to recognize it because Mr. A. C. Bassett was superintendent of what we called the Northern Division, and he was not under Mr. Towne's jurisdiction, and he told me that Mr. Towne's passes were no good on his division.

Q. And you remember that as being in June, 1890?

A. Yes.

Q. How do you fix the year 1890?

A. The year when I went and took a job as chief engineer of the Hotel Del Monte.

Q. When did you leave the service of the Central Pacific Railroad?

A. How do you mean; in what capacity?

Q. In any capacity.

A. Well, it was at that time, when I went to the hotel down there.

Q. I see. And that, you say, was in September, 1890?

A. Yes, sir.

Q. You went out of railroading altogether, then, did you?

A. For awhile; yes, sir.

Q. How long were you out of railroading?

777 A. I stayed down there pretty nearly two years. Then I came up to Oakland and went into the Pacific Improvement Company. I considered that I was working all the time for the P. I. Company. They owned and operated the hotel.

Q. That is, the Pacific Improvement Company operated the hotel?

A. Yes, sir. Then I came up and opened up a creosoting works, creosoting timber here in Oakland; and that was under the Pacific Improvement Company.

Q. That was under the Pacific Improvement Company also?

A. Yes.

Q. How long were you at that?

A. A couple of years. I was there over two years.

Q. Then where did you go?

A. Then I went to El Paso, Texas, from there.

Q. And went to work for the Galveston, Harrisburg & San Antonio Railroad?

A. Yes.

Q. Did you ever go to work for the Southern Pacific Company?

A. Not after that; no, sir.

Q. Who was Ben Crocker?

778 A. Well, in his time he was a very conspicuous man. He was very close to Charles Crocker. I don't know whether he was any relation to him or not, but he did lots of odd jobs on contract work.

Q. What was his business?

A. First off, the way I came to know him was this: He had the storage of baggage; that is, any baggage that arrived in Sacramento and was there over twenty-four hours was turned over to his storehouse and then he charged storage on it. I had a trunk come out, and I was not very well fixed then to follow it up, and it was over at his storehouse, and I had to go and get it, you know, and there was quite a good deal of storage against it. That is how I came to go to work for him.

Q. You mean to work out the storage?

A. Well, there was a chance to go to work, and I accepted it. There was no chance to get on as an engineer right at that time, because there was only one road in the country then.

Q. He used to furnish some supplies for this railroad construction?

A. Yes; horses and wagons.

Q. You say he was pretty close to Charles Crocker?

779 A. In a business way. I don't know whether he was any relation to him or not.

Q. You worked on the construction of this road from Redding to Ashland, Oregon, all the way, did you?

A. Nearly all the way; yes, sir.

Q. That was constructed for what railroad?

A. For the Central Pacific Railroad.

Q. And where did the Central Pacific Railroad terminate up there when you left off?

A. At Ashland.

Q. How did it end there—in a village or in a city or town or in a forest?

A. Ashland was quite a little town.

Q. Do you remember when that was?

A. I think that was in 1885 or in the spring of 1886.

Q. In the spring of 1886?

A. I think it was; yes.

Q. What railroad operated that line?

A. From Redding up to Ashland?

Q. From Redding to Ashland.

A. The Central Pacific Railroad.

Q. How long did the Central Pacific Railroad continue
780 to operate that line?

A. As long as I know anything about it; I do not know of any other.

Q. How late did you know it?

A. Until I left there.

Q. When was that?

A. In the spring of 1886.

Q. Prior to 1895, when you were on the Galveston, Harrisburg & San Antonio, did you know of the Southern Pacific Company operating any railroads?

A. Well, it was commonly known then——

Q. I do not want what was commonly known. I am asking just if you know, yourself, of the Southern Pacific Company operating any railroads prior to 1895. Just tell me that you did or did not, one or the other.

A. Well, I thought that the Southern Pacific operated the line before I went to El Paso, as the Southern Pacific Company. I do not know just what year they organized that Southern Pacific Company. This little road here out of Frisco down to Monterey was called the northern division of the S. P. Railroad.

Q. When the Central Pacific was operating this railroad
781 that you have spoken of, down at Los Angeles, and operating this railroad up to Ashland, what railroads was the Southern Pacific operating?

A. Well, I don't know just the year that they changed the name of the operating companies. I could not tell you that, when they changed from the Central Pacific Company and leased lines to the Southern Pacific Company. I could not tell you that.

Q. You have no idea?

A. No, sir.

Q. And practically in all of this testimony you do not know at any given time whether you were working for the Central Pacific or for the Southern Pacific at a given time?

A. I am pretty sure I was working for the Central Pacific up until 1890.

Q. Until 1890?

A. Yes.

Q. But just what time after that the Southern Pacific began the operation, you do not know?

A. No, sir.

Mr. McCLENNEN. That is all.

782 Redirect examination by Mr. HERRIN:

Q. Do you remember when the name was changed from the Central Pacific Railroad to the Southern Pacific Company?

A. No, sir.

Q. You remember, however, the fact that there was a change?

A. Yes, sir.

Q. You know that the Southern Pacific succeeded the Central Pacific in operating a lot of lines at some time or other?

A. Yes.

Q. But you do not recall when that was?

A. No, sir; I don't know the date.

Q. Before the Southern Pacific Company took the lines the Central Pacific was the operating company?

A. Yes, sir.

Q. Do you not remember that long after the Southern Pacific Company was operating the Central Pacific and the main line of the Southern Pacific Railroad that this northern division you spoke of was operated by the Southern Pacific Railroad Company?

783 Mr. McCLENNEN. Objected to as leading.

The WITNESS. Yes, sir.

By Mr. HERRIN:

Q. That is, the Southern Pacific Company did not take that northern division——

Mr. McCLENNEN. Objected to as leading.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. (Continuing.) Until 1890 or 1891?

A. Somewhere along there; because Mr. Bassett was the head; he was the operating chief.

Q. Do you not know that before that time, before the Southern Pacific Company took this northern division, that it had for some time before that been operating the Central Pacific and the main line of the Southern Pacific Railroad?

Mr. McCLENNEN. Objected to as leading.

The WITNESS. Before the Southern Pacific Company took over the northern division?

By Mr. HERRIN:

Q. Yes.

A. That it was operated?

Q. That it was operating the main line of the Southern
784 Pacific Railroad through to El Paso and the Central Pacific line to Ogden, for some time before it took over the northern division of the Southern Pacific Railroad; that is, the line from San Francisco to——

A. Yes; I know that to be a fact.

Q. And that it was operating these other main lines for some time before it took over the northern division of the Southern Pacific Railroad?

A. Yes.

Mr. MCCLENNEN. The same objection.

By Mr. HERRIN:

Q. Have you any recollection as to how long before they took over the northern division of the Southern Pacific Railroad the Southern Pacific Company had been operating these other lines?

A. They had been operating quite a while, a good many years, before they took over this northern division.

Q. But you have nothing in your mind by which you can fix the date?

A. No, sir.

Mr. HERRIN. That is all.

Mr. MCCLENNEN. That is all.

(Whereupon at 4.20 o'clock p. m. an adjournment was taken until to-morrow, Tuesday, March 2, 1915, at 2 p. m.)

TWELFTH DAY.

785 ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Tuesday, March 2, 1915.

The hearing was resumed, pursuant to adjournment, at 2 o'clock p. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Edward F. McClennen, Esq.; and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq.; J. P. Blair, Esq.; P. F. Dunne, Esq.; and Garret McEnerney, Esq., for the Southern Pacific Company.

786 Mr. HERRIN. I wish to suggest three corrections that should be made in petitioner's Exhibit 42, as follows:

At page 973 of the record the sentence "Wheatland to Yuba, September 19, 1869", should be changed to read "1868"—just a change in the year.

On page 984 of the record the line "Branch Rossi to Stratton, June 20, 1907", should be changed to "July" instead of "June."

On page 988, first line on the page, "Branch Springfield to Springfield Junction, October 1, 1896", should be changed to read "October 1, 1906."

Those are not very important, but for the sake of accuracy I suggest them, as I understand that counsel for the Government have no objection to this entry being made on the record.

Another suggestion, an omission that I wish to supply in petitioner's Exhibit 14: At page 235 it should be stated, in giving the directors and officers of the Southern Pacific Company for the year 1885, that A. N. Towne was general manager of the Southern Pacific Company. That is shown by the report made, and I do not know how it was omitted from this exhibit which we furnished. I recall Mr. Hood.

787 WILLIAM HOOD was recalled as a witness on behalf of the defendants, and, having been previously sworn, testified as follows:

Redirect examination by Mr. HERRIN:

Q. When did you enter the service of the Central Pacific Railroad Company?

A. On the 3rd of May, 1867.

Q. In what capacity?

A. I worked for a short time in the office of the chief engineer, and then went, about June, to work as a member of a field construction engineer party out on the road.

Q. What road?

A. Out on the Central Pacific Railroad, in the vicinity of Summit, the summit of the Sierra Nevadas.

Q. And what was your age at that time?

A. I was twenty-one years old on the 4th of February, 1867.

Q. How long did you continue your work on the Central Pacific line?

788 A. I worked on the Central Pacific Railroad in the vicinity of the summit tunnel and between there and Cold Stream Canon east of the summit tunnel until some time in December, 1867. Shall I continue?

Q. Yes.

A. Then I went to Sacramento and was detailed to go to work on the road being prepared for construction between Niles and Sacramento via Livermore Pass, my work principally being in the vicinity of Sunol and Pleasanton, which lasted until early in March, 1868. I then was directed to go out on the Central Pacific Railroad and proceeded direct to the vicinity of what afterwards became Wadsworth, Nevada, and then continued easterly from what became Wadsworth, Nevada, as instrument man in a locating party until some time in July, 1868. I then was given engineering charge of fifteen or twenty miles of railroad in the vicinity of Humboldt Station to Rose Creek Station, and thence continued easterly to as far as Promontory, Utah, in charge of successive isolated pieces of construction of several miles at a time, going from one to another as they were completed.

Mr. McCLENNEN. Is there any Promontory Point?

The WITNESS. No; Promontory station, Utah.

Mr. HERRIN. On the old line.

The WITNESS. Of the Central Pacific.

789 By Mr. HERRIN:

Q. Right there, the present Promontory station, which Mr. McClennen refers to, is a station on the cut-off, is it not?

A. The Promontory station I refer to is Promontory, on the original Central Pacific Railroad.

Q. Around the north end of the lake?

A. Certainly; the only road that existed at that time.

Q. It is not on the present line?

A. This occupied until early in May, 1869, just before the final track laying was completed. I then went with a few hundred men, laborers, etc., to Palisade, Nevada, on the Central Pacific Railroad to reconstruct the road for a distance where it had been originally built with the consent of the Government on a temporary line. That ended for a considerable period my engineering connection with the Central Pacific Railroad main line.

Q. Your work was mainly the locating of that line and also taking charge. What did you do as engineer?

A. I took charge of considerable distances of construction that was given charge of.

790 You remember Mr. Strobridge, who testified here yesterday?

A. Very well.

Q. You remember his connection with that work?

A. Yes. Do you wish any more answer than that?

Q. Generally, what did he have to do with it?

A. When I first went on the Central Pacific Railroad, on its construction, the end of the track was at Cisco, and grading was in pro-

ress beyond that point, tunneling, etc. At that time the Central Pacific Railroad was being built by Charles Crocker & Company, contractors, for whom we used to make monthly estimates of classified grading, masonry, tunneling, track laying, etc., the same as we do for any contractor, and Mr. Strobridge was their superintendent of construction. That arrangement lasted, as I remember it, to some point between Floriston and Reno—I do not know the exact point. Afterwards the road was built by the Contract & Finance Company, but not on a classified yardage or unit price basis, but on another basis, and Mr. Strobridge was superintendent of the forces engaged in grading and track laying, and the forces of the Contract & Finance Company, engaged in trestling and wooden bridge building, and the like, were under the superintendency of Mr. Arthur Brown,
791 and the masonry, culverts, piers, abutments, and so forth, were built by unit price contracts by individual contractors.

Q. What, if anything, did Mr. Charles Crocker have to do with that work?

A. Charles Crocker was the man to whom everyone looked connected with the construction, whether an engineer—which I can testify to positively—or others, as I know from observation, as the man from whom they received orders in particular as representing the other owners, with the exception of the distance extending about 100 miles west of Ogden, which was graded under what was known as the Mormon contract. That was in the direct charge most of the time of Mr. Leland Stanford, together with other negotiations necessary in that vicinity, and was regular contract work, such as we do nowadays by grading contracts.

Q. You knew Mr. Crocker quite well?

A. Very well.

Q. Did you have any conversations with him, or take any orders from him during this work?

A. Yes. Of course I was under the orders of the chief engi-
792 neer, and Mr. Crocker, with the mutual consent of all concerned, would give direct orders to all concerned that he ran across, or anybody that needed it.

Q. Did you know Mr. C. P. Huntington at that time?

A. No, sir; Mr. Huntington was unknown to me personally during the construction of the Central Pacific main line.

Q. Did you know Mr. Mark Hopkins?

A. Yes; very well.

Q. What did he have to do with the road, if anything?

A. He was the treas[illegible]r. I do not remember his having given any construction order[illegible] to my knowledge or that I ever heard of, on the Central Pacific main line.

Q. Did he go out to the front during the work?

A. I never happened to see him.

Q. Were there any other persons than those four you have mentioned that had to do with that work in a controlling capacity?

A. To my personal knowledge, Charles Crocker and Leland Stanford were the men who actively gave orders as to actual construction work and detail.

Q. Did you at any time have to do with the Southern Pacific Railroad Company?

793 A. I might say, as leading up to that question, that I still remained in the service of the Central Pacific Railroad engaged on work north of Marysville until about December, 1871, or January, 1872, and shortly after that time I continued under the orders of the chief engineer of the Central Pacific Railroad on the construction of the branch of the Central Pacific Railroad south to Goshen, and south of Goshen I fell automatically under the orders of the chief engineer of the Southern Pacific Railroad Company.

Q. Who was the chief engineer?

A. The chief engineer of the Central Pacific Railroad during the time I have detailed was Samuel S. Montague, and the chief engineer of the Southern Pacific Railroad at the time, in 1872, that I began taking orders from him was George E. Gray.

Q. You may continue, now, your narration of the work you did in building these lines after you passed Goshen.

A. The construction south from Goshen—which at the time was built there had no name of Goshen, but was simply a point selected for the Southern Pacific Railroad from the west to turn south—continued consecutively, without cessation and without any special line of demarcation other than I have mentioned, to Tipton, which, I think, is about twenty miles south of Goshen, and there the construction ceased for that year; and in the early summer of 1873 I went east on private business until July, 1874, and when I arrived back again to go to work again the track had just reached Bakersfield. I then took active charge of the location of the road from Bakersfield over Tehachapi Pass and south, including charge of construction as well, in the sense of going over it constantly in an advisory capacity, as I was appointed during the progress of that work assistant chief engineer of the Southern Pacific Railroad and essentially acted for the chief engineer in most particulars.

794

This continued until some time in September, 1876, at which time the road was completed through to San Fernando station, now known, I think, as Fernando Station. There was then a stretch of road already completed by a separate organization under the orders of the chief engineer, which extended from Fernando to Indio, and with which I had no personal connection, excepting that occasionally I had gone over it on trips with Mr. Charles Crocker, who was,

course, in charge of that, as of other similar matters on the Southern Pacific Railroad.

795 At Indio I commenced with the location of the line and carried it through to Yuma; and without going into too many details as to other pieces of work here and there—which I can describe at length if desired—the track reached Yuma in the late summer of 1877 or thereabouts.

Construction was recommenced at Yuma in the late fall of 1878, and was carried on continuously eastward, with the exception of a few months layoff in the summer of 1879, in the vicinity of Casa Grande; and the construction from the west was carried eastward to join the construction being carried westward from San Antonio at a point about ten miles west of the crossing of Pecos River, the tracks having joined there in the fall of 1882. In the meantime construction had been pushed westward from San Antonio, and I had made the preliminary surveys for it.

Q. For that road west of San Antonio?

A. West of San Antonio; by going to San Antonio at a certain period and working west.

Q. Yes.

A. To join the construction from the west, as above indicated, at a point between Langtry and the Pecos River crossing, to
796 make it specific enough; that construction was done principally under the direct orders of Mr. C. P. Huntington and Mr. James Converse, chief engineer of the Galveston, Harrisburg & San Antonio Railroad, whose efforts of construction, however, were entirely confined to the distance between San Antonio, Texas, and a point perhaps midway between Langtry and Pecos River crossing, it being under my supervision, however, to the extent that, under the direct orders of Mr. Charles Crocker, I would go down there occasionally and revise their line and direct line changes, and approve or veto proposed contracts.

This completed what is known as the Sunset Route as far as San Antonio, Texas. East of San Antonio, Texas, I have no knowledge of it whatever.

Q. You spoke of Mr. Crocker having to do with the construction of that line to San Antonio?

A. Yes.

Q. What did he have to do with it?

A. Well, you understand, I mean between San Antonio and a point midway between Langtry and the Pecos River crossing.

Q. You have spoken of him as having to do with this line—I mean the line all the way from Goshen to San Antonio.

797 A. He had to do with it in this way—just to illustrate: I received a telegram from him by messenger from the military

telegraph station to go quickly to the vicinity of the mouth of Devil's River and the Rio Grande River, and see what was doing, whether the contract should be let, whether the route was right, and in general to tell them what to do; and I went and did it, of course.

Q. He gave instructions as to that also, just as he had done on the Central Pacific?

A. Exactly the same.

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion of the witness.

The WITNESS. That is, my relations with Mr. Charles Crocker were, on the entire construction that I had to do with between Lathrop, California, and San Antonio, Texas, of the same character as my relations with Mr. Charles Crocker on the construction of the Central Pacific Railroad and its branches.

By Mr. HERRIN:

Q. Was this road south of Goshen to Pecos River, or near there, turned over for operation to any company as you completed sections of it?

798 A. At occasional intervals, as the track laying progressed and the road became ready for operation, say, a stretch of 100 miles was completed, the operating organization of the Central Pacific Railroad commenced to operate it, and it continued so consecutively as the construction continued east, as far as I knew anything about it, which was at San Antonio, Texas.

Q. What official was in charge of the operating organization of the Central Pacific Railroad?

A. A. N. Towne was the general manager.

Q. What company operated the road after that time—the Southern Pacific Railroad Company?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. The operation was in direct charge of Mr. A. N. Towne; that is, as far as my knowledge extends.

By Mr. HERRIN:

Q. What arrangements were used to pay these forces while you were doing the work, from time to time?

A. In general, they were paid from the same pay car that paid the operating force, trainmen, shopmen, and section men.

Q. The pay car of what company was that?

A. The Central Pacific Railroad.

799 Q. The pay car that came down over the part of the line that was being operated by the Central Pacific Railroad Company would continue on to the front and pay the construction forces?

A. Yes, sir.

Mr. McCLENNEN. That is objected to as leading.

By Mr. HERRIN:

Q. Who, if you remember, were in charge of that pay car?

A. Major Hanford was in charge a great deal of the time, and Mr. Anthony—R. E. Anthony, I believe his initials were—was considerable of the time his assistant.

Mr. Robinson—I forget his initials—also at one time was Major Hanford's assistant.

The only exception to the pay car method that I recall is that occasionally, both on the original main line of the Central Pacific construction, and occasionally on the construction of the Southern Pacific Railroad that I have been testifying about, special trips beyond the end of the track were sometimes made by the pay car officials, by team, with money and books, and so forth, to extend the payments where practically necessary beyond the end of the tracks.

Q. What position did Major Hanford hold?

800 A. He was known to us as paymaster.

Q. Of what company?

A. Of the Central Pacific Railroad Company.

Q. Do you know whether he is living?

A. I think he is not. I think he is dead.

Q. Did Mr. C. H. Redington have anything to do with that pay car?

A. Yes; but I do not recall Mr. Redington on the Southern Pacific Railroad in Arizona, New Mexico, and Texas, although he might have come there without my recalling it.

Q. Were you, during this time, an employee of the Central Pacific Railroad Company?

Mr. MCCLENNEN. I object to that as calling upon the witness for a conclusion.

The WITNESS. I can only say——

By Mr. HERRIN:

Q. Who paid you? That is the question.

A. When I was doing work on the construction of the Central Pacific Railroad and branches, I was under the orders of the chief engineer of the Central Pacific Railroad, and on his rolls; and whenever I was doing work on the Southern Pacific Railroad

01 construction I was under the orders of the chief engineer of the Southern Pacific Railroad, and on his rolls. I have no further knowledge of the matter.

Q. How long did Mr. Gray continue as chief engineer of the Southern Pacific Railroad Company?

A. I am not positive as to the date. I think it was until some time in 1885.

Q. How long did Mr. Montague continue as chief engineer of the Central Pacific Railroad Company?

A. He died in 1883, and at that time, as construction was going on on the branch of the Central Pacific Railroad between Roseville and the Oregon State line, I had been made chief assistant engineer of the Central Pacific Railroad; and when Mr. Montague died, in the summer of 1883, I was made chief engineer of the Central Pacific Railroad in his place.

Q. How long did you continue chief engineer of the Central Pacific Railroad Company?

A. Until I was appointed chief engineer of the Southern Pacific Company.

Q. In what year?

A. In the fall or summer of 1885.

Mr. McCLENNEN. That was of the Southern Pacific Company?

The WITNESS. Yes.

802 By Mr. HERRIN:

Q. Who determined the fixing of the location of these lines that you have mentioned that were constructed, and also when work should be done how fast it should be proceeded with or continued or suspended?

A. It was, in general, Mr. Charles Crocker who gave orders as to when to build a railroad, how fast to build it, about how much money to spend a month, and what kind of railroad to build, whether a first-class main line or otherwise; and sometimes Mr. Leland Stanford would give an order, and sometimes, particularly in 1874, 1875 and 1876, Mr. Mark Hopkins would give an order. In general, however, it was Mr. Charles Crocker.

Q. But the final authority in these matters was held by what men?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion of the witness.

The WITNESS. I would take orders, during their lifetimes, without question, on any matter, from either Mr. Mark Hopkins, Mr. Charles Crocker, Mr. Leland Stanford, Mr. C. P. Huntington, and, after Mr. Charles Crocker's death, from Charles F. Crocker.

803 By Mr. HERRIN:

Q. His son?

A. His son, representing his estate; and without the least inquiry as to whether the order was known to the rest or not. That was not my business.

Q. Do you remember when Mr. Mark Hopkins died—in what year?

A. It was in the spring of 1878.

Q. Who, if anyone, represented the interests of his estate in these roads after his death?

A. Immediately after his death, as I remember it, they were represented very largely by the other owners, so to speak—Mr. Charles Crocker, Mr. Leland Stanford, and Mr. C. P. Huntington—although later Mr. Timothy Hopkins represented the Hopkins estate interests to a considerable extent. Still later, General Hubbard and Mr. Stillman, as representing Mrs. Hopkins's husband, Mr. Searles.

Q. Do you remember what position Mr. Timothy Hopkins held at any time—what official position?

A. I do not remember at what particular time he might have been vice president or might have held any other official position. In those times we gave almost no attention to whether a man was president or vice president or anything else. It was simply, was he one of the men who owned and controlled the road and from whom we took orders.

Mr. McCLENNEN. The last answer is objected to as not responsive and containing a conclusion drawn by the witness.

By Mr. HERRIN:

Q. If he was one of the men you have mentioned, his orders were respected?

Mr. McCLENNEN. This question is objected to as intensely leading.

The WITNESS. If Mr. Timothy Hopkins gave me an order, I would obey it at once.

Mr. McCLENNEN. The answer is objected to as not responsive. Petitioner moves to strike out this and the several irresponsive answers referred to in the earlier objection to the testimony of this witness.

By Mr. HERRIN:

Q. Do you remember when Mr. Charles Crocker died?

A. It was in 1888. I think it was in the fall of 1888. I would not undertake to be positive as to the month.

Mr. GANN. Was Mr. Charles F. Crocker the same gentleman who was later known as Colonel Fred Crocker?

The WITNESS. That is the same gentleman.

By Mr. HERRIN:

Q. You supervised the construction of the road from Redding north in the Sacramento Canon, to the Siskiyou Mountains, did you?

A. I was assistant chief engineer until the death of the chief engineer, S. S. Montagu, and then I was chief engineer from that time, during that construction.

Mr. HERRIN. You may take the witness.

Recross-examination by Mr. McCLENNEN:

Q. During the period of your connection with the construction of these roads, the Central Pacific Railroad had been constructed for the major part of the way from Sacramento to Ogden?

A. To be specific, from Cisco to Ogden.

Q. When you began, it had already been constructed from Sacramento to Cisco.

A. From Sacramento to Cisco.

Q. When was the section from Sacramento through Stockton, Lathrop, and Niles to Oakland constructed?

A. That was under way during the construction of the main
806 line of the Central Pacific Railroad, and I was not personally connected with any of that construction from Sacramento through Stockton and Livermore Pass to Niles, excepting as I have testified, for a distance between Niles and Pleasanton, in the spring of 1868, and the information, as I intended to make plain yesterday, as to matters where I was not personally informed, whether after I was connected with the road or not, is from our records.

Q. A good part of that section of the road west of Sacramento was constructed for the Western Pacific Railroad?

A. It was constructed as Western Pacific Railroad, being a road, as I remember it, from San Jose to Sacramento.

Q. By the close of 1869 the Central Pacific Railroad owned and operated a railroad from San Francisco Bay to Ogden?

A. Yes, sir; from early in 1869.

Q. Up to that time you had had nothing to do with the Southern Pacific Railroad in any way?

A. My first connection with the Southern Pacific Railroad in any way whatever was in the summer of 1872, at Goshen.

Q. At that time the Central Pacific Railroad Company owned and operated, in addition to its main line, a line from Sacramento to Goshen?

807 A. From Lathrop to Goshen, the road from Sacramento to Lathrop having been Western Pacific Railroad; and whether the corporate name had been changed or not, I do not know.

Q. The Southern Pacific Railroad had been constructed and operated by that company from San Francisco to Gilroy some time in 1869?

A. As to that, any testimony that I would give would be from records, not from personal knowledge.

Q. I understand.

A. Yes.

Q. And, as advised by those records, that was the fact?

A. It was, yes.

Q. At that time, so far as you know, neither Mr. Huntington, Mr. Stanford, Mr. Hopkins, nor Mr. Crocker had anything to do with the Southern Pacific Railroad Company?

A. I do not know at what time they became connected with the Southern Pacific Railroad Company.

Q. You have never heard of their connection with that company prior to 1870?

A. I do not think I could testify as to the time when they acquired or became connected with the Southern Pacific Rail-
808 road. I took no possible interest in it, and I have never looked it up.

Q. I have asked you a slightly different question from that. I have not now asked you the date when they did become connected with it, but simply the question as to whether you recall ever having heard of their connection with the Southern Pacific Railroad Company before 1870?

A. I do not recall it.

Q. Do you know when, if at all, the Central Pacific Railroad Company took up the operation of the line from San Francisco to Gilroy, owned by the Southern Pacific Railroad Company?

A. Let me see. In what sense do you ask the question? Do you mean as to ownership or organization or what? I do not understand it.

Q. I mean this: It appears that the Southern Pacific Railroad Company owned a line from San Francisco to Gilroy as early as 1869. At some time did the Central Pacific Railroad Company, operating organization, take up the operation of that line of railroad between those two points, or any part thereof?

A. I could not answer the question. I was trying hard to
809 think if I ever knew. So far I am unable to answer the question. It is not a thing that I naturally would have cared anything about; and if I knew it, it would be really a matter of indifference to me, the main point being the ownership; but I can not recall that I ever knew anything about it.

Q. When the Central Pacific Railroad's line from Lathrop to Goshen was completed in 1872, how far down that line was there any traffic except traffic for the construction of the Southern Pacific Railroad to the south?

A. Let me see if I understand your question. You understand that the Central Pacific Railroad and the Southern Pacific Railroad were separated at Goshen by a point, so to speak. It ceased being the Central Pacific Railroad and commenced to be the Southern Pacific Railroad, but was built continuously and was operated continuously by the Central Pacific Railroad. I know about that.

Q. Well, now, do you not see that you have not answered my que
tion at all, which is a perfectly simple one. It is this: This road w
stretching, or these rails were stretching, from Lathrop down t
Goshen?

A. Yes.

810 Q. All I have asked you is, how far down that line ther
was any traffic in 1872, except the traffic necessitated by th
construction of the Southern Pacific Railroad south of Goshen?

A. Commencing at the lower end of the construction at that time—
that is, at Tipton, the south end—there was considerable passeng
traffic over the line connecting at Tipton with stages for Bakersfiel
and other points, and, in particular, Los Angeles. It was the ove
land route to Los Angeles at that time for passengers; also for pa
sengers for Bakersfield. At Bakersfield these same passengers fr
quently continued over to Inyo County, where mining was in hea
progress. We did a very large business of stage connecting passe
gers to and from Tipton. Working north from there, if that will b
just as intelligible, it will be noticed that the town of Visalia and th
very large and thickly settled agricultural district around it was
very few miles to the eastward of Goshen; and there the traffic w
so large and there was so much business, it being an old establishe
town many years before the railroad was built, that a branch line w
promptly constructed by private capital from Visalia over to Goshe
running connecting trains with our road at that point. Nort

811 from there, taking the entire distance, principally betwe
Modesto and Visalia, the country was in a very good natur
state for agriculture, and towns and villages grew up with extre
rapidity, such, for instance, as Fresno, soon became quite a flourishi
city and furnished us a good deal of business. Incidentally, I m
remark that in that general region there were occasionally very lar
wheat farms in full cultivation a considerable number of years befo
the railroad was built at all. These wheat farms disposed of the
products by hauling them to the nearest rivers and sloughs, and th
like, which were quite frequent in that region. So that we had qu
a business grow up very promptly, as well as the old established bu
ness of Visalia.

Q. The section of road south from Goshen to the Colorado Riv
opposite Yuma, Arizona, was constructed for the Southern Paci
Railroad Company of California?

A. Of California.

Q. And the road from Yuma, Arizona, to the eastern boundary
Arizona was constructed for the Southern Pacific Railroad Compa
of Arizona?

A. It was.

Q. And the railroad from that point to El Paso, Texas, was constructed for the Southern Pacific Railroad Company of
812 New Mexico?

A. It was to the boundary of Texas, which was at the center of the Rio Grande River, as I remember.

Q. That is, it was the other side of the river from El Paso?

A. Yes.

Q. From El Paso east, for what railroad was the construction done?

A. It was constructed, as I remember it, under the corporate name of the Galveston, Harrisburg & San Antonio Railroad or Railway.

Q. That laid in Texas was also operated by the Galveston, Harrisburg & San Antonio Railroad Company, was it not?

A. I would like to be sure that I understand the question. Do you mean as far west as San Antonio prior to any other construction?

Q. I mean skip to the point when there was a through line, in the later part of 1882 or the beginning of 1883.

A. It was operated, as I have heretofore described, by the operating organization of the Central Pacific Railroad.

Q. Did the Galveston, Harrisburg & San Antonio Railroad
813 Company have any operating organization?

A. It had.

Q. And was the personnel of that different from the personnel of the Central Pacific Railroad Company's operating organization?

A. The operating organization of the Galveston, Harrisburg & San Antonio Railroad had jurisdiction as far west as San Antonio when that was the end of their railroad. Now, it never was in regular operation west of San Antonio that I remember of in the strict sense of regular operation until the track from the west connected on the track built westward; that is, the track from the west connected on the track built from the east, and at that time it went into operation under the operating organization of the Central Pacific, A. N. Towne being general manager. And in addition to that, as I understood it—I am now coming to where I understood instead of where I know—Mr. Towne's jurisdiction was then extended over the existing operating officials of the existing railroad, San Antonio eastward.

Mr. HERRIN. To what point—to New Orleans?

The WITNESS. New Orleans.

814 By Mr. MCCLENNEN:

Q. Do you mean quite that?

A. Yes.

Q. That the operating organization of the Galveston, Harrisburg & San Antonio Railroad went all the way to New Orleans?

A. Well, no; I do not mean that; I should not have said that. Thank you for the correction. But let me say, as near as I know, that Mr. Towne's jurisdiction extended over the operation of what then became a continuous line of railroad, including giving orders to the operating officials of the sundry railroads from San Antonio, Texas, to New Orleans.

Q. Was Mr. Towne any official of the Galveston, Harrisburg & San Antonio Railroad Company?

A. I do not know.

Q. That is, you do not know, when he gave his orders over that railroad, whether he was giving them as an official of that railroad or as an official of the Central Pacific?

A. I do not know.

Q. The ownership of the lines constructed for the Central Pacific Railroad Company never changed, to your knowledge, prior
815 to 1899, did they, from the time they were originally constructed?

A. I had no knowledge of any radical change of ownership other than what would occur by estates versus the original owners.

Q. I did not make my question clear. I do not refer to what changes might have taken place in the ownership of the stock in that railroad; I mean that after the Central Pacific Railroad was constructed, as you have outlined, for the Central Pacific Railroad Company, the Central Pacific Railroad Company never parted with any part of that railroad, so far as you know, prior to 1899?

A. No; I never knew of their selling any railroad.

Q. So far as you knew that corporation owned all of that railroad up to 1899?

A. Yes; I never knew of the Central Pacific Railroad selling any part of its ownership.

Q. And in the same way the Southern Pacific Railroad Company, the California corporation, and the Southern Pacific Railroad Company of Arizona, the Southern Pacific Railroad Company of New Mexico, and the Galveston, Harrisburg & San Antonio Railroad never parted, so far as you know, with any portions of their railroad?

816 A. I knew nothing of it one way or the other, and never heard of their parting with anything. Any testimony of mine as to handling the stock and corporate ownerships, and the like of that, would be radically of hearsay. It was not any of my affair and it wasn't anything that I needed to know about.

Q. All this construction work for the Central Pacific Railroad Company and for the Southern Pacific Railroad Company in the various States and Territories was performed by construction com-

panies, except the part done by Mr. Crocker or Mr. Crocker and his partners. Is that correct?

A. It is not strictly accurate. It is nearly accurate as applying—it is accurate in one sense, but I think the answer will require to be a little in detail.

Q. Perhaps I can put the question a little more in detail and thus obviate any misunderstanding.

A. And refer specifically to which lines you mean.

Q. Take the line from Oakland to Sacramento. Was that built by a construction company?

A. I knew about that railroad, as I indicated, although I was not directly connected with the construction. It was built di-
817 rectly by contractors, grading and other contractors; and I understood, without knowing positively, that those contractors were in fact subcontractors of a construction company.

Q. I see. Now, what construction company was that?

A. I understood it to be the Contract & Finance Company; but I wish it clearly understood that this is not definite knowledge; it is simply my understanding.

Q. The line eastward from Sacramento for a distance was constructed by Charles Crocker & Company?

A. Charles Crocker & Company.

Q. As a general contractor with the railroad?

A. Precisely, and with unit prices. They, as usual, had a few subcontractors, chiefly for stone masonry work.

Q. You mean the railroad had?

A. No; that Charles Crocker & Company had subcontractors, as I remember it, exclusively for stone masonry.

Q. Charles Crocker & Company was composed of whom?

A. I never knew anything about it.

Q. Did you ever know of anyone other than Charles Crocker connected with that concern?

A. I knew absolutely nothing about it. I made monthly estimates for Charles Crocker & Company, and turned them into
818 the office of the chief engineer, duly classified, as we do now for any contractor, and that is as far as I knew anything about it, except that I know that J. H. Strobridge was known as their superintendent.

Q. Would it be conservative to say that you knew anyone connected with Charles Crocker as being a part of Charles Crocker & Company, except Charles Crocker?

A. I knew nothing about it, except that it was Charles Crocker & Company.

Q. And you had fairly definite knowledge that Charles Crocker & Company was Charles Crocker?

A. It may occur to you that a young man of twenty-one, who wa very busy and working pretty hard and who liked to go hunting an fishing on Sundays, did not care who Charles Crocker & Company was at all, and had no interest in it; that was my situation exactly.

Q. Having regard for those human frailties, did you get any im pression, howsoever vague, as to whether or not Charles Crocke was any part of Charles Crocker & Company?

A. I never even thought about it. If you asked me if I now hav a theory about it, I could give you that, but, in fact, in 1867 and 186 I never gave it a thought.

819 Q. I suppose you mean that so long as your work wa mapped out for you and the construction went forward in accordance with the plans and you received adequate compensation for your services and had your opportunity to fish on Sundays, you did not pay any particular attention, at any given time, as to the person, firm, or corporation for whom you were working in doing particular work. Is that true?

A. Yes; I reported, as heretofore testified, to the chief engineer, received orders from him or his duly delegated assistants. I knew J. H. Strobridge as superintendent for Charles Crocker & Company, and I knew Charles Crocker as the man who would come around and ask me what I was doing and why I was doing it that way, and also who would tell me to do it differently, if he took a notion.

Q. During that period were you chief engineer for Charles Crocker & Company, or were you chief engineer for the Central Pacific Rail road Company?

A. I was an assistant of the chief engineer of the Central Pacific Railroad Company.

Q. Of the Central Pacific Railroad Company?

A. Yes.

820 Q. Next, east of the section constructed by Charles Crocker & Company for the Central Pacific Railroad Company, the railroad was constructed by the Contract & Finance Company?

A. Yes.

Q. Up to its junction with the Union Pacific at Ogden?

A. That is my understanding of it.

Q. Were Charles Crocker & Company connected in any way with the Contract & Finance Company?

A. I have absolutely no knowledge of that detail.

Q. Did you ever meet in the flesh, to know it, any part of the Contract & Finance Company?

A. I may have known who was president or the vice president or other officer of the Contract & Finance Company—it is a good while ago to be positive about such a matter—but I very frequently met Charles Crocker and Leland Stanford.

Q. Did you not have some more or less concrete impression as to whether Charles Crocker was connected with the Contract & Finance Company?

A. I may have had, but it didn't impress me particularly.

Q. You put it rather tentatively; don't you think you did have?

821 A. I think I took very little interest in it; I knew who was the boss, that was all, and I followed his orders.

Q. I have not asked you how much interest you took, but simply whether you did not get an impression that Charles Crocker was connected in some way with the Contract & Finance Company.

A. I have not any remembrance about it at all. As I said, in reference to that matter, I suppose you do not care for my present theories; what you want is my impressions in 1867, 1868, and 1869. I do not remember about it. I am sorry I do not; I would be very glad to tell you.

Q. Then what construction company contracted for the Central Pacific Railroad section from Lathrop to Goshen?

A. I do not know. I think that perhaps some one can present exact dates of the organizations of the several construction companies, but I am unable to do so, except in a general way. For instance, I remember, at a certain period, the Pacific Improvement Company was organized, and I think it was in the seventies, but I don't remember exactly when. I remember after that that the Southern Development Company was organized, I think for the Texas work, but as I said before, I took very little interest in

822 anything of that kind. It was not any of my affair at all, and I knew very little about it.

Q. Does your recollection enable you to state whether it was either the Contract & Finance Company or the Pacific Improvement Company?

A. I am quite certain that the Pacific Improvement Company was not organized until a considerable time after the track reached Tipton.

Q. Well, with that information, would you not recall that the construction from Lathrop to Goshen was by the Contract & Finance Company?

A. I do not recall about it. I took no interest in it. If you care for an opinion, I will give you that.

Q. I do not want an opinion. I asked for your recollection.

A. I can give you nothing else but an opinion.

Q. From 1872 on to 1883, say, who was the chief engineer of the Central Pacific Railroad Company?

A. It was Samuel S. Montague.

Q. Were you next in order to him?

A. No, sir. When we arrived at Goshen, with the construction down to which point we had been under the orders of
823 Samuel S. Montague, chief engineer of the Central Pacific Railroad, we suddenly became under the orders of George E. Gray, chief engineer of the Southern Pacific Railroad, on that construction southward. At times, I have specified here before, the Southern Pacific Railroad of California and of Arizona and of New Mexico, and the Galveston, Harrisburg & San Antonio as far as San Antonio, Texas, with the exception of what Mr. Converse, chief engineer of the Galveston, Harrisburg & San Antonio west of San Antonio, had direct charge of, was technically under the orders of George E. Gray, chief engineer of the Southern Pacific Railroad Company; and I, some time in 1875, instead of assistant engineer, became chief assistant engineer and actively engaged in executing the construction. I remained in that State until the summer of 1883, perhaps June, that I was still assistant chief engineer of the Southern Pacific Railroad. You understand, assistant engineer from Goshen in, perhaps, July, 1872, until some time in 1875, except when I was east, and then assistant chief engineer from some time in the summer of 1875 of the Southern Pacific Railroad until about June, 1883, and then assistant chief engineer of the Central Pacific Railroad on account of the heavy construction then being toward Oregon
824 from Redding, Mr. Montague still being chief engineer until his death.

Q. That is, from 1872 at Goshen, until 1883——

A. About June.

Q. About June—you were an official of the Southern Pacific Railroad Company under Mr. Gray?

A. Yes.

Q. Then you were transferred to the Central Pacific Railroad for construction which it was doing north?

A. Yes; north of Redding.

Q. Now, when this pay car used to come down with money aboard, how did you recognize it as being a pay car of the Central Pacific Railroad Company?

A. My remembrance is that it was so labeled. Personally I only saw it occasionally, generally being too far at the front.

Q. You paid no particular attention to the labeling on the vehicle that brought your pay; is that it?

A. Well, of course this is a purely personal matter. I will say I never drew any. When I wanted any money I got it otherwise, but the vehicles in advance of the end of the track, that brought
825 the pay to the men at the front, were just plain, ordinary vehicles, without any labels at all.

Q. No labels of any kind?

A. No.

Q. And you had nothing from which you could get any definite impression as to whether it was the Southern Pacific Railroad Company's money that was being sent down in this pay car, or whether it was the Central Pacific Railroad Company's money?

A. I would not know one kind of money from the other.

Q. And there was nothing in the wrappings or conveyance that would give you any information on that subject?

A. My remembrance is that personally I never drew a cent of money from the pay car at all, but I have seen the pay car often.

Q. And that answers my question as fully as you can, does it?

A. The pay car that I used to see was labeled Central Pacific Railroad, to the best of my knowledge and remembrance.

Q. During the period of construction of the Southern Pacific Railroad Company there was not any rolling stock labeled Southern Pacific Railroad, was there?

A. You mean in use?

826 Q. Either in use or disuse.

A. I must get this question more clearly. Do you mean did I ever see any Southern Pacific Railroad rolling stock so labeled in the course of the times that we were constructing railroads?

Q. Well, I mean did you ever see any rolling stock at any time in your life labeled Southern Pacific Railroad?

A. I have.

Q. When first?

A. I do not remember first; I remember the last, if that will do you any good. That was a week ago yesterday, coming up from the Hotel Del Monte. Coming up from the Hotel Del Monte I rode in the chair car, which I was greatly interested in, marked Southern Pacific Railroad Company of California, one of the old-time wooden cars. That is the last one. The first one I really can not remember.

Q. Can you give me any idea at all?

A. My best remembrance is that they used to be bought at certain intervals and in certain amounts, rolling stock labeled "Southern Pacific Railroad of California, G. H. & S. A. Railroad," or railway, whichever it was, and I think there was rolling stock bought

827 and labeled, both engines and freight cars and passenger cars, labeled "Southern Pacific Railroad Company of New Mexico." I have seen such things as that, and in general there is rolling stock labeled with sundry corporate names and duly listed.

Q. Did you ever, so far as you now recall, see any rolling stock labeled "Southern Pacific Railroad Company", prior to the summer of 1872?

A. I don't remember. I would be very glad to testify if I did remember, but I do not remember when I first commenced seeing rolling stock labeled "Southern Pacific Railroad Company of California", or "Cal.", to be exact, abbreviated.

Q. Had you ever seen, so far as you recall, any such rolling stock prior to 1879?

A. I have no specific remembrance of when I have seen any specifically labeled rolling stock. As I said before, I would be very glad to remember, but you are asking me questions that had I known in 1879 I was going to be asked I would have made a memorandum so as to be able to answer correctly to-day.

Q. Have you any recollection of seeing any rolling stock labeled "Southern Pacific Railroad Company" before the 1st of March, 1885?

828 A. I am very confident that I have seen rolling stock labeled "Southern Pacific Railroad Company of California" in use, a great deal of it in use before that time; but I can not tell you where or when.

Q. Then we can put it as some time before the 1st of March, 1885, with certainty, can we?

A. Yes; most certainly you can.

Q. Let us go back a little. Can we put it before 1879 that you had seen any such?

A. Of course, you are excluding the coast division? That is a line down the peninsula. You must know, in all these questions——

Q. No; I am not excluding anything.

A. My remembrance is that the rolling stock, a good deal of the rolling stock on the peninsula, from here to San Jose and then south, was labeled "Southern Pacific Railroad Company of California."

Q. That was as early as what time?

A. Oh, I could not tell you, but I should say there was rolling stock labeled that way a long time ago.

Q. As early as 1872?

829 A. I could not be specific. I can now only get into opinions, and you do not care for them.

Q. As early as 1879?

A. I can only say that there must have been, but I don't remember.

Q. Why do you say that there must have been, prior to 1879?

A. Because it was customary to have rolling stock in those days marked with sundry corporate names; they were bought that way.

Q. And among others, the Southern Pacific Railroad Company of California?

A. It was customary to have the engines and the cars marked "Southern Pacific Railroad Company of California", and, as I said

I rode in one a week ago yesterday. That, by the way, was dated 1888, if I remember, and it was customary to have "G., H. & S. A. Railroad" on the freight and passenger cars and locomotives, and it was a common custom to put corporate names on the rolling stock, being a practical and theoretical sign on the rolling stock of certain corporate properties; it was the custom for a long time, and I really hope that general statement will satisfy you, because you can realize how much you would be up against it if I were to ask
830 you when you first saw a New York Central car, so as to be sure that it was a New York Central car, and it is the same situation with me; I can not remember exactly when, but it was a common custom to use labeled rolling stock.

Q. I am not trying to overtax your memory, and when you can not remember, say so.

A. All right.

Q. Now, we come back to this coast line. You say this line from San Francisco through San Jose to Gilroy and down had rolling stock with the name "Southern Pacific Railroad Company of California" at a very early date?

A. Yes. I can not say how early, but it was originally built as Southern Pacific Railroad.

Q. And operated as such?

A. It was built as the Southern Pacific Railroad, and if you want hearsay evidence, as I understood, by people not connected with the Central Pacific Railroad Company to San Jose and south; and I have been to San Jose on that railroad as early as—very early after 1867. I should dislike to testify that I saw any rolling stock marked "Southern Pacific Railroad" and I would still more dislike to testify that I did not see any.

831 Q. Now, that is a line which has since been completed and has become known as the "coast line", has it not, or the coast division?

A. Do I understand that you want a history or statement of the corporate name under which the coast division was constructed? It was not constructed as the Southern Pacific Railroad Company.

Q. No; I am asking you a very simple question. Here is a line of the Southern Pacific Railroad Company that in 1869 ran from San Francisco to Gilroy. Now, that line, irrespective of what corporation has since completed it, is a line which has been completed and has become what is known either as the coast line or the coast division, and now connects in some way all the way through with the line through Yuma?

A. If I understand your question, your understanding is not correct as to that. I will state just how it is and then you will judge whether I am answering you correctly or not. The Southern Pacific

Railroad extends to Tres Pinos by way of Gilroy. It also extends from Gilroy via Castroville, now known as Del Monte Junction, to San Miguel and, as I remember it, about a mile and a half south of San Miguel. From that point the road was constructed as
832 Southern Pacific branch railway through to Saugus via Santa Barbara, for the particular reason that the Southern Pacific Railroad at a point a mile south of San Miguel, not yet built, was projected across the Coast Range into the Tulare Valley as one part of the Southern Pacific Railroad Company; and still another part of the Southern Pacific Railroad Company was projected from the terminus at Tres Pinos to the terminus at Alcalde, on that constructed line from Goshen to Alcalde, so that the coast line was not originally built as the Southern Pacific Railroad Company south of a point about a mile and a half south of San Miguel; it was built as Southern Pacific branch railway.

Q. I was unfortunate in not making my question clear. I will start with a preliminary one. There is at the present time something that is known as the Coast Line or Coast Division, is there not?

A. Yes.

Q. If a freight car starts out of San Francisco, destined to New Orleans, over the coast division, it passes down through Gilroy, does it not?

A. Yes.

Q. And passes from San Francisco to Gilroy over a line
833 which had been constructed for the Southern Pacific Railroad Company of California prior to 1870?

A. That is correct.

Q. Now, the Southern Pacific Company first began to do business in March of 1885, did it not?

A. My remembrance is in the spring of 1885.

Q. And after that company began to do business, you still saw rolling stock containing the various names of the various companies, the Central Pacific Railroad Company, the Southern Pacific Railroad Company of California and of Arizona and of New Mexico, and so forth?

A. Yes; and to this day.

Q. The construction of the Central Pacific Railroad Company by Charles Crocker & Company was on a unit basis?

A. Yes.

Q. That means so much per foot or per mile, for different characters of work?

A. No; it means that each month we would turn in, on the several sections of construction, estimates that during that month they had moved so many cubic yards of earth and so many cubic yards of

granite or of volcanic rock, or whatever there was moved, and
834 they had done so much masonry or tunnel excavation and so forth, the same as we do for any contractor nowadays.

Q. How did the contract between the Central Pacific Railroad Company and the Contract & Finance Company vary from that?

A. We returned no estimates whatsoever of quantities moved, except stone masonry, culverts, bridge piers, and abutments, which were done by certain contractors who were stone masonry specialists, and whom we understood to have their contracts from the Contract & Finance Company.

Q. That is, the detail measurements were needed because of the relation between the general contractor and these subcontractors?

A. Entirely.

Q. And not because of any relation between the Contract & Finance Company and the railroad?

A. Your understanding is correct.

Q. Do you know what the arrangement was between the railroad company and the Contract & Finance Company?

A. I do not of my own knowledge. I never saw the contract.

Q. You never saw any contract?

835 A. I did not see any contract—to the best of my remembrance, I never saw one of those contracts until after I became chief engineer of the Central Pacific Railroad Company. That is the best of my remembrance.

Q. That would be after 1883?

A. That was in 1883, the latter part of 1883.

Q. Did you ever see any contract then which had reference to the original construction of the main line of the Central Pacific Railroad Company?

A. I do not remember of it. It will occur to you that my interest was to see what my duties were, and my duties were to see that the road was built to the satisfaction of the president and the chief engineer, both of whom, or the representative of the president, certified to the construction of the road to their satisfaction in successive distances or mileages.

Q. That is, your only interest was to see that the construction company did the work to the satisfaction of the railroad company represented by you as the man in the field?

A. Certainly.

Q. Were those contracts between the railroad company and the Contract & Finance Company that you saw after 1883 current contracts, or contracts for past time?

836 A. They were contracts under which I was proceeding.

Q. Proceeding after 1883?

A. Yes.

Q. And you never saw any contracts, so far as you recall, covering the work done before 1880 by the Contract & Finance Company for the Central Pacific Railroad Company?

A. I do not remember seeing any. There was no reason why I should, and I do not remember ever having seen one.

Q. Can you tell me approximately how many miles of the Southern Pacific Railroad were built by the Contract & Finance Company?

A. I could not state. I remember that the Pacific Improvement Company took the construction at a certain time, as we learned or heard. You remember that I was never chief engineer of the Southern Pacific Railroad during the construction; I was assistant chief engineer, and I never certified any of their constructed mileages until I became chief engineer of it; and, incidentally, that the testimony may not be confusing, you want to remember that after the Southern Pacific Company became organized and I became chief engineer of that, I still remained chief engineer of every corporation that
837 they leased tracks of, so that if that is not kept in mind you may be misled and misunderstand some of my statements.

Q. That is, after the spring of 1885, when the Southern Pacific first began to do business, you were the chief engineer of the Southern Pacific?

A. No; after the spring of 1885——

Q. Of the Southern Pacific Railroad Company?

A. After the spring of 1885, I was chief engineer of the Central Pacific Railroad Company, and George Gray of the Southern Pacific Company, until the fall of 1885, when I was made chief engineer of the Southern Pacific Company, I think in October, 1885, or some time in the fall; and thereafter I have been chief engineer of all the corporations leased by the Southern Pacific Company, as well as the chief engineer of the Southern Pacific Company.

Q. That dates from the fall of 1885?

A. It dates from my appointment as chief engineer of the Southern Pacific Company, which I think was in the fall of 1885; but it was considerably after its organization, some months after. It was a circular issued by Leland Stanford; I would not pretend to remember the month; I think that is probably unimportant.

838 By Mr. HERRIN:

Q. You have been, at all times since your appointment in 1885, chief engineer of the Southern Pacific Company?

A. I have.

Q. Actively engaged in pursuing the duties of that office?

A. I have.

Q. When Mr. Gray was chief engineer of the Southern Pacific Railroad Company, were not you the active official under him, doing the work?

A. Yes; he was an engineer whose experience had been in the East, but when it came to mountain and desert construction, he said candidly to me and every one else that he was out of his element, and was very glad to have me act for him without consultation whenever it was expedient, but as the merest matter of course, in ordinary courtesy, we kept the best relations. He was honest, however, and said frankly "I will have to rely on you", and being quite willing to work, I worked.

Q. The point I wanted to make was that you were an active official?

A. Yes; entirely.

839 Q. Doing the work?

A. Entirely so.

Q. Can you fix the date of your appointment as chief engineer of the Southern Pacific Company?

A. I would say it was in the fall of 1885.

Q. I hand you what purports to be a circular issued by Leland Stanford, and I ask you if you recognize that?

A. I do. It was earlier than I thought. It was August, 1885.

Q. What do you recognize that as being?

A. A circular, Southern Pacific Company, office of the president, San Francisco, California, August 13, 1885. Mr. William Hood has this day been appointed chief engineer of the Southern Pacific Company, Pacific system. Leland Stanford, president.

I would ask to be allowed to correct my testimony to that extent.

Q. Does that fix the date?

A. That fixes the date.

Q. Now, the Southern Pacific Company began its operations in the spring of 1885 by taking a lease of the Southern Pacific Rail-
840 road line, which, I think, was effective March 1, 1885, and a lease of the Central Pacific lines which was effective April 1, 1885. During that interim from March 1st were you the acting engineer for the Southern Pacific Company?

A. Yes.

Q. If there was anything to do, you did it?

A. Yes.

Mr. McCLENNEN. Note an objection to the question as containing an assertion of facts not yet proved.

The WITNESS. I was in charge of any construction pertaining to either the Central Pacific Railroad Company or the Southern Pacific Railroad during the time that I mentioned.

By Mr. HERRIN:

Q. If the Southern Pacific Company required the services of engineer from the earliest date of its operation, before August 1 who, if you know, did that work?

Mr. MCCLENNEN. That I object to as assuming that it had need or that there was any provision made for any need prior August 13, 1885.

The WITNESS. I did any work that I was called upon to do in t time for the Southern Pacific Company.

By Mr. HERRIN:

Q. From the beginning?

841 A. From the beginning.

Q. You were the real acting engineer from the beginning

A. I was the real acting engineer from the beginning for the Sou ern Pacific Company.

Q. Have you ever surveyed the line of railroad connecting T Pinos with Alcalde?

A. There has been such a line surveyed very many years ago, I had nothing to do with it.

Q. You spoke of Goshen as being on the line of the South Pacific Railroad. Now, there is built a line westwardly from Gos extending to Alcalde, is there not?

A. Yes.

Q. What do you call the line of the Southern Pacific Railro You spoke in your testimony of it not having been completed. I you speak of the line which is to be connected from Tres Pinos Alcalde?

A. The original projected line of the Southern Pacific Railr was via Tres Pinos, to which point it was constructed; thence o the mountains to the Tulare Valley, in the general vicinity of Gosh and the actual construction was from Goshen westwardly to Alca

Mr. HERRIN. The articles of incorporation show that t

842 line is covered.

By Mr. HERRIN:

Q. Concerning the northern division of the Southern Pacific R road, extending from San Francisco to Gilroy, don't you recall t that was operated for some time by Mr. Bassett?

A. I know that it was operated by Mr. Bassett for a long time, cluding a considerable time after the road was constructed south that point.

Q. It was a separate organization, was it not?

A. My understanding was, if you wish testimony as to understa ings, that Mr. Bassett reported directly to the executive officers

the company, and did not report to A. N. Towne until the time when A. N. Towne took over the operation of that line, as to which I am uncertain as to the date.

Q. You don't remember the date?

A. No.

Q. Do you remember the date when the coast line was connected and was operated through? This is all shown by the record.

A. The coast line was operated as a through line in the
843 spring of 1901, without attempting to specify the month.

Q. Now, was the northern division taken over by Mr. Towne before that?

A. A very long time before that.

Q. Well, some time before that?

A. Yes.

Q. But before it was taken over by Mr. Towne, was it not operated by the Southern Pacific Railroad Company and not by the Central Pacific Railroad Company?

A. I can only say that that was my opinion. I did not know, of my own knowledge, and I had no occasion to know.

Mr. HERRIN. That is all.

H. B. BRECKENFELD was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Please give your age, Mr. Breckenfeld.

A. Fifty-nine.

Q. Your residence.

A. Berkeley.

844 Q. And your occupation or business.

A. I am a member of the efficiency committee of the Southern Pacific Company.

Q. How long have you been a member of that committee?

A. Since March 1, 1914.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin service with that company?

A. In 1870.

Q. In what capacity?

A. In the capacity of telegraph operator at San Jose, California.

Q. How long did you remain there?

A. I remained in the service at San Jose for about a year.

Q. Then where did you go?

A. Then I was transferred to Sacramento.

Q. What did you do there?

A. I was assigned to duty in the office of the division superintendent of the Sacramento division. I first worked as telegraph
845 operator, and then became superintendent's clerk, and afterwards train despatcher, chief train despatcher and assistant superintendent; from there I was transferred to San Francisco.

Q. At what time?

A. In 1906.

Q. Now, from 1875 to 1906, when you left Sacramento, what were your duties there?

A. They were of various characters; at first I was telegraph operator, then became superintendent's clerk, and subsequently train despatcher.

Q. Did you have anything to do with time-tables?

A. Yes.

Q. What?

A. From about 1873 until the time I left; at first I assisted, and later I had general charge, under the general direction of the superintendent, of the compilation of the working time-tables for the Sacramento division.

Q. Do you remember, in a general way, the extent of that division during that time?

A. Why, at first the westerly terminus was Sacramento. Later on it was extended still farther westerly so as to include the Cali-
846 fornia Pacific system, which extended to South Vallejo, with branches to Calistoga, and easterly; the terminal at different times was at Truckee, California, and Wadsworth, Nevada; the northerly terminus was at different points from Redding northward to near the State line.

Q. Did it ever include any part of the Southern Pacific Railroad Company's line?

A. Yes.

Q. What part?

A. From what afterwards became the Southern Pacific Railroad, from Sacramento to Placerville, and from Sacramento to Benicia, from Napa Junction to Calistoga, and other branches in that territory.

Q. In arranging these time-tables and routing trains was any attention paid to the ownership of these particular lines, or were they regarded as one property?

Mr. McCLENNEN. That is objected to as leading and calling upon the witness to draw a conclusion instead of obtaining his narrative of what he did.

The WITNESS. The time-tables were compiled with the idea of performing the best service; there was no attention paid to the corporate boundaries.

847 By Mr. HERRIN:

Q. You did not send trains around by the Central Pacific line to Oakland, did you? By Niles or Livermore; that is, the principal trains?

Mr. MCCLENNEN. That is objected to as leading.

By Mr. HERRIN:

Q. Well, what route did you take for principal trains between Sacramento and San Francisco?

A. Prior to 1879 trains—for example, between Ogden and San Francisco—were routed via Stockton, because that was the only way to get there. Subsequently, or beginning in the fall of 1879, the important trains were run via what then became the short route or direct route, and upon arriving at Sacramento from the east, instead of being sent via Stockton they were routed via Suisun, Benicia, and the short line to Oakland.

Q. Do you remember when the Southern Pacific Company took possession of the Central Pacific lines?

A. April 1, 1885. How I remember it is that there was a circular issued by the officials of the Central Pacific indicating that such would be the case.

848 Q. Do you remember when the Southern Pacific took possession of the Southern Pacific lines?

A. It was about the same time; I think perhaps a little sooner.

Q. Do you remember the operating officials? Who were operating the lines before the Southern Pacific Company took possession; what company?

A. The Central Pacific Railroad.

Q. It was operating its own lines?

A. It was operating its own lines, and also the lines which it had leased.

Q. Did that include the lines of the Southern Pacific Railroad Company?

A. Yes.

Q. Was the Central Pacific Railroad Company operating the Southern Pacific Railroad line from Goshen to Los Angeles in 1885?

A. It was operating the line south of Goshen. Whether it extended to Los Angeles I do not recall.

Q. Don't you recall, in 1885?

A. In 1885 it could not have been. That was not the territory with which I was connected at that time, but it could not have been.

849 Q. You do not remember when the line was connected with Los Angeles?

A. No; I don't.

Q. Who were the operating officials of the Central Pacific Railroad Company at this time, at the time the Southern Pacific Company took over those lines?

A. Why, A. N. Towne was general manager.

Q. Who was general superintendent?

A. J. A. Fillmore, and R. H. Pratt was assistant superintendent.

Q. Who was master of transportation, if you remember?

A. E. N. Railton.

Q. And who was general passenger agent?

A. T. H. Goodman.

Q. What were the corresponding officials of the Southern Pacific Company when it took possession?

A. The same persons.

Q. Was there any change in the operating organization at the time the Southern Pacific Company took the place of the Central Pacific Railroad Company?

A. No, sir; I didn't notice any.

850 Q. The Southern Pacific Company has continued to operate those lines since that time to your knowledge?

A. Yes.

Cross-examination by Mr. McCLENNEN:

Q. Do you say that a distinction was made between the Central Pacific Railroad lines and the Southern Pacific Railroad lines as to the date when the Southern Pacific Company began to operate?

A. That is my recollection. At that time I was connected with the corporate property included within the Central Pacific, and in those days we never paid much attention to Central Pacific or Southern Pacific, it was all the same thing; but I recall that a circular was issued, announcing that, effective April 1, 1885, the Southern Pacific Company would take over the operation of the lines of the Central Pacific Railroad, and that all officers and employees were to govern themselves accordingly, that they would all continue in their respective positions.

Q. Well, take it at the end of February, 1885, for instance, just before the 1st of March; the Central Pacific Railroad Company was operating all of the Central Pacific Railroad, was it not?

851 A. Yes.

Q. It was also operating over substantially all of the Southern Pacific Railroad, was it not?

A. Yes.

Q. The Central Pacific Railroad Company continued to operate the Central Pacific Railroad up to April 1, 1885?

A. Yes.

Q. Did the Central Pacific Railroad cease to operate the Southern Pacific Railroad before it ceased to operate the Central Pacific?

A. Such is my recollection.

Q. This short line that you have spoken of is the one called the Benicia cut-off, is it not?

A. It is sometimes so designated.

Q. Just how much of it, in your language, is the Benicia cut-off?

A. The short route was made up of a portion of the original California Pacific Railroad, which ran from Sacramento to South Vallejo. A short piece of railroad was built, beginning at Suisun, on that line, and running for a distance of about seventeen miles across the marsh to Benicia, on the Straits of Carquinez, and at that point a large transfer boat was utilized to convey trains across the strait, about one mile in width, to Port Costa, on the opposite shore, from which point the constructed line was utilized from Port Costa to Oakland, and by that combination of lines the short route from Sacramento to Oakland was made possible.

Q. Speaking now of the spring of 1885, that line from Sacramento to the approach to Oakland was a Southern Pacific Railroad line, was it not?

A. You understand, in the first place, the original corporate ownership was that of the California Pacific Railroad from Sacramento as far as Suisun. Then from Suisun to Benicia it was at that time known as the Northern Railway, or part of the Northern Railway—not the entire Northern Railway—and from Port Costa, on the opposite shore, to Oakland is was also the Northern Railway.

Q. Was any part of that, in 1885, the Southern Pacific Railroad?

A. These smaller corporate properties were taken over from time to time by the Southern Pacific Railroad, but at what time I can not clearly recall.

Q. Do you know whether they had been so taken over before 1885?

A. I would not be sure about that.

Q. You say that care was taken to distinguish between the Southern Pacific Railroad and the Central Pacific Railroad in the date of change of operation?

Mr. BLAIR. He did not say anything about care being taken, I think.

The WITNESS. What I mean to say is that it seems to me there was a slight difference in the dates of those two events, perhaps something like a month. I am not quite sure; I will say about a month.

By Mr. MCCLENNEN:

Q. What piece of track do you know of that belonged to the Southern Pacific Railroad Company and was operated by the Southern

Pacific Company prior to the time when the Southern Pacific Company began to operate the Central Pacific track on March 1, 1885?

A. As to that I am not very clear. We did not pay very much attention—in those days I was a young man, and I did not pay very much attention to things of that character. My work was all for the one set of officials, and I was not particularly impressed with these distinctions as between the Central Pacific and Southern
854 Pacific, and still less with the original corporate distinctions.

Q. Take it on the 28th of February, 1885, the entire operating organization was a Central Pacific Railroad Company organization, was it not?

A. Yes, sir; that was the case.

Q. Except for some incidental lines somewhere the Southern Pacific Railroad Company then had no operating organization, did it?

A. I think that is the case.

Q. Do you know of any man who was adopted into the Southern Pacific Company's operating organization prior to April 1, 1885? And, if so, who was he?

A. I am not sure that I understand your question.

Q. On the 28th of February, 1885, we have the only operating organization, the organization of the Central Pacific Railroad Company, do we not?

A. Yes.

Q. There was not any new organization put into the field in that spring, was there?

A. Any new operating organization?

Q. Yes.

A. Why, in the spring of 1885 the Southern Pacific Com-
855 pany was organized, and its functions were announced in this general circular to all the employees.

Q. And it took over the entire operating organization of the Central Pacific Railroad Company?

A. Yes, sir.

Q. And it did it at one time?

A. Well, it did it at one time, except that it was my recollection that there was a slight interval—whether that is of any moment or not—my recollection is that there was a slight interval in the dates of the announcements of the two transactions, something like a month.

Q. You, on the 28th of February, 1885, were doing some work connected with operations over the Central Pacific Railroad, and some work connected with operations over the Southern Pacific Railroad, were you not?

A. Yes, sir. If these branch lines at that time had been taken over by the Southern Pacific—of which I am not sure now. Those

ran along, and they were acquired by the Southern Pacific Railroad at various times, with which I am not entirely clear.

856 Q. Did you enter the employ of the Southern Pacific Company as to some lines, yourself, at a different date from that at which you entered it as to the lines of the Central Pacific Railroad Company?

A. There was no ceremony. I did not enter the employ of the Southern Pacific Company in that sense. I simply received this information, that the Southern Pacific Company had taken over these various lines, and that all employees would continue the same as they were doing at that time; so that I just kept on working.

Q. Did you receive two different circulars yourself, one as to one lot of lines and one as to another lot of lines?

A. My impression is that there were two circulars; but as to that I am not entirely clear. I think there were two.

Q. When last did you see either one of those circulars?

A. I think it was about a month ago.

Q. Which one did you see then—or did you see both of them?

A. I think I saw the Central Pacific.

Q. Did you see any as to the Southern Pacific Railroad at that time?

A. I think not.

857 Q. When last did you see the circular as to the Southern Pacific Railroad, having reference to this turnover of the spring of 1885?

A. Why, I think perhaps four or five months ago.

Q. Did you see that at the same time that you saw the one as to the Central Pacific?

A. I am not very such as to that. I have been looking at a number of circulars, and I am not quite sure just how it is about that.

Q. Where were these circulars when you saw them within the present year?

A. They were in the Flood Building.

Q. Here in the Southern Pacific Company's offices?

A. Yes, sir.

Mr. McCLENNEN. Have you got those circulars, Mr. Herrin?

Mr. HERRIN. Yes.

Mr. McCLENNEN. Will you let me have them, please?

Mr. HERRIN. They are both in evidence in Mr. Pratt's deposition, and both exhibits; one is Exhibit 2 and the other is Exhibit 3 [handing papers to counsel for the petitioner].

By Mr. McCLENNEN:

Q. Are the circulars to which you have just referred the ones marked, respectively, "Defendants' Pratt's Exhibit 2" and "De-

858 fendant's Pratt's Exhibit 3", dated, respectively, February 27, 1885, and April 1, 1885, which I show you?

A. Yes, sir.

Q. And was it only the differences referred to in these two circulars which you had reference to in the testimony which you have been giving?

A. Yes, sir.

Mr. McCLENNEN. That is all.

Mr. HERRIN. Have you finished with this witness?

Mr. McCLENNEN. Yes; I am through with the witness.

(Whereupon at 4.30 o'clock p. m. an adjournment was taken until to-morrow, Wednesday, March 3, 1915, at 11 o'clock a. m.)

859 THIRTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Wednesday, March 3, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

860 H. ENGLEBRIGHT was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. Sixty-three.

Q. Your occupation?

A. Master car repairer, western division, Oakland.

Q. Of the Southern Pacific Company?

A. Yes.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin work for that company?

A. Well, I commenced with the California Pacific Railroad in October, 1869, which was absorbed or taken over by the Central Pacific, and I went to Sacramento in December, 1871.

Q. What were you doing there?

A. Blacksmith's apprentice.

Q. In the shop of the company?

A. Yes.

861 Q. How long did you continue there?

A. Well, I continued there until May, 1873.

Q. Then where did you go?

A. Why, I left the service of the company then and was absent about two and a half years. I worked at the Mare Island Navy Yard and the North Pacific Coast Railroad and other places.

Q. When did you return to the Central Pacific?

A. March 15, 1876.

Q. How long did you continue?

A. That was at Sacramento; and then I was transferred to San Francisco in March, 1877, by Ben Welch, master car builder at Sacramento.

Q. What did you do here?

A. I was a blacksmith then.

Q. At what place?

A. San Francisco, Sixth and Townsend Streets.

Q. In the shops of the company?

A. Yes.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. How long did you continue there?

902 A. Until November, 1878, when I was transferred to Oakland under the same jurisdiction.

Q. Were you in the shops of the company at Oakland?

A. Yes.

Q. How long did you continue there?

A. Until May, 1892.

Q. What occurred then?

A. I was then sent to Fresno, and I was car foreman at Fresno nd also roundhouse foreman until August, 1898.

Q. And then?

A. Then I was transferred as car foreman to San Francisco, and remained there until February, 1900, when I was appointed master ar repairer at Oakland. I have been there ever since.

Q. Now, while you were in the Sacramento shops, from December, 871, to May, 1873, as you have stated, what work did you do?

A. I first worked in the car department under Mr. Welch as a lacksmith and apprentice on car work, and I was afterwards a ember of the wrecking train, and we used to go out on the road a good deal picking up wrecks, cars, engines, and so forth; and 3 then afterwards I went over into the blacksmith shop in the machine department, and I worked there until I left, in May, 873, on locomotive work and work of that character.

Q. You worked on engines?

A. Yes. When we built the first twelve engines I worked on those engines; 1872–73 they were turned out.

Q. Were those engines built for the Central Pacific?

A. The Central Pacific Railroad; yes.

Q. Where were they used?

A. They were used all on the western division out of Oakland, between Oakland and Sacramento; I think all of them but one or two; there were twelve engines built, if I recall it, two of which went to Virginia and Truckee. The others were used on the western division.

Q. While you were in Oakland in 1878 to 1892 what work did you do?

A. I was a blacksmith in the shops there and I was also on the wrecking train—went out on the road.

Q. Did you have to do with repairs of engines that were operated on the Southern Pacific Railroad?

A. Not at Oakland; car work entirely at Oakland.

864 Q. The cars that were used on the Southern Pacific Railroad came from the Oakland shops?

A. Yes.

Q. Do you remember any engines that were sent out from the east for the G., H. & S. A.—locomotives?

A. Yes.

Q. Will you state what you know about them and what years that was?

A. Well, I can not recall the years, but it was along in the early eighties; it might have been 1881 or 1882, along in there somewhere. Those engines came to Sacramento and were used between Oakland and Sacramento.

Q. To what company did those engines belong?

A. They were G., H. & S. A.—Galveston, Harrisburg & San Antonio—later.

Q. Where were they used?

A. Between Oakland and Sacramento.

Q. Did you ever see those engines in the Sacramento shops?

A. The engines came from the east to the Sacramento shops. In fact, all new engines were delivered at Sacramento.

865 Q. Do you know about the use of engines and equipment of these different companies—the Central Pacific, the Southern Pacific of California, the Southern Pacific of Arizona, the Southern Pacific of New Mexico, and the G., H. & S. A.? Were those engines, those locomotives, used indiscriminately over the different lines?

A. Yes; they were used indiscriminately over the different lines with reference to the classes of the different types that were needed.

Q. State whether or not you have seen engines and rolling stock labeled "S. P. of New Mexico", for example, or "S. P. of Arizona", in use on the California lines?

A. Yes.

Q. Also Central Pacific rolling stock in use on the lines of the Southern Pacific Railroad in California?

A. Yes; we had them C. P., S. P., S. P. Cal., Northern Railway, S. P. of Arizona, New Mexico, and so forth. They were used indiscriminately on the western division at that time.

Q. Do you remember the two large locomotives, supposed to be large at that time, No. 229 Central Pacific and No. 237 Central Pacific?

A. Yes.

Q. What do you know about them?

866 A. I know that they were being built at the Sacramento shops and I made a number of visits up there to look at them while they were under construction, and they were taken South and used on the Southern Pacific on the Tehachapi hill.

Q. Tehachapi Mountains?

A. Yes. They were both C. P. engines, though, and they never ran anywhere else. No. 237 was worn out there on the mountain.

Q. They were your largest engines at that time?

A. Yes. When that engine was built it was the largest engine in the world.

Q. And the work required on the Tehachapi Mountain made it suitable to use that engine at that place?

A. Yes.

Q. And it was there used?

A. Yes.

Q. Do you remember when the Southern Pacific Company, the present company operating those lines, took them over for operation?

867 A. Well, I can not state the year, but it was about 1885 or 1886, somewhere in that neighborhood; I remember that distinctly; yes.

Q. I will ask you: What company was operating those lines before the Southern Pacific Company took them?

A. Central Pacific Railroad, so far as I understand.

Q. You were down there prior to the time the Southern Pacific took it? You had been over the lines of the Southern Pacific Railroad?

A. Yes.

Q. How far south?

A. I had been as far south working—I think Delano was the farthest point south I went.

Q. Did you ever go to Los Angeles?

A. Only on a short trip or something, but working out of Oakland I went with the wrecking train to Delano, and also from Sacramento in 1876 to Goshen Junction and did some work there.

Q. And you know the Central Pacific Railroad Company was operating the line south of Goshen?

Mr. McCLENNEN. I object to that as leading and as showing something the witness could not have observed from his earlier testimony.

The WITNESS. Yes.

868 By Mr. HERRIN:

Q. What do you know about the company that was operating the Southern Pacific Railroad line south of Goshen to Los Angeles prior to the time the Southern Pacific Company took it in 1885 or 1886, as you have stated?

A. It was all operated under one head—the same managers.

Q. What head was that?

A. The Central Pacific Railroad.

Q. Who were the operating officials of that company?

A. A. N. Towne was general superintendent and A. J. Steels was general master mechanic in charge of locomotives and power; Benjamin Welch was the master car builder in charge of all car work and their jurisdiction extended over the entire system.

Q. How far did that go?

A. To El Paso and Ogden.

Q. Do you remember J. A. Fillmore?

A. Yes; afterwards. Filimore was at Sacramento, division superintendent in the early days, when I went there.

Q. What happened after the Southern Pacific Company took
869 those lines, the Southern Pacific Railroad and the Central Pacific Railroad, what was Fillmore doing?

A. Fillmore succeeded Fellows; E. C. Fellows was assistant general superintendent to Mr. Towne, and Fellows died and Fillmore was brought down from Sacramento. I could not state the year exactly.

Q. And after that he was what?

A. General superintendent. Towne was general manager.

Q. Who was the general passenger agent of the Central Pacific?

A. Mr. Goodman.

Q. T. H. Goodman?

A. Yes.

Q. You remember R. H. Pratt?

A. Yes; very well.

Q. What position did he hold?

A. He was assistant general superintendent. I think that was his title at that time.

Q. These officials of the Central Pacific Railroad Company had jurisdiction over what lines prior to the Southern Pacific Company's advent?

A. Do you mean what different lines?

Q. Yes.

870 A. The Central Pacific Railroad of California, the Southern Pacific of California, the Southern Pacific of New Mexico, the Southern Pacific of Arizona, the Northern Railway, the California Pacific Railroad, the Stockton & Copperopolis Railroad, the Los Angeles, and Independence——

Q. That is as far as you need go.

A. There might be some more. I can not think of them now.

Q. Which the record shows. The operating officials you have mentioned, of the Central Pacific Railroad Company, who were in office when the Southern Pacific Company took these lines—did they or did they not become like operating officials of the Southern Pacific Company, or did the Southern Pacific Company have a new set of officials?

Mr. McCLENNEN. This is objected to as calling for a conclusion, and for information which a railroad company's blacksmith is not in a position to receive.

The WITNESS. No; it went right along just as it was.

By Mr. HERRIN:

Q. Did the Southern Pacific Company have any other officials than those that were in office under the Central Pacific Company?

871 A. I never heard of any.

Q. Was there any change in these officials, so far as you knew, when the Southern Pacific Company took charge?

A. I can not recall any change whatever.

Q. What were you doing in 1885 when the Southern Pacific Company took possession?

A. Working in the Oakland shops as a blacksmith.

Q. And you were out on the line at times, making repairs?

A. Yes, sir; I was on the wreck train when required.

Q. Did you know A. N. Towne?

A. Only by sight and by reputation.

Q. Did you know Mr. Fillmore?

A. Yes; I knew him personally.

Q. Did you know Mr. Pratt?

A. Yes.

Q. Did you know Mr. Goodman?

A. Only by sight and reputation.

Q. Do you know whether Mr. Goodman is living?

A. I believe he died a year or so ago; last year.

Q. Is Mr. Fillmore living?

A. Mr. Fillmore died some years ago.

872 Q. Is Mr. Towne living?

A. No, sir.

Q. Is Mr. Stevens living?

A. Mr. Stevens died some twenty years ago. He died in 1888. Ben Welch died two years ago.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. It appears definitely, Mr. Engelbright, from other testimony in the case, that the date when the Central Pacific lease to the Southern Pacific was to go into operation, was April 1, 1885. Having that date in mind, will you tell me prior to that date, just prior to that date, what rolling stock labels predominated in the region that you saw?

A. The freight equipment was stenciled with the initials of the road; that is, the Ceneral Pacific cars were stenciled "C. P."; the S. P. cars of California were stenciled "S. P. Cal."; the Southern Pacific of New Mexico were stenciled "S. P. of N. M."; the Southern Pacific of Arizona were stenciled "S. P. of A."; the California Pacific were stenciled "Cal. P."; the Northern Railway were stenciled "N. Ry."; and the locomotives were stenciled in the same way,

873 and the passenger equipment in the same way.

Q. Did you used to see the trains much in operation or only as cars came in for repairs?

A. Well, I saw trains in operation a great deal. Oakland was the terminal yard at that time, and we did the largest passenger business at Oakland yards, where the trains were made up and where they were received and made up and repaired and cleaned and sent out again.

Q. Was that the terminal yard for the southerly system as well as for the central system?

A. Yes, sir; everything that came into Oakland went into that yard.

Q. Come back, then, to the original question: Which should you say you saw the most of, Southern Pacific cars or Central Pacific cars, or other lines?

A. Well, in the early days there were more of the Central Pacific cars.

Q. That is going back how early?

A. Oh, going back in the seventies. About along in 1885 there were a great many Southern Pacific cars and the S. P. of A. and N. M., and these other lines that began to arrive from the east.

Q. Just prior to 1885 did you used to see many of the G., H. & S. A. cars up there? I mean many as compared with the eat bulk of cars.

A. Well, I could not recollect whether I did or not. That is, fixing e date.

Q. There would be nothing to fix it in your mind, would there?

A. Not particularly; no.

Q. Just a casual observation?

A. We did have, I know, a great many G., H. & S. A. cars, but I uld not say just right to the date when it was.

Q. Would you get Union Pacific cars in there?

A. Oh, yes.

Q. A good many?

A. Lots of them, and all other foreign cars.

Q. And Denver & Rio Grande cars?

A. Well, I don't remember in that early day of seeing any D. & G. cars. That was a narrow-gauge road then, and we did not have m come out here. We had, however, all kinds of what we called eign cars. Any car that is not our own we call a foreign car.

Q. Did that apply to passenger cars?

A. No, sir.

Q. That was freight cars that you were speaking of?

. Freight equipment; yes, sir.

. Take passenger cars next. Did you used to see foreign passen- cars?

. No foreign passenger cars; no, sir; other than Pullmans.

. Didn't you used to get Union Pacific ordinary passenger ches?

. No, sir; they were cut out at Ogden.

. Did you used to get G., H. & S. A. passenger cars?

. Occasionally; yes, sir.

. Was it a frequent occurrence or just occasionally?

. Well, quite frequently; yes, sir.

. How about the passenger cars of the S. P. of Arizona?

. They were run indiscriminately, just as we required them.

. And the S. P. of New Mexico?

. Yes, sir; we ran them all into Oakland and out of Oakland.

. Did the S. P. cars of Arizona and New Mexico run much be- tween Oakland and Ogden?

A. Well, if they needed them; yes.

Q. Was it a frequent occurrence?

. Quite frequent; yes, sir. I don't believe there was any dis- ination made much; we used the cars wherever we happened to them, of the required class.

Q. Could you give me some idea of how many times there would be, in the course of a week, say, when there would be a S. P. of Arizona car run up to Ogden?

A. No, sir; I couldn't do that.

Q. And there was nothing to attract your attention to it particularly?

A. No, sir.

Q. And the engines—how were most of the engines labeled that ran from San Francisco to Ogden?

A. All I know about is what ran to Sacramento. That was the end of our division. Another class of engine was used from Ogden on, but we used all kinds of engines between Oakland and Sacramento—C. P., S. P. Cal., S. P. of A., and N. M.—wherever the class was suitable for the trains they used them on.

Q. After 1880 most of the passenger business for Ogden used to run to Sacramento over S. P. tracks, did it not?

877 A. Well, it ran to Benicia on the Northern Railway tracks or to Port Costa and across the bay on what was then known as the California Pacific from Benicia to Sacramento.

Q. Do you know when those became S. P. tracks?

A. No, sir; I can not recall when it was.

Q. Those never became Central Pacific tracks?

A. No, sir.

Q. You know the line running from San Francisco down through Gilroy, the so-called coast line?

A. Yes, sir.

Q. Prior to April 1, 1885, what company operated that line?

A. The Southern Pacific Railroad.

Q. Did not the Central operate that?

A. Well, I don't know about that. I believe they did. They called that the northern division, or something, at that time.

Q. In your position, with all these different labels on the cars, there was really no way in which you could know which railroad was operating any particular line, was there?

A. No, sir.

Q. That is, the only way you could judge was by who was

878 operating you?

A. That is the idea; yes.

Q. You knew you were working for the Central Pacific Railroad up to the 1st of April, 1885?

A. Yes.

Q. But who any conductors or engineers might be working for on any of these lines you really did not know at all?

A. Well, only that we all worked for the same company, the same management, the same paymaster.

Q. Take this very thing, the coast line through Gilroy: Did you really know, between 1880 and 1885, whether the conductors and engineers on that line were working under the same paymaster as you were yourself?

A. I could not say as to that. I was not there at that time.

Q. And the same would be true of any other line, except those lines that you came immediately in contact with?

A. Yes.

Q. Within a few miles of your own place. Was the transfer of operation of all the different lines, from the Central Pacific to the Southern Pacific, made at one time?

A. I do not know.

879 Q. Was the operation of the Southern Pacific lines that you came in contact with in 1885 transferred at the same time as the operation of the Central Pacific lines that you came in contact with?

A. I believe so; yes.

Q. That is, there came some time, a certain day, when it was generally known that the Central Pacific had ceased to operate the lines and the Southern Pacific had begun to operate them?

A. I never heard of that. I never heard of any such date. In the position that I occupied, I did not notice any changes or did not hear of any. The thing went right along just the same.

Q. It appears that in March, 1885, you were working for the Central Pacific Railroad Company?

A. Yes, sir.

Q. You found out some time that you were working for the Southern Pacific Company, did you not?

A. Yes; only in a general way; but there was not any change; the same paymaster paid off, and it went right along—the same officials. There was no change, as far as we were concerned.

880 Q. There came a time, did there not, when, if somebody had asked you who you were working for, you would have said you were working for the Southern Pacific Company?

A. The S. P. Company; yes, sir.

Q. And before that, if anybody had asked you who you were working for, you would have said you were working for the Central Pacific?

A. Yes, sir; the Central Pacific.

Q. What I want to get at is just how you found out when you were working for one and when you were working for the other.

A. Men in my class at that time never got any circulars or letters to that effect. It was only what the foreman told us in regard to charging time for work. And then we began to see the term "South-

ern Pacific Company" used on all the stationery and time cards, and the like of that.

Q. It did not make any particular difference to you what the name of your employer was?

A. No, sir.

Q. And you sort of got information just as you picked it up around the street?

881 A. Yes, sir. Well, the printed matter, the time cards and the advertisements and printed literature, was Southern Pacific Company.

Q. You used to handle time cards, so that you would see that?

A. Oh, yes.

Q. In 1885?

A. Yes, sir. That is, I mean shop cards.

Q. You mean ordinary day work cards, such as they have in the shop?

A. Yes; and printed matter was marked "S. P. Company."

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. You did not see any Union Pacific locomotives running on the Central Pacific?

A. No.

Q. Or on the Southern Pacific?

A. No, sir.

Q. You did not see any Denver & Rio Grande locomotives?

A. No, sir.

Q. Nor any foreign locomotives at all?

A. No, sir.

882 Q. You did not regard the S. P. of Arizona as being a foreign road, did you?

Mr. McCLENNEN. That is objected to as leading, immaterial, irrelevant, and incompetent, and calling upon the witness for a conclusion.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. When you spoke of foreign cars, what did you mean?

A. Chicago & North Western, New York Central, Pennsylvania Railroad, Baltimore & Ohio—any of those roads are called foreign. All the others were called system.

Q. What cars did you consider as not being foreign cars? What cars were not foreign cars?

Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion, as immaterial, incompetent, and irrelevant, and not proper redirect examination.

The WITNESS. Central Pacific, Southern Pacific of California, Southern Pacific of New Mexico, Southern Pacific of Arizona.

By Mr. HERRIN:

Q. That would be the same as to the locomotives?

Mr. MCCLENNEN. The same objection.

883 The WITNESS. Yes; Northern Railway, San Pablo, Tulare.

Mr. HERRIN. That is all.

I offer in evidence the deposition of Mr. R. H. Pratt, taken in San Francisco, July 14 and 15, 1914, and it is agreed that it shall be copied in the record.

Mr. MCCLENNEN. Petitioner, without repeating them, saves all of the several objections set forth in the deposition.

(The deposition is as follows:)

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS. } In Equity. No. 420.

Be it remembered that on Monday, July 13, 1914, at two o'clock p. m., pursuant to stipulation of counsel hereunto annexed, at room 830 in the James Flood Building, in the city and county of
884 San Francisco, State of California, personally appeared before me, Herbert Bennett, a notary public in and for the city and county of San Francisco, State of California, duly commissioned to take acknowledgments of bail and affidavits, and so forth, R. H. Pratt, a witness on behalf of the defendants.

Edward F. McClennen, Esq., and James W. Orr, Esq., appeared as solicitors for petitioner, and Wm. F. Herrin, Esq., Peter F. Dunne, Esq., and E. J. Foulds, Esq., appeared as solicitors for the defendants.

(The signatures of the witness to the deposition is expressly waived.)

885 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS. } In Equity. No. 420.

Stipulation.

It is hereby stipulated that the testimony of R. H. Pratt, a witness for the defendants in the above-entitled suit, may be taken

before Herbert Bennett, a notary public in and for the city a
county of San Francisco, State of California, at room 830 in t
James Flood Building in said city, county, and State, on Tuesday, t
14th day of July, 1914, at two o'clock p. m.

That such testimony, together with such objections as may
offered thereto, shall be reduced to writing by said notary and exa
iner, and certified to by him, and shall be signed and sworn to by t
witness, and may thereafter be used by either party upon the tr
of the above-entitled suit.

886 Dated this 14th day of July, 1914.

JAMES W. ORR,
E. F. MCCLENNEN,
Solicitors for Petitioner
WM. F. HERRIN,
Solicitor for Defendant

887 R. H. PRATT was called as a witness on behalf of the defe
ants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your name?

A. R. H. Pratt. Do you want the full name?

Q. Yes.

A. Robert Henry Pratt.

Q. And your place of residence?

A. My place of residence is San Francisco. My voting resid
has been here for a long time.

Q. When did you first know the Central Pacific Railroad C
pany had constructed the line of railway between Ogden and Sa
mento?

A. About 1863.

Q. When did you first have anything to do in a business way
that company?

A. March, 1865.

Q. What was your business with it?

A. With the company?

Q. Yes.

888 A. I was appointed foreman of construction and sup
tendent in charge of camps.

Q. At what place were you doing construction?

A. Newcastle.

Q. California?

A. California.

Q. That is, you had camps where the laborers lived?

A. Yes, sir.

Q. While the work was going on?

A. Yes, sir.

Q. How long did you continue that work?

A. I continued that work until August, 1866.

Q. Then what did you do, if anything?

A. Then I was appointed superintendent of the Dutch Flat and Donner Lake Wagon Road.

Q. Where was that road constructed?

A. From Dutch Flat to Crystal Peak. From Dutch Flat, in California, to Crystal Peak, in Reno, Nevada.

Q. That was a wagon road across the mountain near the line where the road was being constructed?

889 A. Yes, sir; and built for the purpose of moving supplies and material, and also for transporting passengers and freight that had to go across the mountains into Nevada.

Q. How long did you continue in the work?

A. About two years.

Q. Until some time in 1868?

A. 1868; yes. That was early in 1868, I think January or February.

Q. About January, 1868?

A. Yes, sir.

Q. Then what did you do?

A. Then I was appointed supply agent of the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company?

A. Yes, sir; in charge of teaming supplies; I was in charge of the teams.

Q. How long did that continue?

A. That continued until about December, 1868.

Q. 1868 or 1869?

A. December, 1868.

Q. Then, what was your next work, if any, with the Central Pacific Railroad Company?

890 A. My next work was, I was sent with 1,000 men to cut wood. The company was short of wood from the mountains and we had to cut all the wood off in Nevada in the sagebrush to get wood to enable the company to get along with the construction. That work was cutting out cedar, with about 1,000 men.

Q. How long did you continue that work?

A. I continued that work about until August of that year.

Q. Of 1869?

A. Yes, sir; of 1869.

Q. Then what did you do, if anything, after that?

A. I then was appointed superintendent of track, 625 miles from Truckee to Ogden.

Q. What was the date when the Central Pacific Railroad was opened for operation between Sacramento and Ogden?

A. May 10, 1869.

Q. And you were superintendent of track, you became superintendent of track in August of 1869, on the track between Truckee and Ogden?

A. Yes, sir.

Q. How long did you continue as such superintendent?

A. Until 1871; in the fall, November, 1871, about that time. I do not remember the exact date.

Q. Then what did you do, if anything, afterwards?

891 A. I was appointed superintendent of the Salt Lake Division, located at Ogden.

Q. Your office was at Ogden?

A. Yes, sir.

Q. And how far did that division extend westward?

A. It extended west to Wells.

Q. Wells, Nevada?

A. Yes, sir.

Mr. ORR. From Ogden to Wells?

The WITNESS. Yes, sir; from Ogden to Wells.

By Mr. HERRIN:

Q. How long did you continue in that position?

A. At Ogden?

Q. Yes.

A. Seven years.

Q. Until when?

A. Until August, 1879.

Q. Then what did you do, if anything?

A. Then I was moved as superintendent from Ogden to Sacramento; placed in charge of the Sacramento division.

Q. How long did that continue?

A. That continued two years.

Q. And after that, what did you do, if anything?

892 A. I was appointed assistant general superintendent, headquarters at San Francisco.

Q. And how long did that continue?

A. Until 1895.

Q. When you retired from the service?

A. Yes; I resigned.

Mr. ORR. Until when in 1895?

The WITNESS. December 31st, 1895.

By Mr. HERRIN:

Q. Your work from the time you became superintendent of the Salt Lake Division, in 1872, until you retired in 1895, was the operation of the road, the operation of trains?

A. Yes, sir; the operation of trains.

Q. What were your duties when you were superintendent of the Salt Lake division; what were your duties?

A. My duties were, I was in general charge of all the traffic over all that division and also over the foremen of track; also general charge of the whole division; everything that went over the division.

Q. And from the time you became assistant general superintendent, what were your duties?

893 A. My duties were general charge all over the Central Pacific line and branches; Central Pacific and Southern Pacific line and branches.

Q. You do not mean that you handled the traffic, as a traffic officer, but you were an operating officer?

A. Division superintendent over the line under my superiors; that distance of track.

Q. You were then in charge of operation?

A. Yes, sir.

Q. As contradistinguished from the other departments, you were an operating official?

A. That is what I was.

Q. Who was the president of the Central Pacific Railroad Company from the time you had business relations with it, down to 1885?

A. Leland Stanford.

Q. Was there any vice president during that time?

A. Yes, sir.

Q. Who was it?

A. C. P. Huntington.

Mr. ORR. Covering the same period?

The WITNESS. Yes, sir.

894 By Mr. HERRIN:

Q. Was there any other vice president during that time?

A. Mr. Charles Crocker was second vice president during the same time.

Q. Who was the secretary of the Central Pacific Railroad Company during that period?

A. E. H. Miller, Jr.

Q. Who was the first treasurer of the Central Pacific Railroad Company?

A. Mr. Mark Hopkins.

Q. How long did he continue in such office?

A. He continued until his death. My memory don't serve me, I can not tell you exactly when he died. About 188— I can not say just now.

Q. About 1880?

A. Yes, sir; about that time somewhere.

Q. Who was the chief operating officer of the Central Pacific from 1869?

A. Charles Crocker was superintendent.

Q. How long did he continue in that position?

A. I can not give you it positively, but I think it was about October, 1869.

895 Q. 1869?

A. Yes, sir.

Q. Who succeeded him as the chief operating official?

A. Mr. A. N. Towne.

Q. Did Mr. Towne continue as chief operating official of the Central Pacific Railroad until 1885?

A. He did.

Q. When did you first know the Southern Pacific Railroad Company?

A. The Southern Pacific Railroad Company? Well, about 1885.

Q. Didn't you know it before that?

A. Perhaps it was a little earlier than that. I can not think of the date to-day.

Q. Do you know what company built the road from Lathrop to Goshen?

A. That was previous to 1885.

Q. I say, do you know what company built that road?

A. The Central Pacific.

Q. To Goshen?

A. Yes, sir.

Q. What company built the road south of Goshen?

896 A. The Central Pacific Railroad Company.

Q. The Central Pacific south of Goshen to Los Angeles, Yuma, and El Paso?

A. The Southern Pacific.

Q. Which was it, the Central Pacific or Southern Pacific?

A. The Southern Pacific.

Q. The Southern Pacific Railroad Company?

A. Yes, sir.

Q. From Goshen?

A. From Goshen.

Q. When any section of that road was open for operation south of Goshen, do you know what company operated the road?

A. Well, the Central Pacific Company operated it until the Southern Pacific was formed.

Q. That is all right. I want to continue along as it was brought in, as these sections were brought in to be operated by the company operating them.

A. The Central Pacific Company.

Q. Did the Southern Pacific Company operate any of the line?

A. The Southern Pacific operated it after.

897 Q. The Southern Pacific Railroad Company?

A. The Southern Pacific Railroad Company?

Q. Yes.

A. Yes, sir.

Q. Do you mean the Southern Pacific Railroad Company operated it? The Southern Pacific Railroad Company built it, built the road south of Goshen, but what company operated it?

A. What years, now?

Q. From the time it was opened, that was about 1885?

A. Down to 1885?

Q. Yes.

A. The Central Pacific Company.

Q. The Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when that line reached El Paso in its progress eastward, about when?

A. I can not remember.

Q. Did the Central Pacific Railroad operate the line to El Paso at any time?

A. It did.

Q. Did it operate the road east of El Paso to New Orleans at any time?

898 A. It did.

Q. Do you remember when the line was opened between New Orleans and San Francisco, or about when?

A. I am unable to give the date.

Q. Was it prior to 1885?

A. I am unable to state the date, but I know the road was completed and connected with San Antonio.

Q. Did the Central Pacific Railroad Company operate trains at any time between New Orleans and San Francisco?

A. It did.

Q. Was it doing that at the time that line was taken over by the Southern Pacific Company? That was in 1885.

A. Yes, sir; 1885—early in 1885.

Q. How long before that had it been operating that through road between New Orleans and San Francisco?

A. About two years, I think; it was about two years it was open.
Q. So it was probably about 1883 or 1882?
A. Yes, sir; about 1883.
Q. That the New Orleans line was opened?
A. Yes, sir.
899 Q. Did your jurisdiction extend over the line south of Goshen?
A. It did.
Q. All the way to New Orleans?
A. All the way to New Orleans for a period of about two years.
Q. Do you remember when the Southern Pacific Company, the Kentucky corporation, took over the operation of the road between New Orleans and San Francisco; do you know?
A. Yes, sir; I remember.
Q. What year was that?
A. About 1885.
Q. Was there any change made in your jurisdiction at that time as to its extent?
A. No change whatever.
Q. Was there afterwards?
A. Never. Not as long as I remained with the company.
Q. Did your jurisdiction always extend through to New Orleans?
A. Not always.
Q. That is what I want to get at. The exact point of my question is to find out when you were restricted to El Paso.
900 A. Well, perhaps I will have to explain that a little. I can not give you the date, but somewhere about 1883, or somewhere, my jurisdiction was extended to New Orleans, and we operated from San Francisco for about two years, and it was found for some reason by the directors that it was not the best thing to do. Then we turned to the former operation, the operation formerly had been from New Orleans by the Morgan Steamer Company Line, which had previously owned those lines, and after that it was operated from New Orleans.
Q. Was it not a fact that as fast as the road was built and owned for operation south of Goshen to Los Angeles, El Paso, San Antonio, and on to New Orleans—as soon as that through line was opened for operation that the Central Pacific Company operated it?
A. It was.
Q. It was the first company that operated that line?
A. The first company.
Q. And your jurisdiction then extended all the way to New Orleans?
A. All the way to New Orleans.
Q. And that continued—that was some time in 1883, you think?
A. Yes, sir; I think that was about 1883.

901 Q. I think probably it may be a little earlier than that. That is about right.

A. Yes, sir.

Q. You made several trips over that road, you say?

A. Two trips a year, generally.

Q. Official trips?

A. Official trips and inspections over the road.

Q. And that continued until 1885, when the Southern Pacific Company of Kentucky took over that road to operate it as lessee?

A. It did.

Q. And did your jurisdiction extend after that, after the Southern Pacific Company took it, east of El Paso, or was it restricted at that time to El Paso? In other words, what they call the Pacific system of the Southern Pacific Company—when was that organized?

A. I can not give you the date. I do not remember.

Q. Now, from the beginning, Mr. Pratt, who were the controlling officials and stockholders, as you saw them in everyday life and in your business, of the Central Pacific Railroad Company?

Mr. McCLENNEN. Note an objection on the ground that the
902 question calls for the conclusion of the witness to draw a conclusion of fact and a conclusion of law.

The WITNESS. May I give my answer?

By Mr. HERRIN:

Q. Yes.

A. Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins.

Q. Did you know each of those gentlemen yourself?

A. I knew them personally.

Q. Did you ever have to do with them, or any of them, in your official business while operating the Central Pacific Railroad?

A. Quite often; more especially with Mr. Hopkins and Mr. Crocker, in my history of the road.

Q. Did you receive instructions from them?

A. I did receive instructions.

Q. And obeyed them?

A. Always, if I could.

Q. How long did that status continue of their control, or, as you observed it, from the time you began with the company?

Mr. McCLENNEN. The same objection.

903 The WITNESS. As long as I was connected with the company, except two who died previous.

By Mr. HERRIN:

Q. Who were they?

A. Charles Crocker and Mark Hopkins.

Q. During the lifetime of Mr. Hopkins and during the lifetime of Mr. Crocker they each continued actively in the management of the Central Pacific Railroad?

A. They did.

Q. Who were the gentlemen that determined finally the questions that had to be decided for the Central Pacific Railroad in its financial and executive department?

Mr. McCLENNEN. Note an exception to that on the ground it calls for the witness to draw a conclusion, give an opinion, which is not material or relevant to this case, and is not the best evidence of the fact of corporate action.

The WITNESS. Leland Stanford, Charles Crocker, C. P. Huntington, and Mark Hopkins.

By Mr. HERRIN:

Q. How do you know that? I want to get at what facts you base that statement on.

A. I know it from taking their orders from them and
904 working for them and with them; that is, they were on the work frequently, one of them, almost one or the other of them was always at the work and the other in the office.

Q. What did Mr. Charles Crocker have to do from the beginning until he died?

A. General superintendent and paymaster from the time the work was commenced until December, 1868. Then he resigned and they reappointed another paymaster, and then later on, in 1869, he was relieved by Mr. Towne.

Q. Did he continue his activities after that in connection with the company?

A. Until his sickness and death.

Q. Do you know when that occurred?

A. I am unable to give the date.

Q. He was in charge of the construction of the road in the early stages?

A. Charles Crocker; yes.

Q. Was he not on the ground most of the time?

A. He was on the ground most of the time; he was very energetic.

Q. Very active man, was he not?

A. Very active all through; very active.

905 Q. What did Mr. Hopkins have to do?

A. Mr. Hopkins was more in his office, did more office work; he did not come out on the road so much.

Q. Was he sometimes out on the road?

A. Oh, yes; he would come over occasionally and visit us and look over the work a little, but was not so active.

Q. What did Mr. Stanford have to do?

A. Mr. Stanford often came out on inspection tours and work in his capacity.

Q. Was he active in the management of the company?

A. He was quite active.

Q. He was president during all of this time?

A. He was present during all this time.

Q. Did you ever consult with him as to the business of the company?

A. Did I?

Q. Yes.

A. Not so much as I consulted with Mr. Crocker.

Q. You saw more of Mr. Crocker?

A. I saw more of Mr. Crocker, because he was the active man on the ground.

Q. Did you consult with Mr. Stanford at all?

906 A. I did.

Q. Frequently?

A. Not frequently. Less frequently than the other two.

Q. Than Mr. Hopkins and Mr. Crocker?

A. Yes, sir.

Q. Did you know Mr. C. P. Huntington?

A. I did.

Q. When did you see him on the road?

A. Generally he made his residence in New York most of the time, after the second year of building the road, and I only saw him personally when he came out on his annual and semiannual inspection. Of course, I took orders from him during those times. He always was with us, our men in charge.

Q. Did you ever receive orders from Mr. Huntington?

A. I did.

Q. When Mr. Crocker was on the ground, in the absence of the three gentlemen, did he exercise the control?

A. He did.

Q. Generally?

A. Generally.

Q. Of the company's business?

A. Yes, sir; he was considered as superintendent. He

907 was considered the active man.

Q. I have asked you if you remember when the Southern Pacific Company of Kentucky took over the line between San Francisco and New Orleans as lessee. You stated you did. Do you also remember the time when the Southern Pacific Company of Kentucky took over the operation of the Central Pacific road as lessee from the Central Pacific Railroad Company?

A. Yes, sir.

Q. What time was that?

A. About 1885.

Q. About the same time that it took over the Southern Pacific Railroad Company?

A. About the same time.

Q. Now, at the time of this lease, or at the time of these leases, one of the Southern Pacific Railroad Company's line and the other of the Central Pacific Railroad Company's line, both to the Southern Pacific Company of Kentucky, do you know who were the chief officials of the Central Pacific Railroad Company? I will ask you if you know who was president at that time?

A. Leland Stanford.

Q. Who was the vice president?

908 A. C. P. Huntington.

Q. Who was the second vice president?

A. Charles Crocker.

Q. Who was the treasurer?

A. Mark Hopkins, until his death.

Q. He died before that. Who succeeded Mark Hopkins?

A. I am not quite sure who succeeded him directly.

Q. Was it Timothy Hopkins?

A. Timothy Hopkins, I think; I am not quite sure it was Timothy Hopkins.

Q. Who was the secretary?

A. E. H. Miller.

Q. Edward Harry Miller, Jr.?

A. Yes, sir.

Q. Who was the general manager?

A. Mr. A. N. Towne.

Q. The chief engineer?

A. Mr. William Hood.

Q. The general superintendent?

A. J. A. Fillmore.

Q. The assistant general superintendent?

A. Myself—R. H. Pratt.

909 Q. The general passenger agent?

A. Mr. T. H. Goodman.

Q. The traffic manager?

A. Mr. Stubbs.

Q. I am going to ask you who was the traffic manager and who was the general freight agent, if you remember.

A. Richard Gray was freight agent.

Q. And who was what we call the traffic manager?

A. J. C. Stubbs.

Q. And who was the general counsel?

A. Judge Sanderson.

Q. Now, we are speaking of the time when the Southern Pacific Company of Kentucky took over these two lines as lessee. Do you know the officers of the road of that company at this time? For example, who was president?

A. Leland Stanford.

Q. Did or did not the Southern Pacific Company have precisely the same officials that you have named for the Central Pacific Railroad Company?

A. The same that I have named.

Q. All the way through?

A. No change whatever.

910 Q. After the death of Charles Crocker, who succeeded him, if any one, in his position with the Central Pacific Railroad Company?

A. I am unable to state that any one succeeded him immediately.

Q. Well, afterwards, who succeeded him? Was in any one of his own name?

A. C. F. Crocker.

Q. Who was C. F. Crocker?

A. C. F. Crocker was a son of Charles Crocker.

Q. Then, as I understand you, Mr. Charles Crocker was succeeded by his son, Mr. C. F. Crocker?

A. Yes, sir.

Mr. ORR. In what position?

The WITNESS. As second vice president.

By Mr. HERRIN:

Q. Now, after the death of Mark Hopkins, who did you recognize in your daily life as dominating the affairs of the Central Pacific Railroad Company?

Mr. MCCLENNEN. That is objected to as calling for a conclusion, and matter that is immaterial, irrelevant, and incompetent.

911 The WITNESS. Leland Stanford and C. P. Huntington.

By Mr. HERRIN:

Q. Anybody else after Mr. Hopkins died?

A. Mr. Huntington, Mr. Crocker, and Mr. Stanford.

Q. Those three men?

A. Those three men; yes.

Q. After the death of Mr. Charles Crocker, about 1888 or 1889, who did you recognize as dominating the affairs of the Central Pacific Railroad Company?

Mr. MCCLENNEN. The same objection.

The WITNESS. Leland Stanford and C. P. Huntington.

By Mr. HERRIN:

Q. Who were the men who dominated the affairs of the Southern Pacific Company from the time it took these leases in March and April, 1885?

Mr. MCCLENNEN: The same objection.

The WITNESS. Leland Stanford, C. P. Huntington, and Mr. Crocker.

By Mr. HERRIN:

Q. Was there any difference in the control or organization of those two companies at that time, 1885, namely, the Central Pacific
912 Railroad Company and the Southern Pacific Company, that you ever noticed?

Mr. MCCLENNEN. The same objection; and further, calling for the witness to express an opinion and to state the substance of corporate to be shown by the record.

The WITNESS. No difference.

By Mr. HERRIN:

Q. Did you at any time receive from Leland Stanford oral orders—orders given orally, not in writing—that controlled you in your official duties?

A. I did.

Q. Did that occur frequently?

A. Not very frequently.

Q. It sometimes did?

A. It sometimes did.

Q. How about Charles Crocker?

A. The same. More frequently with Charles Crocker.

Q. How about Mark Hopkins?

A. Mark Hopkins quite frequently during two or three years, quite frequently; all correspondence was entirely with him; that is, during the time I had charge of the Dutch Flat and Donner Lake Wagon Road.

Q. Did you always obey his instructions?

913 A. To the best of my ability.

Q. Never questioned them?

A. Never questioned them.

Q. Was there any difference, so far as you noticed, in the management or control of the Southern Pacific Railroad Company, as compared with the other two companies that you have mentioned, the Central Pacific Railroad Company and the Southern Pacific Company of Kentucky?

Mr. MCCLENNEN. The same objection as last stated.

The WITNESS. No difference.

By Mr. HERRIN:

Q. When the Southern Pacific Company took possession of these ads under its leases, did you become an official of the Southern cific Company then and cease your official relations with the Cen-al Pacific Railroad?

A. So far as the heading of the stationery.

Q. Did you become an official of that company?

A. I became an official of that company.

Q. You were assistant general superintendent of the Southern cific Company, instead of the Central Pacific Railroad Company?

A. I was.

Q. So one day you were an official of one company and the next day you became the same official of the Southern Pacific mpany?

A. I did.

Q. In making that change, was there any change in the organiza-on or change in salary or change in duties of any official, so far as u know?

Mr. MCCLENNEN. The same objection as last above stated, and, fur-er, as calling in part for a matter which must of necessity be beyond e knowledge of the witness.

The WITNESS. No changes whatever.

By Mr. HERRIN:

Q. You know that your own duties were not changed?

A. Not changed in the least.

Q. And that in your dealing with other officials precisely the same lations continued as were existing before the lease?

A. The same.

Q. And do you know of any change whatever that was made in the ganization of the company?

A. Not excepting some of the changes in the heading of blanks.

Q. What was that?

A. Stamp or something of the kind was put on the head the Central Pacific Railroad Company paper.

Q. You took the old stationery that you were using for the Central cific Railroad Company, and what did you do with it?

A. Put "Southern Pacific" on.

Q. Just as illustrating that, do you recognize that paper I hand u? [handing]

A. I do. I recognize the signature.

Q. That letterhead, as we call it, was the letterhead you officials re using for the Central Pacific Railroad Company, was it?

A. It was.

Q. And the only change was stamping across it in red ink "Southern Pacific Company"?

A. That is all the change.

Q. Do you recognize that signature?

A. I do.

Q. Whose is it?

A. T. H. Goodman, and Mr. Horsburgh, his chief clerk at that time.

916 Mr. HERRIN. I will offer this in evidence just as an exhibit.

Mr. MCCLENNEN. Only for the purpose of identifying the stationery?

Mr. HERRIN. For the purpose of showing that instead of getting new stationery they used up the old stationery in that way.

(The paper is marked "Defendants' Pratt Exhibit 1", and is as follows:)

Central Pacific Railroad Co. and leased lines.

Ansd. Apl. 13. No. 3560D.

T. H. Goodman, gen. pass. & tkt. agent. R. A. Donaldson, asst. gen. pass. & tkt. agent.

OFFICE GENERAL PASSENGER AND TICKET AGENT,

San Francisco, Apr. 6, 1886.

1 enc.

(Stamped in red ink across printing on top of letterhead appears the following:) Southern Pacific Company.

C. B. TURRILL, Esq.,

California Exhibit, Govt. Bldg.,

Exposition, New Orleans, La.

DEAR SIR:

917 Enclosed find notice of shipment from agent, Newcastle, under date of March 31st, covering box of oranges forwarded by W. J. Wilson & Son.

Very respy.,

T. H. GOODMAN, *G. P. & T. A.,*

Horsburgh.

By Mr. HERRIN:

Q. How was your rolling stock that you were using on the Central Pacific Railroad Company labeled prior to the use of it on the Southern Pacific Railroad Company's lines?

A. C. P. Railroad Company.

Q. Central Pacific Railroad Company?

A. Central Pacific Railroad Company.

Q. Your locomotives and your cars?

A. All the cars; all the stock.

Q. Now, when the Central Pacific Railroad Company extended its operations over the line south of Goshen, even as far as K

Orleans, how was their rolling stock labeled that was used over those lines?

A. Labeled the same for a long time.

Q. It was all Central Pacific Railroad?

A. All Central Pacific until a much later date.

Q. And that was the condition in March and April, 1885, when these leases were made to the Southern Pacific Company of Kentucky?

A. It was.

Q. Did you continue thereafter to use this same stock, this same rolling stock, with the same label?

A. The same rolling stock. I can not remember the date when we began to change.

Q. When did you change it?

A. That I can not tell you.

Q. I mean when a car was brought in and had to be repainted, would you then—what did you put on in place of Central Pacific Railroad?

A. Then some of the stock was transferred to the Southern Pacific Company, some of the rolling stock, and the headings changed, or the labels changed at that time.

Q. You did not do that until you had occasion to repaint the rolling stock; then you would label it properly with the name of the Southern Pacific Company?

A. Quite a long time after, we did.

Q. Do you recognize the paper I hand you? [handing]

A. Yes, sir; I recognize that circular.

Q. By whom was it issued?

A. Issued by Leland Stanford.

Mr. HERRIN. We offer this as defendants' Pratt Exhibit 2.

By Mr. HERRIN:

Q. You recognize this as a circular issued by Leland Stanford, President of the Southern Pacific, at about its date, February, 1885?

A. I do.

(The paper is marked "Defendants' Pratt Exhibit 2", and is as follows:)

Circular notice.

SOUTHERN PACIFIC COMPANY,
OFFICE OF THE PRESIDENT,
San Francisco, Feb. 27th, 1885.

Arrangements having been effected by the various railway companies interested between San Francisco and New Orleans, comprising the following roads, namely, the Southern Pacific of California,

Southern Pacific of Arizona, Southern Pacific of New Mexico, Galveston, Harrisburg and San Antonio, Louisiana Western, Texas and New Orleans and Morgan's Louisiana and Texas railway and steamship lines, and roads controlled by the said companies, for a
920 unification of their joint administration, and with a view to a more economical working of the properties, it has been decided that on and after March 1st, 1885, these properties will be operated under one general organization known as the Southern Pacific Company, with headquarters at San Francisco, Cal., divided into two sections; all west of El Paso will be known as the Pacific System and all east thereof as the Atlantic System.

The organization for the administration of the general conduct of the business of the company will be briefly as follows:

Under the direction of the president the general managers will attend generally to the business of the company, having the supervision and direction of all the departments of the service of the company within their respective jurisdictions, the financial and accounting departments excepted, and their orders will be obeyed and respected accordingly.

The secretary and controller will have charge of all books and accounts, and will, subject to confirmation by the president, nominate and fix the compensation of suitable persons for the heads of the various offices of the accounting department.

The treasurer will have charge of all revenues of the
921 company, and will appoint, subject to confirmation by the president, such assistants as may be necessary for the conduct of the business.

The general traffic manager, under the direction of the general manager of the Pacific system, will be charged with the handling of all through business of the company, and that interchanged by or which may be competitive as between, the Pacific and Atlantic systems.

Officials of the line.

A. N. Towne, general manager Pacific system, San Francisco, Cal.

A. C. Hutchinson, general manager Atlantic system, New Orleans, La.

J. C. Stubbs, general traffic manager, San Francisco, Cal.

All other officers and agents will be continued on the various roads and divisions as under the previous organization until further notice by the general managers.

LELAND STANFORD, *President.*

By Mr. HERRIN:

Q. Do you recognize this paper that I hand you? [handing]

A. Yes, sir; I recognize it.

Q. You recognize it as a circular issued by Mr. Towne—Mr. A. N. Towne—the general manager of the Southern Pacific Company, at about its date, April 1, 1885?

A. I do; I recognize it.

Mr. HERRIN. I offer that as defendants' Pratt Exhibit 3.

(The paper is marked "Defendants' Pratt Exhibit 3", and is as follows:)

SOUTHERN PACIFIC COMPANY, PACIFIC SYSTEM,
GENERAL MANAGER'S OFFICE,
San Francisco, April 1, 1885.

To all officers and employees:

Announcing the lease by the Southern Pacific Company of the Central Pacific Railroad and lines heretofore under lease to the last-named company, taking effect this day, it is the purpose of this circular to advise all officers, agents, and employees of the various roads and lines comprising the system that they will, until further notice, continue in the performance of their various duties as heretofore, sending reports and correspondence regarding the affairs of the company to the heads of the various offices as formerly.

Respectfully,

A. N. TOWNE, *General Manager.*

Cross-examination by Mr. MCCLENNEN:

Q. Mr. Pratt, did you have anything to do yourself with the construction of any of the line of the Southern Pacific Railroad?

A. I did.

Q. What is the first date at which you had anything to do with the Southern Pacific Railroad?

A. It must have been about 1885, under the Southern Pacific lease.

Mr. HERRIN. It was after the lease?

The WITNESS. After the lease was made, of course.

By Mr. MCCLENNEN:

Q. I have not made clear to you what I had in mind. You recall, do you, that the Southern Pacific Company, which took over operations in 1885, was a Kentucky corporation?

A. Yes, sir; I remember it was said to be a Kentucky corporation.

Q. And you knew that it was a new corporation at that time?

A. Yes, sir.

Q. Now, before that company was organized in 1884 or 1885, there had been a Southern Pacific Railroad Company as well as a Central Pacific Railroad Company. You knew that, did you not?

A. Yes, sir; I knew that.

Q. Now, in that period prior to 1885, I will say between 1864 and 1885, had you personally had anything to do with the construction of any of the Southern Pacific Railroad Company's line?

A. No, sir; I had nothing to do with the construction until it was turned over to the operating department.

Q. You had nothing to do with the construction?

A. I had nothing to do personally with the construction until it was turned over.

Q. Did you have a general contemporary knowledge of the construction of those Southern Pacific Railroad lines?

A. Just a knowledge of how the work was going on under the construction and the way it was going on at the time, and the
925 miles that were turned over to us for operation. It was turned over as it was built, ten miles at a time, or five miles.

Q. At the time you were constructing the Central Pacific Railroad from Sacramento to Ogden there was nothing being done by you or any of those with whom you were connected, so far as you know, by the Southern Pacific Railroad, was there?

A. I am unable to answer you just the date that they commenced building south from Goshen.

Q. The first construction work done by the Central Pacific Railroad was upon this line running from Sacramento to Ogden?

Mr. DUNNE. You are now calling the attention of the witness to a map marked "Southern Pacific Company and proprietary companies, 1913"?

The WITNESS. Yes; I was still with it.

By Mr. MCCLENNEN:

Q. The first construction work done was that from Sacramento to Ogden?

A. Yes, sir.

Q. The road from Sacramento to San Jose was not constructed by the Central Pacific Railroad?

926 A. It was purchased.

Q. It was purchased?

A. Yes, sir.

Q. And when it was purchased it was a completed line over that distance?

A. I am unable to tell you that, because I was at the east end of the road all the time; I was not here when that was purchased and

as not familiar with the road to San Jose until after I came to San Francisco as assistant general superintendent.

Mr. McCLENNEN. Mr. Herrin, will you kindly give us on the main ne of the Central Pacific Railroad Company the sections, with their ates of completion?

Mr. HERRIN. Yes; I will give it to you right now, if you want it. he following are the sections with respect to dates of opening for peration of the Central Pacific Railroad line between Sacramento nd Ogden:

Sacramento to Newcastle, November 1, 1864.
Newcastle to Auburn, May 14, 1865.
Auburn to Colfax, September 11, 1865.
Colfax to Dutch Flat, July 5, 1866.
Dutch Flat to Alta, July 11, 1866.
Alta to Cisco, December 3, 1866.
Cisco to Truckee, April 3, 1868.
Truckee to Reno, July 19, 1868.
Reno to Wadsworth, July 22, 1868.
Wadsworth to Winnemucca, October 1, 1868.
Winnemucca to Elko, January 25, 1869.
Elko to Promontory, May 29, 1869.
Promontory to near Ogden, May 29, 1869.

The line south between Sacramento and San Jose is as follows:

Sacramento to Galt, May 15, 1869.
Galt to Stockton, August 14, 1869.
Stockton to San Jose, September 15, 1869.

Now, the line from Niles to Alameda Wharf, September 8, 1869.

he line from Lathrop to Goshen was opened for operation in sec-ons as follows:

Lathrop to Modesto, November 8, 1870.
Modesto to Merced, January 25, 1872.
Merced to Fresno, May 28, 1872.
Fresno to Goshen, August 1, 1872.

The line running north from Roseville was opened for operation sections as follows:

Roseville Junction to Wheatland, October 28, 1867.
Wheatland to Yuba, September 19, 1869.
Yuba to Marysville, June 1, 1869.
Marysville to Chico, July 2, 1870.
Chico to Tehama, August 28, 1871.
Tehama to Red Bluff, December 6, 1871.
Red Bluff to Redding, September 1, 1872.
Redding to Delta, September 1, 1884.
Delta to Oregon State line, October 5, 1887.

By Mr. McCLENNEN:

Q. Do you remember how far the Southern Pacific Railroad had been constructed the first time that you knew of its being operated by any of the men with whom you were connected or by any concern they were interested in?

A. I can not remember; I came to the general office in 1882; I can not remember; my memory don't serve me to give you those dates.

Q. Do you remember the fact that there was a Southern Pacific Railroad of some extent before any of these men that you have mentioned had anything to do with it?

A. No, sir; I don't.

Q. Do you remember a railroad that used to run from San Francisco to Gilroy?

929 A. I don't remember; I never was on it; I don't remember; I remember there was such a railroad there, but I can not give you the date.

Q. Don't you remember during your early railroad business here of there being a railroad from San Francisco to Goshen that you had nothing to do with?

A. Yes, sir; I remember there was a railroad that went through San Jose to Gilroy at an early date, but I can not give you the date.

Q. Without being able to give the date, you remember that was prior to the time when the Central Pacific Railroad Company had anything to do with it? That is, that it was an independent road?

A. No, sir; I do not know.

Q. Do you remember a time when that road was running down to Gilroy when it was not being operated by your company?

A. No, sir; I am unable to say that I remember that.

Q. At that time you did take over the operation of that railroad from San Francisco to Gilroy?

A. Yes, sir.

Q. Do you remember that the first time that you ever took

930 over that operation it was already a constructed road as far as Gilroy?

A. I can only remember that in 1882, when I came into the general office, it was then constructed, and we operated it, but as to its previous construction or operation I am unable to say.

Q. Is it fair to say, then, that prior to 1882 you knew nothing about the Southern Pacific Railroad?

A. No, sir; not by any personal connection with it, as I was located on the Central Pacific until I came in the general office in 1882.

Q. What is the first time of which you have knowledge of who were the officers or directors of the Southern Pacific Company?

A. Well, of course, I know the officers of the Central Pacific Railroad were the officers of the Southern Pacific.

Mr. McCLENNEN. I will ask to have that answer struck out as not responsive.

By Mr. McCLENNEN:

Q. What I have asked you is the first date that you can fix at which you had any knowledge of who were the officers of the Southern Pacific Railroad.

A. I had that knowledge. Of the Central Pacific owners
931 and directors?

Q. No; Southern Pacific. I want to get the time when your knowledge begins of who were the officers and directors of the Southern Pacific Railroad Company.

A. When I had any authority to say it would be in 1882, because I was not connected with the general office of the Southern Pacific or Central Pacific until 1882; I mean as to the general officers. Of course, I knew all these things, but I do not understand just how I can answer that.

Q. You do not quite mean that you knew at all times who were the officers of the Southern Pacific Railroad?

A. Yes, sir; I knew that, not by any personal connection with them in regard to the road, but I knew the same as we know everything.

Q. Now, you knew, for instance, that Mr. Willcutt was the secretary of the Southern Pacific Railroad Company?

A. Yes, sir.

Q. And you also knew that he never was the secretary of the Central Pacific Railroad Company?

A. Yes, sir.

Q. You knew that at one time David D. Colton was one of the vice presidents of the Southern Pacific Railroad Company?

932 A. I did, for a short time.

Q. And you knew that he never was an officer of the Central Pacific Railroad Company?

A. No, sir; I did not know that he was ever an officer of the Central Pacific Railroad Company.

Q. Did you know, Mr. Pratt, that Mr. Lloyd Tevis was the president of the Southern Pacific Company?

A. I did not.

Q. Did you ever hear of him as the president of that company?

A. I never did of my knowledge.

Q. Did you ever know Mr. Tevis?

A. I was not acquainted with him, but I knew him when I saw him.

Q. Did he ever have any connection with the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. Did you know that Mr. D. B. Minor was the secretary of the Southern Pacific Railroad Company?

A. I did not.

Q. Did you know him?

A. I did not know him.

933 Q. Did he ever have any connection with the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. Did you know that more than three-quarters of the stock of the Southern Pacific Railroad Company was held at one time by Mr. Lloyd Tevis, Mr. William E. Barron, Mr. Thomas Bell, Mr. W. B. Carr, and Mr. D. B. Minor?

A. I did not.

Q. Of your own knowledge, I take it, you never knew yourself who held any of the shares of stock of the Southern Pacific Railroad Company?

A. I have no knowledge of that.

Q. And in the same way, you had no personal knowledge of who were the stockholders holding the stock of the Central Pacific Railroad Company?

A. I did not.

Q. When you became foreman of construction in 1865, on the line of the Central Pacific Railroad Company, for whom did you work?

A. For the directors of the railroad, of the Central Pacific Railroad Company, directors and owners.

Q. Were you the man actively on the job overseeing the

934 work?

A. No, sir; I was not.

Q. You were an office man, were you?

A. I was not an office man; I was on the work and had charge of men and camps.

Q. Did you ever work for Charles Crocker & Company?

A. Charles Crocker & Company? Perhaps I am wrong, I do not know what that company means.

Q. Did you ever work for Charles Crocker?

A. Charles Crocker and the other directors of the railroad company.

Q. Don't you know that Charles Crocker built, as an individual, or Charles Crocker & Company, and not the Central Pacific Railroad Company, was the one that constructed some portion of the line from San Francisco?

A. I knew that they contracted and financed the company, constructed some of the railroad.

Q. Don't you know when the Contract & Finance Company began onstruction that the construction was begun by Charles Crocker & 'ompany?

A. I have no knowledge of that.

Q. Did you ever work for the Contract & Finance Company?

35 A. Worked for Mr. Crocker. Mr. Crocker was superintendent, and Mr. J. H. Strobridge was the general superinendent of the work, remained on the work, and Mr. Charles Crocker as the head; we looked to him for our orders.

Q. Putting it simply, did you ever work for the Contract & Finance Company?

A. I don't know. I worked for the railroad company. I don't now how you would segregate that. The Contract & Finance Company did the work, but under the directors and owners of the road, nd they were the controllers; they directed us and were our heads.

Q. How were you paid, in cash or by check?

A. Paid in cash by Mr. Charles Crocker.

Q. Charles Crocker paid you?

A. He was second vice president.

Q. Did you know at the time whether you were being paid with he cash of the Central Pacific Railroad Company or cash of the 'ontract & Finance Company?

A. I certainly supposed I was paid by the Central Pacific Raiload Company. We all supposed that.

Q. What was the Contract & Finance Company doing?

36 Mr. ORR. We move to strike out so much of the last answer that says "We all supposed that," as not responsive, and beg the opinion of the witness.

By Mr. MCCLENNEN:

Q. What was the Contract & Finance Company doing?

A. That is a matter I have no control over.

Q. You knew they constructed some part of that road, don't you?

A. I knew it was said it was done by the Contract & Finance Company.

Q. The work that was said that was being done by the Contract & inance Company was work that you were doing?

A. It was also done by the Central Pacific Railroad Company.

Q. What do you mean, the Contract & Finance Company was laying one rail and the Central Pacific the other?

A. The Contract & Finance Company was, as far as I knew, nothing; that was a matter that did not come under me, except that it as the Southern Pacific Company. Whatever arrangement they

might have had with the Contract & Finance Company I did not know anything about.

Mr. DUNNE. I think the witness inadvertently said Southern Pacific instead of Central Pacific.

937 The WITNESS. Yes; Central Pacific.

By Mr. McCLENNEN:

Q. You mean to say as far as the actual construction of the work, as you did the work, you did not actually know the Contract & Finance Company was doing it?

A. I said so; I knew nothing about it; I knew nothing about the management of the heads at all; we were doing the work for the owners and builders of the railroad, and they paid us, and as far as I knew anything about the Contract & Finance Company it was only hearsay. I knew nothing about it. I was paid by the Central Pacific Company; the treasurer of the company paid us.

Q. Who was the Contract & Finance Company?

A. The Central Pacific Railroad Company was the Contract & Finance Company.

Q. It was all the same thing as you think?

A. It was all the same thing as I supposed.

Q. What, according to your understanding when you were working there, was the Contract & Finance Company doing?

A. That I can not tell you from any knowledge I have; I am not sure, because I had no knowledge of the formation of the Con-

938 tract & Finance Company; I was not connected with the head of the company near enough to know.

Q. Did you know that the railroad company, the Central Pacific Railroad Company, let the construction of the line from Sacramento out for a distance to Charles Crocker & Company and subsequently let the construction of the line for the balance of the distance to near Ogden where it joined the Union Pacific, to the Contract & Finance Company?

A. I have no knowledge of the Charles Crocker & Company at all. That was said to us, the Contract & Finance Company were building the road. I knew nothing about that, nothing about it personally at all. I have no knowledge of the formation of the Contract & Finance Company at all. I have no knowledge of it.

Q. Was it Mr. Crocker that told you the Contract & Finance Company was constructing the road?

A. He never told me so.

Q. Who told you so?

A. I think I said that it was a general understanding.

Q. A general understanding?

A. Yes, sir.

Q. General understanding while the work was going on?

939 A. General understanding that the Contract & Finance Company were doing the work, but how and why I knew nothing about it. We were paid by the Central Pacific Company and we were superintended by the Central Pacific Company and all the officers were of the Central Pacific owners and builders.

Q. The Contract & Finance Company was also composed of Leland Stanford, Collis P. Huntington, Charles Crocker, and Mark Hopkins?

A. Yes, sir.

Q. So it was the same individuals?

A. The same individuals.

Q. And you understand that that company was composed of no one except those four?

A. That was my understanding.

Q. And you had no particular knowledge when Mr. Crocker gave you instructions or handed you money whether he was then the Central Pacific Railroad Company or the Contract & Finance Company in doing that particular act?

A. I certainly asked no questions.

Q. You asked no questions?

A. No, sir.

Q. You knew that the Central Pacific Railroad Company had a great many stockholders, did you not?

940 A. No; I did not know personally. I did not know personally that it had very many stockholders. In fact, I had no information in that regard.

Q. I show you the list of the stockholders of the Central Pacific Railroad Company to whom the stock was originally issued as that list was prepared by Mr. E. H. Miller, jr., as secretary, under date of July 26, 1887, as shown as Exhibit 5 to the testimony of Mr. Leland Stanford before the United States Pacific Railway Commission at volume 5, page 2550, and ask you whether you knew any of these stockholders? I will read the names to you, and as I read them to you, if you will, indicate whether you did or did not know them, all of them.

Mr. DUNNE. Your question assumes that you have a list of stockholders before you prepared by Mr. Miller and attached as an exhibit to the testimony of Leland Stanford. I do not want to make any unnecessary or technical objections, but I shall object to the question upon the ground it is without foundation and without resting on the facts in evidence and, so far as the question discloses, calling for mere hearsay, and that you are now exhibiting to the witness some printed books.

941 Mr. McCLENNEN. The witness has stated that he supposed the four gentlemen named were the only stockholders in the railroad in some of his answers.

The WITNESS. I do not mean that I said I supposed they were the only stockholders. I supposed they were the owners and builders. So far as the stock has been issued, I have no knowledge of the stock that was issued, except I might say this man or that man might own stock.

By Mr. McCLENNEN:

Q. When you said you supposed they were the owners, you did not mean—you did not actually mean that they were the only stockholders in the company?

A. I mean they were the originators and builders and they put all their money in first, and put all their money in in commencing and starting the road at Sacramento.

Q. You did not know they put a dollar in, did you? Stop to consider. You did not know yourself that they put a dollar in, did you?

A. No, sir; as Mr. Hopkins told me one day, he said he thought they were broke.

Mr. McCLENNEN. I will ask to have the last answer from "Mr. Hopkins told me" and the rest of it stricken out as not

942 responsive.

By Mr. McCLENNEN:

Q. You understood that the corporation known as the Central Pacific Railroad Company was the owner of that line of railroad, first from Sacramento to its junction with the Union Pacific near Ogden and subsequently coming from Sacramento south to Niles and then out to Oakland, and you knew that the Central Pacific Railroad Company, that corporation, was the only owner of that road?

A. I supposed it was the owner of the road.

Q. You supposed it was the owner of the road?

A. Yes, sir.

Q. And you supposed that it was composed of a certain large number of stockholders, of which Mr. Stanford, Mr. Hopkins, Mr. Crocker, and Mr. Huntington were four?

Mr. DUNNE. I must object to that question as being without foundation, the witness having previously testified that he had no knowledge of the subject of the stockholders and had no information upon the subject, and the question is framed in a leading form and contains the implication that he knew there was a large number of stockholders.

943 The WITNESS. Originally, when the railroad first commenced to build, we had no knowledge of who the stockholders were and I did not know, had no knowledge of who the stockholders were

We supposed that Messrs. Stanford, Huntington, Crocker, and Hopkins were the owners and builders of the road. Now, what stock was issued, I am entirely at sea; I don't know anything about it.

By Mr. McCLENNEN:

Q. When you say that you understood that those four were the builders of the road, do you wish to take back your earlier answer that you supposed that the Central Pacific Railroad Company was the builder of the road?

A. They were the Central Pacific Railroad Company.

Mr. McCLENNEN. I ask to have that stricken out as not responsive.

By Mr. McCLENNEN:

Q. You understand, do you not, Mr. Pratt, that a given piece of railroad had been owned at the same time by four individuals and by a corporation, and that if a corporation owned it the four individuals do not own the railroad?

Mr. DUNNE. Objected to upon the ground it is incompetent and calling for the conclusion of the witness as a matter of law.

944 The WITNESS. I do not know how to answer that question.

Mr. McCLENNEN. Read the question, Mr. Reporter.

(The question was read as above recorded.)

The WITNESS. If four individuals form themselves into a corporation, they, of course, I suppose, have to admit that the corporation owned it.

By Mr. McCLENNEN:

Q. Now, if the persons in that corporation are not the only four individuals, but many others, then you would say that the four individuals with the many others are the ones that own it?

A. If I knew there were four and many others. I do not know that.

Q. And you had no knowledge that Mr. Stanford or Mr. Hopkins or Mr. Crocker or Mr. Huntington—you had no personal knowledge that any of those gentlemen owned stock in this railroad?

A. Perhaps not.

Q. That is the fact?

A. It depends on what constitutes knowing.

Q. Now, you have said that Mr. Huntington, Mr. Stanford, Mr. Hopkins, and Mr. Crocker at times and from time to time

945 gave you directions and controlled your actions?

A. Yes, sir.

Q. The directions and control that they exercised in that way was the ordinary control that men would exercise who held the positions of officers and directors of the railroad?

A. Yes, sir.

Q. And you mean nothing more than that by your answer?

A. No, sir; nothing more than that.

Q. When was it that you were first informed that the construction of the road had been let to the Contract & Finance Company?

A. I can not remember.

Q. It was while the work was going on, was it?

A. It was some time while the work was going on. I can not remember now. I do not remember any instance that would lead me to remember.

Q. And did you know that a large part of the stock of the corporation was issued to the Contract & Finance Company under that contract?

A. I did not.

Q. Did you know that a large part of the bonds of the
946 company were paid over to the Contract & Finance Company?

A. I did not.

Q. Was it at the time that these four gentlemen, Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker, were the officers and so many of the directors of the Central Pacific Railroad Company that you learned that the construction work had been given to the Contract & Finance Company?

A. It must have been.

Q. And it was at the same time that you learned that these four gentlemen composed the Contract & Finance Company?

A. About the same time; somewhere the same time.

Q. Do you know why the Central Pacific Railroad Company stopped its construction at Goshen?

A. I do not.

Q. Was Goshen a natural terminal of the railroad?

A. It was no terminus to the Southern Pacific Railroad that I know of; no facilities there for a terminal; no reason there for a terminal. The building of the Southern Pacific toward New Orleans would be more reason for a terminal there.

Q. I refer to the time when the Central Pacific Railroad Com-
947 pany stopped work at Goshen. At that time the Southern Pacific Railroad Company had no road at Goshen, had it?

A. No, sir.

Q. Goshen was not a place of any size?

A. No place of any size, no.

Q. It was a natural ending place for a railroad?

A. No, sir.

Mr. HERRIN. The following are the sections and dates of opening for operations of the Southern Pacific Railroad Company south of Goshen:

Goshen to Tipton, July 25, 1872.
Tipton to Delano, July 14, 1873.
Delano to Sumner, October 26, 1874.

Other sections not connected at that time with this line were opened as follows:

San Fernando to Los Angeles, April 15, 1874.
Los Angeles to Spadra, April 15, 1874.
Sumner to Caliente, April 26, 1875.
Caliente to Mojave, August 9, 1876.
Mojave to Tunnel, September 6, 1876.
Tunnel to San Fernando, January 1, 1876.

That completes the line between Goshen and Los Angeles. Continuing south from Spadra:

948 Spadra to Colton, July 16, 1875.
Colton to Indio, March 29, 1876.
Indio to Colorado River (near Yuma), May 23, 1877.

At the same time, or in that same period, we had the Southern Pacific Railroad of Arizona from:

Yuma to Casa Grande, May 15, 1879.
Casa Grande to Tucson, May 17, 1880.
Tucson to New Mexico line, September 15, 1880.

Then the section in New Mexico known as the Southern Pacific Railroad of New Mexico, the section from:

Arizona line to Rio Grande bridge, October 18, 1880.
Rio Grande bridge to El Paso via Galveston, Harrisburg & San Antonio, April, 1881.

From the line east of El Paso:

San Antonio to 405 miles west, June 1, 1882.
Eagle Pass Branch (45 miles), June 1, 1882.
Harwood to Gonzales (13 miles), 1883.
San Antonio to Junction with line building from the west near Pecos bridge completing through line, January 15, 1883.

949 Trains between San Francisco, New Orleans, and Galveston were first operated February 1, 1883.

San Francisco to Menlo Park, October 17, 1863.
Menlo Park to San Jose, January 16, 1864.
San Jose to Gilroy, March 13, 1869.

Then I have got a note:

San Francisco to Pajaro, November 27, 1871.
Pajaro to Salinas, November 1, 1872.

Salinas to Soledad, August 12, 1873.
Soledad to Templeton, November 16, 1888.
Templeton to Santa Margarita, January 13, 1889.

By MR. MCCLENNEN:

Q. You came in the main office in 1882?

A. Yes, sir; May, 1882.

Q. And up to that time you had no reliable knowledge of things, what was being done on the Southern Pacific Railroad?

A. It was operated by the general manager. I was in his office as assistant general superintendent.

Q. That was beginning in 1882?

A. In 1882, which was operating almost as far as it has been built.

950 Q. I do not think I make it clear. I said before 1882 you had no knowledge of how it was operated?

A. No personal knowledge.

Q. When you came in, in 1882, it was being operated by the Southern Pacific Railroad Company to somewhere down in Texas?

A. Nearly connected with Texas.

Q. Then it continued to be operated farther and farther, until it got into New Orleans?

A. Yes, sir.

Q. Did you know anything about the way in which those roads over the Southern Pacific Railroad were controlled by the Central Pacific—that is, whether the Central was a lessee, or whether it was acting as an agent, or in what legal way it was operating those properties?

A. No, sir.

Q. All you know is, it was operating as——

A. (Interrupting.) It was turned over to our people for operation.

Q. And the Central cars were being run the whole distance?

A. And Central Pacific employees all through.

951 Q. And, for instance, the repair men on the railroad——

A. (Interrupting.) Were all Central Pacific men; no change whatever; no one knew of any change, personally.

Q. Did you know anything about where the freight cars were running from and to?

A. Something; yes, sir.

Q. Did you know anything about where the through freight was originally and where it was going to?

A. Well, I knew something, but my memory would not serve me to state where and when, exactly, or anything about it. If I had been directing the freight department, I would have remembered it.

Q. From your position you knew that prior to the completion of

the line to Texas all of the east-bound freight had gone over the Central Pacific and the Union Pacific?

A. Yes, sir; prior to that.

Mr. HERRIN. That was the only line, was it not?

The WITNESS. That was the only line existing then between the west and east.

By Mr. McCLENNEN:

Q. When the line was completed to New Orleans how did the freight used to go for the eastern part of the country?

952 A. Some of it was routed by the way of New Orleans and some of it east over the Union Pacific.

Q. After the completion of the line to New Orleans, take the bulk of the freight originating in San Francisco and going to the Atlantic seaboard, what route would it take?

Mr. HERRING. I object to that as not proper cross-examination. The witness has not been examined in chief at all on the movement of traffic, and he said that he had nothing to do with that, only operated it.

The WITNESS. My duties were such I could not answer that. I could not give you intelligent information on that from my memory. Of course it would be entirely from my memory.

By Mr. McCLENNEN:

Q. Did you note the fact that the amount of eastbound freight traffic over the Central Pacific Railroad's own line through Ogden and on in that direction was perceptibly less after the completion of the line to New Orleans than it had been before?

Mr. HERRIN. I make the same objection, as not cross-examination, and, besides that, any movement of traffic over these lines prior

53 to July 2, 1890, could have no possible materiality or relevancy to the issue.

The WITNESS. I don't remember.

By Mr. McCLENNEN:

Q. You don't remember anything about that?

A. I don't remember anything to give you an intelligent answer to the changes in that respect. I suppose there must have been some, of course.

Q. You do remember, do you not, that freight cars, after the opening of the line through New Orleans, used to come down from these points in Nevada, down to about Sacramento, and then down around through New Orleans over the Southern Pacific road?

A. I don't remember that after the Union Pacific and Central Pacific were connected.

Q. Do you remember that in your observation of the way in which this road was operated that you did not note that eastbound cars from Reno and eastern California used to travel west through or near Sacramento, and then down over the Central or Southern Pacific line to New Orleans?

A. I can not say that there were not some instances, but certainly very rare.

954 Q. Didn't you used to operate this line beginning in the Ogden region and coming down to Sacramento and thence around to New Orleans as one continuous line?

A. Yes, sir; but it was a very hard haul to haul these mountains to go around to New Orleans this way.

Q. Across the two mountains twice for that?

A. I can not remember. They probably may have some instances, but I can not remember. That was too much cost.

Q. How did those cars used to go east?

A. East on the Union—and the Central Pacific and Union Pacific from Nevada.

Q. After the completion of the line through to New Orleans, did you notice much freight going out of San Francisco through Ogden and eastbound?

A. Considerable freight; yes.

Q. Did you ever compare it in your mind at all with what had been going that way before the line through to New Orleans was opened?

A. If I did compare it during my work in the office, I have forgotten it.

Q. Do you know who the officers were of the Galveston, Harrisburg & San Antonio Railroad?

955 A. No, sir; I don't remember. I probably knew at the time, but I don't remember now.

Q. Were they the same officers as the Southern Pacific officers, or different officers? I am referring prior to 1885 now.

A. Prior to 1885 I did not know any of the officers of the road at all.

Q. Did you know, in that period prior to 1885, who the officers of the Morgan Line were?

A. Well, I know that Captain Hutchinson was the chief man. I don't know that Captain Hutchinson was chief owner there of the Morgan Line—did not know officially until after 1885, about 1885; it was a little earlier than that, probably 1884; a little earlier than 1885.

(Whereupon an adjournment was taken until to-morrow, Wednesday, July 15, 1914, at ten o'clock a. m.)

956

WEDNESDAY, JULY 15, 1914.

R. H. PRATT resumed the stand, and testified further, as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. I take it you did not have any direct knowledge of who were the officers and directors of the Southern Pacific Railroad Company prior to 1885?

A. I did not directly. Tell me who you refer to, the officers of the road?

Q. Officers and directors.

A. I knew the officers after 1882.

Q. Did you know the directors?

A. I can not name all the directors. My memory does not serve me.

Q. You understand I am now referring, not to the Kentucky corporation, but to the old California corporation, the Southern Pacific Railroad Company.

A. I did not know the directors. I could not name them from memory.

Q. On page 11 of your evidence, Mr. Herrin asked you this question:

57 "Q. Now, from the beginning, Mr. Pratt, who were the controlling officials and stockholders, as you saw them in everyday life and in your business, of the Central Pacific Railroad Company?"

Did you know of the stock, if it was so, that a large part of the stock of the Central Pacific Railroad Company was disposed of by the original holders?

A. I did not; no, sir.

Q. I call your attention to a statement made by Mr. Richard S. Hofford, appearing on behalf of the Southern Pacific Railroad before the Committee on Railroads in the United States Senate, March 12, 1878, in the course of which he said——

Mr. HERRIN (interrupting). Have you the reference to that document?

Mr. ORR. We have not, but we will furnish it to you.

By Mr. MCCLENNEN:

Q. I call your attention to a statement made by Mr. Richard S. Hofford, appearing on behalf of the Southern Pacific Railroad before the Committee on Railroads in the United States Senate on March 12, 1878, in the course of which he said:

8 "It is affirmed respecting those by whose labor and enterprise the Southern Pacific Railroad of California has been

extended to its present terminus to Fort Yuma that but few of thei number are connected, whether by ownership or otherwise, with th Central Pacific Company—so few, indeed, as to constitute but on seventh in ownership and control of the former corporation, and thi is an assertion which is capable, it would seem, of absolute authent cation."

In view of that statement, you would not wish to be understoo as saying that in 1878 the four gentlemen whom you have me tioned were the controlling stockholders of that company?

A. I do not say about the stock; I do not know about the stoc and, in fact, that first answer you might say that I gave the co trolling officers, the stockohlders; of the stock I do not know muc about.

Q. All you meant by that, Mr. Pratt, really is these four gentl men whom you have mentioned were the prominent officers of t corporation who in its daily affairs in their contact directed yo efforts?

A. Yes, sir; and owners as far as I know.

Mr. McClennen. I will ask to have that part of t
959 answer "and owners as far as I know" stricken out as n responsive.

Mr. Herrin: It should not be stricken out. It is entirely r sponsive, in my opinion.

By Mr. McClennen:

Q. You did not understand that those gentlemen were owners any sense except as they were stockholders in the corporation?

A. I did. I understand that they were owners.

Q. Of what?

A. General information.

Q. Owners of what?

A. Owners of the road they were building.

Q. I am speaking of 1878 now.

A. 1878?

Q. Yes.

A. Yes, sir.

Q. At that time you understood that the Central Pacific Railro Company was the owner of the line of road and its equipment, d you not?

A. Those men that I named were the owners of both.

960 Q. Didn't you understand that the Central Pacific Ra road Company owned the railroad?

A. I did.

Q. And you understood that it owned the entire railroad fr Ogden to San Francisco Bay?

A. I did.

Q. And that it had the full title to that line of railroad?

A. As far as I knew. They had the full title.

Q. Now, as to the matter of ownership, I call your attention to the testimony of Mr. Collis P. Huntington at the hearing before the Committee on Pacific Railroads in the Senate on February 17, 1896, at page 131 of Senate Document No. 314 of the Fifty-fourth Congress, the first session, in which occurred this question and answer:

"Senator MORGAN. In whatever way you contrived to get the ownership represented, about what is the percentage of the stock of the Central Pacific which is owned by the stockholders of the Southern Pacific?

"Mr. HUNTINGTON. I do not know. It is not very much. We have had to part with these Central Pacific shares to pay the old indebtedness, and we have not got very many shares. I am not a large shareholder."

961 Mr. HERRIN. What is the date of that?

Mr. MCCLENNEN. That is 1896.

By Mr. MCCLENNEN:

Q. In view of that statement, you would not wish to be understood as saying that Mr. Huntington was the owner of any large part of the stock or of the railroad of the Central Pacific Railroad Company at that time?

Mr. DUNNE. We object to the question as purely argumentative; in no sense calling for evidentiary matter, and simply asking for the deduction, or opinion, or inference of this witness.

Mr. HERRIN. Also call attention to the witness to the fact that this purports to be in 1896, this testimony.

Mr. MCCLENNEN. The inferences which the witness has already stated on this subject give occasion for this question.

By Mr. MCCLENNEN:

Q. Now, do you have in mind the question, or would you like to have it read?

A. I would like to hear the question again.

Mr. MCCLENNEN: If you will read it, Mr. Reporter, so the witness will have an uninterrupted answer.

962 The WITNESS. I have no knowledge of the financial condition of the company at that time.

By Mr. MCCLENNEN:

Q. In view of this statement of Mr. Huntington's, I ask you if you still desire it to be understood that you are giving your belief that Mr. Huntington was the owner of any substantial part of that railroad at that time?

A. During the building?

Q. I am not asking you about that. I am just asking you about this time.

A. I did not.

Mr. HERRIN. 1895, after you left the company?

The WITNESS. I did not.

By Mr. MCCLENNEN:

Q. I call your attention to the testimony of Mr. Collis P. Huntington, given before the Committee on Pacific Railroads in the Senate on February 17, 1896, page 133, Senate Document No. 314, Fifty-fourth Congress, first session, in the course of which, referring to the time of the formation of the Southern Pacific Company in 1884, occurred this testimony:

963 "Senator MORGAN. Did you have any in the Central Pacific?

"A. Yes.

"Q. Did you transfer that stock?

"A. No.

"Q. Have you got it yet?

"A. Yes.

"Q. How much?

"A. Not a great many shares. I suppose I have got four or five thousand shares.

"Q. How much money would that represent on the face value?

"A. One thousand shares represents $100,000.

"Q. And you have got four or five thousand shares; about $500,000?

"A. Yes."

And again on page 139 of the same, this testimony:

"Senator MORGAN. You say the stock of the Central Pacific Company has been taken up by this Kentucky company?

"Mr. HUNTINGTON. Excuse me. The Southern Pacific Company has no stock in the Central Pacific.

"Q. None at all?

"A. No.

964 "Q. No stockholder of the Central Pacific has ever exchanged his stock with the Southern Pacific?

"A. No; I am sure of it. No stockholder of the Central Pacific was ever asked to exchange it.

"Q. You never would permit that?

"A. We would not ask it to be done."

And again on February 20, 1896, in the course of the same hearing, at page 208, this testimony:

"Senator MORGAN. I will ask you, preliminarily, Mr. Huntington, to state as nearly as you can the exact amount of stock which you now own in the Central Pacific Railroad.

"Mr. HUNTINGTON. I stated, I think, that I owned over six thousand shares.

"Q. Representing in face value over $600,000?

"A. Yes.

"Q. What is the largest amount of stock in that railroad that you (sic)

"A. I do not know that I ever owned more than that. I had an interest in the Contract & Finance Company.

"Q. You do not think that you have personally owned more than $600,000 of this stock?

965 "A. I never had more than that standing in my own name. I am not prepared to say that I ever had so much as that.

"Q. What was the largest amount you owned at any time or that you had a right to as a member of the Contract & Finance Company?

"A. I do not know. Mr. Hopkins kept all those accounts. He was the bookkeeper of that concern, and whatever he said always went with me. I never saw the books of the Contract & Finance Company.

"Q. Were all the memoranda of the ownership of the stock and distribution of the stock of each stockholder in the Contract & Finance Company kept on the books of that company?

"A. I think so. The Central Pacific stock was sold largely and the debts of the Contract & Finance Company were paid out of the proceeds of the sale. so that it did not really come into my hands.

"Q. Was there ever any distribution of the assets of the Contract & Finance Company?

"A. Yes.

"Q. When was that made?

966 "A. I do not recollect the date. I should say along in the '70's.

"Q. Did that include a distribution of the bonds and stock of the Central Pacific Company?

"A. There was no distribution. They were sold to pay the debts of the Contract & Finance Company, which debts were incurred, according to my recollection, by the building of the Central Pacific Road.

"Q. And out of their sale the Contract & Finance Company paid its debts?

"A. Yes."

Now, in the light of that testimony of Mr. Huntington's as to what he held in 1884, and as to what was done with the stock in the '70's, you would not wish to be understood as saying that he was a substantial owner of the stock even in the later '70's, would you?

Mr. DUNNE. We object to that on the ground already stated. The question is entirely incompetent.

The WITNESS. It is a matter I know nothing about whatever.

By Mr. McCLENNEN:

Q. In view of that statement, you would not feel justified in
967 stating that after the completion of the road, Mr. Huntington was the owner of any substantial part of it?

A. I would not.

Q. I call your attention to volume 7 of the testimony taken before the United States Railway Commission under the bill approved March 3, 1887, at page 3751, to a letter therein of May 15, 1887, addressed to "Friend Colton," by C. P. Huntington, in the course of which he says:

"Scott is working everywhere for his open highway; but I think we can beat him; but it will cost money and harder work to beat him with money under the plan of some of my associates, viz, having it understood that the Central Pacific and Southern Pacific are, as it were, one property. Then it would be without money if the public could know the facts; that is, that the Southern Pacific is a separate and distinct property."

In view of that statement of Mr. Huntington's, you would not wish to be understood by any of your testimony to intimate that the Central Pacific Railroad and the Southern Pacific Railroad were one property, or any one ownership at that time, 1877?

A. Well, I understand that it was one ownership.

Q. Have you any more reliable information on which to
968 base that statement than Mr. Huntington's own statement here that they are separate properties?

A. My general information and memory.

Mr. McCLENNEN. I will ask to have that stricken out as not responsive.

By Mr. McCLENNEN:

Q. What I asked you is, have you any more reliable information as to the common ownership of the property than this statement of Mr. Huntington's himself which I have just read to you?

A. I have not.

Q. I call your attention to the testimony taken before the same commission, volume 5, page 2829, the testimony of Mr. Leland Stanford, in the course of which he says:

"Neither we ourselves individually nor any of the Central Pacific people are in any manner responsible for the building of the Southern Pacific line."

In view of that testimony, you would not wish to be understood as stating that the Central Pacific people were the ones who began the construction of the Southern Pacific Railroad, would you?

A. As far as I know they were.

969 Q. Have you any more reliable information than this statement which I have just read you of Mr. Leland Stanford's?

Mr. DUNNE. We object to that as purely argumentative and inferential and, indeed, without foundation, there being no evidence in the case that such statement was ever made by Mr. Stanford.

The WITNESS. I have no knowledge of Mr. Stanford's statement.

By Mr. MCCLENNEN:

Q. What I ask you is whether you have any more reliable piece of information upon which to base your belief than this statement of Mr. Stanford?

A. So far as my knowledge goes, they were the builders.

Mr. MCCLENNEN. I will ask to have that stricken out as not responsive.

Mr. DUNNE. I think we should be justified in instructing the witness not to answer the question, although I am not very much disposed to do that; but there is no evidence in this case that Mr. Stanford ever made that statement except the mere assumption of that question. I want to submit to your better judgment in that you are conducting the examination along a very wide departure from

970 the evidence, and if we were trying this case before a judge our objection would be sustained.

Mr. MCCLENNEN. Will you read the question?

(The question was read as above recorded.)

The WITNESS. No; I have not.

By Mr. MCCLENNEN:

Q. To put it more directly, you have no personal direct knowledge of your own of what corporation or group of men actually began the construction of the Southern Pacific Railroad, have you?

A. I have; I worked for them.

Q. Did you work on the beginning of the construction of the Southern Pacific Railroad?

A. I did not, on the Southern Pacific.

Q. And you have no direct knowledge of your own of who were the persons who began the construction of that Southern Pacific Railroad, have you?

A. Not until after some of it was built.

Q. You never saw in any business way, at least, any part of the line of the Southern Pacific Railroad until after it had been constructed at least as far as Gilroy?

A. Gilroy? No; I did not.

971 Q. What, prior to 1895, was the general character of the Central Pacific Railroad from San Francisco Bay to Ogden with respect to grades?

A. Grades?

Q. Yes.

A. The general character was that the first, about the first, 100 miles was pretty near level grade; the next, to the summit of the Sierras, was a very heavy grade, sometimes 160 feet to the mile, and also on the other side of the Sierras the same grade until they reached Reno. Then the grade for 500 miles was more of a level character. From thence to Ogden there were a good many intervening mountains or hills, making often heavy grades of over 100 feet to the mile, and some as high as 150 feet to the mile.

Q. How many miles are covered by the part where the grades are as high as 160?

A. Well, I am unable to state that.

Mr. HERRIN. What is the use of taking up time with a witness who has been away from the property for twenty years? We can furnish you the profiles of the old line and also the present line, if you want to get the exact information.

Mr. MCCLENNEN. I do want that in part. I hope you will

972 be indulgent with me, in that I am trying to get it in the best shape I can.

Mr. Reporter, will you read the question?

(The question was read as above recorded.)

The WITNESS. I am unable to give you anything that my memory does not serve me. Of course, I was working there all the time, but my memory is not good for figures, although at the time I probably knew about it. I can not give it to you now.

By Mr. MCCLENNEN:

Q. In the same general way, what is the condition as to the grade over the so-called Sunset Route—that is, from San Francisco or Sacramento through Yuma and thence on around to New Orleans?

A. From San Francisco for about 250 miles the road is very near level, and from there over the Tehachapi Mountains the grade is very heavy, up and down, going through many tunnels, that would be about passing somewhere in the neighborhood of 70 miles. From there to Yuma, with the exception of perhaps 10 miles, 10 or 15 miles—from 10 to 25 miles—the grade is also level, very near level. I don't mean by that that it is level exactly. Then from Yuma

973 to El Paso the mountains are cut so that the grades are very much varied; some pretty heavy grades and some lighter

grades all the way through, and some level places for perhaps 20 or 30 miles.

Q. And does that complete the description through?

A. On to New Orleans, not hardly; no; because the grade from there to New Orleans—the grades are very light generally. It is pretty near level country; of course there are some short, heavy grades, but only short pieces.

Q. How, during the time you were assistant general superintendent, did the ordinary course of maintenance on the two lines compare; that is, one from San Francisco to Ogden, and the other from San Francisco to New Orleans?

A. From memory I can give you no information; my memory does not serve me on those figures at all.

Q. Without attempting to commit you to any precise figure, does it lie in your mind at all whether one was, on the average, more expensive than the other to maintain, or whether they were somewhere near equal?

A. May I ask if you mean whether the Central Pacific or Southern Pacific was most expensive to maintain?

Q. Yes.

A. Per mile the Central Pacific was more expensive.

974 Q. Was the divergence a substantial one, or a small one?

A. Well, I don't know whether it could be construed in that way, because I can give only a vague answer to that. It is certainly quite a proportion larger, the Central Pacific, the expense of maintenance and operation.

Q. From San Francisco to the Atlantic seaboard the most direct and shortest and best route is over the Central Pacific through Ogden and over the Union Pacific to the Missouri River and thence on by connections, is it not?

A. To what point?

Q. To any point between Florida and Maine.

A. May I have that question again?

Mr. McCLENNEN. Read the question, Mr. Reporter.

(The question was read as above recorded.)

The WITNESS. To Florida it would be over the Sunset Route.

By Mr. McCLENNEN:

Q. Well, how about that part of the Atlantic coast north of Carolina?

A. Considering the grades of both roads, I am unable to say. The grades of the Central Pacific and Union Pacific are much
75 heavier than the grades south by the southern route, but I am unable to tell you.

Q. Have you any recollection of the difference in mileage?

A. I have not. From what points?

Q. I will say, to be specific, from San Francisco to New York City by the Ogden route, and San Francisco to New York City by the Sunset Route.

A. My memory does not serve me as to the exact mileage.

Q. It is considerably shorter over the Ogden route?

A. A little shorter.

Q. Considerably shorter, is it not?

A. From memory, I am unable to say how much shorter.

Q. Don't you know what the rail is from San Francisco to New Orleans?

A. About 2,400 miles.

Q. About 2,400 miles?

A. Yes, sir.

Q. And the water line from New Orleans to New York something like 1,200 miles?

A. Something like that; I don't remember exactly.

Q. The distance from San Francisco to Omaha is about 1,700 miles, is it not?

976 A. About that; I don't remember the exact mileage now.

Q. And the distance from Omaha to New York is something like 1,400 miles?

A. Yes, sir; that is correct.

Q. Is this a fairly accurate statement?—"From the Pacific coast to New York the Central Pacific and Union Pacific is the shortest route, and with proper management it is the best route and always will be."

Mr. HERRIN. May I ask what you are reading from?

Mr. MCCLENNEN. I am reading from the testimony of John C. Stubbs, volume 6 of the testimony taken by the United States Railway Commission under the bill approved March 3, 1887, at page 3310.

The WITNESS. I am unable to say that it is. I don't know.

By Mr. MCCLENNEN:

Q. You don't know which is the best route?

A. I don't know which will be.

Q. Leaving out the future, then, should you say that up to the time you severed your connection it was the best?

A. It was then.

Q. At the time you severed your connection in 1895 what

977 was the comparative condition of the two roads from San Francisco—the Central via Ogden or the Sunset Route via New Orleans—with respect to upkeep?

A. Probably the Central Pacific and Union Pacific; they were older roads and built longer; had been built longer and more settled

etter, and had longer time to mature the roadbed, but they were oth in fair condition in 1895.

Q. I understand your answer to be, in substance, that by reason f the longer settling the northern route was somewhat in better ondition?

A. Yes, sir; probably a little better.

Q. Can you give us some idea of how long it was before the re-arking of the rolling stock of the Central Pacific Railroad Com-any with the name of the Southern Pacific Company had become omplete?

A. I can't give you correct information on that, because it went slowly.

Q. There came a time when the re-marking had become complete?

A. Yes, sir; there came a time.

Q. And all the new equipment was marked "Southern Pacific Company"?

A. Yes, sir.

Q. So before you left the railroad proper there was nothing ft with the name "Central" on it?

A. Pretty well established then; very well.

Q. That is, "Southern"?

A. Yes, sir; all our new equipment came labeled and marked for e proper road.

Q. That is, Southern Pacific Company?

A. Yes, sir.

Q. Do you know whether, after 1885, any new equipment was ught by or for the Central Pacific Railroad Company, or whether was all bought for the Southern Pacific Company?

A. There was no equipment bought for the Central and bought the Southern.

Q. But that which was bought for the Central, I understand you, s nevertheless marked "Southern Pacific Company"?

A. Southern Pacific Company, after that company was formed.

Q. You have spoken of the date of the opening of the Central cific Railroad Company as a through line, as May 10, 1869?

A. Yes, sir.

Q. And at that time it was a through operating line from the tracks of the Union Pacific near Ogden to San Francisco y at Oakland, and had terminals there and was in a condition to ry through eastern freight to the Pacific Ocean or to take Pacific an freight to the East?

A. Yes, sir.

Q. Before 1885 the Southern Pacific Railroad had likewise a com-te line, with connections and terminals, and in a position to carry

freight from San Francisco Bay continuously to New Orleans at tidewater?

A. I can not remember the date before 1885, but it was before 1885, I think.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Pratt, the Contract & Finance Company had something to do with the construction of the Central Pacific?

A. It did.

Q. Did it have anything to do with the operation of the Central Pacific?

A. Never to my knowledge.

980 Q. Now, in your cross-examination you stated that the actions of Messrs. Stanford, Huntington, Crocker, and Hopkins were such as they would perform as officials merely. Do you mean to say that was all the interest those men had in that property, the Central Pacific, they were merely officials and interested only in getting their salaries?

A. They were owners and builders.

Mr. McCLENNEN. That question I object to as leading in form and in manner of address and as calling for a conclusion of the witness and not for facts and immaterial matter not of the witness's own knowledge. And the answer is objected to as not responsive, and we move to strike it out as stating a conclusion.

By Mr. HERRIN:

Q. You did not mean to be understood, did you, that they were acting merely as officers and not as substantial owners of that property?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion.

The WITNESS. I did not.

By Mr. HERRIN:

Q. Now, in your thirty years' experience with this company

981 the Central Pacific Railroad Company and the Southern Pacific Railroad Company and the Southern Pacific Company, your testimony is based upon all the information that you got during those thirty years in operating with these properties, with these men, and your answers are given in view of all the information you derived from every source during that thirty years?

Mr. McCLENNEN. That question is objected to as leading and calling for a conclusion, and argumentative in form and too general.

The WITNESS. Yes, sir.

Mr. McCLENNEN. In view of the answer of the witness, which discloses that he has been speaking from hearsay to a considerable extent, we move that his answers in the direct examination, except so far as they appear affirmatively to be of his personal knowledge, be stricken out.

By Mr. HERRIN:

Q. You did not see the certificate of stock that any one of those stockholders had?

A. I did not.

Q. But you know who controlled and dominated the property, do you not?

982 Mr. McCLENNEN. That I object to as leading and calling for a conclusion as to matter which is not material and not proper redirect examination.

The WITNESS. I do.

By Mr. HERRIN:

Q. If some one was to tell you that Governor Stanford said he never had any stock in the Central Pacific, and never owned anything in it, would that change your opinion and knowledge?

Mr. McCLENNEN. That I object to upon the ground that the opinion of the witness is not material, and that it did not make his opinion of hearsay statements come up to the description of knowledge used in the question.

The WITNESS. Not a particle.

By Mr. HERRIN:

Q. Would such a statement change your knowledge of the facts?

Mr. McCLENNEN. That I object to upon the ground that the question assumes that the witness had knowledge, whereas the evidence shows that he did not have knowledge on the subject.

The WITNESS. It would not.

983 By Mr. HERRIN:

Q. You were actively engaged for thirty years in administering this property, were you not?

A. In working and administering, yes.

Q. And, you had opportunities of knowing who controlled the property?

A. I had.

Q. And who were the owners of it?

A. I had.

Mr. ORR. That is objected to as leading and suggestive and calling for the opinion of the witness.

By Mr. HERRIN:

Q. Did you ever hear or know of any stockholder who exercised any voice or influence in the management of the property of the Central Pacific Railroad Company except the four men you have mentioned, Stanford, Huntington, Crocker, and Hopkins?

Mr. MCCLENNEN. That is objected to as leading and as immaterial, and not proper redirect examination.

A. I never heard or knew that any other person had any authority. I never did.

Q. Except those men?

984 A. Except those men.

Mr. DUNNE. There is one little matter I would like to clear up, and with your permission, Mr. McClennen, I will ask him a question about it.

By Mr. DUNNE:

Q. You spoke of a piece of track from San Francisco to Gilroy.

A. I did not. I was asked some question.

Q. In respect to that?

A. In respect to that.

Q. Is the general direction of that track southerly from San Francisco?

A. Yes, sir; southwesterly.

Q. Southeasterly?

A. Well, it would be south from here to Gilroy, I think; I am not quite sure as to the points of the compass.

Q. At all events, in contradistinction to a northerly direction?

A. Yes, sir; southerly.

Q. Was that track extended beyond Gilroy and continuing in a southerly direction later?

A. It was.

985 Q. Do you recall when that further extension southerly was made?

A. I can not tell you; I can not remember the date.

Q. Now, then, the Southern Pacific Railroad Company was also extended from Goshen to the south, was it not?

A. It was.

Q. Do you recall about when that extension was made?

A. I can not tell you the date.

Q. From San Francisco to Goshen half the road was built by the Central Pacific, was it not?

A. It was as far as I know.

Q. Now, then, when the road was opened from San Francisco to tidewater at New Orleans by way of Los Angeles and El Paso the road consisted in part of the Central Pacific Railroad from San

Francisco to Goshen and the Southern Pacific Railroad from Goshen on, did it not?

A. It did.

Q. At the time that the road was opened for operations and traffic who administered that road? What was the operating company?

A. The owners, you mean, and builders?

Q. No; the operating company.

986 A. The Central Pacific.

Q. The Central Pacific?

A. Yes, sir.

Q. The Central Pacific operated the part of the line from San Francisco to Goshen as the Central Pacific property, did it not?

A. It did.

Q. And the line from Goshen to New Orleans as the Southern Pacific Railroad Company property under lease to the Central Pacific; is that correct?

Mr. McCLENNEN. That I object to as leading and in part obviously had no road to lease beyond a point near the eastern boundary of New Mexico.

By Mr. DUNNE:

Q. And the line from Goshen to New Orleans as the Southern Pacific Railroad Company's property under lease to the Central Pacific, is that correct as far as the Southern Pacific's rails extended? Is that correct, Mr. Pratt?

A. That is correct.

Q. From the ultimate extension of the Southern Pacific's rails to the eastern boundary line of New Mexico to tidewater at

987 New Orleans. To put the matter simply, from El Paso to New Orleans, did the Central Pacific Railroad Company operate that property as well?

A. They did.

Q. In the discharge of your duties as assistant general superintendent, did your jurisdiction extend from San Francisco to Goshen, from Goshen to El Paso, and from El Paso to tidewater at New Orleans?

Mr. McCLENNEN. I call your attention to the fact that this was covered by Mr. Herrin in the direct examination.

Mr. DUNNE. I know, but it was a little confused by the cross-examination.

Mr. McCLENNEN. If it goes further, I will have to object to it on the ground that it is a matter already covered by the direct examination.

The WITNESS. It did.

By Mr. DUNNE:

Q. Now, then, Mr. Pratt, so far as your knowledge goes, and bring
ing your mind to the extension that I have spoken of from Gosh
beyond and from Gilroy beyond, who built those extensions?

A. The Central Pacific Company.

988 Q. Who operated those extensions prior to the organizatio
of the Southern Pacific Company?

A. The Central Pacific, owners and builders.

Q. Now, then, at any time from your first connection with th
Central Pacific Railroad Company until your retirement from th
service while the Central Pacific Railroad property as a physica
thing and the Southern Pacific Railroad property as a physical thin
were in concurrent existence, was there any space of time durin
your connection with the property that there was any adversary co
trol of management as between them?

Mr. MCCLENNEN. That is objected to as leading in phraseolog
and in manner which it is impossible for the stenographer to sho
in the record and as calling upon the witness to state a conclusion o
fact and a conclusion of law and as calling for matter which is i
competent, irrelevant, and immaterial.

The WITNESS. There was not.

By Mr. DUNNE:

Q. Speaking now from your intimate and direct connection wi
the properties as assistant general superintendent, is it not the fa
that the Central Pacific Railroad Company and the Southe

989 Pacific Railroad Company at all times within your related e
perience when the two properties were in concurrent exi
ence—is it not the fact that at all times they were operated as
unified property?

Mr. MCCLENNEN. The same objection as made to the last questi

The WITNESS. It is a fact.

Mr. DUNNE. That is all.

Recross-examination by Mr. MCCLENNEN:

Q. Did you never hear, did you say, or know of any attempts
any other stockholders to exercise rights in connection with th
Central Pacific Railroad Company?

A. I never did; nothing that I had anything to do with.

Q. Didn't you ever hear of any of the numerous suits filed
stockholders in the Central Pacific Railroad Company claiming th
they were being deprived of their rights by the actions of Stanfo
Huntington, Crocker, and Hopkins?

A. I don't know how to answer that question. Of course, not a
that came under my observation.

Q. You heard of them?

A. Probably I have heard of them. I can not now cite you the cases, if there were any.

890 Mr. McCLENNEN. That is all.

(Signed) R. H. PRATT.

UNITED STATES OF AMERICA,

State and Northern District of California, city and county of San Francisco, ss:

I certify that, in pursuance of the stipulation hereto annexed, on Tuesday, July 14th, and Wednesday, July 15th, 1914, at the hour of 2 o'clock and 10 o'clock, respectively, before me, Herbert Bennett, a notary public in and for the city and county of San Francisco, State of California, at room 830 in the James Flood Building, in the city and county of San Francisco, State of California, personally appeared R. H. Pratt, a witness called on behalf of the defendants in the cause entitled in the caption hereof, and Edward F. McClennen, Esq., and James W. Orr, Esq., appeared as solicitors for petitioner, and William F. Herrin, Esq., Peter F. Dunne, Esq., and E. J. Foulds, Esq., appeared as solicitors for defendants, and that the said R. H. Pratt, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

891 I further certify that the said deposition was then and there taken down in shorthand notes by myself, a disinterested person, and was by me thereafter reduced into typewriting; and I further certify that, by stipulation of the solicitors for the respective parties, the reading over of the deposition to the witness and the signing thereof was expressly waived.

Accompanying the said deposition and annexed hereto and forming a part hereof is "Defendants' Pratt Exhibit 1", "Defendants' Pratt Exhibit 2", and "Defendants' Pratt Exhibit 3", introduced in connection therewith and referred to and specified therein. Such exhibits were endorsed by me with my official title.

And I do further certify that I have retained the said deposition in my possession for the purpose of mailing the same with my own and to the clerk of the District Court of the United States for the District of Utah, for whom the same was taken.

And I do further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

992–1029 In testimony whereof I have hereunto set my hand
my office aforesaid this 21st day of July, 1914.

[SEAL.] HERBERT BENNETT,
Notary Public in and for the City and
County of San Francisco, State of California.

1030 W. W. SLATER was called as a witness on behalf of the d
fendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Slater, will you please state your age?

A. Sixty-six.

Q. And your residence?

A. San Francisco.

Q. Did you ever work for the Central Pacific Railroad Compan

A. Yes, sir.

Q. At what time?

A. I was first employed jointly with the Union Pacific Compa
as telegraph operator at Ogden, Utah, the 1st of January, 1869.

Q. What did you do afterwards?

A. I was next employed by the San Francisco & San Jose R
road in April, 1869, as clerk and operator at San Jose. Then,
June of the same year, 1869, I was employed at Warm Springs with
Central Pacific Railroad as receiver of material for the buildi
1031 of the line to Sacramento. In October of that year, after
line was finished through to Sacramento, I was employed
agent and operator at a point in Niles Canyon, called San Jose Ju
tion, which does not exist now. The following year, in April, 18
I was transferred—in fact, my whole equipment was transferre
to the new station at Niles, until September, 1871, when I left
leave of absence, was later taken sick and went East, and came b
in 1875. In the meantime I was employed several months on
San Francisco & San Jose Railroad in 1871 at Mountain View
agent and operator. Then I went East and came back in 1875,
was employed at Oakland Wharf, first as operator and a few mon
later as train despatcher.

Q. How long did you continue that?

A. Until February 1, 1885, when I was made master of sig
in charge of the signal system.

Q. In 1885?

A. In 1885.

Q. And have you since continued in that position?

A. I was in that position until March 1, 1914, when I retire

Q. What were your duties as operator or despatcher?

1032 A. Handling the movement of trains on the line between Sacramento and Oakland Wharf, and the various branch lines south as far as Mojave, and for a short period, through to The Needles, over what is now a portion of the Atchison, Topeka & Santa Fe road, and which was then the Atlantic & Pacific road.

Q. So, as despatcher at Oakland, or Oakland Pier, you handled trains running between San Francisco and Sacramento over the Central Pacific, and between San Francisco and Mojave, and for a time as far as the Needles?

A. Yes, sir.

Q. And the western division included the Southern Pacific line to Mojave?

A. Yes, sir.

Mr. McCLENNEN. What date are you speaking of?

By Mr. HERRIN:

Q. What date would that be?

A. That was previous to 1885; between 1875 and 1885. I could not recall the exact date. It was along about 1880.

Q. Do you know what company operated the road prior to 1885, prior to the advent of the Southern Pacific Company—what company operated these lines you have mentioned?

A. The officers were under the Central Pacific Railroad.

1033 Q. The Central Pacific Railroad Company?

A. Yes.

Q. It operated the line to Mojave, as well as the line to Sacramento?

A. Well, it was under one set of officials, under one division superintendent, the men that I reported to.

Q. Do you know what company operated the line south of Mojave to Los Angeles?

A. It was under the same company, under the same general management.

Q. Were you ever over the line to Los Angeles?

A. Yes, sir.

Q. Did you ever go over the line south of Los Angeles to El Paso?

A. After 1885 I did.

Q. Did you know, prior to 1885, how far the jurisdiction of the Central Pacific Railroad Company extended down south?

A. Under the general management of one set of officers, who were located at Fourth and Townsend Streets—I don't know whether they were Central Pacific or Southern Pacific at that time.

1034 Q. So far as you know, there was only one set of officials?

A. One set of officials.

Q. They were the officials of what company?

A. Of the Central Pacific prior to 1885 and of the Southern Pacific Company after that time.

Q. You remember when the Southern Pacific Company came in, do you?

A. Only in a general way. I was then located at Oakland and had no knowledge of the fact of any change; in fact, I do not recall that there was any special change.

Q. You do not recall any change in the official management or staff?

A. No, sir.

Q. What is your recollection as to that, as to whether there was any?

A. There was none.

Q. You know there was no change?

A. I know there was no change.

Q. Was your attention ever called to the different ownerships of these lines that were operated by the Central Pacific Railroad Company first, and afterwards by the Southern Pacific Company?

1035 If so, in what way, if you remember?

A. I have no knowledge of any change or anything other than this: I was making up time cards, and I do not recall now during that time whether they were Central Pacific or Southern Pacific. I did not consider it of any importance.

Q. The point I want to get at is whether you concerned yourself with whether one company owned this line and another company owned that line?

A. No, sir.

Q. Or whether you dealt with it as a system of lines operated as one thing.

Mr. McCLENNEN. That is objected to as leading and as calling upon the witness for a conclusion.

The WITNESS. May I ask: This is prior to 1885?

By Mr. HERRIN:

Q. I mean at any time. I do not think it makes any difference.

A. After 1885, when I had occasion to make out material reports, I was required to charge the material to the various lines on which the material was used.

Q. That is all I wanted to get at. You had instructions

1036 from the auditor, did you not, to make your charges against one company or another, according to where the material was used?

A. Yes.

Q. And is that or is it not the only case where you considered the ownership of these different lines?

A. That is all, sir.

Q. In operation did you consider the ownership at all?

A. Not at all.

Mr. HERRIN: That is all.

Cross-examination by Mr. MCCLENNEN:

Q. What was the period during which your course of duty called upon you to make out cards for the charging of materials?

A. It was subsequent to 1885.

Q. Beginning directly in 1885?

A. Yes; February, 1885.

Q. That is, as a train despatcher you had had no occasion to do anything of that kind?

A. No, sir.

Q. As signal master you were called upon to make these
1037 charges?

A. Yes, sir.

Q. And from February, 1885, when any material was used for any particular part of the railroad, operated either by the Central Pacific or the Southern Pacific, you charged that on the card to the particular road for which it was to be used?

A. Yes, sir.

Q. What sort of materials were you handling in that position?

A. Signal materials.

Q. That had nothing to do with rolling stock?

A. No.

Q. Only ways and structures?

A. Maintenance of ways.

Q. And the signal material that you were supplied, or that passed through your hands, was charged by you on the cards to the road that owned the line on which that signal material was to be erected or used?

A. Yes.

Q. You had no knowledge as to whether the same course had been pursued with signal material prior to 1885 or not?

1038 A. There was no signal material prior to that time.

Q. There was no signal material prior to that time?

A. No; I was the beginning of it.

Q. Do you know, after 1885, whether the same course was pursued as to rolling stock?

A. I have no knowledge of that.

Q. And do you know whether before and after 1885 the same course was pursued with reference to material for other structures connected with the railroad?

A. Only in a general way. I know our blanks were arranged to include all classes of material. Of course, mine was only signal material.

Q. That is the reason that you charged to the different railroads signal material only—because that was the only kind of material that you were handling?

A. That is all I handled.

Q. But the material blanks which you were handling were arranged to make similar distributing charges on all other kinds of material?

A. Yes, sir.

Q. And those same blanks had been in use before 1885—the same type of blanks, I mean?

1039 A. I presume so. I do not know.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

ARCHIE LISTER was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Please state your age.

A. Sixty-seven.

Q. Where do you reside?

A. Lomita Park, San Mateo County.

Q. Did you ever work for the Central Pacific Railroad Company?

A. I started the 1st of February, 1870, for the Central Pacific.

Q. What were you doing?

A. Telegraph operator at Pleasanton.

Q. Just continue and state your work for that company, what it was and where you were.

Q. I went from Pleasanton to Banta as operator. From

1040 Banta I went to Livermore. From Livermore I went to Midway. From Midway to Simpsons, now Melrose. In July, 1871, I went down to Long Moor.

Q. That is in San Francisco Bay, here?

A. Yes; Oakland, as operator. I relieved Mr. Railton. Mr. Railton had relieved Mr. Bassett. Mr. Bassett was train despatcher at that time, and was appointed superintendent of the San Francisco & San Jose Railroad, I believe they called it at that time, and in 1872 I was made train despatcher, and continued in that position until 1900, I think it was, or 1901.

Q. What were your duties as train despatcher?

A. I moved the trains between Oakland, Long Wharf, and Sacramento, and as far south as the railroad had been turned over to

he company; and we eventually ran it to Mojave. Then, when he line was built from Mojave to The Needles, we handled that.

Q. What company were you working for?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. Do you remember that the road was being constructed
041 south of Goshen towards Los Angeles during the time you were acting as train despatcher?

A. Yes, sir.

Q. Do you know what company took over the sections of that ine as it was completed for operation?

A. The Central Pacific, as far as I understood it. Everything as C. P., as far as I understood.

Q. You had to do with the despatching of trains over the line as ar as what point south?

A. When the road got down to as far as Goshen or Tipton, in hat neighborhood, they put in a set of despatchers at Tulare, and hey handled the trains during the day, during the stress of busi- ess, and we handled them nights, after six o'clock at night, and e took charge from Oakland to Mojave and The Needles.

Q. You handled the trains during certain hours as far as Mojave?

A. Yes, sir.

Q. And The Needles as well?

A. Yes; when they opened that line.

Q. And you were working for what company when you did that?

042 A. The Central Pacific, western division. That was called the Western Pacific when I started in; when I first started in.

Q. You were working on what was called the Western Pacific en?

A. Yes.

Q. How long did you continue to work for the Central Pacific Rail- ad Company?

A. Well, until they retired me, as far as I know; 1910.

Q. You never heard of the Southern Pacific Company?

A. Only just about 1885, or somewhere in that neighborhood; the rs and locomotives and so on were initialed S. P., and some C. P.

Q. Did you ever work for the Southern Pacific Company?

A. Well, it was all the one thing to me. I did not know the differ- ce, in fact.

Q. Do you remember any change from the Central Pacific Rail- ad Company to the Southern Pacific Company?

A. I do not.

Q. You do not?

A. No, sir.

Mr. HERRIN. That is all. Take the witness.

1043 Mr. MCCLENNEN. No cross-examination.

(Whereupon a recess was taken until 2 o'clock p. m.)

1044 AFTER RECESS.

EDGAR MELVILLE LUCKETT was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you state your age?

A. Sixty-five last birthday.

Q. And your residence?

A. My residence, 2683 Green Street.

Q. San Francisco?

A. This city; yes.

Q. Have you ever worked for the Central Pacific Railroad Company?

A. Yes, sir.

Q. At what time?

A. I started work for them in the latter part of 1873.

Q. At what point?

A. Sacramento.

Q. In what capacity?

A. As journeyman machinist.

1045 Q. In the shops?

A. Yes; the Sacramento shops.

Q. How long did you work there?

A. I worked in Sacramento as journeyman up until Septembe 1875, when I was promoted and sent to Terrace, Utah, as divisio foreman of the Salt Lake division of the Central Pacific.

Q. How long did you remain there?

A. About three years.

Q. Then where did you go?

A. Then I was brought back to Sacramento shops again a placed in charge of a gang there in the erecting shop. I remain there for six or seven months, something like that, when I was se up to Carson City, Nevada, on the V. & T., and I remained the two years, or a little over two years, when I came back again Sacramento and was placed in charge of a gang there, and bu the first Stephens valve gear locomotive. That was engine C. 48, and I rebuilt several others, and put on the improved valve ge Then I built engine 237, which was called the El Gubernador; it w

supposed to be the largest engine in America. It was built for Tehachapi Mountain.

1046 Q. How was that marked?

A. It was marked "C. P."

Q. Number what?

A. 237 was the number, but it had a name, El Gubernador.

Q. Where was that engine used?

A. On Tehachapi Mountain. When I got it built I was sent down there and I was traveling engineer for several months. Then I was brought back to Sacramento, and after six or seven months was appointed foreman of the Sacramento shops—machine shops.

Q. Of the Central Pacific Railroad?

A. Central Pacific Railroad, and I stayed in that position for a few months—six or seven months, I guess—and was made general foreman of the Sacramento shops, of all the shops of the Central Pacific Railroad; that is, at Sacramento. I held that position up to September, 1893. I was then promoted and sent to the Salt Lake division, master mechanic of the Salt Lake division. My headquarters were in Ogden, Utah. I remained there until February 1, 1906. I was then given an extended leave of absence.

1047 Q. During the time you were in the Sacramento shops, for what roads did you do work, building locomotives, and the like?

A. We did work for all the roads; that is, several of the S. P.'s and the C. P.'s, and did some work for the Oregon road, and we did a lot of work for the S. P. of Cal., S. P. of A.—S. P. of Arizona—the G., H. & S. A.—all the roads.

Q. When you say "C. P." you mean Central Pacific?

A. Yes.

Q. And "S. P." is Southern Pacific?

A. Yes.

Q. And G., H. & S. A. means Galveston, Harrisburg & San Antonio?

A. Yes.

Q. Where is the road of that company located?

A. Down in Texas.

Q. Do you remember the Southern Pacific Railroad of New Mexico having anything to do with that?

A. Yes; we built locomotives for them. They were commonly called S. P. of N. M.

Q. Did you have anything to do with the building of pumping stations along those lines?

1048 A. Yes; down on the desert of Arizona we built several new pumping stations. They had to haul water there for years, and we built several quite extensive pumping stations there.

Q. Did you have anything to do with furnishing track supplies and materials to those lines?

A. Yes; we furnished, I guess, all the spikes and bolts and fish plates that were used on the Southern Pacific; that is, most all of them. We could furnish them cheaper than we could buy them at that time.

Q. Do you remember at any time running over time or extra time in doing this work?

A. Yes; there was a portion of the time, in doing a portion of the work on the Southern Pacific, that we had to work night and day to keep up with our orders for bolts, spikes, and nuts.

Q. What road?

A. Down in Arizona, the S. P. of A., when they were building that.

Q. Did you have anything to do with or ever set up any locomotives for the G., H. & S. A.?

A. Yes; all of the engines that came out for those different
1049 roads came to Sacramento, towed out in a train and put together there, and set up and shipped to the different places or consigned to wherever they needed them the worst. I remember we got a lot of G., H. & S. A.'s there once, and were hard up for engines on the western division over here, what we call the western division—that is, running from Oakland to Sacramento—and we used four of them there for quite a while. We also sent some of them down to Mr. Johnson, at Tulare. He was master mechanic of the Visalia division. At that time we did practically all the work for the whole system at Sacramento. We did not have any large shops then at any other place.

Q. That was the only general shop?

A. That was the only general shop that the company had.

Q. And that supplied all these roads you have mentioned?

A. Yes; with material of all kinds, and locomotives.

Q. The general repairs were made to those locomotives at what point; at Sacramento?

A. All divisions shipped their engines in there for general repairs; that is, what we called heavy general repairs. There were nothing but small division shops on the different divisions, both south and east.

Q. What sort of repairs did you make at those division
1050 shops?

A. Light repairs, running repairs; but never did any heavy work.

Q. Do you know anything about furnishing enginemen and journeymen mechanics, and employees of that sort, to the different divisions of those roads, both the Central Pacific and the Southern Pacific Railroad Company?

A. Yes, sir.

Q. What about that?

A. Well, if we had a surplus of men on any division on the C. P. nd the S. P. had a rush of business and they wanted more men, we ould send them down there, transfer them, and when they got hrough we would bring them back; and the same way with mechan-s, if we had a surplus of mechanics, these different divisions when ey wanted mechanics or engineers always called on Sacramento, lled on the general master mechanic; that is, if they could not pick em up themselves.

Q. From what you say these shops at Sacramento seemed to be ractically as much a shop for the Southern Pacific Railroad Com-any as for the Central Pacific Railroad Company?

Mr. McCLENNEN. That is objected to as leading and call-51 ing for a conclusion.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Was there any distinction made with respect to the ownership those lines?

A. No, sir.

Q. Do you remember when the Southern Pacific Railroad line uth of Goshen, towards New Orleans, was being constructed?

A. Yes, sir.

Q. Do you know what was done with that line when sections of it re completed for operation?

A. Well, as soon as the construction department got through with piece of track, they turned it over to the operating department.

Q. Of what company?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes; turned it over to the same officers; Mr. Towne, for in-nce, he was general manager; and Mr. Fillmore.

Q. Did that continue right on through, as far as the line was con-structed, if you know?

52 Mr. McCLENNEN. Objected to as leading.

The WITNESS. Yes.

By Mr. HERRIN:

Q. How far did it continue south, as far as El Paso?

Mr. McCLENNEN. The same objection.

The WITNESS. Yes. At one time I think it went farther than Paso; I think it went on to New Orleans. Then later on they med the Atlantic system; that stopped at El Paso, and this d here was the Pacific system.

By Mr. HERRIN:

Q. Do you remember when the Southern Pacific Company, the present company that is operating these lines, took possession of them?

A. Not exactly; I do not. I think it was around 1885 or 1886, somewheres around in there. I remember the time, but I can not recall dates.

Q. Was there any change in the operating management or staff when that change occurred?

A. None whatever; the same master mechanics and the same general officers.

Q. Mr. Towne continued as general manager?

A. He was the general manager, and all the division
1053 master mechanics remained just the same.

Q. Did Mr. Fillmore continue in his place?

A. Yes; Mr. Fillmore was general superintendent. A. J. Stevens was general master mechanic.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. When you built an engine in the Sacramento shop, prior to 1885, for the Southern Pacific Railroad Company, to what did you charge the work?

A. Always charged it to the initial of the engine; if it was an S. P. engine it was charged to S. P., and if it was a C. P. engine it was charged to C. P.

Q. Those charges were made of so much material and so much time, were they?

A. Yes; the time and the material was taken every day.

Q. Was that carried out into dollars, in the charges that you made?

A. Well, I couldn't tell you about that. That would be the accounting department.

Q. Under your direction, the charge was simply made of the
1054 materials and time that went into an engine, a charge to the railroad company for which the engine was being built?

A. Yes.

Q. And if it was the Southern Pacific Railroad Company of Arizona it was charged to that railroad?

A. Well, when we built engines we would build so many, and they would be charged; for instance, fifteen, fifteen locomotives would be the charge. Then, whenever they got them done, we would get instructions to letter them; that is, put the initials on. If it was S. P. or C. P., it was so put on.

Q. All the work, all labor and materials that went into each one of those engines, was charged up to the railroad company for which that engine was lettered?

A. Yes; I presume so; that is the accounting department. We charged in the shop so many locomotives. As I say, if we were building ten, we would charge time to ten locomotives, time and materials and everything, that would go in, and they would cost so much, and when they were done we got at the cost of them.

Q. What sort of charge card did you have?

A. We had a card about three inches wide and about four inches long, with the date on it and hours, and every man,

055 before he went to work, got one of those cards, and he had to deposit that card in a box that was kept in the shop for hat purpose, and the timekeeper the next morning would take those ards up, and he would put in so many hours on this and so many ours on that, total so many hours, and sign his name at the bottom, nd he would take them up and distribute the time to different ccounts.

Q. That is, of these different railroads?

A. Yes; whatever it was for.

Q. That accounts for the time. Now, did you have cards for aterial in the same way?

A. No; we didn't have cards for material.

Q. How were the materials charged up?

A. They would ordinarily be charged on the back of one of those bsolete cards, if it was more than six months old. A fellow would y that he wanted so much so and so, charge so and so, and sign s name to it, and they were to be turned right into the office.

Q. They would be turned in to the same account as the time was arged for?

A. Turned it in to the gang foreman, and the gang foreman would turn it in with his charges.

56 Q. Was the same method of charging pursued with reference to repairs that were done on those engines when they ne back again?

A. Yes; a man charged his time to whatever he was working on, urs, and signed his name to it. No man could get any time unless put in a time card and showed what he was doing.

Q. What did you have to do personally with the turning over of rly constructed roadway to the operating department?

A. Nothing; that was not in my department.

Q. When you say that the portions of the roadway, as completed, re turned over for operation, you mean that they were turned r to some organization of which Mr. Towne was the head?

A. Yes; and Mr. Towne would issue a circular to all shops and everybody concerned on the road that so-and-so had been turned over to the operating department.

Q. That is, that a certain section of track had been turned over to the operating department?

A. Yes.

Q. What railroad company was operating the line from San
1057 Francisco down through Gilroy, that which is part of the coast line now?

A. The coast division?

Q. Yes; what company was operating that?

A. That was an independent company for a while. That is, it was under Mr. Bassett, and I think he was bossing all hands there for quite a while; but eventually, when it was completed, when Mr. Huntington completed the road, it was part of the Southern Pacific.

Q. How late did Mr. Bassett continue to be boss of that line?

A. Well, I could not tell exactly, but I know that Mr. Bassett and Mr. Jack Wilson, who was the master mechanic—we did a lot of work for them in Sacramento—did a lot of their heavy work for them.

Q. Can you give me some general idea about how long Mr. Bassett remained at the head of operation of that coast line?

A. I think it was around in 1878, somewhere along there; I wouldn't be positive about it.

Q. Up to that day, if you are right on the date, the Central Pacific Railroad Company had never operated that line?

1058 A. Not that I know of.

Q. That was operated under the name of the Southern Pacific Railroad Company?

A. We always have known it as the coast division.

Q. Do you remember how the rolling stock of that railroad used to be lettered when it came into the Sacramento shops?

A. No; I do not.

Q. Was it C. P. R. R. of Cal.?

A. No; it wasn't C. P., I am pretty sure.

Q. Was it S. P. R. R. of Cal.?

A. It might be, yes; I would not be positive about that.

Q. That line was not completed until about 1901, was it?

A. I think it was around there somewhere; I think a little before that; I would not be sure.

Q. It was not very much before that, was it?

A. Not many years before that.

Q. You knew at some time that the Southern Pacific Company took over the operations that had been conducted before that by the Central Pacific Railroad Company?

A. Yes; around about 1885, I think, or around there some-
1059 where, within a year of that time. There was a general circu-
lar came out, and they cut off the line east of El Paso and
made the two systems—the Atlantic system and the Pacific system.
Q. After 1885 what company operated the Pacific system.
A. The Central Pacific. Well, I guess it was the S. P. then, but it
was the same men.
Q. I wanted to find out what company it was; which one was it?
A. Well, after that the S. P.; our stationery and everything came
out more with "S. P."
Q. Don't you know, after 1885, which company was operating the
lines west of El Paso?
A. I did not know any difference between S. P. and C. P. It was
all managed by the same men, and there wasn't any more men or any
ess men; all that we knew was that we were working for the same men
and getting our pay from the same pay car.
Q. From 1885 to 1895 what railroad company did you think you
were working for?
A. Well, I guess I was working for the Central Pacific. I was on
he eastern end of the C. P. at that time; from 1893 to 1896 I was
master mechanic from Reno to Ogden.
060 Q. Then up to 1906 you understood you were working for
the Central Pacific Railroad Company?
A. No; we all turned into S. P.'s, somehow.
Q. When did you become a convert?
A. Well, I don't know just exactly. Along about 1894 we were
ivorced from the S. P.
Q. You were divorced from the S. P.?
A. Yes; some time along about 1894, and we went to the Oregon
hort Line, and then we were Oregon Short Line, Salt Lake divi-
on, but we drew our money from the S. P. pay car. I was sup-
osed to be the S. P. man. The Union Pacific took us over, or the
hort Line.
Q. After 1894, up at Ogden, you were working for the Oregon
hort Line and getting paid by the Southern Pacific Company?
A. I was being bossed by the superintendent of motive power on
Short Line; yes.
Q. But you were still getting your pay from the Southern Pacific
mpany?
A. Yes; they paid all the time.
Q. How long was the Southern Pacific Company engaged in pay-
ing those employees of the Oregon Short Line?
1 A. Up to a few years ago; about three years ago, I think,
the S. P. took it back again. The Union Pacific haven't got

it, nor the Short Line has not got it. I don't just remember those dates, because I have been out of the service since.

Q. Before we move out of the State, let us go back to this time when you were still in the Sacramento shops, up to 1893.

A. Yes, sir.

Q. Just before you went to Ogden in 1893, what company were you working for?

A. Well, I guess I was working for the Southern Pacific. The Southern Pacific seemed to predominate there, but we were working for the same men; they were bosses, and had always been bosses. Mr. Towne had died then and Mr. Kruttschnitt and Mr. H. E. Huntington took his place.

Q. Didn't you know in 1893 whether you were working for the Southern Pacific Company or not?

A. Yes; I was working for the Southern Pacific Company.

Q. You were working for the Southern Pacific Company?

A. Yes; the Southern Pacific Company predominated then. Everything was marked "Southern Pacific", practically; that
1062 is, with the exception of equipment, cars and locomotives; they bear the same initials now.

Q. Your stationery was marked "Southern Pacific Company" then, wasn't it?

A. Yes.

Q. That is, in 1893?

A. Yes.

Q. Well, now, back in 1884 that same sort of stationery had been marked "Central Pacific Railroad Company"?

A. Yes; up to about 1885 or 1886, somewhere along in there; I don't just remember. Everything was C. P.; that is, the stationery and such as that.

Q. Now, when the Southern Pacific Company took over the operation of the railroads, did they re-mark any of the rolling stock?

A. No; not that I know of.

Q. The marking stayed just the same?

A. The marking is there yet on a great deal of their equipment.

Q. On the equipment built since 1885, have you marked some of it Central Pacific Railroad, or C. P. R. R. Co.?

A. Yes, I think there has been; yes.

Q. Down to how late a day did they mark new rolling
1063 stock C. P. R. R. Co.?

A. Well, now, I don't know. The equipment blanks of the company would tell you.

Q. Did they ever stop marking new rolling stock C. P. R. R. Co. when it was going onto the Ogden and Sacramento division?

A. Not that I know of.

Q. It still kept on right down to the end?

A. The same.

Q. There came a time, did there not, when the Southern Pacific Company began to do the operating of the Pacific system west of El Paso?

A. Yes, there came a time, but it would be hard for anybody to tell just when the time was, because there was no change; nobody got promoted or got discharged.

Q. Was there not a time when the employees were circularized generally, and informed that on and after such and such a date the Southern Pacific Company would take over the control and operation of the railroad?

A. Yes.

Q. When was that date?

1064 A. As I told you, it is around in '85 or '86, somewhere in there.

Q. About '85 or '86?

A. But at that time—what brings it to my memory is that at that time the lines east of El Paso were cut off, and that was made separate, taken away from us, taken away from the general officers. Mr. Black Ryan, who was master mechanic under Mr. Stevens at San Antonio, he was made general master mechanic of the Atlantic system, and his road came up to El Paso.

Q. And that, you say, was 1885 or 1886?

A. Yes; I can not remember just when it was.

Q. Was it at that time that the Southern Pacific Company took over the operation of the lines west of El Paso?

A. The Southern Pacific?

Q. Yes.

A. They had been operating that, but they were taken away from the Southern Pacific; that is, the Pacific system, and two systems were made. One was the Atlantic and the other was the Pacific. This was the Pacific, and the one from El Paso to New Orleans was the Atlantic system.

Q. I am afraid we will have to start afresh on this. Prior

1065 to 1885 the Central Pacific Railroad Company was operating the railroad of the Central Pacific Railroad Company, and operating over the lines owned by the Southern Pacific Railroad Company of California, Arizona, and New Mexico, was it not?

A. So far as I know. All I know about the affair is that the same bosses, Mr. Towne, Mr. Curtis, Mr. Stevens, and Mr. Fillmore, those men were our bosses then, and they remained to be bosses.

Q. I haven't asked you about any change. I am afraid you are getting away from my question. Remember the year 1884, just say that over in your mind for some time—1884. I am not asking you

about any change; I am just wanting to find out about what wa
going on in 1884.

A. Yes, sir.

Q. At that time the Central Pacific Railroad Company was oper
ating the Central Pacific Railroad from Ogden to San Francisc
and was also operating some of the lines at least of the Souther
Pacific Railroad Company from San Francisco Bay down throug
California, Arizona, and New Mexico, was it not?

A. Yes.

1066 Q. Now, some time about the 1st of April, 1885, did ther
come some kind of change with respect to those lines; do yo
know?

A. Did there come some change?

Q. Yes.

A. I think that must have been about the time that they separate
the systems.

Q. When they separated the systems they cut off the lines east
El Paso?

A. Yes.

Q. Did it have any effect upon the operations west of El Paso?

A. No, sir.

Q. Did the Central Pacific Railroad Company keep on operatin
the lines west of El Paso?

A. Yes; so far as I know.

Q. And kept on operating those lines west of El Paso up to wh
time?

A. Up to the present time. Well, I don't know; as I say, it g
merged into the S. P. Just what time that came I don't know;
don't remember.

Q. Was there a time when you learned that those roads we

1067 of El Paso which previously had been operated by the Centr
Pacific Railroad Company began to be operated by the Sout
ern Pacific Company? Bear in mind the question—west of El Pa

A. Yes; that is this side.

Q. Yes. Was there a time when you learned that the roads west
El Paso which had been operated by the Central Pacific Railro
Company began to be operated by the Southern Pacific Company?

A. I could not tell you when that time was.

Q. Was there some time when that happened?

A. Yes; there must have been some time; but when it was, I
not know. It didn't make any difference.

Q. At the time it happened, you were informed of the fact?

A. Yes; there were notices stuck up on the bulletin boards,
everybody was notified.

Q. On some day that you do not now recall?

A. No, sir; I could not.

Q. You were told by notifications from headquarters that on and after such a date those lines west of El Paso, as well as the lines east of El Paso, would be operated by the Southern Pacific Com-
1068 pany and not by the Central Pacific Railroad Company; is that correct?

A. No; I do not know of any such notice as that. I never saw one. Usually a notice of that kind, where they were separating, they would get out a notice and say that after such a date a certain general manager will have control up to a certain place, and a certain general manager will have control west of there or east of there, as the case may be. Those would just be printed notices sent out and stuck on the bulletin board.

Q. And you never would know that that general manager that had been the general manager of the Southern Pacific Railroad Company had become the general manager of the Southern Pacific Company? You would not know anything about that?

A. Why, yes; that circular would mention that.

Q. That circular would tell you that you were shifted over from operating under one company to operating under another company?

A. I don't know about that; it might be. Those are matters that I didn't pay any attention to.

Q. As a matter of fact, through all this time you did not
1069 particularly know which of these various railroad companies or other companies were employing you, or operating these various railroads, did you?

A. When I first came to work for the company, of course there was no S. P. to speak of, but it was C. P. Everything was C. P., C. P., and as long as I worked for them, if anybody asked me where I was working, I would say I was working for the C. P., and I might have been working for the S. P. It was all one company, one set of officers, bosses.

Q. Which would you say that you were working for?

A. I will say the latter part of my service I was working for the S. P., not exactly the latter part, because there were three years of the latter part of my service, or two years and a half, that were with the Oregon Short Line.

Q. Suppose somebody asked you whom you were working for in 1893; who would you say you were working for?

A. I might say C. P. and I might say S. P.

Q. It just happened, and you would not know which it was?

A. I don't know anything about it.

Q. You did not even know that the officers of those companies were in fact different, did you?

1070 A. I didn't see any change.

Q. I mean you did not even know that in the year 1893, for instance, the president of the Southern Pacific Company was a different man from the president of the Central Pacific Railroad Company, did you?

A. Yes; Mr. Huntington was president—no; he was dead then. He died around 1890 or 1891.

Q. I have not asked you who was president; I have asked you if you knew enough about this operating by these companies to be able to say whether or not the same man, whoever he was, was president of the Central Pacific Railroad Company and the Southern Pacific Company in 1893.

A. I couldn't say.

Q. You can not say?

A. No, sir.

Q. And you could not say but what there was a different man president of one from the other?

A. I do not think there was but one for the two of them.

Q. I am not asking you what you think; I am asking you what you know.

A. I do not know.

1071 Q. You did not know that the vice president of those two companies was different at that time, did you?

A. No, sir.

Q. You did not know that the treasurers were different, if they were, at that time, did you?

A. No, sir.

Q. Or the secretaries?

A. No, sir.

Q. Or the directors?

A. No; I did not.

Q. You did not know at that time whether or not the Central Pacific Railroad Company had any general manager?

A. No, sir; not at that time.

Q. You did not know at that time whether the Southern Pacific Company had any general manager?

A. Oh, yes; Mr. Kruttschnitt was general manager then, I think, in 1893.

Q. When do you think Mr. Kruttschnitt became general manager of the Southern Pacific Company?

A. When he came up here from New Orleans, or the Atlantic system. He was on the Atlantic system before he came here.

1072 Q. When do you think he became a general manager on the Pacific system of the Southern Pacific Company?

A. I don't know just when he came here.

Q. Well, about?

A. I think he came here along in 1891 or 1892; '91, possibly.

Q. Who succeeded Mr. Towne in the Southern Pacific Company?

A. Mr. H. E. Huntington was quite prominent then, and Mr. W. G. Curtis, and Mr. Kruttschnitt came pretty soon after Mr. Towne's death.

Q. Did Mr. Kruttschnitt take Mr. Towne's place?

A. Yes; he was general manager.

Q. Do you know whether Mr. Kruttschnitt was ever any kind of an officer or employee of the Central Pacific Railroad Company?

A. No, sir; I do not.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Luckett, you spoke of the Oregon Short Line. Don't you remember that arrangement occurred during the time that the Union Pacific controlled the Southern Pacific?

1073 A. Yes, sir.

Q. And all the lines, then, including the Union Pacific, the Southern Pacific, and the Central Pacific, were all called the Harriman Lines, were they not?

A. Yes.

Q. And this arrangement cutting off the Central Pacific at Sparks, throwing all lines east of Sparks into the management of the Oregon Short Line, was a part of that general management which was put in by what we call the merger?

A. Yes, sir.

Q. That is what you were referring to?

A. That is what I was referring to.

Q. When you said you were getting pay from the Southern Pacific and working for the officials of the Oregon Short Line?

A. Yes, sir; we always got our pay from the same pay car.

Q. Before you built locomotives you had to assemble materials for that purpose, did you not?

A. Yes.

Q. You would have the iron parts or anything that was necessary to construct the locomotives——

1074 A. Yes; we would get our boiler plate, and so on.

Q. What company would order that material prior to the Southern Pacific Company coming in?

A. Huntington, Hopkins & Company.

Q. I know; but what railroad company? The shops there were the shops of the Central Pacific Railroad Company, were they?

A. The shops?

Q. Yes; at Sacramento.

A. Yes; the shops belonged to the Central Pacific; they were built by it.

Q. For what company would that material be ordered, generally, for building locomotives and doing your repair work?

A. The S. P. shops; the Sacramento shops.

Q. The Sacramento shops?

A. Yes.

Q. I am speaking of the time before the Southern Pacific came in. What company was it?

A. That would be for the Central Pacific.

Q. The Central Pacific?

A. Yes; the C. P.

1075 Q. You would get an order to build, say, fifteen locomotives?

A. Yes.

Q. You would take from the materials that had been assembled there by the Central Pacific Railroad Company what was necessary to build those locomotives?

A. Yes.

Q. After they were completed you would get instructions to letter them, you say?

A. Yes.

Q. And you might be instructed to put "S. P. of Cal." or "S. P. of Arizona", or "S. P. of New Mexico" on your locomotives, might you not?

A. Yes; or Oregon road or C. P.

Q. But during the construction of these locomotives you would simply——

A. (Interposing.) They were built as one; so many locomotives.

Q. As one job.

A. That is, the job; yes.

Q. And that would be the Central Pacific, would it not, until you distributed them to other lines?

1076 A. Yes.

Mr. McCLENNEN. That is objected to as leading.

By Mr. HERRIN:

Q. You never assembled any materials there in the first instance for the Southern Pacific of New Mexico, did you?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. You did not know, until the job was over, what marks would be ordered to be put upon the——

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. We would get orders to letter engine so and so.

By Mr. HERRIN:

Q. After they were completed?

A. Yes, sir. We would get that from the general master mechanic.

Mr. HERRIN. That is all.

Mr. MCCLENNEN. That is all.

1077 SEYMOUR JOHNSON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. I will be seventy-nine in August coming.

Q. What is your residence?

A. 1929 Fiftieth Avenue, Oakland.

Q. Did you ever work for the Central Pacific Railroad Company?

A. Yes.

Q. When did you begin?

A. In 1864.

Q. What were you doing?

A. Running a locomotive most of the time.

Q. Locomotive engineer?

A. Yes.

Q. Where did you run the locomotive?

A. All the way from Sacramento to Ogden.

Q. You mean, as the road was completed, you ran the locomotive down the line that was opened for operation?

1078 A. Yes.

Q. Did you ever work on the line of the Southern Pacific Railroad Company down near Visalia or Tipton?

A. Yes, sir; I was appointed master mechanic on the Visalia division of the Central Pacific in 1872.

Q. What did that include, that division, at that time?

A. At that time it included the road from Lathrop to Tipton.

Q. And as the road was constructed south to Tipton, extended southerly from Tipton, did it take in that road; and if so, how far?

A. It took it in by sections to Mojave. That was the extent of my jurisdiction.

Q. Do you remember when the Southern Pacific Company took possession of these lines for operation?

A. As nearly as I can remember it was 1885.

Q. Before that time what company was operating the line from Lathrop down to Mojave?

A. The Central Pacific, so far as I ever knew.

Q. The Central Pacific Railroad Company?

A. Yes.

1079 Q. Do you remember the Central Pacific engines Nos. 229 and 237?

A. Yes, sir.

Q. Did you have anything to do with them?

A. Yes, sir; they were sent to my division for Tehachapi Mountain service.

Q. Where were they operated?

A. Between Bakersfield and the summit of the Tehachapi Mountains.

Q. How long were they used there?

A. They were used up to the time that I left the service of the company in that capacity, and I think ever since, as far as I know.

Q. Do you remember seeing any engines lettered "G. H. & S. A."?

A. Well, we had a few of them, four or five. I think we had five, for passenger service. We used them between Lathrop and Tulare for several months. I do not think they were there a whole year. As near as I can remember it was somewhere in the neighborhood of a year.

Q. Did you ever see engines lettered "Southern Pacific of California"—"S. P. of Cal."?

A. I have seen them, but I do not know that we ever had

1080 any on our division.

Q. Did you ever notice engines lettered "S. P. of A."—"Southern Pacific of Arizona"?

A. Yes; I have seen them.

Q. Do you remember any engines lettered "S. P. of N. M."—New Mexico?

A. Yes; I have seen them.

Q. Were they operated on this line, any of them?

A. I do not think we had any of those engines on that line.

Q. But you operated Central Pacific engines on this line, as you said?

A. Yes, sir.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENEN:

Q. How long were you master mechanic on the Visalia division?

A. About seventeen years.

Q. That would be up to about 1889?

A. 1888 or 1889; yes, sir.

Q. Then what did you do?

1081 A. I took a leave of absence for pretty nearly a year—for a number of months—and was then appointed traveling road foreman of engines, and served in that capacity about three years.

Q. Over what part of the road?
A. Between Sacramento and Los Angeles and the branches.
Q. That would bring you up to about 1892. Then what did
u do?
A. Then I retired again. I have been retired ever since.
Mr. McCLENNEN. That is all.
Mr. HERRIN. That is all.

WILLIAM HENRY NORTON was called as a witness on behalf of the
fendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?
A. Fifty-eight.
Q. What is your occupation?
A. Assistant superintendent of the Southern Pacific Company's electric lines in Oakland.

82 Q. Did you ever work for the Central Pacific Railroad Company?
A. Yes.
Q. When did you begin that work?
A. September 1, 1876.
Q. At what place?
A. Oakland Wharf.
Q. What were you doing?
A. The first two years I was telegraph operator, from 1876 to 1878
1879; from 1879 to 1887 I was train despatcher.
Q. At what place?
A. Oakland Wharf, excepting two months at Wadsworth. From
87 to 1901 I was chief train despatcher.
Q. At what place?
A. Oakland Wharf, the same place. From 1901 to 1906 I was
vision train master at the same place.
Q. Of what division?
A. The western division. From 1901 to the present time I have
en located at the same place, but the last year and a half I have been on the electric lines as assistant superintendent.

83 Q. While you were train despatcher at Oakland Wharf, how far did you handle trains beyond Goshen on the Southern
acific Railroad line?
A. At night time the wires were cut through, and for about one
ar I personally handled the trains from Oakland Wharf to Mojave.
hen, later on, when The Needles branch was cut in, I handled trains
Needles—at night times only.
Q. What company were you working for at that time?

A. The Central Pacific Company.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. Do you remember when the railroad was being constructed south of Goshen towards Los Angeles?

A. Well, I only remember that in a general way. That was completed, I think, along about 1878, or along in there. We were handling the trains, and we had short runs, a run down from Lathrop to Merced, fifty-six miles, and back again, and went on down. We always understood the line of the Central Pacific went as far as Goshen, if not farther, at that time.

1084 Q. After it reached Goshen, and as sections of the road south of Goshen were opened for operation, what company took possession?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. It was operating its own lines, was it, at that time?

A. It appeared to be; yes, sir; to all purposes. We were operating the Central Pacific lines.

Q. Do you remember when the Southern Pacific Company was substituted in place of the Central Pacific Railroad Company as an operating company?

A. Yes; I believe that was April 1, 1885.

Q. You remember that time, do you?

A. Yes.

Q. Did that result in any change in the official or operating staff of the company?

A. No, sir.

Q. In other words, I understand that the same officials that were in office the day before the Southern Pacific Company took charge, and working for the Central Pacific Railroad Company, remained as such officials afterwards for the Southern Pacific Company?

1085 Mr. McCLENNEN. That is objected to as leading.

The WITNESS. Yes, sir.

By Mr. HERRIN:

Q. You remember no change whatever?

A. No; either with officials, or, I might add, employees.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Had the Southern Pacific Company ever operated anything up to April 1, 1885?

A. Well, if you mean on the Oakland Wharf, western division side, I may say no.

Q. You knew of the distinction between the Southern Pacific Railroad Company and the Southern Pacific Company, did you not?

A. Well, in a general way.

Q. I have not asked what that difference was, but did you know of there being two separate companies—one the Southern Pacific Railroad Company and the other the Southern Pacific Company?

086 A. The only way I can answer that, I would say prior to 1885 I did not know positively.

Q. Was this change of operation, when the Southern Pacific Company began to operate on April 1, 1885, applied over all the different lines?

A. That is my understanding; yes.

Q. That is, up to April 1, 1885, the Central Pacific Railroad Company had been operating all these various lines that you have described, both the Central Pacific Railroad and the Southern Pacific Railroad, and on that date the operation was changed over to the Southern Pacific Company. Is that correct?

A. The best way I can answer that is this: I am only on one division, and I do not know what is doing on the others; but my understanding was that on that date the line was turned over, in a matter of form only.

Q. Whether form or substance, what I have asked you is whether the turnover was of all the lines.

A. I do not know as I would be competent to say for all the lines, but my understanding was that it was.

Q. Up to April 1, 1885, was it your understanding that the Central Pacific Railroad Company was operating all the lines of the

087 Central Pacific Railroad and of the Southern Pacific Railroad and the Southern Pacific Railroad of Arizona?

A. I would say yes to that.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

C. H. REDINGTON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Redington, will you state your age?

A. I will be seventy-three in a few days. I will be seventy-three the 15th of this month.

Q. And your residence?

A. Oakland; 468 Perkins Street.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

Q. When, first?

A. I commenced December 20, 1866, at Sacramento.

Q. What were you doing?

1088 A. I was in the civil engineer department up to the time that they completed the road up to Promontory, in 1869.

Q. And afterwards, what did you do?

A. For a short time I was in the freight department in Sacramento and in San Francisco; for about two years.

Q. And after that?

A. After that, for a short time, I went back into the civil engineer department and had charge of the building of a short line from Hillsboro to Cloverdale. That was in 1871 and 1872. Then I was still in that department for some time longer. I was receiving and shipping ties from Oakland Wharf when they were constructing the road south of Goshen. I think it was in 1874 that I went to work in the secretary's office of the Contract & Finance Company in San Francisco.

Q. Who was the secretary?

A. John Miller.

Q. How long did you continue there?

A. As nearly as I can remember, two or three years.

Q. Were you ever, at any time, in the office of the paymaster of the Central Pacific Railroad Company?

A. Yes; I was made assistant paymaster of the Central Pacific Railroad Company.

Q. At what time?

1089 A. I think that was about 1875 or 1876.

Q. How long did you continue in that position?

A. Up to 1893.

Q. For the Central Pacific Railroad Company?

A. Yes, sir—well, until 1885, when it was the Southern Pacific Company; but in the same position with both companies.

Q. But you continued, technically, as assistant paymaster of the Central Pacific Railroad Company until the Southern Pacific Company took possession?

A. Yes, sir.

Q. And thereafter what did you do?

A. I ran the same pay car, did the same work, the same pay.

Q. Until when?

A. Until 1893.

Q. And then what did you do?

A. I was made assistant to the treasurer of the Southern Pacific Company.

Q. How long did you hold that position?

A. I held that position up to 1907, when I was elected assistant treasurer of the Southern Pacific Company.

90 Q. How long did you hold that position?

A. I held that position until the 1st of August, 1912, when etired.

Q. What was the business of the Contract & Finance Company d the Western Development Company—or did you mention the estern Development Company?

A. I do not know as I did. John Miller at that time was secretary th of the Contract & Finance Company and the Western Develop- nt Company. The Contract & Finance Company was about clos- g up its affairs at that time, and my remembrance is that the West- n Development Company took over the Contract & Finance Com- ny.

Q. It was a sort of successor to the Contract & Finance Company?

A. That is my understanding.

Q. What was the business, as far as you know, of the Contract & nance Company, the Western Development Company, and the cific Improvement Company?

A. Constructing railroads.

Q. In a general way I will ask you to state the roads that you know ey constructed, or that were constructed through the instrumentali- ties of those companies.

91 A. The Central Pacific Railroad to Goshen; railroads, I think, south of Goshen; and I know they did south of Spadra. lso, they built the branch line from Saugus to Santa Barbara. ey built the line through Arizona and New Mexico and through xas to Pecos River. They built the lines to Needles from Mojave.

Q. While you were paymaster did you see that construction work, any part of it?

A. Yes, sir.

Q. What was the occasion of your being out to the front, as we ll it?

A. I was assistant paymaster of the Central Pacific Company, but lso paid off the construction men for these construction companies. would go to the end of the track with the pay car, and then take ms and pay the construction men at sometimes thirty or forty les from the end of the track.

Q. How often did you go out to the front?

A. Sometimes once a month, and sometimes only once in two nths.

92 Q. Did you, at the same time this line was being built from Goshen south, go over the main Central Pacific line in the same way and pay off the men?

A. Yes, sir.

Q. During the construction of the road south of Goshen, all the way to El Paso, as I understand it, you were paymaster of the Central Pacific Railroad Company?

A. I surely was, since they built south of Bakersfield. There was a little time, while they were building between Goshen and Bakersfield, that I was shipping material.

Q. I wish you would just describe, in a general way, one of your trips—what you did on this southern road, what you did from the time you started until you got back. Just give us the procedure.

A. I was in the paymaster's office of the Central Pacific. I had the pay rolls, and I would look over the pay rolls and figure up how much money it would take to pay the trip; and from the construction company Mr. Douty would turn over the pay rolls of the construction company to me, with a memorandum that it would take about so much to pay the road. I would then obtain the money from the treasurer of the Central Pacific Railroad Company, and the pay car would start from Oakland wharf and go as far as the end of the line and pay the Central Pacific men. We still had enough money
1093 to pay the construction men. For instance, when I got to Bakersfield, a large number of men were working in the Tehachapi Mountains, and we would take a six-horse team—we were paying mostly in silver at that time—and we would go as far as we could that day, and camp, on what money I had left, and continue paying those men.

At the same time they were working on the tunnel—the San Fernando Tunnel. One trip it took a four-horse team from the summit of the Tehachapi, and we went and paid those men on the San Fernando Tunnel, and then came back by stage.

When I would return I would figure up that I had paid so much for the Central Pacific Company and so much for the construction company, and I would take the memorandum to Mr. Douty, who had charge of the construction companies, and he would check the pay rolls to see that my figures were correct. Then he would give me a draft or warrant for the part that I had paid for the construction company. I would turn that in to balance my account. I would usually bring back a little money. The money that I had brought back and the draft that I obtained from Mr. Douty and the money to the Central Pacific balanced my account. It would take, sometimes, as much as $500,000 to make the trip.

1094 Q. You got rid of most of it, did you not, before you got back?

A. Pretty nearly.

Q. Did you go as far as El Paso?

A. Yes, sir.

Q. Did you go beyond El Paso?

A. Yes, sir; I went as far as Pecos River.

Q. Following this procedure you have detailed here as to every trip?

A. At that time I was the only assistant paymaster. We would make one trip to Ogden—that is, when we only paid once in two months we would make that trip to Ogden one month; there were very few construction men on that line—and the next month we would go south; and then repeat that until the road was completed.

Q. You were the paymaster all the way to the Pecos River until after the line was connected?

A. My title was assistant paymaster, but I was the one in charge of the car—the one that did the paying.

Q. I say, you were attending to the pay car?

A. Yes, sir.

Q. Until after the connection was made at Pecos with
1095 the eastern end of the line?

A. Yes.

Q. And after that how far did you go, if at all, east of El Paso with your pay car?

A. Not any, after the connection was made.

Q. What was your eastern limit or point?

A. El Paso.

Q. Do you know how the men east of El Paso were paid, or from what point?

A. They were paid from a pay car that came from—I guess it was Houston—from the other end; Houston or New Orleans.

Q. From the other end?

A. Yes. I used to meet the car occasionally.

Q. Do you know to what company the sections of road south of Ogden were turned over for operation as they were completed?

A. To the Central Pacific Railroad Company up to 1885.

Q. Did that company operate these sections and this line at all times after they were opened for operation until the time when the Southern Pacific Company took them over?

A. Yes, sir.

1096 Q. Did you know Mark Hopkins?

A. Yes, sir.

Q. What position did he hold in these companies?

A. He was treasurer of the Central Pacific Railroad Company.

Q. You had some business with him, then, if he was treasurer?

A. Yes; at different times.

Q. Did you ever receive instructions from him, as treasurer of the Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when Mark Hopkins died?

A. 1878, at Yuma.

Q. Did you know Charles Crocker?

A. Yes, sir.

Q. Personally?

A. Yes, sir.

Q. Did he have anything to do with these roads?

A. Yes, sir; he had more to do with the construction companies than any of the others.

Q. Any of what others?

A. Mr. Stanford, Mr. Hopkins—the Big Four we always
1097 called them—Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker.

Q. Did you know Governor Stanford, Leland Stanford?

A. Yes, sir.

Q. Did you know Mr. Huntington?

A. Well, I did not know him as early as I did the others. When I went to Sacramento the others lived there. He was in New York. I did not get acquainted with him nearly as early as I did with the others.

Q. At all times prior to 1885, when the Southern Pacific Company took possession of these lines, from what source did you get the money which you used on these pay-car trips?

A. I got it from the treasurer of the Central Pacific Railroad Company.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. And after the Southern Pacific Company took possession, what was the source of your supply?

A. From the treasurer of the Southern Pacific Company.

Q. Mr. Redington, do you recognize this paper that I hand you?

1098 A. Yes, sir; I remember that there was such a circular issued.

Q. You remember that it was issued?

A. Yes, sir.

Mr. HERRIN. I wish to have the paper which has just been identified by the witness marked as an exhibit, and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 8, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. Do you recognize that paper that I hand you?

A. Yes, sir.

Q. What do you know about it?

A. I know all the people mentioned there. I used to keep track of those, and to know who were the officials and when there were changes made.

Q. Do you remember that those changes were made, those appointments?

A. I remember those changes were made. If you asked me the date they were made, I could not tell you.

Q. This is a circular issued by Mr. Towne, general superintendent of the Central Pacific Railroad Company?

1099 A. Yes.

Q. Dated April 27, 1881. I wish to have that marked as an exhibit, and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 9, March 3, 1915", and will be found in the volume of defendants' exhibits.)

Mr. HERRIN. Just for the purpose of identifying it here in the record I will state that it is a circular issued by A. N. Towne, general superintendent Central Pacific Railroad and leased lines, dated April 27, 1881, appointing W. G. Curtis superintendent of track, Mr. A. A. Bean to succeed Mr. Curtis as assistant superintendent of the Southern Pacific Railroad of Arizona and the Southern Pacific Railroad of New Mexico, with headquarters at Tucson.

By Mr. HERRIN:

Q. Do you recognize the paper I hand you now, which purports to be a circular issued by Mr. A. N. Towne, as general superintendent of the Central Pacific Railroad and leased lines, dated San Francisco, October 8, 1881, appointing Mr. James Campbell assistant superintendent of the Rio Grande division of the Southern Pacific Railroad Company of New Mexico, also the El Paso division

1100 of the Galveston, Harrisburg & San Antonio Railroad, with headquarters at El Paso [handing paper to witness]?

A. I remember there was such a circular issueed and that Mr. Campbell filled that office.

Mr. HERRIN. I wish to offer in evidence the paper which has just been identified and to have it marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 10, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you a paper purporting to be a circular or announcement by Mr. J. A. Fillmore, under title of the Central Pacific Railroad Company, general superintendent's office, dated San Francisco, January 12, 1882, stating that on Monday next, January 16, the G. H. & S. A. Railway, El Paso division, will be opened for business

to Marfa, 103.4 miles east of Sierra Blanca, stations, distances, and agencies east of Sierra Blanca will be as follows—stated.

A. Yes; I remember that such a circular was issued, and the names on there are all familiar.

Mr. HERRIN. I ask to have that marked as an exhibit and I offer it in evidence.

1101 (The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 11, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you a circular purporting to be issued by J. A. Fillmore, assistant general superintendent of the Central Pacific Railroad Company, dated San Francisco, March 6, 1882, announcing the establishment of six new stations in Arizona, giving the names of the same, and I ask you if you recognize the circular or have any remembrance as to whether it was issued at the time it is dated.

A. Yes, sir; I remember such a circular was issued.

Mr. HERRIN. I ask to have that marked as an exhibit and I offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 12, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. That was the original signature of Mr. Fillmore to that circular or was it a mimeograph copy of it?

A. That is his regular signature. I do not know whether it
1102 is a carbon copy of his signature or whether it was written on that paper.

Q. You recognize it as his signature?

A. I recognize his signature very well.

Q. Whether he wrote it or whether it was taken from a mimeograph copy, or something of that kind, you do not know?

A. No; I could not say.

Q. I hand you what purports to be a circular issued by J. A. Fillmore, assistant general superintendent Central Pacific Railroad Company, dated San Francisco, April 1, 1882, stating that on Saturday, April 8, 1882, the G. H. & S. A. Railroad would be open for business to Haymond, 74.4 miles east of Marfa, and also stating the agencies and location of stations, and ask you if you remember such a circular was issued at the time of the date?

A. I remember the same as the others. These stations are not as familiar to me now as they were twenty years ago, but the principal stations are still very familiar to me, and that is Mr. Fillmore's

signature, or a copy of his signature, perhaps taken from a mimeograph.

Mr. HERRIN. I ask to have that marked as an exhibit, and offer it in evidence.

1103 (The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 13, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I now hand you what purports to be a printed circular purporting to be issued by Leland Stanford, president of the Central Pacific Railroad, dated San Francisco, May 3, 1882, stating that A. N. Towne is this day appointed general manager of the Central Pacific Railroad and leased lines, with headquarters at San Francisco, with some details as to his duties, and ask you if you remember such a circular having been issued at or about the date of the same?

A. Yes, sir; I remember that. He was general superintendent up to that time.

Q. Mr. Towne was?

A. Yes. His duties were somewhat enlarged by the issuance of that circular.

Mr. HERRIN. I ask to have that marked as an exhibit, and offer it in evidence.

(The paper was received in evidence and marked "Defendants' Exhibit (Redington) No. 14, March 3, 1915", and will be found in the volume of defendants' exhibits.)

1104 By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by Mr. J. A. Fillmore, general superintendent of the Central Pacific Railroad Company, San Francisco, May 20, 1882, stating that on Monday, May 22, 1882, the G., H. & S. A. Railroad, El Paso division, will be opened for business to Strobridge, 314 miles east of El Paso, giving details as to stations and agencies, and ask you if you have any recollection that that was issued as a circular at or about its date.

A. I remember that. I remember the station of Strobridge, a very forlorn looking place.

Mr. HERRIN. I will ask to have that marked as an exhibit and offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 15, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular signed by J. A. Fillmore, general superintendent of the Central Pacific Railroad

Company and leased lines, dated San Francisco, July 24, 1882, stating that on Sunday, July 30, 1882, the Galveston, Harris-
1105 burg & San Antonio Railway, El Paso division, will be opened for business to Lozier, 358.2 miles east of El Paso, and giving some particulars as to stations, and ask you if you remember such a circular having been issued at or about its date.

A. Yes, sir; I remember it.

Mr. HERRIN. I offer that in evidence, and ask that it be marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 16, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a printed circular issued by Charles Crocker, second vice president of the Central Pacific Railroad Company, dated San Francisco, January 1, 1883, stating that Mr. Timothy Hopkins has been elected treasurer of this company, vice E. W. Hopkins, resigned, and ask you if that was issued as a circular at or about its date, if you know?

A. I remember that was a circular of about that date. I did not know that Mr. Charles Crocker issued it. I know there was a circular issued.

1106 Q. You know there was a circular issued, making that announcement?

A. Announcing the appointment of Timothy Hopkins as treasurer.

Mr. HERRIN. I will ask to have that marked as an exhibit and offer it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 17, March 3, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by Mr. J. A. Fillmore, general superintendent of the Central Pacific Railroad Company and leased lines, dated San Francisco, August 21, 1884, stating that September 1 the Oregon division of the Central Pacific Railroad will be opened for business to Delta, 38.48 miles north of Redding, and giving station agencies and distances, and ask you if you remember such a circular issued at or about its date?

A. Yes, sir; I identify it.

Mr. HERRIN. I will offer that in evidence and ask to have it marked as an exhibit.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 18, March 3, 1915",
1107 and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. I hand you what purports to be a circular issued by J. A. Fillmore, general superintendent of the Central Pacific Railroad Company and leased lines, dated San Francisco, October 5, 1884, stating that the name of Vermillionville station on the G., H. & S. A. Railway system has this day been changed to La Fayette, and ask you if such a circular was issued, if you remember, at or about its date?

A. I am not so positive about that. I know that is the same signature, but I never went as far as that, and I am not so familiar with that. When that was issued I was not so much interested in that.

Q. Do you recognize Mr. Fillmore's signature?

A. Oh, yes; yes.

Mr. HERRIN. We will put it in, and I will call other witnesses who know about it. I will ask to have it marked as an exhibit and put it in evidence.

(The paper referred to was received in evidence and marked "Defendants' Exhibit (Redington) No. 19, March 3, 1915", and will be found in the volume of defendants' exhibits.)

Mr. HERRIN. You may take the witness. I notice, however, that the hour of adjournment has arrived.

Mr. MCCLENNEN. It will be necessary for Mr. Redington to return in the morning, then.

(Whereupon, at 4.10 o'clock p. m., an adjournment was taken until to-morrow, Thursday, March 4, 1915, at 11 o'clock a. m.)

FOURTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Thursday, March 4, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Moulds, Esq., for the Southern Pacific Company.

C. H. REDINGTON, the witness under examination at the taking of the adjournment, resumed the stand and testified further, as follows:

Cross-examination by Mr. MCCLENNEN:

Q. You were engaged at the general offices of the company in San Francisco at the time of the fire in 1906, were you not?

A. Yes.

Q. And at that time you were the assistant treasurer, were you?

A. At that time I was assistant to the treasurer.

Q. And in that position you were generally familiar with the treasurer's records?

A. Yes.

Q. Did you know anything about the secretary's records? I mean to the extent of knowing what sort of records were kept by him in San Francisco.

A. I do not think I am familiar with those.

Q. From your familiarity with the records of the company, will you tell us what sort of records were destroyed in the fire of 1906 in San Francisco?

1111 A. I can only tell about the treasurer's office.

Q. What would that include? What was destroyed? I do not mean paper by paper, you understand, or book by book, but the general character of the things that were destroyed.

A. I do not think there was anything of great value in the treasurer's office destroyed. For instance, we made a daily statement of the receipts and disbursements of that particular day. They were destroyed. They should have been put in the vault, but they were put in a desk. It caused considerable trouble in finding out who had paid their bills, and the remittances. Each agent remitted daily to the treasurer's office at that time; they sent so much money and there was a credit to show what it was for that particular day's work.

Q. Were those records of the treasurer which were put in the vault all saved?

A. Not all. The treasurer's office had three vaults. What were in two vaults were not destroyed, and in one vault they were.

Q. What were the things in the destroyed vault?

A. There was some coin; there was about $10,000 in silver

1112 that was melted together, and there were papers. Although, as I said, some of them were put in a drawer, some of them were put in this particular safe—counter money, what was in the tray—and there were some other things put in that safe. It was impossible to read anything that was in that safe; it was ashes and melted coin.

Q. In the two vaults that were saved, what sort of records and papers and books were there?

A. Check books, cash books—they were all saved.

Q. And ledgers?

A. Well, the treasurer didn't keep a ledger.

Q. Were those vaults that you have described, those three, the vaults of the treasurer exclusively, or were they used by other departments of the company?

A. Also used by the paymaster; he was part of the treasurer's office, though. That is the one that there was some silver destroyed in.

Q. But those three vaults that you have just described were exclusively treasurer's department vaults?

A. Yes; treasurer and paymaster.

Q. Did the treasurer's department have custody of any of the contracts of the company?

A. No.

1113 Q. In whose department would the contracts of the company ordinarily be found?

A. The auditor's office.

Q. Do you know anything of what happened as to the auditor's office in that fire?

A. I remember the morning of the fire that I was in the building, and the auditor had a great many papers in our vault, such as contracts. They were in a tin case, I think, about six feet high and two or three feet wide, contracts, and so on. They were somewhat charred, but they came out all right. And he had some vaults himself; I do not know what the condition of those vaults was.

Q. In what department were the stock-holding records kept?

A. I suppose in the secretary's office.

Q. Do you know what happened with respect to those in the fire?

A. I do not.

Q. Do you know whether or not there is in existence anywhere any records showing the names and holdings of the stockholders in the Central Pacific Railroad Company for any part of the period between 1880 and 1900?

1114 A. I do not. I had always supposed that they were kept in New York. They were not kept in the treasurer's office here.

Q. And you have nothing beyond the supposition to guide you?

A. That is all.

Q. And would the same be true with respect to the stockholders and their holdings in the Southern Pacific Railroad Company and the Southern Pacific Company?

A. That was my understanding.

Q. Were the San Francisco offices of the Southern Pacific Company, the Southern Pacific Railroad Company, and the Central Pacific Railway Company, in 1906, at the time of the fire, all in one building?

A. As to the Southern Pacific Railroad Company and the Southern Pacific, I think all the business attended to in San Francisco was in the same building.

Q. So far as the Central Pacific Railway Company had any office in San Francisco, that was also in the same building?

A. Yes.

1115 Q. Were the vaults of the several companies a battery o
vaults, or were they distributed about the building?

A. Distributed about the building. Securities were all kept in
safe deposit vault outside of the building.

Q. That is, those would be the stocks and bonds and such paper
that were owned by any of the companies in other companies?

A. Yes; bonds.

Q. Were they saved?

A. Yes, sir.

Q. You have spoken, on your direct testimony, of operations o
these various lines of railroad prior to April 1, 1885. There is
little uncertainty in the testimony of some of the witnesses as t
whether the Central Pacific Railroad Company, up to April
1885, operated all of the lines of the Southern Pacific Railroad Com
pany. Can you make that definite?

A. The road from San Francisco and beyond was Southern Pacif
Railroad property. For a time that was operated separately; the
were separate officers.

Q. Was that road from San Francisco to Gilroy and beyond ev
covered by any lease to the Central Pacific Railroad Compan

1116 or did the Southern Pacific Railroad Company always operat
that, up to the time that the Southern Pacific Company begu
April 1, 1885?

A. I think it had always been run separately up to that time.

Q. That is the first end of what has since become known as th
coast line, is it not?

A. Yes.

Q. Were there any other of the lines of the Southern Pacific Rai
road Company of California or New Mexico or of Arizona whi
were not operated by the Central Pacific Railroad Company?

A. Not to my knowledge.

Q. The Central Pacific Railroad Company operated its own lin
the lines which it owned itself, as an owner, did it not?

A. The Central Pacific?

Q. The Central; that is, the main line from Ogden to San Fra
cisco Bay, and the line from Lathrop to Goshen, and the line nor
from Roseville Junction as far as it had been constructed up
April 1, 1885, were all operated by the Central Pacific Railroad Co
pany as the owner of those properties?

1117 A. Yes, sir.

Q. The lines of the Southern Pacific of California, or
Arizona or of New Mexico, so far as they were operated by the Ce
tral Pacific Railroad Company, up to April 1, 1885, were operat
by that company as a lessee?

A. Yes, sir.

Q. And on the stationery that has been put in, the significance of the words "Central Pacific Railroad and leased lines" was the lines which I have described, which were owned by the Central Pacific Railroad Company and the lines of the Southern Pacific Railroad Company which had been leased to the Central Pacific Railroad Company?

A. Yes, sir.

Q. Then, as of date of April 1, 1885, all those leases were canceled and the Southern Pacific Company took up the operation of the various lines as a lessee company?

A. Yes, sir; I am not familiar with the leases, but that was the operation.

Q. Were you familiar with the methods of accounting which were employed between the various lessee companies and lessor companies, either before or after April 1, 1885?

A. Not any more than I suppose that the Southern Pa-
1118 cific Company was really the banker for all these other companies.

Q. And prior to April 1, 1885, did the Central Pacific Railroad Company occupy the same position as bankers for all the companies?

A. So I understood; yes.

Q. As the payments were made, they were made more or less after a clearing-house method, and charged to the various companies to which the particular payments were chargeable?

A. Well, I don't know; I am more familiar with the Pacific Improvement Company. I do not think they had any bank account themselves. At times they borrowed a large amount of money and would turn it over to the Central Pacific, and later the Southern Pacific; that is, if they wanted money, they would draw on the Central Pacific or the Southern Pacific Company, and if they had any amount of money, they would turn it in to the treasurer of the Central Pacific, until after 1885, and then to the Southern Pacific.

Q. And when any payments were made on these lines under construction, for account of the constructing companies, those payments were either charged on this so-called banking account to those
1119 construction companies or else a draft was drawn by those construction companies on that account to cover the payments so made?

A. Yes, sir.

Q. Do you know anything, Mr. Redington, with reference to what has been done by way of the duplication or near duplication of such of the records of the various companies as were destroyed in the San Francisco fire of 1906 or in the Equitable fire in New York?

A. The stock, you mean?

Q. Yes.

A. I do not think there was any destroyed in San Francisco.

Q. Do you know whether any were destroyed of the records i New York?

A. I was informed at the time that there was.

Q. Do you know to what extent there was a restoration of th stock records?

A. I do not.

Q. Do you know whether it went back of the current stockholding of the company and reproduced anything as to the holdings in earlie periods?

A. I could not say.

1120 Q. You do not know at all about that?

A. No. I know at the time that Mr. Mahl, the comptroller said that they had met with a loss and wanted us to send a copy o all the stock held here.

Q. That was after the Equitable fire in New York?

A. Yes.

Q. Which was subsequent to the San Francisco fire of 1906?

A. Yes, sir.

Q. Do you know whether there was sent on to New York such ma terial as there was here that would assist in the reproduction o records?

A. Yes, sir; we formulated lists of the stock we had in differen companies owned by the Southern Pacific Company.

Q. Did those go back of 1900?

A. Oh, yes; I think some of them.

Q. Did they relate to the holdings in the Central Pacific Railroa Company prior to 1900?

A. No.

Q. Was anything restored, as far as you know, of the record showing the stock holdings in that company prior to 1900?

1121 A. No; we never had had those records in San Francisco not in the treasurer's office. They had the directors' share here, and in many cases the stock of the different companies, in a the companies owned by the Southern Pacific.

Q. Are you referring now to the securities themselves or to boo entries and memoranda showing them?

A. To the stock itself.

Q. I see. That is all.

Redirect examination by Mr. HERRIN:

Q. Mr. Redington, you did not keep the stock transfer books o the Central Pacific Railroad Company in your office?

A. No, sir.

Q. And what you speak of here as stocks were the stock certificates which were held in your office, representing stock certificates to qualify directors, and securities that the company might have in other companies?

A. The treasurer's office kept a record of the shares of that character, and also had the stock. When Mr. Mahl sent for them, we went and looked at our records which were saved, and also checked back the stock to see if everything was all right.

1122 Q. So that your efforts were devoted to looking up the certificates which you held?

A. That is all.

Q. And if they were destroyed by seeing that you got new certificates in place of them?

A. None was destroyed that we had. We did not have to get any new certificates.

Q. You had nothing to do with the stock transfer books themselves?

A. Nothing at all; nothing.

Q. You do not know what was done to replace those books, if anything?

A. I do not.

Q. And what you have said here does not refer to the stock transfer books?

A. No, sir; not at all.

Q. Who was the auditor that you spoke of at this time?

Mr. McCLENNEN. This is in 1906?

Mr. HERRIN. In 1906, yes; at the time of this fire.

The WITNESS. Mr. Seger.

By Mr. HERRIN:

Q. C. B. Seger?

1123 A. Yes, sir.

Q. Do you know what Mr. Seger is doing now?

A. I think he is vice president and comptroller of the Union Pacific.

Q. And his office is where?

A. In New York City.

Mr. HERRIN. That is all.

Mr. McCLENNEN. That is all.

EDWARD M. RAILTON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your age?
A. Sixty-four.
Q. And your residence?
A. Oakland, California.
Q. And your occupation?
A. I am an employee of the Standard Oil Company.
Q. Did you ever have employment with the Central Pacific Railroad Company?
1124 A. I did.
Q. At what time?
A. I commenced employment with them in December, 1868.
Q. In what capacity?
A. Telegraph operator.
Q. At what point?
A. Battle Mountain, Nevada.
Q. How long did you continue there?
A. Until the latter part of May, 1869.
Q. Did you continue there until the line was opened between Ogden and San Francisco?
A. Yes; the line was opened between the 10th of May and the time I left there.
Q. From Battle Mountain where did you move to?
A. Sacramento.
Q. Were you a telegraph operator there?
A. Yes, sir.
Q. How long did you remain there?
A. I remained in Sacramento from approximately the 1st day of June until the 1st of September.
Q. Then where did you go?
A. Upon the completion of the Western Pacific Railroad
1125 which connected Sacramento with San Jose, I was transferred to San Jose; on the 16th of September, 1869, they completed the bridge across the San Joaquin River.
Q. Then you may continue and narrate your service, please.
A. From San Jose I returned to Sacramento. I remained there until the 1st day of January, 1870, when we came to Oakland, with the headquarters of the division superintendent that was established at Oakland on that date.
Mr. MCCLENNEN. That is, still as telegraph operator?
The WITNESS. Yes; continuously as a telegraph opertor.

By Mr. HERRIN:

Q. How long did you continue in Oakland in that capacity?

A. In the capacity of telegrapher, train despatcher, and assistant to the superintendent, I remained there until the 2nd day of August, 1880.

Q. And after that, what did you do?

A. I was master of transportation of the combined roads until the 1st day of July, 1885.

Q. And where was your office?

A. Fourth and Townsend Streets, San Francisco.

1126 Q. And as master of transportation, over what lines did you have jurisdiction?

A. All the lines that were operated by the Central Pacific and its successor, the Southern Pacific.

Q. That included the lines operated by the Central Pacific Railroad Company, did it?

A. It did, sir; yes.

Q. And also the line owned by the Southern Pacific Railroad Company southerly from Goshen to Yuma?

A. Yes, sir.

Q. And other lines in California owned by the different corporations?

A. All other lines in California, with the exception of what we knew as the northern division, which was operated by Mr. A. C. Bassett as superintendent.

Q. Of what company?

A. The Southern Pacific Company.

Q. The Southern Pacific Railroad Company?

A. Well, that I can not be positive about, whether it was the Southern Pacific Railroad. We recognized it as Southern Pacific; but it was a distinct and separate organization, so far as the administration of the operating officials of the Central Pacific was concerned.

1127 Q. Did that remain separate until 1885?

A. Yes; Mr. Bassett was still in charge of the northern division.

Q. And the Central Pacific Railroad Company had nothing to do with that line?

A. Evidently not, because he did not consult either with the manager of the Central Pacific or with the general freight agent at that time. Mr. Bassett was his own general freight agent.

Q. Do you remember how far the line extended from San Francisco southerly to Gilroy and beyond in 1885—July, 1885?

A. I can not say positively, but it is my impression that it extended as far south as Tres Pinos Junction—is it, that goes to Monterey?

Q. No, Castroville.

A. Well, that junction there; possibly a little farther south than Castroville.

Q. But it did not go to Santa Barbara?

A. No, sir; it did not go to Santa Margarita, either.

Mr. McCLENNEN. And that is the line that the witness means is the northern division?

1128 By Mr. HERRIN:

Q. That line, from San Francisco down to the point beyond Castroville, is what you have called the northern division, which was operated by Mr. Bassett?

A. Yes; A. C. Bassett.

Q. You terminated your service with the Central Pacific Railroad Company or the Southern Pacific Company, its successor, July 1, 1885?

A. Yes, sir.

Q. As I understand it, you were, from 1872 to 1876, inclusive, train despatcher on the western division?

A. Yes, sir.

Q. At Oakland Pier?

A. At Oakland Pier, or at that time what was known as Oakland Wharf.

Q. In 1872 had the line, if you remember, from Lathrop to Goshen been built?

A. Not as far as Goshen, sir. Construction had been commenced south from what was then known as Wilson Station, subsequently called Lathrop.

Q. And do you remember about when the road was completed to Goshen?

1129 A. As my memory serves me, I would say along about the fall of 1873 or early in 1874.

Q. And do you recall the building of the road beyond Goshen towards Los Angeles?

A. Yes, sir.

Q. Did your jurisdiction as train despatcher of the western division extend southerly of Goshen?

A. It did; as the road was constructed from Lathrop south, it was designated as the Visalia division. The Visalia division extended as far as Tulare. When we passed Tulare, beyond there it was known as the Tulare division. All of that territory was under the

jurisdiction of Mr. E. C. Fellows, who was the superintendent at Oakland, and I was the train despatcher on that division.

Q. How far did your jurisdiction extend, at any time between 1872 and 1876, as train despatcher—how far south?

A. We had charge of the line as far south as Lang, where the connection was made from the Los Angeles and the San Francisco ends.

Q. Where was Lang with reference to some other station that we may know better?

1130 A. Let me see. Lang is about sixty miles south of Mojave.

Q. It is this side of——

A. It is this side of Newhall.

Q. I see. You had jurisdiction to Lang?

A. Yes.

Q. Do you know what company operated the road south of Goshen when it was opened—that road from Goshen to Lang?

A. It was the continuation of the operation of the balance of the road, sir.

Q. What company operated it?

A. The Central Pacific Railroad. Everything was Central Pacific at that time.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. What time in 1880 was it that you became master of transportation?

A. The second day of August, 1880.

Q. You were master of transportation for all the lines then operated by the Central Pacific Railroad Company?

A. Yes.

Q. Whether owned by it or leased?

A. Yes.

1131 Q. How far south, if you remember, had this Southern Pacific Railroad between Los Angeles and El Paso been constructed when you took charge as master of transportation?

A. The end of the track the 1st of August was at or about what is now known as Benson, Arizona, beyond Tucson.

Q. And you remember the progress of the construction of that road while you were master of transportation, do you?

A. I do.

Q. Who was in charge of construction?

A. The physical construction?

Q. Yes.

A. J. H. Strobridge.

Q. Do you remember about when this road made connection with the Santa Fe at Deming?

A. In the month of March, 1881.

Q. Do you remember about when it reached El Paso?

A. Within a short time after that. We got down as far as the Rio Grande River. There we were hung up for a while on account of bridge construction.

Q. And it was about when that it reached El Paso, if you remember?

A. I should say along about June or July.

1132 Mr. ORR. 1881?

The WITNESS. 1881. I will not be absolutely positive in regard to that, but that is my impression. I know it was mighty hot.

By Mr. HERRIN:

Q. Were you down there at that time?

A. Yes; I was down there several times during 1881.

Q. Do you remember the construction that was continued beyond El Paso, through Texas, of the Southern Pacific Railroad line?

A. I do; yes, sir.

Q. How far did it extend along, that jurisdiction?

A. Up to the connection with the G., H. & S. A.

Q. At or near what point?

A. I do not remember the exact point, but it was beyond Sanderson.

Q. Was it not the Pecos River, or near there?

A. I will not say positively as to that, because they were held up at Pecos River a long time on account of that bridge construction.

Q. As sections of these lines all the way south from Goshen
1133 were constructed and made ready for operation, they were turned over to what company to be operated?

A. Turned over to the Central Pacific Railroad Company—the officials of the Central Pacific.

Q. And after the junction of the line at or near Sanderson, that you spoke of, or the Pecos River, as other witnesses have mentioned, do you know whether the Central Pacific Railroad Company took control of the operation of the line through to New Orleans?

A. The officials of the Central Pacific Railroad Company, located in San Francisco, took charge of the operations after the connection through to New Orleans, and our official names were published on the official time-tables.

Q. Do you remember when the Southern Pacific succeeded the Central Pacific Railroad in the operation of these lines?

A. Yes.

Q. About what time was that?

A. That was early in 1885.

Q. What change, if any, was made in the operating officials or general officials that were operating the road when the Southern Pacific Company took possession?

A. So far as the individuals were concerned, there was no change. The title of the individuals was changed. Mr.
1134 Towne, I think, was made general manager.

Q. Mr. Towne was made general manager some little time before that?

A. Prior to that.

Q. But aside from that, the change of title of Mr. Towne, you remember no other change of title?

A. General superintendent, assistant general superintendent, and master of transportation were the operating officials.

Q. And continued as such?

A. Continued as such.

Q. For the Southern Pacific Company, just the same as they had for the Central Pacific Railroad Company?

A. Yes.

Q. I suppose while you were master of transportation you made frequent trips over these lines?

A. Yes, frequently.

Q. Did you personally know C. P. Huntington, Leland Stanford, Charles Crocker, and Mark Hopkins?

A. Yes, I knew each and every one of them.

Q. Did they have anything to do with these roads we have been talking about?

1135 A. Yes; we recognized them as being the practical owners.

Mr. McClennen. I object to the answer as not responsive, containing an opinion and conclusion of the witness, and ask that the answer be stricken out.

By Mr. Herrin:

Q. How did you recognize them?

Mr. McClennen. The question is objected to as incompetent, irrelevant, and immaterial, asking for an opinion by the witness, and based upon an answer of the witness which in itself is not competent.

The Witness. By knowing them.

By Mr. Herrin:

Q. What did they have to do, these gentlemen or either of them with these roads, the Central Pacific Railroad Company and the Southern Pacific Railroad, that you know of your own knowledge?

A. Well, I know that their instructions as regards operations of any kind were followed.

Q. What did Charles Crocker have to do especially, if anything?

A. Mr. Charles Crocker, more particularly than any of the others, took charge of construction and operation.

1136 Q. Do you remember about when Mr. Mark Hopkins died?

A. I do; yes.

Q. About what year was that?

A. I know he died at Yuma.

Q. What?

A. He died while he was at Yuma. He died in a private car, if my memory serves me; it was along, I should say, about 1882. My memory is vague as to the time Mark Hopkins died.

Q. Do you remember when Charles Crocker died?

A. Yes; I do.

Q. When was that?

A. He died in either 1887 or 1888. I was in Mexico at the time, but I remember distinctly the death of Mr. Crocker. Pardon me; I will just revise my memory on that. The last time I saw Mr. Charles Crocker was at Lathrop, in July, 1888. I came with him in his private car from Lathrop to San Francisco; it was later than that, of course, that he died, because I know I was in Mexico at the time of the old gentleman's death.

Q. Mr. Hopkins died before Mr. Crocker, did he not?

A. Yes; he did.

1137 Q. Prior to Mr. Hopkins' death, who, within your knowledge, exercised the final authority of deciding any questions, operating or otherwise, concerning these lines; what individuals?

Mr. McCLENNEN. That is objected to as calling upon the witness for a statement of an opinion and conclusion, as to matter in itself immaterial.

The WITNESS. Why, Mr. Charles Crocker more particularly, although Governor Stanford also gave orders. I have received instructions from both of them personally, as regards certain movements.

By Mr. HERRIN:

Q. What did Mr. Mark Hopkins have to do with these roads?

A. Mr. Hopkins was the treasurer.

Q. And C. P. Huntington?

A. Was vice president.

Q. Where was his residence?

A. In New York.

Q. Did you ever see him on the line?

A. Yes, a number of times.

1138 Q. After Mr. Hopkins' death, who continued to exercise this controlling authority, so far as you observed it, or know?

Mr. McCLENNEN. The same objection, that it calls for an opinion and a conclusion, and is in itself immaterial.

The WITNESS. The same individuals.

By Mr. HERRIN:

Q. Well, of course, Mr. Hopkins did not do anything after his death. I asked you, after his death.

Mr. McCLENNEN. The same objection.

The WITNESS. The surviving individuals.

By Mr. HERRIN:

Q. And after Mr. Crocker's death, did any one represent him, that you remember, or his interests?

A. His son, Fred Crocker.

Q. Colonel Fred Crocker?

A. Yes.

Q. When the Southern Pacific Company took possession of these lines in 1885 you say there was no change whatever in the official organization of the Central Pacific Railroad that was turned over and continued by the Southern Pacific Company?

A. That is the condition.

1139 Q. I would like to ask about the creation of what they call the Atlantic system and the Pacific system. Would you know about that?

A. Well, at the time of the formation of the Southern Pacific Company, when the Southern Pacific Company took possession, the line was divided at El Paso. The Rio Grande River, as a matter of fact, was always regarded as El Paso, and the operating officials from the New Orleans end took charge of that, while the officials from San Francisco retained charge as far as the Rio Grande River.

Q. But the Southern Pacific Company extended itself over the whole line from New Orleans to San Francisco?

A. Yes.

Q. As master of transportation, was it any part of your duty to supervise the freight and passenger train schedules of those lines?

A. That, more particularly than anything else.

Q. What was the practice of routing trains? Did you consider the ownership of the lines, or did you take the most practicable and best route for trains, without reference to ownership?

Mr. McCLENNEN. That is objected to as extremely leading.

1140 The WITNESS. There was no regard paid to the ownership of the various companies. We routed trains by whichever was the best and most direct route.

By Mr. HERRIN:

Q. Can you give instances where that was done?

A. Yes; trains were diverted, directed to go, if you please, v
Port Costa and Benicia to Sacramento, or via Antioch and Trac
or, if you please, by way of Livermore and Tracy. Train servi
was maintained without any regard to the actual mileage made,
order to meet the exigencies of the occasion.

Q. To meet the public demands?

A. Yes.

Q. Do you remember when the Benicia cut-off, as we call it, w
opened—about when?

A. I think that was along about 1877 or 1878.

Q. Now, before that time the trains between San Francisco a
Sacramento ran over what line?

A. Both lines, via Livermore and via Antioch; the heavy trai
went by way of Antioch so as to avoid the Livermore grades.

1141 Q. But after the Benicia cut-off was opened, being connect
with Benicia and Port Costa by the boat Solano, how we
the main trains run then?

A. Via Benicia and Suisun, on account of the decrease of mileag

Q. That is, the Central Pacific trains that were formerly sent
Stockton and those two routes you mentioned were then sent over t
short route?

A. Yes; by way of Benicia and Suisun.

Q. Was the same rule observed as to taking the most direct rou
for freight trains also?

A. Yes.

Q. Do you know where the general repairs were made to cars a
locomotives on all these lines under your jurisdiction from 1880
1885?

A. Sacramento, principally, construction and general repairs, ov
hauls; also at Oakland.

Q. That is, the Sacramento shops of the Central Pacific Railro
Company?

A. Yes.

Q. The Southern Pacific Railroad Company had no shops there?

A. No, sir.

1142 Q. And those shops made repairs for the Southern Paci
Railroad line all the way to El Paso, just as it did for the C
tral Pacific line to Ogden?

A. Those were our general repair shops for both cars and locom
tives.

Q. Now, as to the equipment purchased for use on those lines, w
they allotted to the ownership of different companies?

A. As far as the marking of the cars was concerned, some were marked "Southern Pacific" and some of them marked "Central Pacific."

Q. Did you ever see any G. H. & S. A.?

A. Freight cars, yes; and, occasionally, passenger cars. So far as freight cars were concerned, there were innumerable markings.

Q. Did you ever mark any cars "S. P. of A.?"

A. S. P. of A. and S. P. of N. M.

Q. Were those cars and locomotives marked in this way used on the particular line for which they were marked, or were they used indiscriminately?

A. Indiscriminately; locomotives marked "S. P. of New Mexico" would haul trains between Sacramento and Oakland, and
1143 engines marked "Central Pacific" would be hauling trains out of Los Angeles, in both passenger and freight service.

Q. So the equipment was used wherever it was suitable?

A. Indiscriminately.

Q. Without reference to its marking?

A. Without any reference to it whatever.

Q. And all these lines were operated as one system?

Mr. McClennen. That is objected to as so leading as almost to raise the blush of shame.

Mr. Herrin. You furnish the shame.

The Witness. Yes.

Mr. Herrin. You can take the witness.

Cross-examination by Mr. McClennen:

Q. Mr. Herrin has not done you the justice that he has the other witnesses; he has not asked you what your age is.

A. That is the first question he asked me, sir. Where is the blush now?

Q. My notes are not as good as your memory. In routing trains, making up schedules, did you deal as freely with the northern division as you did with the other part of the system?

1144 A. No, sir.

Q. Did you route any trains over the northern division?

A. No, sir.

Q. Or make any schedules for the northern division?

A. No, sir.

Q. The Southern Pacific Company took possession in 1885. Can you tell me whether the date was April 1st?

A. It was during April. Whether it was the 1st day of April or not, I do not know.

Q. Mr. Huntington and Mr. Stanford and Mr. Hopkins and Mr. Crocker during their lifetimes, so long as you were connected with any of these companies, occupied some official position in them?

A. Yes.

Q. Mr. Hopkins generally was connected with the treasurer's office, wasn't he?

A. Entirely so, sir.

Q. Mr. Crocker's duty was more that of construction and operation?

A. Yes.

Q. Mr. Huntington was situated in New York?

A. Principally.

1145 Q. And did not come as directly in contact with daily operations as Mr. Crocker, for instance?

A. No, sir.

Q. Mr. Stanford was president of the Central Pacific Railroad Company?

A. He was.

Q. In the operations of your department you recognized their respective official positions and their authority therein?

A. Yes.

Q. You had no personal knowledge of the names of the stockholders in the Southern Pacific Railroad Company or the amount of their holdings?

A. No, sir.

Q. And the same was true of the Central Pacific Railroad Company?

A. Yes.

1146 JOHN E. FOULDS was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. You may state your age.

A. Sixty-five.

Q. Your residence?

A. 2331 Bancroft Way, Berkeley.

Q. Were you ever in any way connected with the Central Pacific Railroad Company?

A. Yes.

Q. You may state, in your own way, when you went into the service of that company, what you did, and how long it continued.

A. In August, 1871, under a written agreement with the then head of the law department of the Central Pacific Railroad Com-

pany, I came to California and accepted employment with that company as a reporter and stenographer, and for the performance of such clerical services as might be required of me when my services as reporter were unnecessary. I remained in that position
1147 until January, 1876. I had studied law and was admitted to the bar. I then and thereafter acted as attorney for the Central Pacific Railroad Company and its allied and subordinate corporations.

At the time of the assumption of the Central Pacific properties by the Southern Pacific Company I continued my relations as attorney with that company and its allied corporations. For a short time I was in general practice, and during the whole of that period conducted business for all of the companies I have mentioned, and returned to the service of the Southern Pacific Company, in its law department, about the beginning of the year 1893 and continued therein until September, 1911, when I retired on pension.

Q. Did you know Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins?

A. Very well.

Q. In your work that you have mentioned, did you meet those gentlemen?

A. I met them frequently.

Q. What did you do for them or with them?

A. Well, I furnished them with advice and performed various legal services as were from time to time required.

1148 Q. Did you draft any articles of incorporation of companies that were to be formed?

A. Quite a number.

Q. Do you remember the formation of the Pacific Improvement Company?

A. Yes; I drew those articles.

Q. Do you remember consolidations that were made by the Southern Pacific Railroad Company subsequent to your employment? Did you have to do with them?

A. Yes.

Q. Consolidations of the Central Pacific Railroad Company subsequent to that time; did you have to do with them?

A. I knew of them, but whether I personally handled that matter I do not remember just now.

Q. Did you have to do with the articles of incorporation of the Southern Pacific Railroad of Arizona?

A. I think not, directly.

Q. Or with the Southern Pacific Railroad Company of New Mexico?

A. I organized the Southern Pacific Railroad of New Mexico, and went to Santa Fe for that purpose.

Q. Under whose instructions did you do that work?

1149 A. I believe it was under the instructions of Mr. Charles Crocker.

Q. Did you meet the gentlemen you have mentioned at any time for purposes of conference or in your work as attorney for the Central Pacific Railroad Company, and afterwards the Southern Pacific Company?

A. Quite a number of times; sometimes there were two or three of them present, at other times I conferred, perhaps, with but one of them.

Q. Do you know whether or not they gave instructions or directions concerning the corporate action of any of those companies?

A. I very frequently got instructions from them as to business that they desired to execute, and in proper cases, where it required some action by the board of directors of those companies, I would draw the necessary resolutions and advise their adoption.

Q. But ordinarily was the practice to put those matters before the board of directors, or were they disposed of by these gentlemen or some of them?

Mr. McCLENNEN. That is objected to as leading and calling for a conclusion of the witness; as too general, and calling for a matter not in itself material.

1150 The WITNESS. Well, practically they were disposed of by these gentlemen personally, or some of them.

By Mr. HERRIN:

Q. Who exercised, if you know—what individual or individuals—the final authority in deciding all matters that arose concerning the Central Pacific Railroad Company, the Southern Pacific Railroad Company, or the Southern Pacific Company, so far as you know?

Mr. McCLENNEN. The same several objections, and the further objection of calling for a statement of an opinion and a conclusion by the witness.

The WITNESS. The authority was very largely exercised by Mr. Stanford and Mr. Crocker; sometimes jointly and sometimes separately. Mr. Huntington, of course, was almost entirely in New York.

By Mr. HERRIN:

Q. Mr. Hopkins died first, did he?

A. Mr. Hopkins died first.

Q. Some time in the seventies?

A. 1878, I think.

Q. As I understand your testimony, if corporate action was

1151 necessary, you drew the resolutions for the directors of the

corporation to pass; if it was not necessary, these gentlemen ou have mentioned disposed of what there was to be done?

Mr. McCLENNEN. That is objected to as leading, calling for an pinion by the witness, and as purporting to be a comprehensive tatement of the witness's prior testimony, and more comprehensive han the testimony so given.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Do you remember when Mr. Charles Crocker died?

A. 1888, I think.

Q. Do you remember when the Southern Pacific Company took ossession; about the time?

A. Yes.

Q. It succeeded what company?

A. It succeeded the Central Pacific Railroad Company.

Q. Before that time what company operated all of these lines, all f the companies mentioned except the northern division?

A. The Central Pacific Railroad Company.

Q. And what you have said concerning the control or author-
152 ity exercised by the four gentlemen you have mentioned, or their successors, refers to the Southern Pacific Company as well s the Central Pacific Railroad Company?

Mr. McCLENNEN. Objected to as leading, calling for an opinion and onclusion of the witness, too general in form, and as to matter in- ompetent, irrelevant, and immaterial.

The WITNESS. Yes.

By Mr. HERRIN:

Q. And does it also refer to the construction companies, the Con- act & Finance Company, the Western Development Company, and e Pacific Improvement Company?

A. All of those companies.

Q. And the Southern Pacific Railroad Company?

Mr. McCLENNEN. The same objection as stated to the three pre- ding questions.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Under whose instructions were you acting when you organized e Pacific Improvement Company?

A. I think under the instructions of Governor Stanford.

Q. Did you attend to business arising on all these lines and any of them, the Southern Pacific Railroad, the Central Pacific, or
153 any of these corporations in California, or the Pacific Improve- ment Company?

A. Oh, yes; we treated them as all belonging to our regular law department business.

Q. The law department covered all of the lines?

A. All of those lines.

Q. And you were just as much attorney for the Southern Pacific in Arizona as you were for the Central Pacific Railroad in Nevada?

A. Practically.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. In your position from 1876 on, did you have knowledge of who were the stockholders in these various companies from time to time?

A. No personal knowledge of the amount of stock held by any particular person, but I will complete that answer by saying that we assumed that the four gentlemen named——

Q. (Interposing.) I did not ask for an assumption; I am asking for knowledge.

A. Well, cut that out.

1154 Mr. HERRIN. Complete your answer, and Mr. McClennen may make his objection.

Mr. McCLENNEN. Before the answer is completed I would like to call to the witness's attention the fact that he is a lawyer, and to observe the extent of the question, and to consider how far, as a matter of his own dignity, he wants to go beyond the question. With that suggestion I would like to have the question read to the witness.

(The question and the unfinished answer were read as above recorded.)

The WITNESS (continuing). Were in practical control of these various companies.

Mr. McCLENNEN. I move that the answer of the witness beginning "We assumed", and all thereafter, be stricken out as not responsive to the question.

By Mr. McCLENNEN:

Q. Did you know anything about the reports that were filed by the Central Pacific Railroad Company showing the number of stockholders that there were in the Central Pacific Railroad Company?

A. No.

Q. Did you ever know about any of those reports?

1155 A. I may have seen some such report at some time, but have no recollection of it at the present time.

Q. You knew the requirement of the California laws with reference to filing with the railroad commissioners of California, after 1879 or 1878, of a report of the number of stockholders in railroad corporations in California, did you?

A. Well, at this time I have no recollection of that requirement.

Q. You have no recollection of that?

A. Not at this time.

Q. Do you know whether or not in 1880 the Central Pacific Railroad Company had 411 stockholders, or thereabouts?

A. I do not.

Q. Did you know that at somewhere about that time, or then beginning, substantial quantities of the stock of the Central Pacific Railroad Company were sold to the general public, either in the United States or Great Britain or on the Continent?

A. I had no personal knowledge of that fact.

Q. Did you know, from your relations with the companies, that stock was being sold and in large quantities?

A. No; my relations with the companies did not call for any such knowledge on my part.

1156 Q. Did you know that in 1881 the Central Pacific Railroad Company had something like 1,340 stockholders?

A. I did not.

Q. There was nothing, in your knowledge at that time, inconsistent with there being that number of stockholders, was there?

A. I have no recollection that I had any occasion to determine what the exact number of stockholders was at that time, or any other time.

Q. And in the same way, then, you do not know whether or not, in 1882, the Central Pacific Railroad Company had something like 1,880 stockholders?

A. No; any information I would get upon that point would be mere hearsay. I knew nothing, of my own personal knowledge.

Q. And in the same way, you do not know whether or not, in 1883, the Central Pacific Railroad Company had something like 2,198 stockholders?

A. No.

Q. In the same way, you do not know whether or not, in 1884, the Central Pacific Railroad Company had something like 2,600 stockholders?

1157 A. I have no personal knowledge on the subject.

Q. Did you know of the fact of the proceedings of the Railway Commission of Congress in 1887?

A. Nothing, of my own knowledge.

Q. Did you ever read the testimony before that commission?

A. I do not think I was present when any of the testimony was taken.

Q. Did you ever, at any subsequent period, read it?

A. I think I have perhaps read some portions of it, but I do not remember whether I have or not.

Q. Do you remember whether you read the testimony of Governor Stanford before that commission in 1887?

A. I may possibly have done so, but I have no recollection of it.

Q. Such portions of the testimony before that commission as you did read were first read by you about when?

A. I do not know that I ever read that testimony. I say it is possible that I may have done so; but if I did, it has passed my memory.

Q. Do you remember ever reading any testimony of Mr.

1158 Huntington, to the effect that in 1885 he did not own more than 6,000 shares of the stock of the Central Pacific Railroad Company?

A. I have no recollection of reading any such testimony.

Q. Do you remember whether you ever read any testimony of Governor Stanford to the effect that about 1880 they began to get the stock of the Central Pacific Railroad Company on the market, and that large blocks of it were then sold?

A. No; I can not remember that I ever read such testimony.

Q. Do you remember the form of the stock certificate which the Central Pacific Company had?

A. I think I have seen some of those old stock certificates, but I can not remember the purport of them at this day.

Q. Do you remember the special feature of them, that they had attached to them dividend warrants, by number, which could be cut off for a dividend in the same way that a coupon on a bond is commonly cut off?

A. No; I haven't any recollection of it.

Q. Did you ever have anything to do with advising on the form of stock certificate that was used by the Central Pacific Railroad Company?

1159 A. I do not think I had. I have no recollection of it.

Q. Did you know anything about the form of stock certificate that the Southern Pacific Company, organized in Kentucky, had in those early days?

A. No; I think not.

Q. Do you remember ever seeing any certificate of either the Central Pacific Railroad Company or the Southern Pacific Company having dividend warrants attached to it?

A. Well, I can not recall seeing any of those stock certificates, now.

Q. Did you ever see any of the transfer books or the stock-record books of either of those companies, the Central Pacific Railroad Company or the Southern Pacific Company?

A. I think not.

Q. Did you ever receive from any person connected with the company any statement, written or oral, as to the number of shares of either of those companies that any one of them held?

A. No; I can not recall having received any such statement.

Q. Did you occupy the position of director in the Southern Pacific Company?

160 A. I think not.

Q. Or of the Southern Pacific Railroad Company?

A. I think I have been a director of the Southern Pacific Railroad Company of New Mexico, but I do not recall being on any of the other Southern Pacific directories.

Q. Were you ever a director in the Central Pacific Railroad Company?

A. I think I was a director after the Central Pacific Railroad Company had disposed of its property, in 1899.

Q. But never before that?

A. I do not recall it.

Q. And when you refer to being a director, possibly after 1899, you have reference to the old company, the Central Pacific Railroad Company?

A. The old company.

Q. Were you counsel or attorney in any of the cases which were brought by stockholders in the Central Pacific Railroad Company against either Mr. Stanford, Mr. Huntington, Mr. Hopkins, or Mr. Crocker, or any or all of them?

A. No; I think not.

Q. You did not appear for the company, or any of the defendants, in any of those cases?

161 A. Well, I do not recall having done so, at the present time.

Q. You have spoken of authority being exercised by Mr. Huntington, Mr. Hopkins, and more particularly Mr. Crocker and Mr. Stanford. Do you recall any instance where they exercised authority in excess of that inherent in the positions which they respectively held as officers and directors of the corporation?

A. The authority referred to by me was the exercise of the power to cause certain operations to be performed in connection with the properties or business of various corporations, and such exercise was usually made personally by one or both or several of the gentlemen named.

Mr. McCLENNEN. Now I will ask that the question be read. See if you do not find that you can answer it by yes or no.

(The question was read by the reporter as above recorded.)

The WITNESS. I can not now say if much of the authority exercised by them was within or without their powers as officers or agents of those corporations.

By Mr. McCLENNEN:

Q. Whenever anything was to be done that required corpo-
1162 rate action, or for which corporate action was desirable, you had action taken by the stockholders or directors of the corporation, did you not?

A. Personally I had nothing to do with the functions of the stockholders or directors of the corporation; but as I stated, I think, in the former part of my examination, whenever I believed that corporate action was necessary, I usually or commonly prepared proper resolutions for adoption, either by the board of directors or stockholders, as the case might be, and presented those to the gentlemen named, who took such necessary steps to have them adopted as they deemed proper.

Q. You did not observe, did you, in your connections with these several corporations, any disposition on the part of anyone to disregard the appropriate corporate obligations and duties of the different corporations to each other?

A. I can not say that I did.

Q. You did not observe, in the control exercised by the Central Pacific Railroad Company prior to April 1, 1885, over the properties of the Southern Pacific Railroad Company, anything in excess of that which was appropriate to be exercised by a lessee corporation over the property which it was operating as a lessee?

1163 A. I can not say that I did.

Q. After April 1, 1885, you did not observe that the Southern Pacific Company, or its officers, desired to or did, in fact, exercise or attempt to exercise any powers over the property of the Central Pacific Railroad beyond those powers which they would have had if the lease from the Central Pacific Railroad Company to the Southern Pacific Company was a valid lease?

A. I did not.

Q. In those instances to which you have referred, in which, in your judgment, it was desirable that corporate action should be taken, do you recall whether corporate action was taken?

A. No; the lapse of time has been so great that I can not recall that specifically.

Q. That is, you can not recall one way or the other, whether your advice was followed or not on those occasions?

A. I can not say that it was followed absolutely on every occasion; I think, generally speaking, it was followed.

Redirect examination by Mr. HERRIN:

Q. There were a good many companies here involved in
1164 this Central Pacific-Southern Pacific combination, were there not?

A. Yes.

Q. And Mr. Stanford, Mr. Crocker, Mr. Huntington, and Mr. Hopkins were not directors or officers of all of those corporations, were they?

A. Not all of them.

Q. You would find a lot of subsidiary companies without those men being in them at all?

A. Yes.

Q. As officials?

A. Yes.

Q. According to the views presented by Mr. McClennen, it would seem that if you got an order from Mr. Huntington, you would immediately look it up to see if he was an official of the corporation involved, and if you found that he was not, you would not observe his order. What was the fact about it? Didn't they give orders and directions concerning each and all of those properties, without reference to the fact as to whether or not they were officials of that corporation?

Mr. McCLENNEN. That question is objected to as containing a statement not accurate, of the questions put or the testimony elicited in the cross-examination, as too comprehensive and too general in form; as extremely leading, as calling upon the witness for a statement of opinion and a conclusion, and for an answer so general as not to be of assistance in determining the facts upon which the witness based his answer.

Mr. HERRIN. I will withdraw that, but let it all stand, because it is very interesting.

By Mr. HERRIN:

Q. I will ask you whether the actions of those men had any reference to whether they were an officer or director of any particular corporation.

Mr. McCLENNEN. That is objected to as leading, particularly in the emphasis put upon the word "reference" and the accompanying gesture, and also calling for a conclusion and opinion of the witness, too general, and as calling for a matter immaterial, incompetent, and irrelevant.

The WITNESS. I can not say that they had, but it was always assumed that they had the necessary authority to order the operations effected by them.

Mr. McCLENNEN. The answer beginning with the words "but it was always assumed", is objected to as a statement of opinion by the witness, and as not responsive to the question, and the petitioner moves to strike out that part of the answer.

By Mr. HERRIN:

Q. For instance, I remember that neither one of those gentlemen was an officer at all of the Pacific Improvement Company, and yet within your knowledge did not those gentlemen control and direct that corporation just as much as any other of those corporations mentioned?

Mr. MCCLENNEN. That is objected to, because upon a casual regard of it it appears to be leading and argumentative, a compound question, a statement of fact by the redirect examiner when not under oath, as calling for an opinion of the witness and a conclusion, and too general in form, and incompetent, irrelevant, and immaterial, and for other reasons.

The WITNESS. Yes.

1167 By Mr. HERRIN:

Q. Do you or do you not recall that neither one of these gentlemen were directors of the Pacific Improvement Company?

A. I can not recall that positively, but assuming that they were not I know that they did exercise very powerful acts of dominion over that company.

Mr. MCCLENNEN. The part of the answer beginning "but assuming that they were not" is objected to as containing an assumption by the witness and as irresponsive to the question and petitioner moves to strike it out.

By Mr. HERRIN:

Q. You remember that Mr. Strobridge was president of the Pacific Improvement Company, do you not?

A. He was first.

Q. And Mr. Douty and Mr. Brown and some others were directors I want to know if you recall that neither one of these four men were directors in the Pacific Improvement Company. Do you recall that?

A. Not at the first organization of the company. Whether they came in afterwards as directors, I do not remember.

1168 Q. Yet there is no question but that they exercised jurisdiction over the Pacific Improvement Company from the start as much as did any of these other companies?

A. There is no question about that. There is no doubt about that.

Mr. MCCLENNEN. This question is objected to as leading, particularly because of the emphasis put upon the "Yet" and the accompanying gesture of the redirect examiner, and as calling for an opinion and conclusion of the witness, and as matter which is immaterial, incompetent and irrelevant.

Mr. HERRIN. Is that all?

Mr. McCLENNEN. That is all I think of at the moment. I strongly suspect that there are several other objections to which the question is subject that I have overlooked in the hurry of the moment.

By Mr. HERRIN:

Q. As a matter of fact, these men were not directors or officers of all of these companies, these railroad companies, were they? Take the Northern Railway and the California Pacific and the South Pacific Coast, and all of these subordinate companies that you know existed; they were not directors or officers of all those corporations, were they?

1169 A. There were some of which they were not directors.

Q. There were a good many of them of which they were not?

A. I think there were quite a number.

Q. And yet was there any distinction in the supervising control or authority of these men exercised as to the corporations they were directors or officers in as compared with those in which they were not?

A. They controlled them all in the same way.

Mr. McCLENNEN. This is objected to as leading and calling for a conclusion; particularly leading because of the emphasis placed upon the words "any distinction", and calling for an opinion by the witness.

Mr. HERRIN. You left out my gesture this time.

Mr. McCLENNEN. Because the objection was effective in excluding any gesture from this particular question. Thus far I have succeeded. What was the answer?

(The answer was read as follows:)

"A. They controlled them all in the same way."

Mr. McCLENNEN. The answer is objected to as not responsive, and as containing a statement of opinion, and a conclusion by the

1170 witness; and the petitioner moves to strike it out.

By Mr. BLAIR:

Q. During the lifetime of Mr. Huntington, Mr. Crocker, and Mr. Stanford, did you notice any lessening of the control or influence they had over the Central Pacific or the Southern Pacific?

Mr. McCLENNEN. That is objected to as incompetent and immaterial, calling for an opinion and statement of a conclusion by the witness and as leading because of the assumption of a prior control.

(By request of the witness the question was read as above recorded.)

The WITNESS. No; I can not say that I did.

By Mr. BLAIR:

Q. Such control or influence as they had when you first became associated with the properties they continued to exercise during their lifetime?

A. So it appeared to me.

Mr. McCLENNEN. The same objections are repeated as to this la question.

Mr. HERRIN. That is all.

1171 Recross-examination by Mr. McCLENNEN:

Q. Did you chance to know anything about the meeting o the Central Pacific Railroad Company in 1898, during the lifetime o Mr. Huntington, when the majority of the stock at the meeting sto in the name of and was voted by the Central Pacific Railroad Sha Holding Company, a British corporation?

A. I was not present at that meeting.

Q. Do you recall the fact?

A. I do not recall the fact. It may have been the fact, but I d not recall it.

Q. Was your relationship to the company so intimate that yo knew anything about the visit to this country of Sir Rivers Wils in the early nineties, representing the British shareholders in th Central Pacific Railroad Company?

A. I knew nothing about his visit, except what I saw in the new papers.

Q. Was your connection with the company sufficiently intima so that you were aware of the fact that after you had seen of h visit in the newspapers you saw that the directorate of th

1172 Central Pacific Railroad Company was materially chang in its personnel?

A. Well, I do not recall it. I may have known it at the time.

Q. You do not recall it?

A. No; I do not recall it.

Q. Do you remember that there were some periods after the vi of Sir Rivers Wilson when the directorate of the Central Paci Railroad Company was wholly diverse from that of the Southe Pacific Company?

A. I have no recollection on the subject.

Q. Were these directors in these various subsidiary companies which Mr. Huntington, Mr. Stanford, Mr. Hopkins, or Mr. Crock were not directors, what are commonly known as dummy director

A. That I could not say.

Q. Did you know anything about the incorporation of the We ern Development Company?

A. I knew of it at the time of its incorporation.

Q. Do you remember about when that was?

A. Not positively; but I think it must have been somewhere abo 1875 or 1876.

1173 Q. Do you know of the date of the incorporation of the Pacific Improvement Company, to the incorporation of which you attended?

A. I think that must have been about 1878. My memory is not good as to dates.

Q. Were the activities of the Contract & Finance Company over at the time you became connected with the Central Pacific Railroad Company?

A. I think not. I think they continued for some time after I became connected with the Central Pacific.

Q. Were they still constructing?

A. What is that?

Q. Were they still doing construction work—that is, the Contract & Finance Company?

A. Well, just this time I can not remember; but the corporation, I think, was still in existence and exercising some degree of activity.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

(Whereupon a recess was taken until 2.30 o'clock p. m.)

1174 AFTER RECESS.

PATRICK SHEEDY was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Sheedy, I will ask you to please state your age.

A. I will be sixty-seven very soon; the 8th of this month.

Q. What is your residence?

A. Los Angeles.

Q. And your occupation?

A. I am superintendent of motive power, at the present time, of the Southern Pacific Company.

Q. At what point?

A. Los Angeles.

Q. Your headquarters are at Los Angeles?

A. Yes, sir.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

1175 Q. Where first?

A. I first entered the service August 1, 1868.

Q. In what capacity?

A. As machinist.

Q. At what point?

A. Rockland, California.

Q. How long did you continue there?

A. About a year and nine months.

Q. Where did you go then?

A. I came to Sacramento.

Q. What did you do there?

A. I served as machinist there for a short period.

Q. At what place?

A. At the Sacramento shops; in the Central Pacific shops at Sacramento.

Q. How long did you remain there?

A. I remained there until October, 1885.

Q. And what were you doing from the time you went there until 1885?

A. The first few months I served as a machinist. Afterwards I filled various positions as foreman there, gang foreman, foreman of machine shops, and so forth.

1176 Q. What did you do after 1885, or after October, 1885?

A. I was sent out on the line as master mechanic.

Q. Of what division?

A. The Salt Lake division.

Q. That is, of the Central Pacific Railroad?

A. Of the Central Pacific Railroad.

Q. Where were your headquarters?

A. My headquarters were at Carlin, Nevada.

Q. Later what did you do?

A. There was a change in the organization of divisions, and they introduced the Humboldt division, or reestablished it, rather, and my headquarters remained the same for a period, and then I went on to the Salt Lake division later on and remained there until 1893.

Q. Just continue to state your employment. State what you did after that.

A. In 1893 I was transferred to San Francisco as master mechanic of what was termed the Coast Division, with headquarters at this point.

Mr. Orr. When was that?

The Witness. 1893. In June, 1894, I was transferred to Los Angeles as master mechanic of the Los Angeles division

1177 and San Joaquin, and I continued as master mechanic of these divisions until July 1, 1902, when I was appointed to the position I now occupy as district superintendent of motive power.

By Mr. Herrin:

Q. Have you since held that position?

A. I have.

Q. Do you remember when the Southern Pacific Company, the company at present operating these lines, took possession and succeeded the Central Pacific Railroad Company?

A. I do.

Q. What year was that?

A. In 1885.

Q. Since that date you have been working for what company?

A. Since that date I have been working for the Southern Pacific Company.

Q. And before that date what was your employer?

A. I was employed by the Central Pacific Railroad Company.

Q. Did you have to do with the setting up of engines and
1178 the repair of engines, locomotives, in the shops at Sacramento while you were there?

A. I did.

Q. Do you remember whether, at any time, you set up engines labeled "G., H. & S. A." in the shops at Sacramento?

A. I do.

Q. Where were those engines used after they were put into commission?

A. Well, they were used indiscriminately. They were sent on lines to which they were marked, and, if occasion required it, they were used in any line that was controlled by the company.

Q. Were any of those engines used in California?

A. Yes; a number of them.

Q. Do you remember the time when the line from Goshen was being constructed southerly to El Paso and beyond?

A. I do; yes, sir.

Q. Did you have anything to do with the construction of that line, in those shops?

A. Nothing more than to attend to such work as came to the Sacramento shops and fell to my lot to care for as foreman of shops.

Q. The question is whether you performed the same func-
1179 tions, or similar functions, with respect to that line as you performed for the Central Pacific main line.

Mr. McCLENNEN. That is objected to as leading and as calling for a conclusion by the witness and for an opinion.

The WITNESS. Identically the same.

By Mr. HERRIN:

Q. Did you or did you not repair engines that were used on that line in Arizona, New Mexico, and even in Texas?

A. I do not recall any coming from Texas; but I repaired engines from west of El Paso. We sent engines into Texas.

Q. There was a period of time when there was no connection through to New Orleans?

A. Yes.

Q. And the construction from El Paso was southerly from that point?

A. Yes.

Q. And do you know about where they made a junction with the line that was being built from the east?

A. I do not.

Q. You do not know where that was?

A. I do not.

Q. Do you remember whether it was east of El Paso?

1180 A. I understood it was east of El Paso. I have never been in that country and had nothing to do with that construction work.

Q. Did you or did you not furnish any material that was used in the construction of the Sunset line, we will call it, from Goshen to El Paso?

A. I had nothing to do with the furnishing of material. I did not furnish any.

Q. Do you remember whether any engine men were detailed from the shops to go to that line?

A. I remember engine men were detailed to go with the engines and take them down there.

Q. Do you remember the engines labeled "229 C. P." and "23 C. P."?

A. I do.

Q. Where were those engines built?

A. They were built in Sacramento.

Q. At the shops in Sacramento?

A. At the Central Pacific shops in Sacramento.

Q. And where were those engines used?

A. They were used on the Tehachapi Mountain.

Q. On the Southern Pacific line?

1181 A. Yes; on the Southern Pacific line.

Q. To what company did those engines belong?

A. They were marked "Central Pacific".

Q. Did you notice any engines marked "S. P. R. R. of Cal." at any time?

A. I did; yes, sir.

Q. Do you know to what company those engines belonged?

A. I presumed they belonged to the same company that owned all the engines, and were simply marked that way to designate them from others that were assigned to other districts.

Mr. McCLENNEN. The answer is objected to as not responsive and as containing an assumption or opinion of the witness, and petitioner moves to strike it out.

By Mr. HERRIN:

Q. Your knowledge consisted merely of the marking of the engines? Did you have occasion to go further and to know exactly where the ownership of those engines resided, whether in one company or another?

A. No, sir; I never did.

Q. Do you remember any engines marked "S. P. of A."?

A. I do.

1182 Q. What did that label mean?

A. Southern Pacific of Arizona.

Q. Do you remember any engines marked "S. P. of N. M."?

A. I do.

Q. What did that label import?

A. Southern Pacific of New Mexico.

Q. Were those two last-mentioned engines used on the California lines in California?

A. They were, when required.

Q. Do you know about the distribution of this rolling stock, as to how it was distributed; whether or not there was any regard paid to the ownership of the lines?

Mr. McCLENNEN. That is objected to as calling for an opinion and a conclusion of the witness.

The WITNESS. I never knew that there was any distinction made in distributing the engines.

By Mr. HERRIN:

Q. Were any engines marked "S. P. of Cal." and "S. P. of A." and "S. P. of N. M." used on the Central Pacific line?

A. Yes, sir.

Q. You have seen them in use there?

A. I have. That is my recollection.

1183 Q. Did you make any distinction in your repairing of engines marked "S. P." of these different designations and "C. P."?

A. No, sir.

Q. So far as your shops were concerned?

A. So far as the shop practice was concerned, there was none.

Q. The Sacramento shops were what we call the general shops?

A. Yes; the Sacramento shops were the general shops.

Q. What work would ordinarily be done in those shops as compared with other shops which were division shops?

A. All of the heavy important work would go to the Sacramento shops.

Q. And will you state whether or not there were what we call division shops at different points on the line?

A. We had division shops on each division.

Q. What repairs were done there?

A. What was termed lighter or running repairs.

Q. The Sacramento shops were owned by what company?

A. The Sacramento shops were owned by the Central Pacific Company.

1184 Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. And for how long a time did those shops do the work for this Sunset line as far as El Paso?

A. Until the Los Angeles general shops were established in 1904.

Q. Were the Los Angeles shops general shops?

A. General shops; yes, sir.

Q. Similar to the Sacramento shops?

A. In a measure, similar to the Sacramento shops.

Q. What company owns those shops at Los Angeles?

Mr. McCLENNEN. That is objected to as calling for a matter of record concerning which this witness could not have first hand knowledge.

By Mr. HERRIN:

Q. Do you know what company owns those shops?

A. The Southern Pacific Company.

Q. The Southern Pacific Company, or the Southern Pacific Railroad Company?

A. Well, the Southern Pacific Company, as the term is now understood, as the title now stands. That is my understanding.

1185 Q. When those Los Angeles shops were put in operation in 1904, for what sections of these roads did those shops do repairs?

A. They aimed at doing general repairs for what was known as the southern district.

Q. Did that district at any time include part of the lines of road owned by the Central Pacific Railroad Company?

A. Yes.

Q. That is, north of Goshen?

A. At all times since the creation of the district it has cared for Central Pacific lines, a portion of them, and does at the present time.

Q. If repairs are needed for engines in use on the line at any point south of Fresno, for example, where would those repairs be made now?

A. It would depend altogether on the distribution of work and the amount of work we had to do. We send engines at the present time, disregarding entirely the district—we send them to Sacramento or make repairs at Los Angeles, as is most convenient.

Q. That is to say, if the Sacramento shops were fully occu-
1186 pied and you had more room for work, you would do the work at Los Angeles?

A. Yes, sir.

Q. And vice versa?

A. And vice versa.

Q. Do you remember when the Southern Pacific Company, the company that is now operating these lines, took possession of them?

A. I do.

Q. What year was that?

A. 1885, as I remember it.

Q. Prior to that time what company operated these lines?

A. The Central Pacific Railroad Company.

Q. Was there any change in the official organization, as far as you know, of the Central Pacific Railroad Company when the Southern Pacific Company took charge in 1885?

A. The only change I recall was the introduction of another system; that is, dividing up the total mileage into two systems, the Atlantic and the Pacific.

Q. What did the Atlantic system comprise?

A. The Atlantic system would be the Southern Pacific lines east of El Paso.

Q. What did the Pacific system comprise?

1187 A. The Pacific system would comprise all other lines west of El Paso, to Portland, Oregon, and east to Ogden.

Q. West of Ogden, you mean?

A. Yes. I say, east to Ogden.

Q. Yes.

Mr. HERRIN. You may take the witness.

Mr. MCCLENNEN. No questions.

GEORGE T. KLINK was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Will you please state your age?

A. Fifty-two.

Q. What is your residence?

A. San Francisco.

Q. And your occupation?

A. Public accountant.

Q. Were you ever in the employ of the Central Pacific Railroad Company?

A. I was.

1188 Q. When did you enter that employ?

A. In 1883.

Q. In what capacity?

A. As a clerk in the accounting department.

Q. What was the title of the officer in charge of that department?

A. The general auditor. I entered as a clerk in the general auditor's office.

Q. How long did you continue in that capacity?

A. For four years, until about 1887, when I was transferred to the office of the secretary and comptroller. There I remained for a period from 1887 to about 1895. In 1895 I was appointed auditor of disbursements of the Pacific system of the company.

Q. Of what company?

A. Of the Southern Pacific Company; and in 1900 I was appointed general auditor of the Southern Pacific Company, and continued in that capacity, the latter capacity, until 1904, when I resigned from the service.

Q. During the time you were chief clerk to the comptroller, I think you have mentioned, did you have any authority, at any

1189 time, to represent him during his absence or incapacity?

A. During the period from about 1892 to 1895 I was the chief clerk in the comptroller's office, and was authorized to represent him during his absence or incapacity.

Q. And did you do it?

A. I did.

Q. Do you remember when the Southern Pacific Company, the present company operating these lines, took possession of them?

A. Yes, sir; it was in 1885.

Q. And in what employ have you been since that date?

A. From 1885 until 1904 I was in the employ of the Southern Pacific Company.

Q. And prior to that date?

A. From 1883 to 1885 I was in the employ of the Central Pacific Railroad Company.

Q. What papers and records did the secretary of the company keep, so far as you observed, when you were there?

A. The secretary of the Central Pacific Railroad Company, as well as the secretary of the Southern Pacific Company, was the chief accounting officer of the company, as well as the secretary,

1190 for the purpose of keeping the records of directors' meetings; and he was also custodian of the company's contracts. The minutes of the proceedings of the board of directors were maintained

n that office, and also a record of the corporate affairs of the com-anies. He had jurisdiction generally over the accounting of the ntire system.

Q. Who was the chief of that office?

A. Mr. E. H. Miller, Jr., from 1883 to 1885. I should say from 883 until the time of his death he was the secretary of the Central acific Railroad Company. Mr. Miller was also the secretary of he Southern Pacific Company from 1885 to 1887. In 1887 G. L. ansing was appointed the secretary and comptroller of the Southern acific Company and acted in that capacity until the time of his eath.

Q. Is Mr. Miller still alive?

A. No; Mr. Miller died about 1892. Mr. Lansing died about 1895.

Q. Was the comptroller chief of the auditing department?

A. Yes.

Q. The auditor was under him?

A. Yes; he was the chief of the auditing and accounting depart-ment of the system.

191 Q. Over what lines of railroad did the secretary and comp-troller exercise jurisdiction while you were in the office?

A. Over all of the lines which comprised the Pacific system of the outhern Pacific Company in 1885, which constituted the lines west f El Paso and of Ogden and as far north as Portland. The lines Oregon did not become a part of the system, as I recall it, until me time in 1887. Generally speaking, the secretary or the comp-oller exercised jurisdiction over the accounting methods of all the nes constituting the system.

Q. The Oregon lines were separate until the connection was made the Siskiyou Mountains with the lines in California?

A. Yes; there was a physical separation there until, I believe, out the end of 1887, when connection was made.

Q. After that connection?

A. After that connection the lines in Oregon became a part of the acific system.

Q. Of the Southern Pacific Company?

A. Of the Southern Pacific Company.

Q. Now, prior to 1885, when the Southern Pacific took 92 possession, will you state what lines the Central Pacific Rail-road Company was operating?

A. You wish them in a general way?

Q. Yes.

A. The Southern Pacific Railroad Company of California, the rthern Railway, the California Pacific, the Central Pacific Rail-ad line itself, the Southern Pacific Railroad of Arizona, the South-

ern Pacific Railroad of New Mexico, the Stockton & Copperopolis Railroad, and various other small lines in the southern part of the State, the Amador Branch Railroad, and the Berkeley Branch Railroad.

Q. Do you remember whether they operated lines east of El Paso also?

A. As I recall it, they did for a short time. My recollection is not clear upon that. I entered the service in 1883, and I believe it was in that year that the physical connection was made in Texas.

Q. It was in that year that the through line to New Orleans was completed?

A. It was in that year; yes.

Q. Now, what you call the northern division, what did that include prior to 1900, for example?

1193 A. That consisted of a line running south from San Francisco, and prior to 1885 was not operated by the Central Pacific Railroad, but it was operated under a separate management. It constituted a line from San Francisco south as far as Tres Pinos, with several branches like the one from Pajaro to Santa Cruz, a branch to Monterey, and a small branch out of San Jose. It was operated by a separate operating organization up to 1885, and when the Southern Pacific Company was formed it became a part of the Pacific System.

Q. And the Central Pacific Railroad never had anything to do with the operation of that line officially?

A. Not to my knowledge.

Q. That is, the northern division, I mean.

A. Yes.

Q. Can you give, in a general way, a description of the lines owned by these different companies, and I will ask you to give the names of them so that you can indicate them. Do you need a map to do that?

A. I would have to have something to refresh my memory.

Q. Take the Central Pacific Railroad; do you know exactly what lines were owned by that company in 1885?

A. Yes.

1194 Q. Have you at hand data from which you can give us the ownership of those different companies in 1885?

A. Yes. And the physical description by terminals?

Q. Yes; from one point to another.

A. Central Pacific Railroad, consisting of the following: San Francisco to Ogden; Niles to San Jose; Roseville to Delta; Lathrop to Goshen; Oakland to Alameda, local lines.

Southern Pacific Railroad of California, consisting of a line from Huron to Yuma: Los Angeles to San Pedro.

Q. Is that Southern Pacific Railroad?

A. Yes; that is, exclusive of the northern division.

Q. You had better give that, too, and say northern division.

A. Northern division, San Francisco to Tres Pinos; Carnadero to Soledad.

The Monterey Railroad, Castroville Junction to Monterey.

1195 Pajaro & Santa Cruz Railroad, Pajaro to Santa Cruz; Aptos to Monte Vista.

Southern Pacific Railroad of Arizona: Yuma to the New Mexico line.

Southern Pacific Railroad of New Mexico: New Mexico and Arizona line to El Paso, Texas.

Mr. GANN. That is the Rio Grande?

The WITNESS. Yes. Los Angeles & San Diego Railroad: Florence to Santa Ana, California.

Los Angeles & Independence Railroad: Los Angeles to Santa Monica, California.

Stockton & Copperopolis Railroad, two lines: Stockton to Milton; Peters to Oakdale.

Amador Branch Railroad: Galt to Ione.

Berkeley Branch Railroad: Shell Mount to Berrymans.

California Pacific Railroad, consisting of the following: Vallejo Junction to Vallejo; Vallejo to Sacramento; Davis to Knights Landing; Napa Junction to Calistoga.

1196 Northern Railway: West Oakland to Delaware Street; West Oakland to Martinez; Port Costa to Suisun; Woodland to Tehama.

San Pablo & Tulare Railroad: Near Martinez to Tracy.

Those corporate properties, in the lines which I have mentioned, constituted the Pacific system of the Southern Pacific Company in 1885.

Mr. MCCLENNEN. What date in 1885 are you speaking of?

The WITNESS. At the time of the lease, under date of February 1st to March 1st, 1885.

By Mr. HERRIN:

Q. You remember, as you have said, when the Southern Pacific Company took possession of those lines in 1885?

A. Yes.

Q. State whether or not there was any change in the operating organization which was in charge, under the Central Pacific Railroad Company, after the Southern Pacific Company took possession.

A. No, sir; there was no change in the organization.

Q. Did the individuals who were officials of the Central
1197 Pacific Railroad Company continue in their positions under
the Southern Pacific Company?

A. Yes.

Q. Was there any change made at the time the Southern Pacific Company took possession that is worth noting?

Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion as to what is worth noting.

The WITNESS. No, sir.

By Mr. HERRIN:

Q. What I had in mind was about the creation of the Atlantic system and the Pacific system.

A. The lines east and west of El Paso?

Q. Yes. Was that division created at that time?

A. Yes.

Q. You can state what was included within the Pacific system and what was included within the Atlantic system.

A. At the time of the Southern Pacific lease, March 1, 1885, the Pacific system and the Atlantic system were created, the Pacific system consisting of the lines west of El Paso and Ogden, and the Atlantic system, consisting of the lines owned, controlled, and operated east of El Paso.

Q. As you understood it, the Southern Pacific Company took
1198 a lease of the line between Goshen and New Orleans in 1885?

A. Yes.

Q. Did you ever see the lease of those lines?

A. Yes; I have.

Q. Have you read it often?

A. A number of times I have read it.

Q. Will you examine this copy and see if you are able to say that that is the lease?

A. I can identify that as the lease.

Q. Did you ever see the original of that lease?

A. Yes.

Q. Where was it when you saw it?

A. It was in the custody of the secretary of the Southern Pacific Company.

Q. At what time was it in that custody?

A. During the period from 1885 to 1895, at which time I was employee of that office.

Q. Do you know what became of it after that?

A. No; the office of the secretary was changed at that time. There was a new secretary elected and the custody of those documents [illegible] in my hands, and I have every reason to think that the [illegible]

1199 was destroyed in the fire which destroyed most of the records of the Southern Pacific Company later.

Q. What secretary was elected?

A. E. C. Wright was elected secretary to succeed G. L. Lansing.

Q. At what time?

A. In 1895.

Q. 1895?

A. 1895 or 1896.

Q. And that was a separation of the office of secretary from the accounting department?

A. So far as it affected my immediate duties, it was a separation.

Q. And to that office, the secretary's office, was given the custody of the original of that lease?

A. Yes.

Q. Did you see it after that time?

A. I can not state positively, but I think that I had occasion to refer to it on more than one occasion subsequent to that time. I think I have seen it.

Q. What do you know about its destruction?

A. I do not know.

1200 Q. You do not know whether it was destroyed or not?

A. No, sir; I can not testify as to that.

Q. But the copy I gave you is, according to your recollection, a copy of that original?

A. Yes; it has that appearance, and I think I can identify that. I should say that is a copy of the lease; yes.

Q. You had frequent occasion, while the original was in your custody, to examine its provisions in order to make a correct account of the transactions under the lease, did you?

A. Yes; it was necessary to divide the revenues under the lease among various corporate properties, under the provisions of the lease, and that was a part of the duty of the office in which I was employed.

Q. How far did you become familiar with the provisions of the lease in that respect by those examinations?

A. There were certain percentages which were used in distribution of the net income, and not only that, but in the entry of this lease in the minutes of the Southern Pacific Company, I have had occasion to compare the original with the copy on more than one occasion, and I have also handled the document when it was called for by

1201 people who wished to make use of it, to examine it, and it became necessary for me to take receipts for it and pass it from the office records, temporarily.

Mr. HERRIN. I will offer this copy and ask to have it marked as an exhibit.

Mr. McCLENNEN. Petitioner notes and reserves the right to obje to the authenticity, materiality, and legality of this lease.

(The lease referred to was received in evidence and marked "D fendants' Exhibit (Klink) No. 20, March 4, 1915", and will be fou in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. What change, if any, did you make in the books and bla forms used in your office after the time that the Southern Paci Company took possession in 1885?

A. I remember that at the time the change was made and t Southern Pacific Company assumed control that the stock of statio ery in the auditor's office was used, as far as possible, by eliminati the words "Central Pacific Railroad" and stamping over them t words "Southern Pacific Company, Pacific system". I also kn

1202 and remember that at that time a new ledger was started f recording the transactions of the Southern Pacific Compan and the forms which were observed and the new books whi were used were substantially along the same lines as those which h been used, except that we labeled them "Southern Pacific Company instead of Central Pacific Railroad Company.

Q. Were the earnings or revenues from the Sunset line kept sep rate from those of the Central Pacific line, in the matter of ben handled as deposits, or as a banking matter? I do not refer to t mere keeping of books or accounts, but to the actual custody of t money.

A. All receipts of the company from the operation of its lines w forwarded to one treasurer.

Q. And before 1885 that was the treasurer of the Central Paci Railroad Company?

A. Yes.

Q. And after the Southern Pacific Company took possession it w the treasurer of the Southern Pacific Company?

A. Yes.

Q. Do you remember, at the time of the lease of the South Pacific Company, a copy of which is marked "Exhibit 20", and a

1203 of the lease of the Central Pacific lines to the Southern Paci Company, a copy of which is annexed to the bill or petiti and which took effect April 1, 1885, if there was any invent or schedule prepared of property, rolling stock, or other phys property, which was taken over by the Southern Pacific Company

A. Yes; there was a very complete inventory taken at that time.

Q. Did you have occasion to refer to that inventory afterwar and if so, in what connection?

A. The inventory was placed for safe keeping in the custody of the secretary, and I have had occasion to refer to it.

Q. For what purpose?

A. To determine the property which had been leased and to take into consideration, possibly, replacements.

Q. Well, it was necessary always to refer to it when you were replacing these properties, was it not?

A. More particularly as regards rolling stock; yes, sir.

1204 Q. Did you add to the inventory? When there were additions to the rolling stock and replacements, would you add to or amend this inventory, or supplement it so that you could have a list of the property at any date which was in the possession of the Southern Pacific Company?

A. As far as rolling stock is concerned, yes. There was a very complete list kept of the additions to the equipment. But as far as all other details were concerned, in the inventory of property, the record remained as it was when the property was turned over. This original inventory, as we viewed it, was the property for which the lessee was responsible, and which it would be expected to restore to the lessor at the termination of the lease.

Q. After the lease to the Southern Pacific Company, was this rolling stock owned, any part of it, by the Southern Pacific Company itself, or was it owned by the lessor company?

A. The lessor companies retained their ownership. There were times when the Southern Pacific Company did own, for a time at least, considerable equipment, but the equipment which formed the property of these different corporations still remained their property; it was so considered.

1205 Q. And if you added new engines, were they allotted in ownership to these lessor companies, or some of them, or was the ownership taken and held by the Southern Pacific Company?

A. No; they were allotted to the lessor companies; so far as it was necessary to replace equipment which had been destroyed, it was charged against a renewal fund carried for that purpose. If it were necessary, for any reason to add to their equipment, it was charged against their capital account.

Q. When a locomotive, for example, or a car was labeled "C. P." with a number, what would that import as to the ownership, if anything?

A. It would imply that that was the property of the Central Pacific Railroad Company.

Q. Did that fact correspond with that labeling?

A. Yes, sir.

Q. That if it was labeled in the name of one of these lessor companies, that property was owned by that company?

A. Yes, sir; that was the fact.

Q. If you remember, there was some amendment made, at different times, to this lease of the Central Pacific lines, which is

1206 dated February 17, 1885, and annexed to the petition as Exhibit A.

A. I recall that there were amendments; yes.

Q. Was there at any time, in any of these amendments, any new inventory or schedule of this rolling stock and other property made or taken?

A. No, sir.

Q. You never had occasion to make any new inventory of that property?

A. Not of the property as a whole; no, sir.

Q. What distinction do you make between that inventory and the current inventory you kept of the materials and supplies on hand, for example?

A. An inventory was taken annually, and sometimes semiannually, of the current materials and supplies which were needed for the operation of the road, such as rails, ties, and shop supplies, and which supplies were required for replacements and repairs of every kind. This inventory was taken for the purpose of checking the actual physical count with the book record, and was for the protection of the company's accounts, as well as to see that none of the supplies disappeared. That inventory was essential as a matter of current accounting, to properly safeguard the company's

1207 interest in its operations.

Q. As materials or supplies were needed, were they purchased by the operating company and held by it until they were used and distributed, or were they purchased in the names of the lessor companies and owned by them from the start?

A. All supplies were purchased by the operating company, the lessee.

Q. And owned by it?

A. And owned and held by it, the Southern Pacific Company.

Q. Until what time, if there was any change?

A. Until such time as the supplies and materials were consumed in operations or in the requirements.

Q. Then how were they charged?

A. Then they were charged against the property of that section of the road where they were used. There is an exception in the matter of repairs to cars. In that instance the materials as well as the labor incident to the repairs of the cars was distributed among the various lessor lines on an arbitrary basis, such as car mileage, and the same with supplies and repairs of locomotives.

1208 Q. In the distribution and use of rolling stock, was there any attention paid to the ownership of the rails upon which it was run?

A. The rolling stock was used and assigned to the traffic needs of the system. The record was kept of the mileage of the cars and locomotives of the various companies, and the service was paid for. If a Southern Pacific locomotive was used by the Northern Railway, or a Southern Pacific of New Mexico locomotive was used by the Southern Pacific of California, or if the cars of any one of these properties ran upon the roads of any other of the properties, it was allowed to them in the way of compensation on the basis of the mileage at fixed rates.

Q. This lease and this amendment covered that, did it not? The provisions of the lease covered that allotment?

A. Yes.

Mr. ORR. That is objected to for the reason that the lease is the best evidence.

Mr. HERRIN. You will find it there.

Mr. ORR. I did not, and I looked at it carefully.

Mr. HERRIN. It is in some amendment to it, I know. It is in
1209 the Central Pacific lease. You will find it there—the one you have annexed to the bill.

Mr. ORR. Yes.

By Mr. HERRIN:

Q. Was this practice continued during and after 1893, that you spoke of, as to allotting the charges to be made for use of rolling stock upon lines other than that of the company owning it?

A. Yes; it was continued during the entire period of my service with the company.

Q. And the amendment to the lease which is set forth in the bill, as dated December 7, 1893, did not require, as you understood it, any difference in that practice? You might look at that for a moment [handing paper to the witness].

What I want to know is whether that amendment made any change or caused any change in your accounting as to the use of rolling stock.

A. No, sir; it did not.

Q. You continued the practice after that time, just as you had done it before, and as you have described it?

A. Yes.

Q. Then the rolling stock was assigned wherever it was needed, or wherever it was suitable?

1210 A. Yes, sir. The treatment of freight cars, for instance, in that respect would be, in a smaller way, precisely what is done with the freight cars between different railroad properties.

Q. That is the practice generally among all the railroads of the country, to interchange freight cars?

A. Yes.

Q. And use them on different lines?

A. Yes.

Q. But it is not the practice, is it, to interchange locomotives?

A. No. The interchange of freight cars was much more extensive than the exchange of locomotives, but I merely mentioned the similarity of the treatment of freight cars as between other lines, or what are known as foreign lines, to show that the use of freight cars was according to the destination and the origin of the freight—that the use of the car itself was allowed for to the owner on a basis of mileage compensation.

Q. What I am trying to get at is this—you do not seem to get it exactly, and I want to have you understand my question, which is:

1211 If you wanted a car to be operated between San Jose and San Francisco, or between San Francisco and Los Angeles, did you take cars belonging to the Central Pacific Railroad Company for that use?

A. There would be no distinction made as to whether they were Central Pacific or any other line. The car which was available for that purpose would be assigned to that run.

Q. Irrespective of the ownership of it?

A. Irrespective of the ownership of it.

Q. It was not usual, was it, in practice for a Union Pacific locomotive to come on over the Central Pacific and be used on that line?

A. No.

Q. Or for a Central Pacific locomotive to be used on the Union Pacific?

A. No, sir; that was very rare.

Q. And that would be so with all your connections; the locomotives would be retained upon the lines owning them?

A. Yes, sir.

Q. What was the rule with respect to the locomotives owned by these different companies composing this Southern Pacific

1212 Company's Pacific system? Were they kept upon the lines of the companies owning them, or were they used indiscriminately?

A. They were used where they were needed, according to their power and the requirements of the track, irrespective of their corporate ownership.

Q. Was there any more attention paid to the ownership of the locomotives than to the ownership of a car, for example, on the Pacific system?

A. No; I should say not.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. The interchange of freight cars between independent carriers is brought about by the origin or destination of the freight carried and is practically universal, is it not?

A. Yes, sir.

Q. And it is customary between the different railroads to charge and credit for the use of the car in accordance with the mileage traveled or some other factor adopted for the accounting?

A. Yes, sir.

1213 Q. This same plan prevailed between the various subordinate companies whose rolling stock was operated by the Southern Pacific Company or the Central Pacific Railroad Company in its day?

A. As between this Central Pacific Railroad and a foreign line?

Q. Yes.

A. Yes, sir.

Q. And also as between the Central Pacific Railroad Company and the Southern Pacific Railroad Company?

A. No. The Southern Pacific Railroad Company was never an operating company. The Central Pacific Railroad Company operated the line of the Southern Pacific Railroad Company.

Q. Did not the Southern Pacific Railroad Company operate the northern division running from San Francisco down through Gilroy, as far as the line ran?

A. Yes; but, as I recall it, there was no physical connection there between the two lines.

Mr. HERRIN. No track connection?

The WITNESS. Well, the only place that we touched was at San Jose. Yes; there was a physical connection at San Jose and also a physical connection here in San Francisco.

1214 By Mr. MCCLENNEN:

Q. Was there any interchange of rolling stock between the Central Pacific Railroad Company and the northern division of the Southern Pacific Railroad Company in those days prior to April 1, 1885?

A. I believe that there was, to a limited extent, anyway.

Q. Was that charged and credited on some per diem or mileage basis?

A. No, sir; I think not.

Q. How was it arranged?

A. There was no payment made, as I recall it, between the various interrelated lines prior to the time of the lease to the Southern Pa-

cific Company. I do not recall it, and my impression is that there was no arrangement of that kind.

Q. After the lease to the Southern Pacific Company; that is, after April 1, 1885, there were debits and credits when the rolling stock of one of the owning companies was used upon the line of another of the owning companies?

A. Yes.

Q. To put it specifically: When the G. H. & S. A. locomo-
1215 tives were brought up from Texas and used on the lines in California, the G. H. & S. A. got a credit for the use of those locomotives?

A. Yes.

Q. The accounting system of the Southern Pacific Company has been a matter of growth and improvement?

A. Yes.

Q. Your first association with any of these companies was in 1883?

A. In 1883; yes.

Q. And the accounting systems then prevailing were crude in their comparison to those which developed later?

A. Yes, sir.

Q. The failure to make the debits and credits for the use of the stock was one of the deficiencies in the system that existed prior to 1885?

A. Well, it might be so described; but in addition to that it was possible that the fact that the operating company was also the owner of a railroad might have prevented that being instituted.

Q. When the Southern Pacific Company began its operations you opened an entirely new set of books?

A. Yes.

Q. And from that time on the operating books were exclu-
1216 sively the books of the Southern Pacific Company?

A. Yes, sir.

Q. Those books began with April 1, 1885?

A. Yes; as far as the operations were concerned.

Q. That is, the Southern Pacific Company never did anything until April 1, 1885?

A. March 1, 1885.

Q. March 1, 1885?

A. Yes.

Q. Was there a distinction between different parts of the system in respect to that?

A. Yes; the lines south of Goshen were operated by the Southern Pacific Company from March 1, 1885, and the Central Pacific lines were operated from April 1, 1885.

Q. And the accounting distinctions were made to conform to what you have just stated?

A. Yes; one set of lines reported their operations for ten months and the other set for nine months of the year 1885.

Q. Then, conversely, the Central Pacific Railroad Company accounted for operations south of Goshen, as a lessee, for two months only of the year 1885?

1217 A. Yes.

Q. And accounted for operations of its own owned lines for three months of 1885?

A. That is correct; yes, sir.

Q. In giving the list of railroads owned, when I interrupted to ask you the date, you used the expression either "February 1st and March 1st" or "February 1st or March 1st", I am not sure which. What you had in mind was, in fact, March 1st and April 1st, 1885?

A. Yes, sir.

Q. Receipts and disbursements, as a matter of the physical handling of money, were into and out of one treasury, you have stated?

A. Yes.

Q. And that was always the treasury of the lessee operating company?

A. Yes; the operating company.

Q. The final instance of the receipts and disbursements was determined by the accounting department, just as might be done in any clearing house?

A. Yes, sir.

1218 Q. The new equipment bought for the lessor lines was paid for in the first instance by the lessee?

A. Yes.

Q. And the amount of payment, if it was new equipment in the truest sense, was charged to the lessor line for which it was purchased?

A. Yes. At the time that all of the payments were complete and the equipment had been received upon the lines during that interim there was a very considerable sum accumulated and was carried in what might be called an unadjusted account on the books of the lessee.

Q. That was a matter of temporary detail, which did not affect the final instance of the charges?

A. Only to this extent, that a record was kept of the rolling stock, locomotives, and cars, by numbers; these numbers were replaced from time to time as the occasion required or the exigencies of the operations of the system warranted. It might be that one road had lost fifty freight cars. They might be replaced in value by some other kind of equipment, and while that matter was being determined

the lessee acted as the holder, you might say, or the banker, for this equipment. That, however, was a temporary arrangement, and was always adjusted within the fiscal year.

1219 Q. The lessee company was practically in all fiscal matters the banker for all the different companies?

A. Yes.

Q. The expenditures for replacements of equipment were charged to a replacement account?

A. Yes.

Q. And there was an operating account?

A. Yes.

Q. That was a charge to expense?

A. Well, if you would like, I will detail the practice to you.

If cars were destroyed, or locomotives were destroyed, or rendered obsolete for any reason, the operating expenses were charged and a credit account styled a renewal fund was created. When the new equipment was bought, sufficient to replace that, the renewal fund was first assigned to that particular property, according to its needs, and according to its requirements. In that way the operations of the property were charged at the time of the condemnation or at the time of the destruction, but the replacement might be delayed some months.

1220 Q. Through the clearing process of your accounting system the financial relations between the lessor companies and the lessee company were kept with the same attention to scrupulous care that would exist according to the best accounting systems in the relations between any lessor and lessee railroads?

A. Yes.

Q. You have spoken of the continuance in office of the operating officials of the Central Pacific Railroad Company when the Southern Pacific Company took up the operation. You did not mean by that answer, did you, to convey the idea that the corporate officers of the two companies were the same?

A. No.

Q. There were material differences in the personnel of the officers and directors of the Central Pacific Railroad Company, the Southern Pacific Railroad Company, and the Southern Pacific Company?

A. A great many of them were the same individuals. There were exceptions. For the most part, the directors or the owners of the property, the Central Pacific Railroad Company, were also directors of the Southern Pacific Company.

Q. There were always some directors that were not com-

1221 mon to the two companies, were there not?

A. I think so; yes.

Q. Just when the noncommon directors were a majority, and just when were they not, you would not be able to say without refreshing your memory from the records?

A. I would have to look at some of the records in order to determine it; but in 1885 my recollection is that they were substantially the same people.

Q. Were you in a position to know about the stock holdings in the various companies in 1885?

A. Yes; as regards the Central Pacific Railroad Company and the Southern Pacific Railroad Company and the Southern Pacific Company.

Q. You were conversant with who were the record stockholders at that time?

A. Yes.

Q. Did you have to do with the annual reports that were made to the California Railroad Commission, showing the numbers of stockholders?

A. Yes.

Q. Did you have enough to do with it so that you knew as to
1222 their correctness, with respect to the number of stockholders that were reported therein?

A. Yes, sir.

Q. Would it fit with your recollection that in 1885 the Central Pacific Railroad Company had something like 2,237 stockholders?

A. I should think that that would be about right. If you had said 1,237, it would have meant just about the same. I know that there was quite a considerable list.

Q. And the same way, in 1884, 2,600?

A. There should not be a great variation between the years. The numbers of stockholders, I presume, is correctly reported. Of course that does not represent the stock ownerships, perhaps, in its entirety. In other words, there might be a very large number of small stockholders and a very small number of large stockholders.

Q. And the reports did not, as you recall it, purport to state the extent of the holdings of the different stockholders?

A. No; the list of stockholders, I think, would assign one number to the holder of one share or a thousand shares, and would not discriminate, or differentiate, rather.

1223 Q. Do you know whether there are in existence any of the original records which would show the stockholders during the period from 1880 to 1900, or any part of it, of the Central Pacific Railroad Company?

A. I think there is no such record in existence—in this city, anyway. I had control of those records; they were in my custody for a number of years; and at the time that I left the service of the com-

pany they were in the office of the company here, and, to the best of my knowledge, they were destroyed in the fire of 1906.

Q. Do you know whether there are any secondary evidences of those holdings during that period in existence?

A. Well, none that I am sufficiently familiar with to state positively. I think that there are some records, but that is only a matter of impression and not of actual knowledge.

Q. What is the last time that you have ever seen any records or memoranda touching the stock holdings during any part of that period?

A. I should say 1904.

Q. You do not know whether there have been any reproductions of any part of the records for the period from 1880 to 1900?

1224 A. As regards stock ledgers?

Q. Either as regards stock ledgers or certificate books.

A. No; I do not.

Q. You were aware that by 1884 large quantities of the stock in the Central Pacific Railroad Company had become widely distributed in America and in Europe, England, and on the Continent?

A. I may not have known it in 1884, but I heard of it subsequently.

Q. When you heard it, it was as of the condition that existed in 1884?

A. Yes; that is what I meant to imply.

Q. And by the first of 1885 more than a majority of the stock of the Central Pacific Railroad Company in actual ownership had become generally distributed to investors, members of the public, in the United States and England and on the Continent of Europe?

Mr. HERRIN. That is objected to unless the witness is confined to his knowledge. I object to his answering as to repute or hearsay.

1225 The WITNESS. The record of the stock ledger would not necessarily disclose the actual ownership, but the greater part of the stock of the Central Pacific Railroad Company was held in the names of employees of the Central Pacific Railroad Company.

By Mr. MCCLENNEN:

Q. That is, the record ownership was in the names of office employees and such of the Central Pacific Railroad Company, persons who, presumably, were not themselves the beneficial owners of the stock?

A. Yes, sir.

Q. You were familiar with the form of dividend warrant certificates of stock that was in existence?

A. Yes.

Q. And the peculiarity of that stock as compared with ordinary railroad stock was that it had attached to it a large number of numbered warrants for the collection of dividends somewhat similar to the coupons attached to an ordinary railroad coupon bond?

A. Yes; I remember it quite well.

Q. And when dividends were declared they were paid on presentation of these dividend warrants without inquiry into the name of the owner of the stock from which the dividend warrant had been cut?

1226 A. Yes, sir.

Q. And the dividend warrant would bear no name upon it?

A. No.

Q. The votes at the meetings of the corporation, the Central Pacific Railroad Company, were cast either by these employees or other record owners, or by their proxies?

A. Usually by proxies. Proxies were forwarded by the parties in whose name the stock stood to the secretary, and the secretary cast the ballot.

Q. This stock that stood in the names of various employees in the offices of the company was cut up into a very large number of certificates?

A. Yes; usually in ten share and one hundred share lots.

Q. You had, in fact, had you not, three series; one a ten share, one a one hundred share, and one an irregular?

A. Yes; that is my recollection.

Q. And there were comparatively few certificates out, single certificates, representing in excess of a thousand shares?

A. Comparatively or relatively few; yes. There may have been as many as fifty or a hundred.

1227 Q. This Central Pacific Railroad Company stock was regularly dealt in upon the stock exchanges as early as 1883, when you came with the company?

A. To the best of my knowledge it was.

Q. The records of the company contained nothing that would disclose the changes of ownership, as these certificates were sold in the market, except as a purchaser might care to transfer the stock into his own name?

A. Yes; that would be the only instance.

Q. Do you remember the occurrence of the visit of Sir Rivers Wilson to this country as representative of the British or European stockholders, in the early nineties?

A. I remember the occasion; yes, sir.

Q. After, or some time after, his visit, did any considerable number of the British and European held shares come in for transfer?

A. Subsequent to 1900? I could not testify as to that, from recollection.

Q. Do you remember a time when, finally, a majority of the stock was transferred into the name of the Central Pacific Railroad Share Holding Company (Limited), a British corporation?

A. I do not seem to recall that; no; I do not recollect
1228 it. These transactions, I should have stated earlier in the course of this examination, all transpired in New York, and we were advised here of it by means of a transfer agent's report which usually came to us monthly. Exchanges of stock in San Francisco were very few, indeed, as my memory serves me. The bulk of the exchange was in New York, and, as I say, coming to us on a transfer statement, there would not be any incident connected with it which might impress it upon the memory. It was merely, you might say, a clerical occupation, transferring the charges and credits and opening of the new accounts.

Q. Was the stock ledger kept virtually in duplicate?

A. No.

Q. Where was the stock ledger itself kept?

A. In San Francisco, in my office.

Q. Just what books did they keep in New York relative to transfers?

A. Just a moment. You asked if they were kept in duplicate. I understood that they did have a duplicate of our records here. I did not understand what you meant at first by "in duplicate". I thought you meant to ask if we kept it in duplicate here. It was kept
1229 in duplicate, in this sense, that we had the ledger and also the transfer record.

Q. Now, putting it again: Is it a fact that practically a stock ledger was kept in San Francisco and another stock ledger in New York?

A. I think so. I think they did keep a stock ledger in New York, although I would not be sure. I have that impression.

Q. And the transfer books in the same way?

A. Yes.

Q. One set in New York and one here?

A. Well, the report which we received constituted our transfer. We posted direct to the ledger from this transfer record.

Q. And the certificate books were kept where?

A. In New York and in San Francisco, both. They kept the certificate books there so that they were enabled to issue new stock, but the stock certificates were all signed at this point by the secretary and forwarded in blank.

Q. Did you have any transfer agent in San Francisco; did the Central Pacific Railroad have?

A. Only the secretary's office.

Q. Was there a transfer agent in New York?

1230 A. Yes.

Q. Who was the transfer agent there?

A. Mr. George Watkins.

Mr. HERRIN. At what time was that?

The WITNESS. About 1885 or 1884.

By Mr. McCLENNEN:

Q. How long did Mr. Watkins continue to be the transfer agent?

A. Well, I should say as far along as 1890, anyway.

Q. Is he living or dead?

A. That I do not know.

Q. What was the last that you knew of him, and where?

A. I find his name is here as transfer agent in 1890—the report for 1890.

Mr. ORR. That is George Watkins?

The WITNESS. George Watkins. My impression is that he was transfer agent as far along as 1895.

By Mr. McCLENNEN:

Q. And located in New York?

A. Yes; but I can not say whether he is still living.

Q. Is that the last you know of him—1895?

A. That is about the last I would have any dealings

1231 with him; yes, sir.

Q. Was he connected with an independent concern or was he an employee of the Central Pacific Railroad Company in its offices there?

A. I do not know. The fact that his address is given as 23 Broad Street, New York, which was the company's office, would lead me to suppose that he was connected with the company.

Q. Did you know Charles Babbidge?

A. Not personally.

Q. Did you know of him as a name connected with the company?

A. Yes.

Q. And in what capacity, and where?

A. He was an officer of the Galveston, Harrisburg & San Antonio Railway Company.

Q. And where did he have his headquarters?

A. I think his headquarters were in New York.

Q. Do you recall that as early as 1884 the number of shares of stock of the Central Pacific Railroad Company standing in the names of Mr. Huntington, Mr. Stanford, Mr. Crocker, Mr.

1232 Hopkins, or the Hopkins estate, on the records of the company

was considerably less than a majority of the stock of the Central Pacific Railroad Company.

A. In 1884?

Q. Yes.

A. I think that is correct. I think that the transfer or the stock standing in the names of the employees which I have mentioned was about that time.

Q. Was about what?

A. About 1884. I would not say that positively, but that is my impression. Perhaps I should not testify positively as to that; but the books came into my custody in 1887 and I had occasion to refer to them very often, and that is my impression. It was along about that time. It may have been a year later or it may have been a year or two earlier.

Q. Do you bear in mind that by 1887 the Stanford stock was something like 32,000 shares?

A. I do not recall.

Q. Do you remember that when the books first came into your custody, in 1887, the stock standing in Governor Stanford's name was, as compared with the whole stock, a comparatively small amount?

1233 A. Yes; I think that was true of all of the owners.

Q. That would be true of Mr. Collis P. Huntington?

A. That would be true of Mr. Huntington, Mr. Hopkins, Mr. Crocker, and Governor Stanford.

Q. And also of the Hopkins estate?

A. Yes.

Q. And that had been true, at least since 1884?

A. That is my impression. I would not care to be positive about that. I know that it was so in 1887.

Q. As to who were the true owners of the quantities of stock standing in the names of the office employees of the company, you did not know, and had no means of knowing?

A. No.

Q. Take it in 1884; about how many employees of the company were there in whose names stock was standing?

A. Perhaps fifteen or twenty.

Q. Fifteen or twenty employees?

A. Yes.

Q. If this figure that you have mentioned is correct, 2,600 for 1884, apart from perhaps twenty-five employees, record owners, was there anything by which you could identify in any way the remaining holders of the stock, perhaps 2,575 shareholders?

1234 A. No; I think not. I could not say.

Q. They were the ordinary scattered public stockholders, so far as you knew?

A. Yes; brokers and others. The stock which was held in the name of the twenty-five, to which reference has been made, was a very considerable majority of the stock of the company, as was evidenced by the fact of its being voted at stockholders' meetings when proxies were forwarded at our office.

Q. That is, the record voting control of the corporation was in the office employees?

A. Yes; I should say so.

Q. And so remained for a long time after the stock which stood in their names had been sold through the community and in Europe?

Mr. HERRIN. I object to that question unless it calls for the knowledge of the witness. I object to what he supposed or heard.

The WITNESS. It so remained, up to 1888 or 1890. As to whether it may or may not have been sold in Europe, I have no knowledge.

1235 By Mr. MCCLENNEN:

Q. Were you one of those in whose name stock, not in fact stock beneficially owned by you, stood?

A. No, sir.

Q. Those employees in whose names the stock stood were, many of them, in positions not of control or importance?

A. Yes.

Q. Some of them got down to the grade of porters and elevator boys?

A. No; I think not. There were no porters or elevator boys. They were, for the most part, employees of the New York office, as I recall it, and occupied positions of greater or less responsibility.

Q. When the certificates did come back for transfer, was there anything about the certificates from which you could tell when the stock represented had been sold to the members of the general public?

A. No; my recollection is that the stock certificates did not come back; I may be mistaken as to that, but I think they were retained in the New York office.

Q. So that the certificates for the stock that had been issued
1236 to the members of the public in 1884, or the office employees, you think never came back to San Francisco?

A. I think it did not.

Q. As dividends were declared, how did the dividend warrants used to come back; through what channels?

A. They were forwarded by express from the New York office to the office here, and the coupons were arranged in numerical order, similar to the manner in which coupons from bonds would be ar-

ranged, in numerical order, and placed in a box convenient for the purpose. There was a very considerable quantity of them. As you have intimated, with ten-share lots, they ran up into the thousands, and it took quite a good-sized box to contain them. Those were usually forwarded about three months after the dividends had been paid.

Q. You mean that they had been honored in New York?

A. Honored in New York.

Q. And came here just as canceled checks would come back?

A. Yes; that is what I meant to say, if I did not. The payment was made in New York, for the most part. We paid very few of them here in San Francisco.

Q. Was there anything about those dividend warrants, when
1237 they reached San Francisco, that would give any clue to the holder of the stock, or his location, whether in Europe or in this country?

A. None whatever.

Q. Did they used to bear banking stamps upon them, such as you are familiar with on checks that go through?

A. Very rarely. There was very rarely any mark whatever. Sometimes there would be a rubber stamp impression, but I think it was more an inadvertence than intention.

Q. You spoke of the creation of the Atlantic system and the Pacific system in 1885. The date of that creation was coincident with the date of the beginning of operations by the Southern Pacific Company, was it not?

A. Yes.

Q. That is, as you said, March 1, 1885?

A. Yes, March 1st.

Q. Did the Atlantic system, in this division, include the steamship lines from New Orleans to New York?

A. Yes.

Q. And subsequently that system included the steamship lines from Galveston to New York when they were put into operation?

A. Yes; although I could tell better if I knew that
1238 latter date, but I will answer yes to the question. The original steamers which were taken over in 1885 were the property of Morgan's Louisiana & Texas Railroad & Steamship Company. Subsequently there were some steamers built and put on that line which were owned by the Southern Pacific Company as a corporation, but their operations, however, were included still as a part of the Atlantic system operations, if that answers your question.

Q. Yes. About the time you severed your connection with the company in 1904, all the steamship property had come into the own-

ership of the Southern Pacific Company, had it not? I mean all of the Atlantic system steamship property.

A. No, I think the M. L. & T. Company still owns some steamers.

Q. And those continue to be operated by the Southern Pacific Company as lessee?

A. Yes.

Q. Can you tell me whether either one of two agreements of the Transcontinental Association of September 28, 1883, and November 8, 1883, were among the papers of the department with which you had to do?

1239 A. I do not recollect those specific papers. I doubt if they were in my custody. They sound to me like traffic department agreements.

Q. Explaining to you that they were, or purported to be, agreements between the several transcontinental roads, with reference to the method of dividend rates, or changes in rates, etc., could you then tell me where, in the ordinary course, those papers should be found, if anywhere in the possession of the Southern Pacific Company?

A. I think those papers would have been in the custody of the secretary, but I do not recall such documents as being in my custody. Still, I will not say that they were not, as we did have some traffic agreements on file there.

Q. And if they remained in the secretary's custody, they would be in a position that would likely have caused their destruction in 1906?

A. I should say so.

Redirect examination by Mr. HERRIN:

Q. Can you tell us whether the Southern Pacific Company acquired, about the time it began operations, substantially the entire capital stock of the Southern Pacific Railroad Company of California?

1240 A. Yes; it did.

Q. And, so far as you know, has since continued to own that stock?

A. Yes.

Q. How about the capital stock of the Southern Pacific Railroad Company of Arizona? Did the Southern Pacific Company ever acquire or own that stock to your knowledge?

A. The Southern Pacific Company acquired substantially the entire capital stock of the Southern Pacific Railroad Company of Arizona in 1885 or thereabouts.

Q. That was also true of the Southern Pacific Railroad Company of New Mexico?

A. Yes, sir.

Q. And, so far as you know, it has since continued to own th same, or during your connection with the company?

A. During my connection with the company it remained the owne

Q. I will ask you whether or not the Southern Pacific Compan at any time acquired the capital stock of the Galveston, Harrisbur & San Antonio Railroad?

A. Yes; it acquired the greater part of the Galveston, Harrisbur & San Antonio Railroad in 1885.

1241 Q. And thereafter continued to own the same, as long you were connected with the company?

A. To the best of my knowledge and belief.

Q. Was that true also of the capital stock of the Texas & Ne Orleans Railroad Company?

A. Yes; it was true of that company.

Q. At what time was that stock acquired by the Southern Pacif Company, if you know?

A. In 1885.

Q. About the date of its lease?

A. Yes.

Q. And did the Southern Pacific Company continue to own th stock, so far as you know?

A. Yes.

Q. Until after you left the company?

A. Until after I left the company.

Q. Do you know whether or not the Southern Pacific Compan at any time acquired the capital stock of the Louisiana We ter Railroad Company?

A. The Southern Pacific Company acquired the stock of the Lou siana Western Railroad Company in 1885 and remained th

1242 owner thereof until after the time I left the service of th company to the best of my knowledge and belief.

Q. Was that true also as to the capital stock of the Morgan's Lou siana & Texas Railroad & Steamship Company?

A. Yes; it was; the Southern Pacific Company acquired the stoc of that company, or the greater part of it, in 1885, and remained th owner thereof until the time I left the service of the company.

Mr. HERRIN. That is all.

(Whereupon an adjournment was taken until to-morrow, Frida March 5, 1915, at 10.30 o'clock a. m.)

1243 FIFTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Friday, March 5, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Edward F. McClennen, Esq.; and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq.; J. P. Blair, Esq.; P. F. Dunne, Esq.; Garret McEnerney, Esq.; and E. J. Foulds, Esq., for the Southern Pacific Company.

1244 ROBERT A. DONALDSON was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. I will be seventy-five next July.

Q. And your residence?

A. San Francisco.

Q. Were you ever employed by the Central Pacific Railroad Company?

A. I was.

Q. At what time?

A. My employment began in 1870, about the middle of November.

Q. Just state what you did thereafter, and how long you remained in the employ of that company.

A. In November, 1870, I entered the employ of the Central Pacific Railroad Company, in the office of the secretary, Mr. E. H. Miller, Jr., at Sacramento.

1245 When the special work I had in hand was finished, I was given work for part of the day in the ticket office in the passenger station in Sacramento. That continued until about the 5th of July, 1871, when I became a clerk in the office of the general passenger and ticket agent, Mr. T. H. Goodman.

Mr. Goodman appointed me assistant general passenger and ticket agent in December of 1877. I held that position—that is, general passenger and ticket agent of the Central Pacific Railroad Company—until the 1st of April, 1885, when the Southern Pacific Company, under a lease, took control of and operated the Central Pacific Railroad and its branches.

From that date, April 1, 1885, under the terms of a circular issued by the general manager, Mr. Towne, I continued as assistant gen-

eral passenger and ticket agent but for the Southern Pacific Co pany, Pacific system, and served in that position until my retireme on the 30th of April, 1912.

During the month from March 1, 1885, to April 1, 1885, I w practically in that position as concerning the Southern Pacific Co pany, which was operating the Southern Pacific lines south Goshen; that is, in common with other officers of the Central Paci road. Our jurisdiction continued over the lines south of Goshe which the Southern Pacific Company was operating during th time.

1246 Q. At what place were you located prior to December, 187

A. I was located in Sacramento until the general offic were moved to San Francisco on September 1, 1873. I was then l cated here in San Francisco, although personally I did not co down until thirty days later; I came down October 1, 1873.

Q. Thereafter your office was in San Francisco?

A. From 1873 until my retirement.

Q. Do you remember the time when the Southern Pacific Railro line, from Goshen south to Los Angeles and Yuma and beyond, w being constructed?

A. I do.

Q. Do you know what company took over that road for operati when sections of it were completed from time to time?

A. From a point at or near the Goshen station the Central Paci Railroad Company operated the lines as they were ready for op ation.

Q. The Central Pacific Railroad Company was operating its o lines from the beginning?

A. The Central Pacific Railroad Company operated its own li during all that time, up to the opening of the line south Goshen.

1247 Q. How far south, if you know, did the operation of t Central Pacific Railroad Company extend over this line so of Goshen?

A. It extended over its own line to Goshen, and over the lines the Southern Pacific Railroad of California, the Southern Paci Railroad of Arizona, the Southern Pacific Railroad of New Mex to the Rio Grande, at El Paso, and also over a portion of the l from El Paso, when it was completed—the line from El Paso San Antonio, say.

Q. Did or did not the Central Pacific Railroad Company or officers control or have jurisdiction of the line all the way to N Orleans when it was opened?

A. They did, for a time.

Q. Did you, in your capacity, act for those lines all the way to New Orleans?

A. We acted all the way to New Orleans for a short period.

Q. For how long?

A. I can not tell exactly.

Q. Do you remember when that line was opened to New Orleans, the New Orleans Sunset line; about what time?

A. It was opened, I think, in the latter part of 1882.

1248 Q. From that time did the Central Pacific Railroad Company or its officials have jurisdiction of the entire line between San Francisco and New Orleans?

A. They did, for a period.

Q. For how long?

A. I think possibly six months or a year's time.

Q. When was that jurisdiction terminated? What was the occasion of it?

A. After the completion of the line to San Antonio and the opening of the line to service to and from New Orleans and from and to El Paso, the road between El Paso and New Orleans was handled by officials of the G. H. & S. A., the Louisiana Western, and the Morgan Line. I will not undertake to say just what date that took effect, but my remembrance is that it was either late in 1883 or early in 1884.

Q. I am asking you when the Central Pacific officials exercised jurisdiction over that entire line.

A. They exercised jurisdiction over that entire line from the time it was completed.

Q. When it was opened?

A. When it was opened.

Q. And how long thereafter did they continue to do that?

1249 A. My remembrance is that it was not much over a year, if it was that.

Q. Did they not continue until the Southern Pacific Company took charge of these lines in 1885?

A. The operating officers may have done that, but the general passenger agent did not.

Q. Did not Mr. Towne exercise jurisdiction all the way through to New Orleans until 1885, when the Southern Pacific Company took possession?

A. My recollection is that he did.

Q. You remember when the Southern Pacific Company took possession of these lines?

A. I do.

Q. And thereafter, after the Southern Pacific Company took possession, what was the southern limit of your jurisdiction on the Sunset line?

A. It ended at the Rio Grande River.

Q. Did you have to do with the formulation of tariffs for passengers over these lines?

A. When the line was completed and opened for traffic from El Paso towards San Antonio our office prepared the tariffs for passenger fares.

1250 Q. Did you have to do with the routing of passenger trains over what lines they would run?

A. Only in a very general way. There was our own line—you mean east of El Paso?

Q. I mean over the lines that were included in the Pacific system.

A. Over the lines that were included in the Pacific system?

Q. Generally.

A. Our office was concerned in that, in a certain way, as being familiar with the necessities of traffic, and so forth, the best points that needed service, and so on.

Q. And you collaborated with the operating department, did you?

A. We worked in connection with the operating department in that particular matter.

Q. In routing your trains, what considerations governed you?

Mr. McCLENNEN. That I object to, in view of the witness's testimony. I understand him to say that he did not have to do with routing trains, but merely followed the routings that somebody else laid out.

1251 Mr. HERRIN. The witness says he knew about it, and cooperated with the operating department to determine time schedules, and so forth.

I ask to have the question read.

(The pending question was read as above recorded.)

The WITNESS. In the routing of trains the main consideration was the best service to the public concerned, with reference to the volume of the traffic, how it could best be handled, and the physical character of the roads that would give that best service; that is, a road that was level, against one having grades.

By Mr. HERRIN:

Q. Did you take the shortest or the longest routes, preferably?

A. We preferably took the shorter lines, although there were cases in which it was necessary to take a longer line with certain of our trains, so as to meet the wants of our passenger traffic.

Q. Did you regard the ownership of these different lines within that system in routing the trains, or did you disregard the ownership?

1252 A. We paid no attention to the particular corporate ownership.

Q. You considered only the needs of the service, the best service to be given?

A. Yes.

Q. Did you have personal acquaintance with Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins?

A. I knew each of them by sight. I saw them every day when they were in town, or nearly every day, and occasionally had something to do in a business way with Mr. Crocker and Mr. Huntington, but very rarely with Mr. Stanford or Mr. Hopkins.

Q. Do you remember the operating officials of the Central Pacific Railroad Company at the time the Southern Pacific Company took possession?

A. I do.

Q. Will you name them?

A. Mr. Towne, Mr. Fillmore——

Q. What was Mr. Towne?

A. Mr. Towne at the time the Southern Pacific took possession was general manager.

Q. General manager of what?

A. General manager of the Central Pacific Railroad.

253 Q. The Central Pacific Railroad Company and leased lines?

A. And leased lines or branches.

Q. Who were the other officials?

A. Mr. Fillmore.

Q. J. A. Fillmore?

A. J. A. Fillmore was, as I remember, general superintendent of the Central Pacific Railroad Company and its branches and leased lines. They were the two chief operating officials.

Q. Who was the general passenger agent?

A. T. H. Goodman.

Q. Were they the same officials for the Southern Pacific Company when it took possession?

A. When the Southern Pacific Company took possession, on the 1st of March, 1885, of the lines south of Goshen the persons I have named continued in the same capacity with reference to the Southern Pacific Company.

Q. They became officials for the Southern Pacific Company?

A. Yes.

Q. That was what date?

254 A. March 1, 1885.

Q. Then, as to the lines north of Goshen, those gentlemen were officials of the Central Pacific Railroad Company?

A. They were.

Q. And south of Goshen they were officials of the Southern Pacific Company?

Q. After it was opened for operation, how far did your jurisdiction extend toward New Orleans?

A. To New Orleans.

Q. How long did that jurisdiction continue?

A. I believe until the formation of the Southern Pacific
1259 Company and the division of the line into the Pacific system and the Atlantic system in 1885.

Q. Do you remember when you first went over the line, after its opening, to New Orleans?

A. Shortly after its opening I went to Houston and New Orleans to install our system of handling passenger business.

Q. Was the system that you installed followed afterwards?

A. It was followed afterwards; yes.

Q. In making the time tables and routing passenger trains, what consideration governed you?

A. The best service to the public and economical handling.

Q. Was any reference had to the ownership of any particular section of the road over which the train would move?

A. It never entered into consideration.

Q. In other words, you would not have acted differently if the lines had all been owned by one company?

Mr. McCLENNEN. That is objected to as leading, calling for a conclusion, and containing an assertion by the direct examiner.

The WITNESS. No.

1260 By Mr. HERRIN:

Q. Did you know Leland Stanford?

A. Yes.

Q. Did you know C. P. Huntington?

A. Yes.

Q. Charles Crocker?

A. Yes.

Q. Mark Hopkins?

A. Yes.

Q. Did they have anything to do with these lines?

A. We considered them the owners; all instructions came from them.

Mr. McCLENNEN. I ask to have that answer stricken out as not responsive, and containing a conclusion and opinion of the witness.

By Mr. HERRIN:

Q. Did you receive instructions from those men or any of them?

A. Yes; from each of them.

Q. Do you know what men, what individuals, exercised final jurisdiction and authority in all matters concerning these lines?

261 Mr. McCLENNEN. That is objected to as calling upon the witness to draw a conclusion and state an opinion, and in view f the context it is leading and too general and immaterial.

The WITNESS. Leland Stanford, C. P. Huntington, Mark Hopins, and Charles Crocker; later, Charles F. Crocker.

By Mr. HERRIN:

Q. Do you know that? I would like to have you state what you ase your answer on as to your observation.

A. That was the general impression, and when instructions were iven us by the general manager as a finality, it was said, "Well, the overnor wants that."

Q. Who was the governor?

A. Governor Stanford. They would say, "That has to be done."

Q. Have you completed your answer?

A. I was just going to give one instance. When the commutation ate between San Francisco and Oakland was established, three dolars, Governor Stanford said to Mr. Towne and Mr. Goodman that e wanted to make it easy for the people living in San Francisco to ive across the bay, that they might get land cheaply and have homes and live comfortably, and he thought he would like to make 262 just about a street carfare for them. Mr. Towne and Mr. Goodman said it could not be done, that it was a rate away elow cost, and that it would return to plague him as long as it was road, and it would be used by other people.

"Well," he said, "I want to do it for the workingmen of San rancisco", and he said "Put the rate in"; and that was final. They ut the rate in, of course.

(At the request of Mr. McClennen a preceding answer of the witess was repeated, as follows:)

"A. That was the general impression, and when instructions were iven us by the general manager as a finality, it was said, 'Well, the overnor wants that.'"

Mr. McCLENNEN. The petitioner objects to the beginning of the nswer, containing the words "That was the general impression", s not responsive, as being a statement of an opinion and hearsay, nd a conclusion, and the petitioner moves that that part of the nswer be stricken out.

By Mr. HERRIN:

Q. So far as your department was concerned, as to matters in which ou were interested officially, do you or do you not know that the nal decision in those matters was exercised by those men or some f them?

Mr. McCLENNEN. That is objected to as leading, as calling for a conclusion, as calling for matter a large part of which must of necessity have occurred in the absence of the witness and be unknown to him.

The WITNESS. It was known in our department that the final decision came from those men.

By Mr. HERRIN:

Q. Did you know it?

A. I knew it.

Q. Do you remember when Mr. Mark Hopkins died?

A. 1878, I think.

Q. 1878 is correct. Was his interest in the property thereafter represented by anyone?

A. By Timothy Hopkins.

Q. Who was Timothy Hopkins?

A. His adopted son.

Q. Do you remember when Mr. Charles Crocker died?

A. In the eighties some time.

Q. In 1888. Do you remember who represented his interest afterwards?

A. Charles F. Crocker.

Q. A son of Charles?

1264 A. Eldest son of Charles.

Q. Commonly called Colonel Fred Crocker?

A. Colonel Fred.

Q. Do you know when the Southern Pacific Company took possession of those lines in 1885?

A. Yes.

Q. Do you remember if there was any change in the operating or traffic officials of the road when that change occurred?

A. No change whatever.

Q. What officials were acting for the Central Pacific Railroad Company became corresponding officials for the Southern Pacific Company?

A. It continued just as before.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Do you know of any instance, in this railroad or any other where the assistant general passenger agent has disputed the authority of the president of the railroad to issue any directions?

A. I don't think he would be assistant passenger agent

1265 very long if he did.

Q. It is not customary in railroading?

A. But he would be at perfect liberty, and always has been at perfect liberty on this road, to express his opinion, even if it might be contrary to the instructions of the president.

Q. But ever since 1873, down to the present day of grace, you have always followed the instructions of the president of the road?

A. Yes; his instructions are final.

Q. Governor Stanford was a considerable property owner about here, wasn't he?

A. I presume he was.

Q. He owned quite a large amount of property in Oakland?

A. I do not know that he did.

Q. Did you ever know of property that he owned in Oakland?

A. I did not—never did. His property, principally, as I understood it, was in the Santa Clara Valley around Palo Alto, and in the Sacramento Valley around Vina.

Q. And you never knew of his interest in any property in Oakland yourself?

1266 A. No, sir.

Q. Did you hear this conversation between Mr. Towne and Mr. Stanford when Mr. Towne was objecting to the low rates to Oakland?

A. No; I did not.

Mr. McClennen. In view of the answer of the witness, petitioner moves that the answer of the witness on direct examination relative to a conversation between Mr. Towne and Mr. Stanford be stricken out as something of which he did not have personal knowledge, and therefore is nothing more than hearsay.

Redirect examination by Mr. Herrin:

Q. How did you happen to have any knowledge of the conversation you detailed on your direct examination?

A. It was told me by Mr. T. H. Goodman, my superior.

Q. At what time?

A. Shortly after it occurred.

Q. Was it not in connection with what you were doing in putting in an order?

Mr. McClennen. That is objected to as leading.

1267 The Witness. No; I did not put in the rate. It was not an instruction to me.

By Mr. Herrin:

Q. What I want to know is whether it was narrated to you weeks or years afterwards, as a sort of gossip or history, or whether it was told you at the time you were taking action concerning those particular rates.

being known thereafter as the Atlantic system and those west of E
Paso as the Pacific system.

Q. And what officers had jurisdiction over the Pacific system

1271 A. Those that I have just named.

Q. What officers had jurisdiction over the Atlantic system
That is, where were they located?

A. They were located at New Orleans and Houston.

Q. You are familiar, are you, with the interchange of traffic be
tween the Union Pacific and the Southern Pacific at Ogden?

A. Yes.

Q. Just state, generally, how trains have been operated in pas
ing through that junction point; what delays or what expeditio
there is there—just state generally how it has been done since yo
have known about it, since 1883.

A. They have been operated substantially the same as they woul
be through a terminal on any one line. The passenger trains ha
been, and are now, made up at Oakland Pier and go through solid
the Union Pacific; and the same in the other direction. Freig
trains are merely made up there, the same as they would be at a
other terminal. There is no delay on account of being another li
It is operated substantially as one through line.

Q. A through continuous line?

A. A through continuous line.

1272 Mr. McCLENNEN. This last question is objected to as lea
ing, by containing in it, in the direct examiner's words, t
language of the Pacific Railroad acts of 1862 and 1864.

Mr. HERRIN. I was simply copying the eminent counsel for t
Government, who, in his examination of witnesses in Chicago, us
language from the railroad acts and decisions. I did not know
was objectionable.

Mr. McCLENNEN. It is not made objectionable by reason of bei
a copy of the conduct of counsel for the Government. The obj
tion was another one.

By Mr. HERRIN:

Q. Was there any difference between the interchange of traffic
transfer of traffic through Ogden and its passing through, say,
Paso?

A. None whatever.

Q. Or any other division point of junction between two divisi
of a road?

A. It is substantially the same.

Q. State whether or not the officials of the Union Pacific, as
as those of the Central Pacific first, and afterwards the South

Pacific Company, have cooperated in this interchange of traffic, or has there been friction.

1273 A. I think they have always cooperated.

Q. As to the routing of freight and passenger trains over the lines included within the Pacific system, did you regard the ownership of those lines; did that form any part of your consideration for determining the route, or was the route determined by other considerations, and if so, what?

A. Wholly by other considerations. That is, by the directness of the route, by the volume of business to be accommodated, and to no extent whatever by reason of different corporate properties.

Mr. HERRIN. That is all.

Cross-examination by Mr. MCCLENNEN:

Q. Mr. Richardson, will you define what the duties of superintendent of transportation are, as that office has been exercised in this railroad?

A. I have charge of the handling and distribution of cars, general supervision of the arrangement of schedules, and train movement, and the multitude of things that are connected with such matters.

Q. Do you have anything to do with keeping up the equipment, the rolling stock?

1274 A. Maintaining it?

Q. No. Do you have anything to do with determining the routes which trains shall take, passenger and freight?

A. I have not the authority to determine that, but have something to do with it in conference with other officials.

Q. When the question arises as to whether a train shall be put on or taken off, from San Francisco to Ogden or from San Francisco to New Orleans, whether it be a passenger train or a freight train, do you exercise any authority or discretion in the matter?

A. Those things are generally arranged by conference between the general manager and the officials of the traffic department. I am frequently present at such conferences.

Q. To contribute your ideas to them?

A. Yes.

Q. There is considerable interchange of traffic at El Paso with the Rock Island Railroad, is there not?

A. With the El Paso & Southwestern.

Q. With the El Paso & Southwestern?

A. Yes.

1275 Q. That is in some way a railroad that is allied with the Rock Island?

A. Yes.

Q. And is the means by which the Rock Island reaches El Paso?

A. Yes.

Q. When shipments are going through from Chicago to San Francisco over the Rock Island and El Paso & Southwestern and Southern Pacific to San Francisco is there a coöperation between the officials of the El Paso & Southwestern and the Southern Pacific?

A. There is.

Q. To facilitate the transfer at El Paso?

A. Yes.

Q. And those freight trains come through just as if they were running over one continuous line from Chicago through El Paso to San Francisco?

A. Substantially; yes.

Q. And at Ogden there is an interchange of traffic between the Southern Pacific and the Denver & Rio Grande?

A. Oh, yes.

Q. And the officials of that road cooperate with the officials
1276 of the Southern Pacific to pass the traffic through Ogden without delay?

A. Yes.

Q. And they are run as one continuous line to the eastern destination?

A. Yes.

Q. And in this respect there is no difference between the treatment accorded the Union Pacific and that accorded the Denver & Rio Grande or the El Paso & Southwestern by the officials of the Southern Pacific?

A. So far as I know, no.

Q. And in assenting to Mr. Herrin's proposition that the operation through Ogden was as of one continuous line, that is all you meant?

A. That was all I meant.

Q. When a railroad is operated as one continuous railroad it is the universal effort of railroad officials to route as much traffic over that road as is possible, is it not?

A. I suppose that would be true; yes.

Q. That is, if you were operating a railroad from San Francisco to Omaha through Ogden, it would be a part of the ordinary
1277 course of business for you to endeavor to put as much traffic over that road as you could?

A. Naturally.

Q. And, indeed, in operating the continuous railroad from San Francisco through El Paso to New Orleans, it has been your effort and that of your brothers in the service to route as much traffic over that railroad as is possible?

A. The routing of traffic is handled by the officials of the traffic department, and I presume that is their effort.

Q. You have, from your relation with the company, known for years of the effort that has been put forth by the Southern Pacific Company to route as much freight as possible through El Paso?

A. Well, I know of that feature of the business only incidentally.

Q. But, even though it comes to you incidentally, you are well aware of that fact?

A. I believe they make every effort to route as much business as they can by both lines.

Q. They prefer their long haul, do they not?

A. I presume so; yes.

1278 Q. And you do not bear in mind any instances where they have sought to route any freight through Ogden that could be influenced to go through El Paso—transcontinental freight?

A. That is a matter I can not testify to, because I do not know what the conditions have been surrounding that feature of the business.

Q. How long have you been familiar with the way in which freight has moved through Ogden to the Atlantic seaboard and to Central Freight Association territory?

A. I have been more or less familiar with it for about twenty years.

Q. Has it moved that way without any substantial delays?

A. By either line?

Q. By either line.

A. Why, there have been delays from time to time, but nothing in the nature of a general stoppage, if that is what is meant.

Q. The delays have been the exception rather than the rule?

A. Yes.

Q. And only such delays as from time to time are inevitable on any railroad?

1279 A. That is what I mean.

Q. Just as you have had them on the Sunset Line?

A. Yes.

Q. You spoke of the Central Pacific Railroad operating all the different lines in 1883. You did not mean to include in that, did you, what is now called the coast division and was then known as the northern division, running from San Francisco through Gilroy?

A. At that time that particular piece of line was operated under a separate organization—operated independently.

Q. And was operated under the name of the Southern Pacific Railroad?

A. Yes.

Mr. McClennen. That is all.

Mr. HERRIN. That is all.

(Whereupon an adjournment was taken until Monday, March
1915, at eleven o'clock a. m.)

1280 SIXTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Monday, March 8, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clo
a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., E
ward F. McClennen, Esq., and Edward E. Gann, Esq., special assi
ants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J.
Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E.
Foulds, Esq., for the Southern Pacific Company.

1281 Mr. MCCLENNEN. Will you note in the testimony, at pa
1217, line 18, and page 1218, line 12, "instance" should re
"incidence."

GEORGE ROSS JACKSON was called as a witness on behalf of t
defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. What is your age?

A. I shall be sixty-two years old next June.

Q. And your residence?

A. 1646 Fell Street.

Q. And your occupation?

A. I am assistant chief clerk in the treasurer's office.

Q. Of the Southern Pacific Company?

A. Of the Southern Pacific Company.

Q. You may state if you ever worked for the Central Pacific Ra
road Company, and if so, give the dates, and narrate in a general w
what you did.

A. I worked for the Central Pacific in December, 1875, a
1282 worked up with the Central Pacific until it was leased to t
Southern Pacific Company in 1885.

Q. What did you do after 1885?

A. I worked for the Southern Pacific Company.

Q. And since have continued with that company?

A. Yes.

Q. During 1885 did you have any work which related to the of
of the secretary of the Central Pacific Railroad Company?

A. In the year 1885 I was in the secretary's office—Mr. Miller.

Q. Mr. E. H. Miller?

A. Mr. E. H. Miller, jr.

Q. What were you doing in the secretary's office?

A. My first piece of work there was to strike a balance of the Central Pacific Railroad Company's stock.

Q. And did you have the stock ledgers?

A. At the meeting at Fourth and Townsend Streets in April, 1885, I handled the stock ledgers at the meeting and verified the stock voted by the proxies by the ledger.

Q. That was in April, 1885?

A. April, 1885. I can not call to memory the date.

1283 Q. What was the business, if you remember, that passed on at that meeting, or any of it?

A. It was the lease to the Southern Pacific Company of the Central Pacific Railroad Company and the lines which had been leased to the Central Pacific Railroad Company.

Q. It was the meeting at which was considered the lease of the lines owned by the Central Pacific Railroad Company to the Southern Pacific Company?

A. To the Southern Pacific Company for ninety-nine years, yes.

Q. Did you attend the meeting?

A. Yes.

Q. What did you do at the meeting?

A. I had to verify the proxies by the stock ledgers, and the ones who were there and had the right to vote the stock.

Q. You were what you might call in charge of the list of stockholders and proxies?

A. Yes.

Q. Do you remember what the vote was?

Mr. McCLENNEN. Just a moment. I do not know whether it has definitely appeared—it has by inference—but I understood you

1284 to say that there is no question but what the stock ledger and all duplicates of it of that time and the records of the meeting and all duplicates are out of existence.

Mr. HERRIN. There is no question about that; no.

Mr. BLAIR. Do you want to stipulate that, or will you take that as an answer to the question?

Mr. McCLENNEN. Yes; if we have your assurance.

By Mr. HERRIN:

Q. Where were the books that were there at that time sent?

A. At that time they were shipped to New York and they were burned up in the Equitable Life Assurance Building fire, as I understand it; even the minutes of the meeting which I put in the book.

Q. But you do not know that?

A. I do not know that. I understand they were, but I do not know it; it is only hearsay.

Q. Do you recollect what the vote was or about what it was?

A. I think approximately about 550,000 shares, but I can not say offhand; probably a little more.

Q. It was voted how?

1285 A. Voted in favor of the leasing of the Central Pacific to the Southern Pacific Company.

Q. Was there any vote against the lease?

A. None whatever; no, sir.

Mr. McCLENNEN. About 550,000 shares?

The WITNESS. Of course I can not tell offhand, but approximately that. I think there were about 560,000; between 550,000 and 560,000 if my memory serves me correctly.

By Mr. HERRIN:

Q. They were voted for the lease?

A. Voted for the lease; yes.

Q. What were you doing in the years 1882–1884?

A. In 1882–1884 I was in the auditor's office.

Q. With what particular duties?

A. Clerk in the auditor's office and on the pay car.

Q. Did you travel with the pay car?

A. I traveled with the pay car from, I think, about February 1882, almost up to the time the pay check system was established in 1893.

Q. What lines did that pay car traverse from 1882 to 1884?

1286 A. From 1882 to 1884 it covered all of them, or nearly all with the exception of a few of the branches, and we paid until the connection was made at the Pecos River, in Texas.

Q. It covered the lines of the Central Pacific Railroad then in existence?

A. All of them; yes.

Q. And it covered the lines of the Southern Pacific Railroad Company south of Goshen?

A. South of Goshen.

Q. To what point southerly? How far did you go south?

A. Which way do you mean—beyond Goshen?

Q. Yes; south of Goshen.

A. We went all the way to the end of the road.

Q. Where was that?

A. The end of the road when I first started in was at Willcox, Arizona, and we continued to the Pecos River.

Q. You continued until you reached the Pecos River?

A. Until we reached the Pecos River and made a connection.

Q. In Texas?

A. Yes.

Q. Was that the point of junction between the eastern and western construction of the through line?

1287 A. Yes.

Q. And about what year was that made? I do not know that you can remember.

A. I think it must have been in the latter part of 1882 or the early part of 1883.

Q. You are correct. Now, did you, in this pay car, pay the operating employees of the lines?

A. Yes; all of them.

Q. Did you, in addition, pay any other employees?

A. We paid the construction men. They were paid out from that car.

Q. During this time you went out to what they called the front and paid the men engaged in construction work?

A. We paid the men on the construction work, away out where the grading camps were; we went out to the end.

Q. Do you remember who was in charge of that construction?

A. J. H. Strobridge.

Q. You made several trips east of El Paso, did you?

A. Yes; as I say, we went all the way to the Pecos River, which was approximately, I think, about 300 miles. I am not quite

1288 sure as to the distance, but approximately that.

Q. Other witnesses have said it was 418 miles east of El Paso.

A. Well, I say approximately that.

Q. During the time of the construction of that road from El Paso to the Pecos River, you made trips how frequently?

A. I used to go down there about every two months.

Q. And during that time you made these bimonthly trips and paid off the construction forces as well as the operating forces?

A. Yes.

Q. After the line was opened as a through line, how far did you go with the pay car?

A. El Paso.

Q. You did not go east of El Paso after that?

A. No, sir.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. Is the exact text of the vote or resolution of April, 1885,

1289 relative to this lease in existence anywhere, so far as you know?

A. I do not know; I can not say.

Q. Have you had occasion to see whether it could be found anywhere?

A. No, sir.

Q. Was it a long resolution?

A. What do you mean?

Q. I mean in phraseology.

A. I think so; yes.

Q. Was it a paragraph, or a page, or two pages?

A. Probably several pages.

Mr. HERRIN. We have made very diligent search, Mr. McClennen, and we have not been able to find any original or any copy of the resolution authorizing this lease referred to in the questions.

By Mr. MCCLENNEN:

Q. Would it be possible for you to come anywhere near reciting that resolution?

A. No, sir; it would not.

Q. Was that the only business done at the meeting?

A. That was the only business done at the meeting.

Q. Do you bear in mind about how many proxies covered
1290 this some 550,000 shares?

A. I can not say offhand, but there were a great many of them; probably a couple of hundred or more.

Q. How many voting persons were there at the meeting? That is, stockholders of record.

A. I do not think to exceed a dozen.

Q. Who were those persons, as far as you can now recall?

A. I can not call the names to memory.

Q. Was Mr. Huntington present, Collis P. Huntington?

A. Yes, sir; I think he was.

Q. Was Governor Stanford present?

A. I think he was also.

Q. And Charles Crocker?

A. Charles Crocker, and Charles F. Crocker and E. H. Miller; I can not call to memory whether W. V. Huntington and H. E. Huntington were there or not. They were also directors.

Q. And Timothy Hopkins?

A. I met Timothy Hopkins and H. E. Huntington. I think Timothy Hopkins was there. He was treasurer at that time.

Q. And Mrs. Searles, who had been Mrs. Mark Hopkins?

A. No; I think Mr. Searles' stock was voted on proxies
1291 which were handled by Mr. E. H. Miller.

Q. Can you contribute any more names?

A. Oh, I could not; no, offhand, I could not.

Q. The majority of the stock was voted by proxy?

A. The majority of the stock was voted by proxy; yes.
Q. Mr. Stanford at that time did not have over 33,000 shares?
A. I think the Big Four had between 30,000 and 35,000 shares.
Q. Apiece?
A. Approximately, apiece; and the bulk of the stock was held by
eople in the New York office.
Q. That is, office employees?
A. I do not say office employees, but officers there probably.
Q. I suppose it is clear, but by the "Big Four" you mean——
A. I mean Mr. Huntington, Mr. Crocker, Mr. Stanford, and Mrs.
earles, representing, of course——
Q. Representing the Mark Hopkins interest?
A. Representing the Mark Hopkins interest.
92 Q. By the way, was Mrs. Searles the sole beneficiary of the Mark Hopkins estate?
A. To the best of my knowledge; yes.
Q. It has appeared that Mark Hopkins died in 1878. Do you
member when Mrs. Searles remarried?
A. It must have been in 1882 or 1883. I can not say offhand. I
o not recollect.
Q. Timothy Hopkins was not the born son of Mark Hopkins?
A. No, sir.
Q. He was adopted by Mrs. Hopkins?
A. By Mark Hopkins.
Q. Oh, by Mark Hopkins?
A. Yes.
Q. Were you one of the proxies at the meeting?
A. No, sir.
Q. You were at that time about thirty years of age?
A. Well, I was a little more than thirty. I will be sixty-two on
y next birthday.
Q. So that you were thirty-two, approximately?
A. Thirty-two or thirty-three. I was probably in my thirty-third
ear.
Q. At that time were you a prominent clerk or a subordinate clerk?
93 A. I was a prominent clerk in one sense of the word. I was taken from the auditor's office and put into the secretary's
fice to do this work. I was there approximately during the year.
went up there early in January.
Q. Put in another way, were you the first man under Mr. Miller?
A. No, sir; I was not the first man under Mr. Miller. There was
. L. Lansing and Mr. Miller's brother, Lash Miller.

Q. Can you fix, with some accuracy, the number of shares that were distributed among the New York office people?

A. No; I can not.

Q. Did you know about the sales of stock that had taken place at that time?

A. You mean Central Pacific stock?

Q. Central Pacific stock.

A. No; that was all done in the New York office. D. S. Watkins was transfer agent there.

Q. You did know, did you not, at that time that the stock had been sold in considerable quantity in the public market?

A. No; I can not say that I did.

Q. You mean prior to the meeting?

1294 A. No, sir; I can not say. Of course, there were a good many transfers from time to time, but I do not recollect whether they were large quantities or small now.

Q. Did you know of the fact that sales were taking place more extensively than transfers on the books were being made?

A. No; I can not say to that, either.

Q. Did you have anything to do with the making up of the reports that were made to the California Railroad Commission showing the number of shareholders?

A. Yes, sir; I worked on them.

Q. Mr. Jackson, what is the first year of those reports that you had to do with? Did you have to do with those of 1882?

A. No; I did not have to do with those of 1882. I did not work on them at all.

Q. Or 1883?

A. It might have been after 1885. I do not think it was prior to that.

Q. You do not think you had anything to do with those prior to 1885?

A. No, sir. When I got into the pay car I was put on
1295 some special work which fell to my lot, and I worked on these reports to the railroad commission.

Q. Do you bear in mind that in 1884—or 1885, at this meeting, to put it precisely—the total stock-holding list was some twenty-six hundred-odd shareholders?

A. I should say about that.

Q. That would be the first date when you would have any decently accurate information as to the number of shareholders?

A. Yes, sir.

Q. Your knowledge of the number of shareholders ran from that time down to when?

A. It ended with that year, 1885, because that was the only year that I was in the secretary's office.

Q. I see; just that one year?

A. Yes; I had no other year at all there.

Q. You think, of the something like twenty-six hundred shareholders, that there were something like two hundred in number represented at the meeting?

A. Oh, there were more than that; there were more than that. Of course, it is a pretty hard thing to say just how many there were. It is a good while ago.

1296 Q. What is your best recollection?

A. There were more than two hundred there, surely.

Q. Were there more than three hundred?

A. I should say, proxies and all, there were probably five or six hundred.

Q. Were the proxies all, or substantially all, voted by one man?

A. By Mr. Miller.

Q. By E. H. Miller, jr.?

A. Yes.

Q. I will put it in double form: Were they all voted by him?

A. The proxies were all, to the best of my recollection, voted by Mr. Miller; yes, sir.

Q. Would it be possible for you to give us any idea of the number of shares held outside of the Big Four and the New York office men?

A. I do not think to exceed thirty per cent.

Q. And when you say not to exceed thirty per cent you mean to approximate thirty per cent, as about what was held outside of the Big Four and the New York office?

A. Yes, sir.

1297 Q. Were you enough conversant with the affairs of the company to know that these New York office men were chiefly, so to speak, straw men for the real owners?

A. That, of course, I could not say.

Mr. McCLENNEN. I think that is all.

Redirect examination by Mr. HERRIN:

Q. E. H. Miller is not living, is he?

A. No, sir; he is dead.

Q. And Gerrit Lansing is also dead?

A. He is also dead; yes, sir.

Q. Mr. Miller held the secretaryship?

A. Yes. He was secretary of the Central Pacific Railroad Company.

Mr. GANN. Is Mr. Miller's brother dead—Lash Miller?

The WITNESS. Yes; he died before Mr. Miller did.

Mr. HERRIN. That is all.

Mr. MCCLENNEN. After conference between counsel, it was agre as follows:

The stock ledgers and transfer books of the Central Pacific Rai road Company were all destroyed in the San Francisco fire
1298 1906, and those ledgers and transfer books, so far as th showed the old holdings of this stock, have never been r produced.

In 1899, or thereabouts, pursuant to a reorganization agreemen the then existing stockholders in the Central Pacific Railroad Co pany, substantially all, deposited their stock with the reorganizati managers, in carrying out the reorganization. These certificates, deposited, were transferred into the name of the Southern Paci Company, except a scattering few for a few shares, that were p into the names of individuals to qualify them as directors; and t stock in the Central Pacific Railroad Company has remained, sin that date and to the present time, in substantially that condition.

After the fire, a stock ledger was opened to show the holdin evidenced by these certificates, but this ledger did not cover anythi prior to 1899.

(Whereupon, an adjournment was taken until to-morrow, Tuesd March 9, 1915, at 11 o'clock a. m.)

1299 SEVENTEENTH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Tuesday, March 9, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clo a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Es Edward F. McClennen, Esq., and Edward E. Gann, Esq., spec assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. Foulds, Esq., for the Southern Pacific Company.

1300 TIMOTHY HOPKINS was called as a witness on behalf of t defendants, and having been duly sworn, testified as follo

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. Menlo Park.

Q. Did you ever live with Mark Hopkins, who was one of t founders of the Central Pacific Railroad Company?

A. Yes; from three years of age until his death.

Q. From the time you were three years of age?

A. From the time I was three years of age. I was his adopted son.

Q. You remember the year that he died?

A. He died March 29, 1878.

Q. Did you at any time have anything to do with the Central Pacific Railroad Company; and if so, what?

A. Yes; I started in the service of the Central Pacific Railroad Company as a clerk in the western division at Oakland and served there during the year 1881.

Q. How long did you remain there?

A. I went there to learn the details of the operating
1301 service; I remained there a little over a year.

Q. And afterwards did you continue in the service of the company; and, if so, in what capacity?

A. I was elected treasurer of the Central Pacific Company in 1882, to succeed Mr. E. W. Hopkins, and continued as treasurer and as a director until 1892.

Q. Of the Central Pacific Railroad Company?

A. The Central Pacific Railroad Company.

Q. Were you also a director at any time of the Southern Pacific Railroad Company?

A. Yes; for the same period I was a director of the Southern Pacific Railroad of California.

Q. Mr. E. W. Hopkins was a relative of Mark Hopkins?

A. A nephew.

Q. He resigned as treasurer in 1882, and you succeeded him?

A. I succeeded him.

Q. As treasurer of the Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when the Southern Pacific Company was organized?

A. Yes.

1302 Q. Were you an official of that company?

A. I was a director and its treasurer from its organization.

Q. In what year?

A. 1885.

Q. And continued until when?

A. I continued as a director until 1889, and as treasurer until 1892.

Q. Your jurisdiction as treasurer of the Central Pacific Railroad Company extended from 1882 to 1885, over what lines of railroad?

A. Over the Central Pacific main lines and its leased lines; all of the property of the Central Pacific Railroad.

Q. Generally, what lines did the Central Pacific Railroad Company lease?

A. Various subsidiary lines; a line from Goshen down the San Joaquin Valley to the south.

Q. How far did the line extend from Goshen south?

A. To Yuma; likewise, the Northen Railway or California from Oakland to Lathrop, and quite a number of other subsidiary lines. The reports will show.

Q. The Central Pacific Railroad Company, during that time
1303 until the Southern Pacific Company took possession in 1885 was also operating all these lines as lessee?

A. It was the operating company for all the lines.

Q. Was it lessee of the lines south of Yuma, or east of Yuma?

A. Yes.

Q. How far did its jurisdiction extend as lessee?

A. Its jurisdiction extended as lessee through the Central Pacific Railroad Company of Arizona, the S. P. of New Mexico, running through to El Paso. During the first years of my connection with the company the line was finished through to New Orleans, and I think the Central Pacific operated the line as far south as the Pecos River, and perhaps a little beyond. I do not now recall whether we went through to San Antonio on that operation or not.

Q. As treasurer, did your jurisdiction extend over the lines to New Orleans?

A. As treasurer of the Southern Pacific Company, yes.

Q. You do not recall as to how it stood when you were treasurer of the Central Pacific Railroad Company prior to 1885?

1304 A. I had no connection with the lines in Texas and Louisiana previous to their completion as a through line.

Q. Do you remember what year they were completed as a through line?

A. In the spring of 1883.

Q. After the opening of that line as a through line, and prior to 1885 when the Southern Pacific Company took charge, did your duties as treasurer extend to the line between El Paso and New Orleans?

A. Well, it extended as far as the operations of the Central Pacific Company's lease extended. Just where that breaking-off point was, I do not now recall; but it was probably west of San Antonio, but previous to 1885 there was an interregnum there, and I think the officials in San Francisco for a short time controlled the operation. Afterwards the line was so long that for operation convenience they created the Atlantic and Pacific divisions, the Atlantic division being east of El Paso and the Pacific division west.

Q. You remember the northern division of the Southern Pacific Railroad Company in California?

A. Yes.

Q. Did the Central Pacific Railroad Company have anything to do with that?

1305 A. No; that was operated as a separate division, for convenience of operation.

Q. And finally that came under the jurisdiction of the Southern Pacific Company, did it?

A. Yes; when the line was completed through to Los Angeles, the northern division was abolished and became part of the Southern Pacific Company's operation under its general manager.

Q. And under its lease?

A. Under its lease.

Q. Did you, as treasurer of the Central Pacific, have anything to do with the Pacific Improvement Company?

A. Yes.

Q. Do you remember that that company, the Pacific Improvement Company, was engaged in constructing the Central Pacific Railroad line from Redding north to the Oregon State line?

A. Yes; they were constructing that at the time I became treasurer.

Q. Who was in charge of the operations for the Southern Pacific Company at that time?

A. F. S. Douty was its secretary and manager. I think
1306 Mr. J. H. Strobridge was superintendent of construction, and maybe president of the company.

Q. Did you have anything to do with obtaining moneys for the Pacific Improvement Company to pay its expenditures?

A. Yes. Do you want the process, Mr. Herrin?

Q. Yes.

A. The Pacific Improvement Company was the constructing company and had large expenditures to make. Money was deposited with me as treasurer of the Central Pacific Railroad Company up to 1885, and as treasurer of the Southern Pacific Company thereafter. They drew drafts against these amounts deposited with me, and they generally had a large balance on hand, running into heavy amounts. Occasionally they might run short, but the drafts were paid just the same; and in these rare instances when the money would not be on hand to meet the drafts, I personally would go out and borrow the money of somebody in San Francisco to make good.

Q. You would borrow the money for what company?

A. For the Pacific Improvement Company. I had no official connection with that company, nor was I an officer of it, but it was a part of my duty to keep alive the notes that were outstanding. At
1307 one time in San Francisco there were four or five million dollars, and it was my duty to keep them alive.

Q. The notes of what company?

A. The Pacific Improvement Company; and this money was deposited with me as treasurer, and I would notify Mr. Douty that I had secured a loan and had deposited those moneys with myself as treasurer; I would notify him to that effect, likewise reporting the fact to the secretary of the company, who kept the books. I kept nothing but the cash transactions.

Q. The secretary was Mr. Douty?

A. The secretary was Mr. Douty; and likewise the secretary of the railroad companies, who kept my books, the treasurer's books. I kept no books but cash transfers in my office. These moneys were kept on deposit. We used them in the affairs of the railroad company to pay our obligations, just the same as if they had been turned in to us by railroad receipts. I say "kept on deposit." I meant kept on deposit in our banks. We used the money.

Q. You kept advised, then, as I understand it, of the financial condition of the Pacific Improvement Company?

A. Yes.

1308 Q. And to what amount or amounts did you negotiate, yourself, loans for the Pacific Improvement Company, in the way you have mentioned?

A. That is pretty hard to say.

Q. Well, in a general way?

A. I kept alive four or five million dollars' worth of loans on this market, personally; negotiated the loans for the Pacific Improvement Company. Of course they would vary in amount from year to year, according to the condition of the money market, and there would be short time notes—so that I can not give you any of the totals. I did that business until my other duties were such that they appointed a financial agent, in the person of N. K. Masten, who relieved me of the duties.

Q. Is Mr. Masten living?

A. He is deceased. Mr. Masten, however, reported to me, in his operations, and acted under my direction.

Q. He acted as financial agent, to look after the active details, but you still supervised his work?

A. Yes.

Q. But you had no official position, yourself, with the Pacific Improvement Company?

A. None whatever.

1309 Q. Who were the owners of the capital stock of the Pacific Improvement Company?

A. Leland Stanford, C. P. Huntington, Charles Crocker, and Mr. Mark Hopkins.

Mr. McCLENNEN. This is speaking of what date? What date is covered by this last?

By Mr. HERRIN:

Q. At all times, as far as you know?

A. At all times. Either they or their successors in interest.

Q. Was C. P. Huntington an officer or director of the Pacific Improvement Company?

A. No.

Q. Was Leland Stanford?

A. No.

Q. Was Charles Crocker?

A. No.

Q. Is Mr. Douty, the secretary, living?

A. He is deceased.

Q. The Southern Development Company has been mentioned in this testimony here. Do you remember that company?

A. Yes.

1310 Q. That was a company engaged in constructing railroad lines where?

A. In Texas, largely.

Q. Do you know, during the time you were treasurer of the Central Pacific Railroad Company, who were the stockholders of that company, generally?

A. I do not recall now.

Q. Did the Hopkins estate have any stock in the company?

A. Yes.

Q. Did C. P. Huntington?

A. Yes.

Q. Did Leland Stanford?

A. Yes.

Q. Did Charles Crocker?

A. Yes.

Q. What stockholders, within your knowledge, controlled the operations of that company during the time you were treasurer?

Mr. MCCLENNEN. That is objected to as calling upon the witness to draw a conclusion, rather than to state the facts, and to express an opinion.

1311 The WITNESS. I can state as a fact that the entire control, during the time that I was a director and treasurer of the Central Pacific Railroad Company, resided in and was exercised by the four interests of Stanford, Huntington, Hopkins, and Crocker. I know this from my associations with them. In fact, during part of the time I was one of them. Likewise, I know it from attendance at directors' meetings, stockholders' meetings, and from transactions in which the voice of the interests dominated and was put into effect by the companies involved.

Mr. McCLENNEN. The petitioner moves to strike the answer out as being an expression of opinion, not responsive, and in excess of the question.

By Mr. HERRIN:

Q. Did you have consultations or conferences from time to time with Messrs. Huntington, Stanford, and Crocker concerning the business of the Central Pacific Railroad Company?

A. Yes.

Q. Did you attend the stockholders' meetings of that company at any time?

A. Yes.

Q. Were you a director of that company?

A. Yes.

1312 Q. Did you attend the directors' meetings?

A. Yes.

Q. Was there at any time in any of these meetings any adverse vote or votes in opposition to the wishes of the Huntington, Stanford, and Crocker interests?

Mr. McCLENNEN. That is objected to as too general in form, leading, and calling upon the witness to draw a conclusion and an opinion, and also as immaterial, incompetent, and irrelevant.

The WITNESS. During the time that I was a director there was never a meeting of the stockholders or directors in which there were adverse interests. Everything was unanimous and directed by the four parties in interest.

Mr. McCLENNEN. The part of the answer beginning "and directed by the four parties in interest" the petitioner moves to strike out as not responsive, and as the statement of a conclusion and opinion of the witness.

By Mr. HERRIN:

Q. Coming down to 1885, just prior to the organization of the Southern Pacific Company and its taking charge of these lines, do you know who owned the capital stock of the Southern Pacific Railroad Company of California?

1313 A. That was owned by the four parties in interest, Stanford, Hopkins, Crocker, and Huntington.

Q. Was that also true of the capital stock of the Southern Pacific Railroad Company of Arizona?

A. Yes.

Q. And of the Southern Pacific Railroad Company of New Mexico?

A. Yes.

Q. There were other companies that had some lines, sections of lines, that were being operated under the leased lines of the Central

Pacific Railroad Company. Do you recall any of them? There was the Northern Railway Company?

A. The Northern Railway Company of California; yes.

Q. Who owned the capital stock of that line, if you remember?

A. Stanford, Huntington, Hopkins, and Crocker.

Q. That was also true of other of these lines owned by subordinate companies?

A. Yes.

Q. Do you remember having a series of meetings in New York in the summer of 1884?

A. Yes.

1314 Q. Please state how you came to attend those meetings.

A. I received a telegram from Senator Stanford, then in New York, asking me to go on, in the summer of 1884. I think it was in the latter part of July when I proceeded to New York. I found there Senator Stanford, Mr. Huntington, and Mr. Crocker, and it was explained to me that the meeting was desired in order to go over our affairs generally, and likewise to take up the question of the organization of a new company for the purpose of holding and operating the railroad companies that were owned by the interests and controlled by them, both those under the management of the Central Pacific and those east of El Paso in Texas and Louisiana.

Q. Do you know if any record or minutes was kept of the transactions at those meetings?

A. Yes; we appointed William E. Brown our secretary and requested him to keep a record of our proceedings from day to day. These meetings ran over—well, there were thirty or more of them, and they ran over until the middle of November, and there was a record kept.

Q. Mr. Brown kept that record?

A. Mr. Brown kept the record.

Q. I will hand you a document, and you may state what

1315 it is, if you recognize it [handing paper to witness].

A. This is Mr. Brown's handwriting, and is the record of those proceedings.

Q. What is that paper that I handed you?

A. That is the record of the proceedings of our meetings in New York in 1884, kept by our secretary, William E. Brown.

Mr. Herrin. I offer in evidence this record, and ask to have it marked as an exhibit. I will say that it contains, preceding the record proper, what purports to be an index of the different subjects considered, with the reference to the pages of the record, and I will ask that in copying it into the record it be copied page for page so that the index will apply correctly.

Mr. McCLENNEN. Before looking at the record, the petitioner objects to its introduction as immaterial, incompetent, and hearsay, not the best evidence; and other objections, if any, are reserved until petitioner has had an opportunity to see what the offer is.

(The record referred to was received in evidence and marked "Defendants' Exhibit (Hopkins) No. 21, March 9, 1915", and will be found in the volume of defendants' exhibits.)

1316 Mr. McCLENNEN. I suppose I shall have to go through this in order to understand it before you go on.

Mr. HERRIN. I want to call attention to different parts of it. I want to ask some questions about it first.

By Mr. HERRIN:

Q. At these meetings Mr. Brown was present and made a record of what was done, did he?

A. Yes.

Q. And at subsequent meetings was it the practice to read that minute or record and approve it, as you would the record of a directors' meeting?

A. Yes.

Q. You have examined this record from time to time, have you, afterwards?

A. Yes, sir.

Q. Did you find it correct?

A. As far as my recollection went, yes. I would like to ask you to explain that question, Mr. Herrin. Of course, I am answering it as having examined it. It was absolutely correct at the time, and was acted upon, of course, as being correct. To the best of my recollection, it is correct now.

Q. If it was correct then, it could not become incor-

1317 rect afterwards?

A. I did not understand the import of your question exactly. I have not examined the details of it.

Q. I wanted to know whether or not those minutes were not kept substantially as the secretary of a corporation would keep the minutes of the acts of the board of directors.

A. They were; and approved.

Q. The first minute here is of a meeting, New York, August 28, 1884, in which it is stated:

"At a meeting of Leland Stanford, C. P. Huntington, Charles Crocker, and Timothy Hopkins, representing Mrs. M. F. S. Hopkins, it was mutually agreed to meet together from day to day for the purpose of discussing and deciding business matters in which all were interested.

"W. E. Brown was appointed secretary, and requested to keep minutes of meetings and a record of transactions.

"The first business was to formulate a basis of settlement with Thomas W. Pierce, and it was agreed to purchase from Mr. Pierce 5,747 shares of the capital stock of the Galveston, Har. & San Antonio R. R. Co. and 548 shares of the capital stock of the Texas & New Orleans R. R. Co. and to give him credit for the same on
1318 the books of the Southern Dev. Co. It was then agreed to make up the interest on all the accounts of the stockholders of the S. D. Co. to August 30th, 1884.

"S. H. H. & C. to assume payment of the bills payable of the S. D. Co. & the amount due to the P. I. Co. on the books of the S. D. Co.

"Notes of the S. D. Co. payable in one year to be executed in favor of the five stockholders, drawing interest at 6% pr. annum, for the balance due to each. Mr. Pierce places in the hands of the four others, one-quarter to each, notes given for his balance as collateral security for his proportion of indebtedness to them; he also places in their hands his 10,000 shares of capital stock of the S. D. Co. as further collateral security for his indebtedness.

"The secretary was instructed to make up a statement embodying these points of agreement.

"Adjourned.

"The letters S. H. H. & C. used in these minutes refer to Leland Stanford, C. P. Huntington, Charles Crocker, & Mrs. M. F. S. Hopkins.

"S. D. Co. refers to Southern Development Co. P. I. Co. refers to Pacific Improvement Co.

1319 "W. E. BROWN, *Secretary.*"

Do you recall the facts stated in those minutes, so far as they relate to Thomas W. Pierce?

A. I do.

Q. And this correctly states what occurred at that meeting?

A. Yes.

Q. Who was Mr. Pierce?

A. Mr. Thomas W. Pierce was of Boston. He was largely interested in Galveston, Houston & San Antonio and Louisiana Western Railroads as a stockholder; likewise, a stockholder in the Southern Development Company, holding one-fifth of its capital stock, the other four-fifths being held by Huntington, Stanford, Hopkins, and Crocker, one-fifth each.

Q. The Southern Development Company was a construction company organized to do construction work on the lines east of El Paso, was it?

A. Yes.

Q. And Mr. Pierce was interested in that construction company because of his interest in the railroad companies owning parts of that line?

A. Yes.

1320 Q. I next refer to the minutes of a meeting on September 26th, in which it is stated:

"Meeting with Mr. Pierce to discuss values of the several roads in the through line contemplated between New York and San Francisco.

"It was agreed that the P. I. Co. exchange S. P. of California stock for Galveston, Harrisburgh & San Antonio stock (on road between Houston & San Antonio) on same basis of value as is embraced in the Southern Pacific organization.

"Then P. I. Company to exchange with T. W. Pierce so that he will have two shares of Southern Pacific stock for every share he owns of G. H. & S. A. old stock.

"Adjourned. W. E. BROWN, *Secretary.*"

Then I refer to the minutes of the meeting of October 3rd, in which it is stated:

"Met at 11 a. m. All present. A proposition was submitted to Mr. Pierce to give him 150 shares of stock of the Southern Pacific Co. for each 100 shares he holds of the old stock of the Galveston, Har. & San Antonio Company.

"Mr. Pierce accepted the proposition and agreed to put in his 28,059 shares on the basis proposed.

1321 "It was then agreed (Mr. Pierce being present) that certificates of stock of the Southern Pacific Company be printed for temporary use and be issued to parties in accordance with the basis agreed upon. It was further agreed that certificates of stock with coupon warrants attached be ordered made from steel plates to be exchanged when ready for the printed certificates.

"Adjourned."

Do you recall the transactions stated in those minutes?

A. Yes.

Q. Then I refer, further, to the minutes of the meeting of October 13, 1884. I read a part only of the minutes of that meeting:

"It is agreed by all parties that the liabilities of all the companies in which they are interested be provided for as far as leaving sufficient securities to provide collaterals for their payment. After such provision is made it is agreed that all bonds and stocks belonging to the various companies be divided among the stockholders.

"It is agreed to pay into P. I. Co. $1,244,200 in S. P. of Cal. stock, to meet the trade with T. W. Pierce for exchange of stocks. Stock to be paid in as follows:

1322

L. S.	$311,100
C. P. H.	311,000
C. C.	311,100
Mrs. H.	311,000
	$1,244,200

"Adjourned."

Do you recall that transaction?

A. Yes.

Q. Was that agreement performed?

A. Yes; all these transactions that you have mentioned there were necessary in the adjustment of the interests between Mr. Pierce and Mr. Stanford and his associates, arising out of the workings of the business of the Southern Development Company and of the railroad company, G. H. & S. A. It was an equalizing of interests.

Q. Now, I refer to a meeting of October 24, 1884, which reads:

"Memorandum of proposition for equalizing accounts was suggested and submitted by the secretary, as follows:

"Use bonds belonging to S. D. Co. to the extent of $14,000,000 to pay on account of notes due S. H. H. & C. from that Co. at a valuation of, say, 85¢ on the dollar.

1323 "This would give $3,500,000 to each of the four, in bonds. Then let the P. I. Co. buy and sell these bonds at same rate from the parties interested, until the accounts are made equal, as follows:

L. S. has due to him	$12,471,390.78
Cr. $3,500,000 bonds, at 85	2,975,000.00
	15,446,390.78
C. P. H. has due to him	14,502,341.71
Cr. $1,100,000 bonds, at 85	935,000.00
	15,437,341.71
C. C. has due to him	16,266,454.99
Dr. $1,000,000 bonds, at 85	850,000.00
	15,416,454.99
Mrs. H. due to her	17,088,585.70
Dr. $2,000,000 bonds, at 85	1,700,000.00
	15,388,585.70

"This leaves $1,600,000 in treasury of P. I. Co."

Do you recall that transaction?

A. Yes; that was an equalizing of the accounts between Stanford, Huntington, Hopkins, and Crocker. It had nothing to do with Mr. Pierce.

Q. I refer to an extract from the minutes of October 28th, which reads:

1324 "The question of using the bonds of G. H. & S. A. Co. belonging to the S. D. Co. for making payments on the notes of S. D. Co. was discussed with Mr. Pierce and all agreed that the proposition was a good one."

Do you recall that?

A. Yes; that was done; afterwards carried into effect.

Q. I read an extract from the minutes of October 30th:

"It was agreed (Mr. T. W. Pierce concurring) that assets of the Southern Dev. Co. may be divided pro rata in kind as far as may be advisable, Mr. Pierce desiring that his proportion of said assets be kept intact as collateral security for his portion of the indebtedness of the company until said indebtedness was paid."

Was that done?

A. That was done.

Q. The last meeting, November 7th—I read the entire minute which is:

"Met at 11 a. m.

"It was agreed to divide all the stocks of the Southern Dev. Company. And the Atlantic & Pacific stock—the proportion due to T. W. Pierce to be held as collateral."

Do you recall that transaction?

1325 A. Yes; that was for the purpose of liquidation of the Southern Development Company.

Q. I will not call attention to much more of this, because the minutes speak for themselves and, as you have stated, they are correct; but I will call attention to the minutes of September 10th which read:

"I. E. Gates and W. E. Brown were appointed a committee to examine all securities on hand in New York and all that are used as collaterals for the payment of the liabilities of S. H. H. & C.

"To ascertain what securities are available, and generally to make such an examination of the properties of S. H. H. & C. in New York as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S. H. H. & C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date."

Do you recall that transaction?

A. I recall that action.

Q. Will you state what it was? What was the purpose of it?

A. Well, this meeting was primarily for the purpose of organizing the Southern Pacific Company. There were a lot of
1326 preliminary matters which were first taken up, and an inventory of securities in New York was one of those preliminary matters, in order to ascertain what our resources were and where they were. The four interests—by that I mean Stanford, Huntington, Hopkins, and Crocker—were large borrowers of money, and as the money market was in New York they always maintained there a large number of securities in order to take care of the collaterals upon these loans. These matters were all in Mr. Huntington's hands, and he operated them, and at this meeting and while we were all together, it was one of the times when we checked up to see where we stood.

Q. To see what you had to borrow on?

A. To see what we had to borrow on or to sell.

Q. Moneys that you were borrowing in New York were borrowed for what purpose?

A. They were borrowed for the Pacific Improvement Company, and likewise, in part, for the obligations of the railroad companies, the four parties in interest loaning their personal credit for the financing of the railroad companies.

Q. It is stated here that the committee was to examine all
1327 securities that "are used as collateral for payment of the liabilities of S. H. H. & C."

A. Yes.

Q. That is, the individuals mentioned there, those four, gave their notes, did they?

A. They gave their individual notes, with their own collateral.

Q. Did you give the notes for the Hopkins interest, or did Mrs. Hopkins?

A. Not in New York. Mr. Huntington had a power of attorney for his associates, and he signed for all of us. In San Francisco I signed for my mother. I want to say, of course, if I happened to be in New York, as I was often, and the notes came in, I signed them also there for my mother.

Q. But Mr. Huntington was authorized to act in your absence?

A. Yes.

Q. And did so act?

A. Yes.

Q. I call attention to the minutes of September 11th:

"It is agreed that the order of consideration of affairs shall be as follows:

1328 "1st. Consolidation of all the lines of Southern Pacific system in one company.

"2d. Separation of Central Pacific business from the Southern Pacific business.

"3rd. Leasing of Central Pacific system to Southern Pacific s
tem. (New organization.)

"4th. General consolidation of lines from San Francisco to N
port News."

Do you remember that meeting?

A. Yes.

Q. You said a while ago that the main object was to consider th

A. The organization of a new holding company to take over
operate the through line from New Orleans to California.

Q. What was the reason for doing that? Was not the Cen
Pacific Railroad Company and leased lines a satisfactory organi
tion, or what reason was there, as you recall it?

A. The Central Pacific leased lines system had become very m
smaller than the Southern Pacific Company interests had become;
fact, the Southern Pacific lines, when completed through
1329 New Orleans, were at least twice as long as that of the Sou
ern Pacific main lines, and we considered it advisable that
long as the larger interests were concentrated in the Southern Pac
Company, it should be the operating line, and accordingly we
cussed and arranged what was considered a fair and equal man
of doing it, and we put it into effect.

Q. As we go along in these minutes I find a meeting of Septem
25th, in which it is stated:

"It was agreed that the Southern and Central Pacific Compan
terminate their present leases, and that the Central lease from
Southern that portion of road between Goshen and Mojave. Th
a running arrangement be made between the Central and the Sou
ern Pacific Company (new organization) between Mojave and S
Francisco and other points in California, as now exists between
Central Pacific R. R. Co. & the Atlantic & Pacific R. R. Co."

Do you recall that?

A. I recall that. I think that was one of the suggested plans th
arose in the discussion of the matter, but it was not carried into eff

Q. Not as made then?

A. Not as made then.

1330 Q. I was just calling attention to the progress of the mat
as it went along. I call your attention to the minutes
September 29th, where you appear to have got a little nearer to wh
was done:

"Meeting assembled, all present.

"It was decided that the general offices of the Southern Pac
Company be located in San Francisco.

"It was also decided to sell to the Central Pacific and Southe
Pacific Railroad Companies the property owned in San Francis

by S. H. H. & C. that is now used for the terminal facilities of those roads.

"The question of leasing or selling the bridges at Yuma and El Paso belonging to the P. I. Co. was discussed, but no conclusion reached."

Do you recall those matters being decided upon or agreed to?

A. Yes; they were discussed, and some, as shown there, were postponed for further action and some were decided.

Q. But you did decide to locate the general offices of the Southern Pacific Company at San Francisco?

A. Yes, sir.

Q. And that was afterwards done?

1331 A. That was afterwards done.

Q. And you did decide to have S. H. H. & C., those four interests, convey to the Central Pacific and Southern Pacific Companies the property in San Francisco owned by them which was used for terminal facilities?

A. Yes; and that was done.

Q. The bridges were discussed, but no action taken. How did the P. I. Company happen to own the bridge at Yuma and the bridge at El Paso, for example, if you recall?

A. Under the law, at that time, corporations were confined to State lines, so that the Southern Pacific Railroad Company of California could only run to the west bank of the Colorado River, and on the other side, the Southern Pacific of Arizona began and ran to the west side of the Rio Grande. The Galveston, Harrisburg & San Antonio Railroad started on the east bank of the Rio Grande at El Paso and proceeded eastward. Those gaps, therefore, could not be covered by the ownership of any one of those roads, therefore they were built by the Pacific Improvement Company and belonged to it until they were finally sold to the reorganization company which was authorized to run a through line.

Q. I call you attention to the minutes of October 1st,

1332 which state:

"Assembled at 11 a. m.

"Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads forming the through line of Southern Pacific Company.

"It was decided to take immediate action towards raising the capital stock of the Southern Pacific Company to 100 millions, and to have temporary certificates of stock printed, to be exchanged hereafter when steel plate certificates can be prepared."

Did you increase the capital stock of the Southern Pacific Company to one hundred millions?

A. Yes; the Southern Pacific Company had been organized previous spring in Kentucky. At that meeting it was agreed u that it should be raised, and it was afterwards so done, and temporary stock certificates issued.

Q. Then I refer to the minutes of October 6th, in which i stated:

"The organization of Southern Pacific Company was further cused and it was agreed to pay in one million dollars cash into treasury in accordance with the terms of the charter, an

1333 was further agreed to obtain by telegraph the resignation Mr. Echol and Mr. McHenry in order to substitute new rectors in their places."

Do you recall that matter?

A. That was done.

Q. And the meeting of October 6th—there seem to be two m ings here under that date. What is the date you have there?

Mr. ORR. October 6th.

Mr. HERRIN. And what is the next date?

Mr. ORR. October 6th.

Mr. HERRIN. Yes. This meeting is half an hour later, I no Anyhow, it is the second meeting of October 6th.

Mr. MCCLENNEN. They put that million dollars through in a short time.

Mr. HERRIN (reading): "It is agreed that the directors of Southern Pacific Company, when permanently organized, shall sist of seven, viz: C. P. Huntington, of New York; T. W. Pierc Boston, and five others to be selected, from San Francisco, and the general offices be located in San Francisco."

By Mr. HERRIN:

Q. You recall that meeting, do you?

1334 A. Yes; that was done.

Q. In the record of the meeting of October 8th the date the bottom of the minute:

"It was unanimously agreed to pay into the Southern Pa Company $950,000 cash, so as to make up one million dollars actu paid in on the capital stock of the company.

"It was further agreed to invest one million dollars of cash longing to Southern Pacific Company in the six per cent 2d mort bonds of the Galveston, Harrisburgh & San Antonio Railroad C pany at the rate of ninety."

Do you recall that that was done?

A. How many?

Q. Agreed to invest one million dollars in the six per cent second mortgage bonds of the Galveston, Harrisburg & San Antonio Railroad.

A. I feel certain that it was done, but just for the moment I do not recall it.

Q. Then, in the minutes of October 9th—they are very short, and I will read them:

"General discussion of business matters, particularly of Central Pacific affairs, as connected with the organization of the new Southern Pacific Company.

1335 "Secretary instructed to hasten all matters in connection with organization of the Southern Pacific Company. Adjourned."

Then, meeting of October 20th:

"It was agreed that at meeting of stockholders of the Southern Pacific Company to-morrow that the order of business should be:

"1st. Raising capital stock to one hundred millions.

"2d. Changes in by-laws.

"3d. Fixing location of general offices.

"4th. Increase in number of directors."

You recall that?

A. Yes; that was done.

Q. It is unnecessary to go through these minutes in detail, because they speak for themselves, I think. I will ask you, however, as to the minutes of November 5, which read:

"The question of leasing the Central Pacific system of roads to the Southern Pacific Company came up.

"It was agreed to lease the properties and temporarily to fix the lease at fixed charges, and a guarantee of 2% interest on cap-

1336 ital stock, and all the earnings of the Central Pacific system over and above that percentage, until the amount reached 6% on its capital stock per annum. After 6% all profits to go to the Southern Pacific Company."

Was that the basis upon which you finally made the lease of the Central Pacific to the Southern Pacific Company?

A. Yes. That was afterwards carried out by proper corporate action.

Mr. HERRIN. There are some references here to matters which apparently do not concern this particular case, and I shall not refer to them if Mr. McClennen does not.

(Whereupon a recess was taken until 2.15 o'clock p. m.)

1337 AFTER RECESS.

TIMOTHY HOPKINS, the witness under examination when recess was taken, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. HERRIN:

Q. I called your attention this morning to the minutes of a meeting of September 10th, where I. E. Gates and W. E. Brown were appointed a committee to examine the securities on hand in New York and those were used as collaterals, and to ascertain what securities were available, and so forth. Do you remember whether or not there was any report made by that committee on those matters?

A. I do not recall it, but I presume a report was made. It was a usual thing to do from year to year, when we met in New York to make an inventory of what we had and where it was.

Q. In the minutes of the meeting of October 10th, where the secretary makes up a statement of Central Pacific stock on hand as follows—giving the amounts—held by these four interests

1338 and also the P. I. Company, making a total of 157,535 shares, the minutes continue:

"Some discussion with Mr. Huntington as to the Chesapeake & Ohio matters and their connection with other joint interests."

Do you remember that discussion about the Chesapeake & Ohio?

A. I do.

Q. Will you state what that was?

A. Mr. Huntington had a large interest in—in fact, controlled the Chesapeake & Ohio Railroad; and it was a suggestion of his that uniting those interests and those his associates in the Chesapeake & Ohio held through to Kentucky and to the Mississippi River combined with those which his associates on the Pacific coast owned might make a transcontinental route from the Atlantic to the Pacific. He presented the matter to his associates, and that is what this refers to. It was discussed, and then it was decided that his western associates did not feel that they could go into the scheme, that they preferred to keep their development in the lines that they already possessed, from California to Louisiana.

1339 Q. So they declined to go into the Chesapeake & Ohio with Mr. Huntington?

A. Yes.

Q. Was there any talk about the collaterals that were used? The collaterals were in the hands of whom in New York?

A. Mr. Huntington. One of the reasons for that inventory that there mentioned and for Mr. Gates and Mr. Brown being appointed a committee was to define or to inventory the securities which we had. There was no reflection, of course, intended upon Mr. Hunti

ton's management of the use of our power of attorney, but it was desirable for us to learn just how much collateral we had left. Mr. Huntington, in his financial matters, believing that a variety of securities was always best to support a loan sometimes used Chesapeake & Ohio securities with ours and ours with Chesapeake & Ohio. Wherever he could get the money in the best possible way he did, to produce the results that he was after and what we wanted. This simply meant that Mr. Gates, representing Mr. Huntington, and Mr. Brown, representing the western associates, were to ascertain where everything was. It is unnecessary to say that they found everything.

1340 Q. And this report or statement made up by the secretary, which is recorded in the minutes of October 10th, as to the amount of Central Pacific stock on hand—do you know whether or not that was all of the stock of the Central Pacific Railroad Company that your interests had at that time?

A. I do not; but the mere drawing up of the list of stock on hand would not mean that it was all we had. The expression used there was "on hand and available". Undoubtedly the other stock might have been used as collateral, and likewise, there were blocks of stock that did not stand in the name of the associates.

Q. That was owned by them?

A. That was owned by them. The stock was used as collateral, and sometimes it was more convenient to have some stock in somebody else's name, rather than in the names of those who were actually making the loan.

Q. Am I correct in assuming that this list or statement would mean, then, that that amount of stock was free and on hand for use as collateral?

A. That is the way I take it, sir.

Q. And if you had other stock in the Central Pacific Rail-

1341 road Company that was used in another place, and was not free, it would not be included in this list?

A. It would not be in that list, but it would have been in the list which the Gates and Brown committee were requested to make.

Q. I find no record in these minutes that Mr. Gates and Mr. Brown made any formal report, unless this was a part of it.

A. As I said before, I presume they did make it; but I do not know. It was the usual thing to make at intervals.

Q. There is mention made in the minutes of October 6th about T. Wilson coming in to discuss the project of putting up a levee between points on the Memphis and New Orleans Railroad. Does that have anything to do with this Southern Pacific line?

A. No, sir.

Q. What did that refer to?

A. It referred to a line of road running from Memphis to New Orleans along the Mississippi, through the Yazoo country. It was really a connection intended to be made from the Huntington lines in Kentucky, a continuation of the Chesapeake & Ohio lines, and likewise an egress from New Orleans through into Cincinnati
1342 and Chicago for the freight that might be delivered to them by the Southern Pacific; but it never was included within the Southern Pacific system.

Q. Mr. Huntington had some interest in that line, did he?

A. Yes.

Q. Did the other interests have any interest in it?

A. Yes; we took it over. We bought the line; but I think it was afterwards sold.

Q. You disposed of the interest?

A. It was after my time. I do not know what became of it.

Q. Do you know who had custody of those minutes that were produced here, marked Exhibit No. 21, from about the time they were made until the present time?

A. Mr. Brown was very close to Mr. Charles Crocker. He was the financial secretary of all four, but his relations were closer with Mr. Crocker and his affairs than they were with the other three; and this memorandum was kept by Mr. Brown, and evidently it was turned over to the Crocker interests, and they placed it in the safety vaults of the Crocker-Woolworth Bank, where I understand it has laid for years.

1343 Q. It was not destroyed by the 1906 fire?

A. It does not look it.

Q. Did any person, except the four interests mentioned, attend those meetings in New York and take part in the discussions or decisions?

A. No; they, and they alone, attended the meetings; and they discussed among themselves and decided the matters between them without conference or consultation with anybody else—with the exception of Mr. Pierce and the interests which he had.

Q. His interests were entirely confined to the line east of El Paso?

A. Yes.

Q. He had no interest on this side of El Paso, in the line?

A. No.

Q. And so far as the lines west of El Paso or west of Ogden and south of Portland were concerned, there was no one else that took any part in these discussions?

A. No; the decisions which the four parties mentioned came to were decided among themselves, and then absolutely carried out afterwards by the companies involved.

1344 Q. With respect to the subsidiary companies here that held pieces of railroad and other properties that concerned this system of road you have mentioned the Pacific Improvement Company, of which no one of these people was an official or director, or anything of that sort?

A. Yes.

Q. And generally was it the custom for these four gentlemen, the four people named there in those minutes, to be in the boards of these subordinate companies? How was that? What was the fact about that?

A. No; it was not at all general. There were a great many of those subsidiary companies. Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker generally belonged to the other companies—the Central Pacific and the Southern Pacific or the Southern Pacific Railroad of California—but the subsidiary companies were made up with other boards of directors. It is probable that I belonged to more of them than any of the other associates during my term of office there, since as treasurer everything pertaining to money matters centered in the treasurer's office, and so I was put in all these companies.

1345 Q. Then your office as treasurer was treasurer for all these companies?

A. I would not dare to say how many I belonged to, but I was, in the case of a great many of them, put there for the convenience of having things come through one channel in regard to money matters, to the treasurer's office.

Q. Did the fact that Messrs. Stanford, Huntington, Crocker, and yourself were not directors in any of these subordinate companies affect in any way your control or management of the property owned by those companies?

A. Not at all. The companies were managed as a unity. The directions given by the four parties in interest were irrespective as to whether they were directors in that corporation or not. I know that it was my action. I never stopped to consider whether I was a director of any company. When there were things to be decided and done I gave my instructions, and they were followed accordingly.

Mr. McCLENNEN. Petitioner moves to strike out the answer after "not at all", and particularly the part which says "The companies were managed as a unity", and so forth, as not responsive and containing an expression of opinion and a conclusion of the witness.

1346 By Mr. HERRIN:

Q. Was there any other management of these companies, or any of them, except that included in the four interests you have mentioned?

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. No.

By Mr. HERRIN:

Q. And that control was exercised as to all these companies, wi
out reference to the fact of whether or not these gentlemen, or
of them, were directors or officers of the subordinate company?

Mr. McCLENNEN. Objected to as leading and calling for a con
sion and opinion of the witness.

The WITNESS. Yes.

By Mr. HERRIN:

Q. Do you recall any effort that was made by this Sunset line fr
San Francisco to New Orleans to carry grain from California to
Gulf of Mexico, there to be shipped to European ports, after it
opened in 1883?

A. Yes; there was one instance that made an impression on
mind. At that period, 1883–1884, the ship charters for grai
1347 the port here were very high, were over seventy shillings,
the farmers were, of course, getting just so much less for th
grain, and it was really Governor Stanford's idea that in the upl
ing of the State we could ship that grain over to the Atlantic
through to Liverpool and save the farmers a good deal of mo
His scheme, likewise, was to bring back, if that line were successfu
inaugurated, to bring back to California immigrants who wo
settle in the State and form a laboring class for the development
California. We built a small warehouse; I think it was at Algier

Q. That was right opposite New Orleans?

A. Right opposite New Orleans.

Q. On the river?

A. Yes; big enough to hold a cargo of grain, and we did s
across a few shiploads, which were sufficient to demonstrate the
that it could be done, and effectually broke the heavy charters wh
existed here at that time, and reduced them down to somewhere n
a third, and, as far as I know, they have never been back there ag
I find my memory on that matter is supported by a report of
railroad commission for 1884, which tells that same incident
1348 Q. I call your attention to the annual report of the Bo
of Railroad Commissioners of California for the year 18
which you have mentioned, and I will read an extract therefrom,
page 32, as follows——

Mr. McCLENNEN. This reading is objected to on such grounds
it appears to be objectionable upon when we know what it is t
is to be read.

Mr. HERRIN. I will read this report from the State printing o
of California, the fifth annual report of the Railroad Commissio

of the State of California for the year ending December 31, 1884. The subtitle in the report is as follows:

"The Southern Pacific Railroad and ocean freights.

"It is said that the 'southern desert road' is a burden upon its owners. Because any desert road is such burden the commission has given this one the benefit of differential rates. But with all its costly mountain and desert divisions the Southern Pacific Railroad is a work of public economy by which the State has gained infinitely more than its owners have lost. The year it was completed it took from the grain crop of California more than a third of the tax levied upon it by ocean carriers. The cost of transportation by sea has always been and now is the subject of special
1349 contract between thirty or forty shipping firms or individuals, and the grain fleet frequenting the harbor of San Francisco. Hence it has fluctuated. But prior to the year ending June 31, 1883, it had seldom if ever gone below an average of 68s. per ton. Thus, for the year ending June 31, 1881, the average was 68s. 10d. For the year ending June 31, 1882, the average was 69s. 3¾d.; and this was the ruling rate when, in that year, the Southern Pacific Railroad was complete to New Orleans. It was a tribute to foreign carriers that had been for years reaping a harvest they had not sown. And when, in April and May of 1882, it was demonstrated by actual experiment that there was a new and competing route via New Orleans and Galveston to the grain markets of Europe, the rate by sailing carriers sunk from 69s. 3¾d. to 43s. 4d., at or below which it has since remained. The cost of grain shipments aggregating from four to five hundred thousand tons per annum, and more than eighty per cent of which were and are made in foreign bottoms, was thus reduced more than thirty-seven per cent. The reduction was made and is continued under stress of threatened competition, for which, if honor be due, it is to the men who built the Southern Pacific Railroad."

1350 By Mr. HERRIN:

Q. Do the facts stated in that excerpt that I have read from this report accord with your recollection of the facts?

A. They do.

Mr. MCCLENNEN. This question is objected to as leading; calling for an opinion and conclusion of the witness; immaterial, irrelevant and incompetent; too general, and as including in the question an apparent eulogium the office of which does not appear, and as assuming the existence of facts of which there is no evidence, and as incorporating a large amount of hearsay into the record.

Mr. HERRIN. If it were odium instead of eulogium I suppose the objection would not have been made, but I will ask the witness to answer the question.

The WITNESS. I answered it before I knew it was loaded.

By Mr. HERRIN:

Q. Was there ever any distinction made between the lines of the Central Pacific Railroad Company and the Southern Pacific Railroad Company on account of their ownership? What I mean by that is, were they operated separately or were they operated together, as if they were in one ownership?

Mr. MCCLENNEN. That is objected to as leading, and a
1351 little more explanatory of what the questioner desires the witness to answer, and as calling for an opinion and conclusion of the witness, and as too general in form.

The WITNESS. They were operated as one company; no distinction made as to which line was which.

By Mr. HERRIN:

Q. Do you know who were the owners of the capital stock of the Southern Pacific Company at the time it began its operations in 1885?

A. Stanford, Huntington, Hopkins, and Crocker, owned most, if not all, of the stock. I, for the moment, do not recollect whether Mr. Pierce, through the Galveston, Harrisburg & San Antonio Company and eastern lines there, received some of that stock or not.

Q. I think these minutes show that he did.

A. That is my impression, that he did, and that it was owned by S., H., H., C., and Pierce, and I think some of the Morgan people took a little of the stock also, but I will not be certain as to that feature of it.

Q. State whether or not at all times that you have mentioned the H., H., S., & C. interests were the owners of a clear majority of the Southern Pacific Company's stock.

1352 A. Yes, undoubtedly; a great majority.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. By "the Morgan people" you mean whom?

A. The owners of the Morgan Louisiana & Texas Railroad & Steamship Company, running from New Orleans westward.

Q. At this time, in 1885, was the stock of the Southern Pacific Railroad Company all held by Mr. Huntington, Mr. Stanford, Mr. Crocker, and Mr. Hopkins, or the Hopkins estate?

A. Which one do you mean?

Q. I mean of California.

A. Of California; yes.

Q. Now, of Arizona?

A. Yes.

Q. And now of New Mexico?

A. Yes.

Q. What was the condition of the stock holding of the Galveston, Harrisburg & San Antonio Railroad at that time?

A. I am not as familiar with that eastern end. We built the road from El Paso as far east as San Antonio. In fact, that
1353 branch of the road is called the San Antonio extension. Mr. Pierce owned, as stockholder, the eastern end. The exact proportions of stock outstanding at this period of time I am not able to answer, but that it was a clear control and that Mr. Pierce turned over enough to us to consummate the control and keep it where it was, with our people, is shown by that statement here. Twenty-eight thousand shares at least came with Mr. Pierce's interest.

Q. Was the building of the road east of the Pecos River and into New Orleans all accomplished without any of these four taking part in it?

A. No; the road, I think, was constructed westward as far as San Antonio. It was the extension from San Antonio westward that the four interests came into, together with Mr. Pierce. Beyond that the road was constructed; the Louisiana Western was an old road, and the Morgan road was still older.

Q. The Texas & New Orleans?

A. Yes.

Q. Those roads were all constructed by entirely independent parties?

A. Yes.

Q. Then the stretch from El Paso to what point is the Galveston, Harrisburg & San Antonio?

1354 A. It runs to Houston.

Q. Is there some portion of the eastern end of that road with the construction of which those four gentlemen had nothing to do?

A. From San Antonio eastward, I think, was the part with which they had nothing to do, the G. H. & S. A.

Q. Then the G. H. & S. A. from El Paso to San Antonio was constructed by the Southern Development Company, was it?

A. I think so.

Q. The road west from San Antonio was being constructed contemporaneously with the road east from El Paso, was it?

A. Yes.

Q. Were they both being constructed for the Galveston, Harrisburg & San Antonio Company?

A. Yes.

Q. Under a single franchise?

A. Yes; I so understand it.

Q. At what point east of El Paso did Mr. Pierce become interested in the construction?

A. Well, if I understand your question correctly, the El Paso end was built eastward and the San Antonio end was built west-
1355 ward, and they met at the junction of the Pecos River and the Rio Grande.

Q. Do you mean that Mr. Pierce was, either alone or with associates other than the "big four", interested in the development westward, while the "big four" were interested in the development eastward, until they met?

A. Well, to be perfectly exact, the construction of the eastern end was done before I was connected officially with the company. I am giving you the best of my impression that it was done for the same interest and under the same franchise. The Southern Development Company worked from both ends, but it is really just one year ahead of me.

Q. In 1885 what stockholders, other than the "big four" and Mr. Pierce, did you know of connected with any of the roads on this so-called Sunset line east of El Paso to New Orleans?

A. I recall none.

Q. What is the earliest date at which you have first-hand knowledge of affairs connected with these various railroads?

A. You mean the Central Pacific?

Q. The Central Pacific, or the Southern Pacific Railroad of California, or any of the other lines connected with them.

1356 A. Officially not until 1880; but I was brought up on the road, you might say, and probably absorbed a good deal of the history and legends connected with it from childhood.

Q. You were born when?

A. 1859.

Q. And I think you said you were adopted when you were three years old?

A. Yes; I lived in the family of Mark Hopkins after I was three years old. I was an adopted child.

Q. When Mr. Hopkins died, in 1878, who took up the active management of his affairs.

A. Well, there was an interim, of course, in the probate of the estate. Mr. E. W. Hopkins, who was treasurer of the company at the death of his uncle, had part of the actual management. My mother was executrix for a short time—most of the time—and then her brother-in-law, Mr. Moses Hopkins, a brother of Mark Hopkins, filled out a term as executor, but the matters rested in statu quo in

the affairs of the estate, of course, while it was being settled. There were also some legal troubles which prolonged it.

Q. There came a time, did there not, when you knew practi-
1357 cally all about the Mark Hopkins estate that the owner of that estate would know?

A. I would know some of it, not all.

Q. How early did you know just what securities and properties were owned by Mrs. Hopkins as administratrix and beneficiary of the estate?

A. About 1882, at the time I took charge of the treasurer's office.

Q. And that intimate knowledge continued up to what date?

A. 1888.

Q. When did Mrs. Hopkins remarry?

A. In 1888. I ought to have said 1889 there, because I did not get out of things until 1889.

Q. You knew of the fact of the stock of the Central Pacific Railroad Company being sold upon the market?

A. There were some stocks sold; yes.

Q. And you knew of the fact that it was being sold substantially at the time it was being done?

A. Sometimes I did and sometimes after it was done.

Q. As that stock was put upon the market it was sold practically for common account of "the big four", was it not?

A. Yes; pooled.

Q. So that at all times, we will say from 1880 to 1889,
1358 the holdings of each one of the four in the Central Pacific Railroad Company were substantially the same?

A. I suppose so, practically.

Q. It was as early as 1880 that the stock began to be sold on the stock exchange, was it not?

A. I don't know that, just when it started.

Q. When you came into more familiar acquaintance with the affairs in 1882, considerable quantities had already then been sold?

A. As to that I could not answer.

Q. You have no recollection of that?

A. No recollection; and I have no papers to which I can refer. All my papers were destroyed in the fire.

Q. Did you, at the time, keep records of the holdings of the estate?

A. Yes; those records were kept in my office, and likewise the pooling stock and the collaterals which were used by the "big four" interests were kept by Mr. William E. Brown. There was very little of that Central Pacific stock ever in my possession.

Q. When you ceased to have more direct connection with the
1359 Hopkins estate in 1889, a very large part of the holdings of

that estate in the Central Pacific Railroad Company had been disposed of, had they not?

A. I do not recall how much had been disposed of.

Q. If it is true that on October 4, 1889, according to the inventory, the estate of Charles Crocker held 34,049 shares and no other, of the Central Pacific Railroad Company, would that help you at all toward stating what amount the Hopkins estate held at that time?

A. No; I do not think it would. The Hopkins estate was divided in kind among three heirs, seventy-five per cent to my mother and twenty-five per cent to the two brothers of Mark Hopkins. I am not certain, after this lapse of time, whether they took some of the Central Pacific stock in distribution as their share of the estate or not; it is too far back for me to remember.

Q. Was not the Hopkins estate held as an entirety as late as 1889?

A. No.

Q. Distribution was earlier than that?

A. Distribution was earlier than that; the Hopkins interest that evidently is in your mind was the interest of Mrs. Hopkins
1360 after the estate had been distributed by the probate court.

Q. Is it not probable that the total interest of Mrs. Hopkins and of Mark Hopkins's two brothers would amount, at any given time, in the aggregate to about the interest of the Crocker estate at the same time?

A. That might be so; yes. I would not say so definitely, if that is what you wish me to answer.

Q. You say, do you, that these inventories of the holdings of Mr. Stanford, Mr. Crocker, Mr. Huntington, and the Hopkins estate used to be made up a matter of once a year or so?

A. Yes.

Q. And you knew on those occasions what stocks were held by the Hopkins estate?

A. Yes.

Q. As you look over this record, Exhibit No. 21, and see this note on September 10, 1884, that "Mr. Gates and Mr. Brown were appointed a committee to examine all securities on hand in New York, and all that are used as collaterals for payment of the liabilities of S. H. H. and C. to ascertain what securities are available, and generally to make such an examination of the properties of
1361 S. H. H. and C. in New York as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S. H. H. and C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date."

Does it not recall to your mind that what was sought to be obtained was a complete inventory of all the securities, whether they were in pledge or in hand?

A. I presume that was so; yes.

Q. And it is probable that such an inventory was prepared and signed, is it?

A. I think so; I think it follows. I have no recollection of it, but I think it follows that it was prepared and was signed. It was the custom to do those things in that way.

Q. Now, it appears from these minutes that Mr. Pierce, who held apparently a substantial interest in some of these companies, was invited into the meetings and his agreement obtained to certain propositions which should take care of his interests; and that is in accordance with your recollection?

A. Yes.

Q. The only one of these companies in which any one besides
1362 the "big four" and Mr. Pierce had a substantial interest was the Central Pacific Railroad Company, was it not?

A. Well, the two companies were different, naturally; the Southern Development Company was a construction company, in which Mr. Pierce had an interest. The Central Pacific Railroad Company had outside stockholders, if that is an answer to your question.

Q. My question was a little more: That it was the only one of these railroad companies that had any outside stockholders substantially?

A. I will not be certain as to that. I do not recall just how the Morgan people came into that proposition. There is a reference in these minutes to Mr. Quintard's discussions and joining and afterwards a retirement on his part, I know; but whether they took stock or not, I can not for the moment recall; but, with the exception of the lines east of San Antonio, the only outside interests that I can recall were in the Central Pacific Railroad Company.

Q. At the meeting of October 10th, according to this record, Exhibit 21, it appears that the secretary makes up a statement of Central Pacific stock on hand as follows—after which follow a number of items of shares in ink, footed at the bottom in pencil as 157,535,
1363 against which, in pencil, are total shares, 592,755. Do you not think it probable that that was intended to be a statement of all the shares which any of the "big four" owned or continued to control at that date in the Central Pacific Railroad Company?

A. It would be a surmise on my part; I do not know what those pencil figures are.

Q. You do not know one way or the other?

A. No; I do not recall them.

Q. So far as your recollection goes at the present time that may or may not be a complete statement of all of the stock which remained

in the ownership, either nominally or substantially, of the "big four"?

A. I do not know anything about it. May I look at it to see what it is?

Q. Certainly [handing Exhibit 21 to the witness].

A. That is in Mr. Brown's handwriting all right, but I do not know just what it refers to.

Q. So far as the exact ownership of the stock of the Central Pacific Railroad Company at that particular date is concerned, you really know nothing except the fact that it is in Mr. Brown's handwriting?

A. Yes. I do know this, that the control of the Central
1364 Pacific was in the hands of the "big four" interests, Stanford, Huntington, Hopkins, and Crocker. The exact number of shares that each held in their own name, or in the names of others, I can not recall; but that there was a control of the company by those four interests, there was never any question as to that.

Q. You mean a voting control?

A. A voting control, absolute control, and a managing control.

Q. How far that control was dependent upon proxies representative of stock which the "big four" did not own, you have no present knowledge?

A. No; there were always a good many proxies coming in for these annual meetings.

Q. About 1885 the number of stockholders in the Central Pacific Railroad Company had got up as high as 2,600 or thereabouts?

A. I could not say; but that there were many was evident. Of course many of those were small certificates. The European investor was a small investor, and a certificate would be cut up and then cut up again through the European houses who peddled this
1365 stock among the small holders in Europe.

Q. Do you bear in mind that the ordinary American certificates were 100-share certificates, and the European were 10-share certificates?

A. Well, there was some such proportion as that; the European shares were very small certificates. I was trying to place it in my mind. It seems to me that we had three classes of certificates of the Central Pacific stock.

Q. One was 100, one was 10, and one was irregular?

A. Yes, I think that is it; but I have forgotten.

Q. It was years after that stock was sold abroad in considerable quantities before the purchasers registered their transfers to any considerable extent, was it not?

A. I would not know so much about that, because those transfers were generally handled in New York. I do know that in some of those European 10-share certificates there would be four or five in

terests, four or five owners in one 10-share certificate, or a greater number; it was a sort of community pool to buy some shares of stock, so that when it came to the registration, that was handled by the New York office through the registrar there; we had very little of that in San Francisco.

1366 Q. And the stock, to a very considerable extent, was in the names of New York office men, who were understood not to be the real owners of it themselves?

A. Some was in their names; yes; and some in other associates.

Q. You remember the form of certificate that was adopted by the Central Pacific Railroad Company, with the dividend warrants attached?

A. Yes.

Q. So that a man could get his dividend by presenting the warrant without any inquiry as to whether he was a stockholder of record or not?

A. Well, it was a coupon.

Q. Just like a coupon on a bond?

A. Yes; a dividend coupon.

Q. And when a dividend was declared it would be dividend No. 3, for instance?

A. Yes.

Q. And when warrant No. 3 was presented by an individual he would receive his dividend?

A. Yes; that was one of the usual forms of the day in stock certificates.

1367 Q. Do you remember when that form of certificate was first adopted by the Central Pacific Railroad Company?

A. No; I do not.

Q. It antedated your treasurership?

A. I would rather not say. They came, some of them, into my office as treasurer; yes; but I do not know the date of that.

Q. Do you remember whether the great majority of the sales abroad had been made prior to 1889, when you ceased to be directly familiar with the Hopkins estate?

A. No; I do not. Those sales of stock were made through Mr. Huntington's office, and through his administration of the pool an option might be given. It might be some time before the option ran out, but as to when the sales took place I do not remember.

Q. Do you remember whether the sales to the public had begun at the time—I am not referring to the original public that might have subscribed for shares in the beginning, but whether the sales to the public of the interest of the "big four" had begun at the time of Mark Hopkins's death?

A. I would not dare to say. It would only be guesswork; I not recall it.

1368 Q. Did you have occasion to go over or verify the prox for any of the meetings of the Central Pacific Railroad Co pany?

A. No, sir; not that I now recall.

Q. Do you remember that in 1885 the voting control was in New York office employees?

A. I would not say that. I think it was in the New York offi that is, the proxies and their control came through that; that cluded some of our own stock, naturally, but the heavy voti strength came from New York.

Q. By your own stock you mean some of the stock that the " four" still retained?

A. Yes.

Q. The New York office stock was largely the stock which had b sold to the public in this country and in Europe?

A. Some of it was; yes.

Q. Well, the major part of it was?

A. Perhaps I do not understand the question. You mean proxies that were sent to us that represented most of the stock t was sold outside and in Europe?

Q. Yes.

1369 A. No; I think not. I am speaking now from recollecti We had proxies, of course, from friends and associates, they likewise. I suppose proxies came, but I doubt whether m European proxies came over.

Q. I did not make my question clear. There were certain sha of stock that stood in the name of either Huntington, Stanfo Crocker, or Mrs. Hopkins, and there were certain other shares t stood in the names of independent members of the public, either this country or in Europe, were there not?

A. Yes.

Q. Then there were still other shares that stood in the name of New York office men, were there not?

A. Some of the shares; yes.

Q. And those New York office men were understood not to be real owners of that stock, to a considerable extent?

A. Yes.

Q. The controlling voting proxies in the meeting of 1885, for stance, were the proxies of these New York office men?

A. Together with our own, and whatever stock came in to vote that occasion. How many shares were voted on that occasion I h no means of ascertaining, and I do not know.

1370 Q. Don't you bear in mind that those New York office men, this third class that I have spoken of, themselves held a voting control in the corporation?

A. No; I do not recall that. I recall that together with what they held and what we as the four interests held there was a clear majority; but I can not differentiate the classes and the number of shares in the manner in which you have presented it.

Q. Now, recurring to the stock standing in the name of the New York office employees, you were aware, were you not, that some part of that stock was really the property of American, English, and European investors?

A. I do not know that I knew anything about that.

Q. You do not know that you knew anything about it one way or the other?

A. No, sir.

Q. Do you recall whether up to 1889 any of the European investors had recorded transfers for shares?

A. No; I was not in a position to know that. That was done in New York; they would record it there.

Q. Do you remember that some apprehension had been expressed lest stockholders of record in a California railroad
1371 corporation might be held personally liable for the debts of the corporation?

A. That has always been with us, as I understand the law.

Q. Do you remember that in consequence of that a good many of the investors in Central Pacific Railroad stock kept their holdings in what we call street certificates, without having them transferred into their own names?

A. Yes; that was done not only in railroad corporations, but in all corporations. There are so many legal gentlemen here that, of course, they can check me up, but I suppose I could hazard an opinion that it was not particularly railroads, but a law applying to corporations generally, as to the consequences of liability.

Q. And the consequence was that those office employees remained the record owners of this Central Pacific stock for some considerable period of time after it had been sold to the British and European investors?

Mr. BLAIR. The witness has said repeatedly that he does not know anything about it.

The WITNESS. I do not know anything about it.

Mr. HERRIN. And I object to it as calling for an opinion
1372 as to the consequences of the stockholders' liability law; I do not think that is competent.

The WITNESS. I can not answer the question; I don't know anything about it.

By Mr. McCLENNEN:

Q. Do you happen to remember when the Central Pacific Railroad Company ceased to pay dividends?

A. I would rather refer you to the record there.

Q. You remember that there was a period during which the Central Pacific Railroad Company paid pretty regular dividends?

A. Yes; it did for a while, I understand.

Q. And then there was a period when they paid no dividends?

A. Yes.

Q. Do you recall that the sales of the stock to the outside investors in England and in Europe and in America took place more largely during the period when the company was continuing to pay dividends?

A. That would be the most natural thing to occur, but I do not recall it.

Q. The sales of the stock to the public were conducted largely through the office of Speyer & Company in New York,

1373 were they not?

A. Well, those sales were made through Mr. Huntington in New York. I would not dare to say how many were made through Speyer & Company and how many through other houses, but Speyer was a well-known dealer in Central and Southern Pacific securities.

Q. Were any sales made through Fisk & Hatch?

A. I would not know. I think early in the life of the Central Pacific—well, that is hearsay; I would not dare to quote that. I do not know whether there was any through Fisk & Hatch or not.

Q. Have you exhausted every possible way of stating definitely, from any records or memoranda, what the holdings of the Hopkins estate in Central Pacific Railroad Company stock in 1885 were?

A. Yes. My papers—every paper I owned in the office relative to old business transactions—was destroyed by the fire of 1906, and I have nothing to refer to at all.

Q. Do you know anything more authentic on which to rely than this memorandum of Mr. Brown's of October 10, 1884?

A. No; I do not. I might say for your information that I

1374 have not seen the Hopkins estate papers since 1889. All the papers belonging to the estate were transferred by Messrs. Stillman and Hubbard, who assumed charge of my mother's affairs, to New York, and I had no access to them or anything to do with them since that time, which may account for some of my unfamiliarity with the figures you asked me to give.

Q. Stillman and Hubbard were located where?

A. In New York City.

Q. During the period when you were treasurer of the Central Pacific Railroad Company, was the Central Pacific Railroad Company a large borrower of money outside of its bonded indebtedness?

A. No; not that I know of.

Q. Did it borrow any money during that period?

A. At periods we borrowed money; yes.

Q. The Central Pacific Railroad Company?

A. The Central Pacific Railroad Company. You mean from 1882 to 1885?

Q. From 1882 to 1885.

A. Yes; we borrowed money here in San Francisco. At least I have borrowed money here for the Central Pacific.

Q. That is, outside of the bonded indebtedness?

A. I do not quite understand what you mean when you say
1375 "outside of the bonded indebtedness". Of course the indebtedness had already accrued.

Q. During the period that you were treasurer of the Central Pacific Railroad Company, did that company issue any bonds?

A. No. Now I understand your question. It seems to me that we had some of the California & Oregon Railroad branch running up from Redding to Oregon, to the Oregon line, that we issued about that time. I will not be certain as to when that series of bonds was issued. That was Central Pacific.

Q. Were those bonds guaranteed by anyone?

A. Not that I recall. I would have to see the bonds in order to refresh my memory on it. I think they were Central Pacific California & Oregon division bonds.

Q. What form of security, or evidences, did you give when you borrowed for the Central Pacific Railroad Company?

A. That was largely bank notes, in order to meet interest charges and other charges that came in faster than the receipts came in to cover them.

Q. They were ordinary short-time notes?

A. Ordinary short-time notes.

1376 Q. And those were the notes of the Central Pacific Railroad Company alone?

A. Yes; they were short-time notes.

Q. Were those guaranteed in any way?

A. No.

Q. During the period that you were treasurer the Central Pacific Railroad Company financed itself in these ways that you have described?

A. Yes. Well, in the ways I have described—you mean in the payment of interest?

Q. Yes.

A. Yes; that was done here in San Francisco. There were bonds redeemed. There was a million and a half of land grant bonds came in during my treasurership there that, I think, was handled by money borrowed in New York for the time being until it could be absorbed or placed out in other directions or other ways.

Q. Have you, then, any specific instance in mind where any one of the four interests—Huntington, Stanford, Crocker, or Mrs. Hopkins—pledged their own credit for any obligations of the Central Pacific Railroad Company?

A. Well, in a general way. In a specific way I can not cite any one instance. We had a common treasury. Any-
1377 thing we had went into it, and everything came out of it, whether it was Central Pacific or P. I. Company—Pacific Improvement Company—it came out of the same financial pot. If the Central Pacific needed money to send on to New York to pay its interest ahead of its receipts, and the Pacific Improvement Company's deposits were on hand that we had borrowed by the Pacific Improvement Company, they went right on to New York as Central Pacific money.

Q. That was a mere matter of a banking or clearing-house arrangement?

A. Yes; we made no separate deposit of the Pacific Improvement money, but we put it all together and used it as it was necessary, for both the railroad and the Pacific Improvement Company.

Q. That is, the Central Pacific Railroad Company used the money of the Pacific Improvement Company, or of any of these other concerns, just as a bank uses the money of its depositors?

A. I suppose you might make that parallel; yes.

Q. Did you know anything about any plans to combine this system of railroads with any other system, apart from this
1378 Chesapeake & Ohio suggestion of Mr. Huntington's—and, of course, prior to the so-called Harriman merger?

A. No; I never heard of any. There was a time, in the early history of the road, when the holders of the Central Pacific were offered the control of the Union Pacific at eleven dollars per share, and they were too poor to take it up; but that was pretty far back.

Q. Was the construction company that constructed from El Paso to the Pecos River or to San Antonio the Pacific Improvement Company or the Southern Development Company?

A. I always supposed it was the Southern Development Company. Mr. Strobridge was in charge of the whole thing, but I do not know that I ever made any particular inquiry. I don't know whether I should dare to say yes or no; but I think it was the same force, operating under the name of the Southern Development Company. It may have been that the Pacific Improvement Company went right

along on that westerly end and constructed that piece of road to the Pecos River. I will not be certain; it is so far back.

Q. That construction was practically completed before you became treasurer?

A. Yes; that was completed the next spring after I was treasurer. I went down that line when the road was being
1379 constructed at the Pecos River; that was in October, 1882.

Q. Were there any stockholders in the Pacific Improvement Company except Stanford, Hopkins, Huntington, and Crocker?

A. No.

Q. In the operation of the Southern Pacific Railroad and of the Central Pacific Railroad up to the spring of 1885 the Central Pacific Railroad Company acted as the operating company, did it not?

A. Yes.

Q. It operated the Central Pacific Railroad as its own and the Southern Pacific Railroad as a lessee?

A. Yes; it was the Central Pacific Railroad and Leased Lines.

Q. And the Central Pacific Railroad Company, in operating those lines, operated them as one railroad, would naturally operate any several railroads over which it held a lease or leases?

A. It operated it as one system, if that is what you mean.

Q. And no differently from what any lessee railroad corporation would operate a series of different railroads which were all being run at the same time by the lessee?

1380 That does not naturally follow, because there are different forms of leases, and roads would be run in different manners. They were run as if there were an ownership in all of the roads, so that it made no difference as to which road was favored.

Q. Did not the Central Pacific Railroad Company keep accounts of its operations?

A. It had to.

Q. And kept separate the different lines, so that it could conform to its leases?

A. Yes; it had to. Bonds were outstanding on all those lines. The corporate existence had to be maintained and accounts kept.

Q. And the Central Pacific Railroad Company, as far as you observed the matter, followed out scrupulously its obligations as a lessee?

A. Oh,, yes.

Q. You became treasurer of the Southern Pacific Company in the spring of 1885?

A. On the organization. I was the first treasurer.

Q. And the Southern Pacific Company operated these various lines ostensibly as a lessee under its leases?

1381 A. Yes.

of having the dog wag the tail rather than the tail wag the dog, if I might put it in that way.

Q. That is, you put the dog, so to speak, in one lease and the tail in the other?

A. It depends upon which way you face the dog.

Q. Approaching it as you were in giving your answer just now. That is what you meant, was it not?

A. The smaller corporation, we thought, had better be subsidiary to the larger corporation.

Q. In one lease there was included the Southern Pacific Railroad of California, the Southern Pacific Railroad of Arizona, the Southern Pacific Railroad of New Mexico, and the Galveston, Harrisburg & San Antonio?

1386 A. Going through to New Orleans it would be the Louisiana Western.

Q. The Louisiana Western and the Texas & New Orleans?

A. Yes; and the Morgan Line.

Q. And the Morgan Line?

A. If you are going through——

Q. Yes; that is what I meant. Those were all put in one lease?

A. Yes.

Q. And the Central Pacific Railroad was put in under a separate lease?

A. Yes.

Q. To use your analogy a little further, any one of those lines, viewed alone, might have been called the tail, rather than the dog. What I am inquiring is how it happened that all these subsidiary companies except the Central Pacific Railroad Company were put in one lease, and that was put in another.

A. The conditions of the leases were different, were they not?

Q. What was the reason for making them different?

1387 A. I suppose one reason was that the ownership of the entire issues of stock of the lines other than the Central Pacific was in the hands of the four interests S., H., H., and C., practically; that there were other stockholders, undoubtedly, in the Central Pacific, and the terms of its lease were more favorable to the stockholders of the Central Pacific than the other lease was to those of the other railroads. They had a dividend assured, earnings assured, up to the extent of six per cent, in the Central Pacific, and there were no such assurances given to stockholders of the other lines.

Q. That is, all the southern lines, meaning the lines from San Francisco to New Orleans through El Paso, were so owned by these common interests that they could make, practically, such arrangements as they pleased with the lessee company, while it was recognized that in the relation between the lessee company and the Cen-

tral Pacific Railroad Company the other stockholders in the Central Pacific Railroad Company were entitled to consideration and to treatment as to which they would have no right to complain in any way?

A. That is putting it rather broadly.

Q. Is not that about the situation?

A. The control of the Central Pacific was likewise in the
1388 hands of the four interests at the time. The Central Pacific had been the leasing company, and in the changing of those relations, which were of course satisfactory to the stockholders at the time—or it would not have been done—I think that it was considered to be a proper thing to put that company beyond any peradventure of criticism upon a change that might have appeared sudden to some of the outside stockholders. To that extent your question is pertinent and right.

Q. That is, the southern lines, using that to describe the line through El Paso which I have mentioned, was not only controlled as a corporate voting matter but was very nearly entirely owned by these same interests that were coming into the Southern Pacific Company?

A. Yes.

Q. So that they were, so to speak, the whole thing on both sides of the trade, so far as the lease was concerned?

A. All of those companies were controlled by the same parties, including the Central Pacific.

Q. But the Central Pacific Railroad Company having these independent stockholding interests, it was recognized to be desirable to make a lease in the case of that road which was more favorable
1389 to the Central Pacific Railroad Company than the other lease was to the other subsidiary lines?

A. I suppose that could be so construed. There was more minority in the Central Pacific. They certainly had no occasion to complain of the lease.

Q. Mr. Hopkins, bearing in mind that you are speaking after a period of nearly thirty years from the event and twenty-five years from the last time you had immediate connection with the holdings of the Hopkins estate, do you want to leave it as your definite statement that the outside independent stockholders in beneficial interest in the Central Pacific Railroad Company constituted a small minority?

A. No; I do not, because I do not recall what they were; but they were in a minority; yes. I recall that they were small, because I do not know just how many they were.

Q. They may well have been at least thirty per cent?

A. Thank you for the opportunity of withdrawing it, because I do not recall it.

Q. And it is very likely, is it not, that they financed that in same way that they financed the P. I. Company and all these othe

Mr. McCLENNEN. That is objected to as leading.

The WITNESS. Yes.

Mr. HERRIN. You can not lead a witness who is intelligent. knows what he is answering.

Mr. McCLENNEN. The objection is not to the success of the leadi

Mr. HERRIN. If my question is wrong, he will say so.

Mr. McCLENNEN. The objection is not to the success of the le ing, but to the effort which it betokens.

Mr. HERRIN. I asked the question in that form for the purpose getting along, and to avoid taking up too much time.

If I am in any respect incorrect in my questions, Mr. Hopkin want you to correct me. That is all.

Mr. McCLENNEN. That is all.

1395 R. P. SCHWERIN was called as a witness on behalf of defendants, and having been duly sworn, testified as follo

Direct examination by Mr. BLAIR:

Q. Your full name?

A. R. P. Schwerin.

Q. Where do you live?

A. San Mateo.

Q. What is your occupation?

A. Steamship manager.

Q. Of what steamship line?

A. The Pacific Mail Steamship Company.

Q. How long have you been connected with that company?

A. Since 1893.

Q. In what capacity?

A. Vice president and general manager.

Q. During all that time?

A. During all that time.

Q. Do you know when the Southern Pacific Company acqui its stock and a controlling interest in the Pacific Mail Steamsh Company?

1396 A. About 1901.

Q. Do you know for what purpose that acquisition made?

A. The company was very much interested at that time in development of oriental traffic. It seemed to be growing into ve large magnitude, and there was a desire to continue steamship ope tion out of this port in connection with the Central Pacific, t Union Pacific, and the Chicago & North Western. They owned

stock in the steamship company, and the officers of the company ascertained that Mr. Harriman was buying largely of Pacific Mail Steamship Company stock, and in order to prevent the control of the property going to the Union Pacific the officials of the Southern Pacific Company bought a controlling interest in the market.

Q. Do you know what they apprehended Mr. Harriman would do if he acquired a controlling interest in the Pacific Mail Steamship Company?

A. There had been general discussion about Mr. Harriman's demanding position on the directorate of the Pacific Mail, and an
1397 intimation that he would remove the line from here to Puget Sound and operate it in connection with the Union Pacific Railroad Company and the Oregon Short Line.

Q. Do you know whether that apprehension had a controlling influence on the purchase by the Southern Pacific Company of a controlling interest in this stock?

A. My impression is that it had a very large influence.

Q. Were you present at any discussions, or did you take part in any discussions, of the managers of the Southern Pacific Company at that time?

A. Yes.

Q. And your understanding as to the motive was gathered from what you heard at those discussions?

A. Yes.

Q. That was shortly after the death of Mr. Huntington?

A. He died in the summer of 1900.

Q. In what business is the Pacific Mail Steamship Company now engaged?

A. In operating a line between San Francisco and Balboa and from San Francisco to the Orient.

Q. Is it engaged in the transportation of any traffic from the Pacific coast to the Atlantic coast and vice versa?

A. No, sir.

1398 Q. What is the business in which the fleet of steamers that ply out of San Francisco is engaged?

A. From San Francisco to the west coast of Mexico and South America, Balboa, and interport business, and business from Central America to Europe.

Q. Has it withdrawn from the coast-to-coast business?

A. Yes.

Q. Permanently?

A. Yes.

Q. I suppose it is useless to say that that is on account of what is known as the Panama Canal amendment to the interstate commerce act.

A. Yes.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Your personal connection with the Pacific Mail Steamship Company began when?

A. 1893.

Q. In what capacity?

A. Vice president and general manager; I have been that ever since.

1399 Q. And prior to that your busines associations were wh

A. One year prior to that I was manager of the purch and supply department of the Southern Pacific Company; and pr to that I was an officer in the United States Navy for nineteen ye

Q. When you first began with the Pacific Mail Steamship Company by whom was the stock in that company held?

A. I suppose there were a thousand different stockholders; it held entirely by the public.

Q. No part of it in any conspicuous hands?

A. It was suposed that Mr. Huntington, who was president of company—went in that year as president—held the controlling int est of proxies.

Q. Was he supposed to have any substantial stock-holding int est?

A. That I could not teli you, of my own knowledge.

Q. Did Mr. Stanford, or the Stanford estate, hold any stock in company at that time?

A. Not to my knowledge; but he apparently had no interest i whatever.

Q. And the Mark Hopkins estate, or Mrs. Searles?

1400 A. The same answer.

Q. And the estate of Charles Crocker?

A. The same answer; in fact, I might say that after I got i the company, I understood that those gentlemen had no stock int est whatever in the company.

Q. So that of the so-called "big four", Mr. Huntington was only one?

A. Mr. Huntington was the only one that would have had ownership in the property.

Q. And when you went in there he had a control of the proxies

A. He had the proxies, yes.

Q. You have no information as to the extent of his ownership

A. No, sir.

Q. It was at his instigation that you went from the South Pacific Company to the Pacific Mail Steamship Company?

A. I did not go from the Southern Pacific Company to the Pacific Mail; I continued in both companies.

Q. It was at his instigation that you went to the Pacific Mail?

1401 A. I suppose so. I was advised that I was elected vice president and general manager. I never knew who nominated me.

Q. Were you a stockholder yourself in the Pacific Mail Steamship Company at the time?

A. No, sir.

Q. Did you ever become one?

A. Simply to qualify as a director.

Q. No substantial beneficial holding?

A. No.

Q. Do you know whether there was any substantial change in the stock holding in the Pacific Mail Steamship Company up to 1901, from 1893?

A. You mean in the buying and selling of the stock?

Q. I do not mean where one outsider sold a few shares to another outsider, but had there been any accumulation of the stock of the company in any particular holding from 1893?

A. My impression is that from the time Mr. Huntington died, it was anybody's stock.

Q. You mean that he did not have a substantial stock-holding interest at the time of his death?

A. That is my belief.

1402 Q. When was it that it began to be whispered that the Union Pacific or Mr. Harriman was engaged in an effort to get control of the stock of the Pacific Mail Steamship Company?

A. 1901.

Q. Was that before or after these interests had acquired a large interest in the Southern Pacific Company's stock?

A. Before.

Q. A substantial time before that?

A. Yes. Mr. Harriman did not come into the Pacific Mail until after he acquired the Huntington interest in the Southern Pacific Company, and that was subsequent to the purchase by the Southern Pacific Company of a majority of the Pacific Mail.

Q. Who were the individuals connected with the Southern Pacific Company that were influential in laying out the policy to acquire the stock of the Pacific Mail?

A. D. O. Mills, Charles H. Tweed, and Mr. Speyer.

Q. How much stock did the Southern Pacific Company acquire in 1901?

A. I could not tell you, but I think the annual report of the Southern Pacific would show it; it was a little over a majority.

1403 Q. That was picked up in small lots?

A. No; it was bought in about two days.

Q. From almost numberless sellers?

A. Yes.

Q. Did the Southern Pacific Company subsequently acquire m of the stock of the Pacific Mail?

A. I think about a year or two ago they acquired some more of i

Q. And how large is the holding now?

A. I think it is about 50,000 shares over a majority.

Q. What is the total stock?

A. A capitalization of $20,000,000.

Q. All issued?

A. All issued.

Q. You mean, in round numbers, that the corporation has 200 shares, of which the Southern Pacific Company owns approxima 150,000 now?

A. I will have to qualify that; I do not remember exactly w they have over a majority. I am confusing the number of share stock with the money value of the stock.

Q. You mean that they have something like 5,000 shares ov majority, then?

1404 A. Something like that; yes.

Q. How is the balance of the stock held?

A. Scattered. There are about 1,100 stockholders in the Pa Mail altogether.

Q. No one prominent interest other than the Southern Pa Company interest?

A. Not that I know of.

Q. Did Mr. Harriman or the Union Pacific Company or an its allies purchase any of the stock of the Pacific Mail Steam Company?

A. Not that I know of.

Mr. BLAIR. What time do you mean?

Mr. MCCLENNEN. At any time.

The WITNESS. You mean prior to Mr. Harriman's purchase of Southern Pacific stock?

By Mr. MCCLENNEN:

Q. I mean to exclude that form of acquiring it.

A. Mr. Harriman was buying stock at the same time that Sp was buying stock.

Q. Personally buying stock?

A. Yes.

Q. In the Pacific Mail Steamship Company?

1405 A. No; individually E. H. Harriman was buying stock.

Q. In the Pacific Mail?

A. Yes, sir.

Q. Do you know how much he acquired or how much there was acquired in his interest?

A. I know that the Speyers got more than he did, and the result was that the Speyers had control.

Q. Did he buy at that time up near to a majority?

A. I could not say how many shares he had; I do not believe anybody knew except Mr. Harriman.

Q. Well, so far as the information came to you, was it a large holding?

A. A substantial holding.

Q. Was that holding dissipated again?

A. Yes; I think he sold some of it to the Speyers during the transaction.

Q. What was the basis, as far as you knew, of the apprehension of the removal of the line to Puget Sound?

A. Nothing except discussions as to what Harriman would do or would not do; they were quite prevalent on the street in New York. Stories had been abroad as to what he would do if he got the Pacific Mail.

1406 Q. Stories that might or might not have a foundation to them?

A. Except that a great many things that Mr. Harriman said had a foundation to them, if he let them go out that way, by rumor.

Q. The Pacific Mail Steamship Company was doing business from San Francisco to the Atlantic coast by its connections over Panama at the time you became manager?

A. Yes.

Q. And it continued in that business up to when?

A. It was running its own line on the Atlantic when I went in, operating a line of steamers from New York to Colon and New York to San Francisco, using the railroad across the Isthmus.

Q. The Panama Railroad across the Isthmus?

A. Yes.

Q. Was the railroad independently owned?

A. Yes; owned by the French stockholders of the Panama Canal Company.

Q. That through transportation was dependent upon an arrangement with the railroad?

A. Yes.

1407 Q. How long did the Pacific Mail Steamship Company continue to run steamers on both sides of the Isthmus?

A. In 1895 I made a contract with the Panama Railroad by which we abandoned the Atlantic service and had through billing arrange-

ments from coast to coast, they operating the railroad and also th steamship line from Colon to New York.

Q. How long did the Panama Railroad Company continue t operate the line from Colon to New York?

A. Up to the present time.

Q. They still do that?

A. Yes.

Q. How long did the Pacific Mail Steamship Company continu to do a through business by arrangement with the Panama Railroa through business from San Francisco to New York?

A. We stopped about three months ago.

Q. At the present time are there any lines doing a through bus ness from the Pacific coast of California to the Atlantic coast, eith through the Panama Canal or over the Isthmus?

A. Yes.

Q. Which are they?

A. The Grace Line, American-Hawaiian, Luckenbach, an

1408 a number of outside independent vessels.

Q. Are those lines complete lines or are they dependent upo connections?

A. As I understand you to say, passing through the canal?

Q. Either passing through the canal or over the Isthmus.

A. They will not permit any freight to be transferred over th Isthmus; the railroad will not touch a pound of freight, or a throug passenger, over the Isthmus; it must be transported through th canal.

Q. What lines are there plying from the Pacific coast to Hawa or the Orient?

A. From San Francisco, or the Pacific coast generally?

Q. The Pacific coast.

A. The Canadian Pacific, the Nippon Yusen Kaisha, the Toy Kisen Kaisha, the Bank Line, the Royal Mail, the Russian Volu teer Fleet, the Pacific Mail, the Standard Oil Company, the Doll Steamship Company, the Matson Steamship Company, the Ocean Steamship Company, and the Australian Steamship Company.

Q. Which of those are from San Francisco?

A. The Pacific Mail, the Toyo Kisen Kaisha, the Doll

1409 Steamship Company, the Matson Steamship Company, Oc anic Steamship Company, and the Australian Line, and th Standard Oil.

Q. How many of those San Francisco lines are competitive wi the Pacific Mail?

A. Toyo Kisen Kaisha, the Matson Line, the Oceanic Steamshi Company, and the Dollar Steamship Company. Do you mean b that, competition outward or homeward?

Q. Do they all reach the Orient?

A. For instance, the Standard Oil Steamship Company takes oil out and brings general cargo home. They are competitors homeward bound, but not competitors outward bound. The Dollar Steamship Company takes lumber out and brings general cargo back; they are competitors outward and noncompetitors homeward.

Q. And the remainder—should a distinction be made as to the outward or homeward competition in the case of the remainder?

A. No; they are competitors both ways.

Q. Those lines all reach the Orient?

A. All except the Australian Line. That goes to Australia.

1410 Q. Only?

A. Only, via Honolulu.

Q. Did you participate in the application that was made for leave to have the Pacific Mail Steamship Company conduct business through the canal?

A. No; the application was made by the Southern Pacific Company.

Q. Did you have anything to do with that?

A. In what way? I do not understand the question.

Q. Did you personally take any action looking to that?

A. In my official position?

Q. Yes.

A. Yes.

Q. What?

A. In discussing the question as to what policy the company should pursue in withdrawing from all business that might be considered competitive with the railroad.

Q. The American-Hawaiian Line now operates through the Canal?

A. Yes.

Q. Thus following the same course that the Pacific Mail-Panama Railroad route heretofore has followed?

1411 A. Except that the American-Hawaiian Line serves more ports on the Atlantic coast than the Panama Railroad Company did. The Panama Railroad line was operated merely between Colon and New York, and the American-Hawaiian Line, I believe, touches at Charleston, Philadelphia, New York, and Boston.

Q. Before the opening of the canal the American-Hawaiian Line crossed from the Atlantic to the Pacific in what way?

A. In connection with the Tehuantepec Railway.

Q. Does any of the eastbound traffic of the Pacific Mail Steamship Company travel out of San Francisco via El Paso?

A. Very little, I should say. It would be an unusual shipment, and a local shipment to some point in Texas or beyond.

Q. Is all the business destined east of the Missouri River which comes via the Pacific Mail Steamship Company routed through Ogden?

A. No, sir; it is routed either via Western Pacific or the Santa Fe or Southern Pacific—the Central route.

Mr. BLAIR. By "Southern Pacific" you mean via Ogden?

1412 The WITNESS. What we call the central route.

By Mr. McCLENNEN:

Q. So far as it travels over the Southern Pacific, it travels through Ogden?

A. It is all fast freight—all fast freight, practically, goes that way.

Q. What is the reason for its travel through Ogden only, so far as it goes into the hands of the Southern Pacific Company?

A. It is all fast freight.

Q. What is the great bulk of that eastbound business?

A. Tea and silk and curios. We compete with the Canadian Pacific and the northern lines, and the date of arrival of practically all this fast freight is cabled back to the Orient the day of its arrival at destination; twenty-one, twenty-two or twenty-three days from point of origin to destination; and whether you get subsequent freight, or otherwise, depends upon that. You have to make the shortest possible time between Japan and China and points in the United States; so we force the freight, naturally, over the rails that will give us the best rail connection.

Q. That situation has existed how long?

1413 A. Ever since I have been in the company.

Q. Since 1893?

A. Since 1893, yes.

Q. Westbound business from east of the Missouri River which is to travel by the Pacific Mail Steamship Company to Hawaii or the Orient comes chiefly what way?

A. By all-rail lines that serve San Francisco. They are all competing for that business.

Q. Does the Pacific Mail Steamship Company do anything by way of influencing the route of that freight?

A. No, sir.

Q. So far as the rails are concerned?

A. No, sir.

Q. It simply accepts it as tendered by the different roads?

A. Yes.

Q. As to that business, so far as it is handled by the Southern Pacific Company, how is it moved?

A. The bulk of it goes by the Central route. Practically the only business we get through the Southern gateway is Government freight from Atlantic seaboard, and cotton. The Government con-
1414 tract is divided practically equally between the Southern Pacific and the Santa Fe, and it leaves New York by water, goes to Galveston, and by either the Santa Fe or the Southern Pacific to San Francisco. Cotton is the only other commodity we have out of that southern territory.

Q. That is, cotton originating in the southeastern part of the United States?

A. Originating in Texas, Oklahoma, and Arkansas—raw cotton.

Q. If you disregarded that cotton and Government freight, what percentage of the Southern Pacific Company handled freight comes through Ogden; that is, originating east of the Missouri River?

A. I should say 100 per cent.

Q. Approximately what Pacific mail eastbound tonnage passes through Ogden annually?

A. In volume?

Q. Yes.

A. I do not know.

Q. Could you approximate it?

A. No; I could not. The freight is split up between three different lines. I would not attempt to remember what amount of
1415 freight the Southern Pacific Company got. In fact, I would not give it any attention.

Q. Approximately what amount of freight coming from east of the Missouri River, through the Southern Pacific Company, is delivered to the Pacific Mail Steamship Company at San Francisco annually?

A. Well, for more than five years neither the Santa Fe nor the Southern Pacific published proportional rates, and the result was that they had no outward business whatever. Whatever business we did, the freight originating in the United States destined to the Orient passed over the Western Pacific. It was only last summer that the Santa Fe and the Southern Pacific published proportional rates and went back into the oriental business. I should say that during that period the Southern Pacific Company has originated and turned over to us as much freight as the other two lines put together. I remember more in percentages than I do in the gross. I could furnish you with those figures, if you desire to have them. I do not carry them in my mind.

Q. If you could conveniently let us have what that tonnage has amounted to, I should be obliged; that is, the tonnage from east of the Missouri River delivered to the Pacific Mail Steamship
1416 Company by the different railroads for a year.

A. I would not be able to give you the tonnage that might or might not originate east of the Missouri River, for the reason that I do not know where the railroad tonnage originates. All I know is that the three railroads delivered so much tonnage to us. Just where it originated, I would not know, unless I went to the railroads and asked them. I can give you the amount of tonnage that each one of the railroads has given us since the proportional rates have gone into effect.

Q. Can you tell me, from your knowledge of the character of the country and the character of the commodities, whether a substantial part of that originates east of the Missouri River?

A. I should think so; from Chicago and Pittsburgh territory I should say the bulk of it originated.

Q. Is substantially all of the eastbound tonnage which is destined east of the Missouri River, which is handled by the Pacific Mail Steamship Company, taken on a through route?

A. All of it.

Q. How do you divide that tonnage as between the different railroads from San Francisco?

1417 A. We try to pay them back according to the percentage of business they develop for us. In other words, we hold out an incentive for the eastbound business equivalent to the division of what they originate for the westbound business.

Q. What is the approximate amount of the Pacific Mail Steamship Company's tonnage eastbound from the Orient for a year and destined east of the Missouri River?

A. It would amount to 25,000 or 30,000 tons.

Q. In practice, about how much of it moves through the Southern Pacific Company?

A. Pretty nearly 33⅓ per cent to each railroad line.

Q. Does the Southern Pacific Company send anything to the Orient by way of the other steamship companies?

A. By way of the Toyo Kisen Kaisha.

Q. And so forth?

A. What steamer is on the berth gets it; yes. The freight is given to the first steamer on the berth by all three railroads.

Q. How long has that been the practice?

A. Ever since the railroads published proportional rates. They had no freight before that and the Western Pacific gave the

1418 two steamship lines their freight, as the ships were on the berth.

Q. Prior to the opening of the Western Pacific in 1910, was the Pacific Mail Steamship Company's eastbound freight divided about half and half between the Santa Fe and the Southern Pacific?

A. No; it was about twenty-five per cent to the Santa Fe and about seventy-five per cent to the Southern Pacific.

Q. And that had prevailed for how long?

A. For some time.

Q. For some years?

A. Yes.

Q. What is the average ton revenue from the Orient to points east of the Missouri River?

Mr. HERRIN. Is that material in any way? It seems as if you are going pretty far outside of cross-examination.

Mr. MCCLENNEN. I think it probably means nothing more than the tonnage figures do, but it is a convenient way to have it converted into dollars. That is all I had in mind.

The WITNESS. I could not answer that question.

By Mr. MCCLENNEN:

Q. You have no idea?

A. In the steamship business we do not pay any attention
1419 to ton revenue; as far as the railroads are concerned, we get our proportion out of the through rate and only deal with that. We have no concern in what the railroads do. They publish their rates for the Interstate Commerce Commission. We have to take the rates they publish and add to that our local to make the through rates. We deal only with our ocean transportation.

Mr. MCCLENNEN. I think that is all.

Redirect examination by Mr. BLAIR:

Q. At the time Mr. Huntington died had he not disposed of his stock holdings in the Pacific Mail Steamship Company?

A. That was the impression.

Q. That is your information?

A. Yes.

Q. At the time the Southern Pacific Company, in 1901, acquired the stock which it acquired in the Pacific Mail Steamship Company had it prior to that time any interest in the Pacific Mail Steamship Company?

A. None whatever.

Q. Nor anyone for it?

A. Not to my knowledge.

1420 Q. This eastbound traffic which you bring to San Francisco and which passes over the railroads across the continent, as I understand it, consists almost entirely of tea and silk?

A. Tea, silk, and curios.

Q. And that requires expedited service?

A. Fast freight.

Q. Is it not given practically passenger service across the c tinent?

A. All of the silk is passenger train service.

Q. As to the westbound traffic?

A. All the rest is given fast freight service.

Q. As to the westbound traffic, with the exception of the co which you have spoken of, and with the exception of the Governm freight, where does that originate—in what territory?

A. The great bulk of that originates in the Chicago and Pi burgh territory.

Q. A very large proportion of it?

A. In Chicago and Pittsburgh and the manufacturing centers tween those points.

Q. In what might be called the middle west territory?

1421 A. The middle west territory.

Q. And the great bulk of the traffic from the Atlantic board territory passes through the Suez Canal?

A. Yes.

Q. And the traffic you get from outside of the middle west te tory consists of cotton from the Southern States and freight ow by the United States going to the Philippines?

A. Yes.

Q. Are you able to give us more definitely the stock owned the Southern Pacific Company in the Pacific Mail Steamship C pany?

A. According to the annual report of the Southern Pacific C pany for June, 1914, the outstanding capital stock of the Pa Mail Steamship Company is $20,000,000. The total owned by Southern Pacific Company is $11,080,000.

Mr. BLAIR. That is all.

Mr. MCCLENNEN. That is all.

(Whereupon, at 5.05 p. m., an adjournment was taken until morrow, Wednesday, March 10, 1915, at 11 a. m.)

1422 EIGHTEENTH DAY.

ROOM 921, FLOOD BUILDING,

San Francisco, Cal., Wednesday, March 10, 191

The hearing was resumed, pursuant to adjournment, at 11 o'cl a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, E Edward F. McClennen, Esq., and Edward E. Gann, Esq., spe assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E Foulds, Esq., for the Southern Pacific Company.

1423 JULIUS KRUTTSCHNITT was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. BLAIR:

Q. Will you give your full name to the stenographer?

A. Julius Kruttschnitt.

Q. Where do you live?

A. In New York. I suppose more properly I should say in Connecticut; New Canaan, Connecticut.

Q. Will you give your railroad biography?

A. I entered the railroad service in 1878 as engineer on construction of the Morgan's Louisiana & Texas Railroad & Steamship Company. From 1878 to 1883 I occupied that position and the position of assistant to the chief engineer and general roadmaster. From 1883 to 1885 I was superintendent of the same road, and also assistant chief engineer. From 1885 to 1889 I was assistant general manager of what was known as the Atlantic system of the Southern Pacific Company. In 1889 I was made general manager of the Atlantic system, and in 1895, on the death of Mr. Towne, who was general manager of the Pacific system, I was made general
1424 manager of the entire Southern Pacific Company, both Atlantic and Pacific systems, with headquarters at San Francisco. From 1895 to 1904 I occupied that position, and was also one of the vice presidents of the Southern Pacific Company. From 1901 to 1904 I was also assistant to the president. In 1904 I was given charge of the operation, maintenance, and construction of both the Union and Southern Pacific systems, with headquarters at Chicago, with the title of director of maintenance and operation. I occupied that position until the unmerging of the Southern and Union Pacific, in January, 1913, when I was made chairman of the executive committee of the board of directors of the Southern Pacific Company, which brings my record down to date.

Mr. ORR. Which position you now hold?

The WITNESS. Which position I now hold.

By Mr. BLAIR:

Q. Do your remember the opening of the through line from San Francisco via El Paso, San Antonio, Houston, and New Orleans and thence by steamship line to New York?

A. I do.

Q. Being the line which is now know as the Sunset-Gulf Line?

1425 A. Yes.

Q. About what time was that line opened?

A. On the 1st of February, 1883.

Q. What was your connection at that time with Morgan's Louisiana & Texas Railroad & Steamship Company?

A. Before the opening I was general road master and assistant chief engineer, and shortly after the opening, about two months after the opening, I was made superintendent.

Q. Who was the president of the Morgan Company—we will call it for short—at that time?

A. Mr. Charles Whitney.

Q. Was he alive in 1883?

A. Well, Mr. Whitney was president when I first went to the Morgan Company. He died shortly after I went with the company I do not remember the date.

Q. Who succeeded him as president?

A. A. C. Hutchinson.

Q. He is also dead, is he?

A. Yes.

Q. State briefly the location of the railroad of the Morgan Company at the time of the opening of this through line.

1426 A. The Morgan Company had a rail line from New Orleans through Vermillionville, Louisiana, to Cheneyville, and it had trackage rights over the Texas & Pacific from Cheneyville to Alexandria, and it had some local branches east of Morgan City, the Houma branch and the Thibodaux branch, and one or two other small branches, the St. Martinsville branch and the Cypremort branch.

Q. What part of its line formed a part of the through line that we have been speaking of?

A. One hundred and forty-four miles from Vermillionville, Louisiana, to New Orleans.

Q. What is the present name of Vermillionville?

A. La Fayette. It was changed shortly after the opening of the through line.

Q. What steamship line did the Morgan Company own and operate at that time?

A. A line of steamships from New Orleans to New York.

Q. At or about the opening of this through line, in 1883, had you any reason for believing that Mr. Huntington and his associates owned or controlled the Morgan Company? And if so, state what those reasons were. By "Mr. Huntington and his associates" I

1427 mean Mr. Huntington, Leland Stanford, Charles Crocker, and the Hopkins estate.

A. The first time I had any reason to suspect ownership or control by Mr. Huntington and associates was a visit of Mr. William Mahl, who was one of his confidential men, in the spring of 188[illegible] Mr. Mahl came and looked over the property, which he did in gen-

detail, and I was detailed to go over the property with Mr. Mahl and show him everything he wanted to see. From that I inferred that something was going to happen, or possibly had happened. Shortly after that I met Mr. Charles F. Crocker and went over part of the road with him, and also met Governor Stanford; I think it was probably the only time, or the second time, that I had ever seen him. I was also detailed to go over the line with him. The first time I ever saw Mr. Huntington himself was in 1884. There was some trouble on the Mississippi River. I was working on closing a crevasse, known as the Davis Crevasse, that occurred in the spring of 1884, and Mr. Huntington came up on a tug with Mr. Hutchinson to see what was going on, and I was introduced to him then.

Q. How did Mr. Huntington act with reference to the road; as an outsider or as one interested in it?

1428 A. Of course I never came in direct contact with him, except on this one occasion, but I was in continual conference with Mr. Hutchinson, and I knew by instructions that he gave me and letters that he showed me that he was receiving instructions from Mr. Huntington.

Q. The letters he showed you were from Mr. Huntington?

A. Yes.

Q. And Mr. Huntington was not at that time an officer of the Morgan Company?

A. No.

Q. Did Mr. Hutchinson obey the instructions of Mr. Huntington?

A. Yes; he did.

Q. That was in 1883 and 1884?

A. And 1884.

Q. After this through line was opened, state any facts which you may know going to show that this through line was under a unified management or control.

Mr. McCLENNEN. That is objected to as calling upon the witness to state facts in the nature of a conclusion, and thereby to express an opinion.

1429 The WITNESS. Well, shortly after the through line was opened we had some very acrimonious discussions about the condition of the rolling stock that was being sent east with through freight. The box cars had very bad roofs, and when they got in Texas and Louisiana, where the rains were frequent and heavy, the freight would be damaged; and we protested against the use of this equipment, first to Mr. Towne, who had charge, and when that availed nothing, Mr. Hutchinson took it up with Mr. Huntington, and I saw numberless letters from Mr. Huntington to Mr. Hutchinson about this matter, showing that he had control over Mr. Hutchinson, and of course he had control over Mr. Towne.

Mr. McCLENNEN. This was 1883?

The WITNESS. Yes; shortly after the opening of the through li Then there were frequent discussions with Mr. Stubbs as to the w the freight should be loaded on steamships from New York to N Orleans and how it should be transferred to the cars. Mr. Stub wanted a great deal of extra expense incurred on the Atlantic end assorting this freight for the benefit of the Pacific end, and M Hutchinson objected to it, and the matter was referred to Mr. Hu ington for decision.

By Mr. BLAIR:

Q. And he decided it?

1430 A. He decided it. Then, again, the employees on the Paci system, particularly on the sleeping cars, treated the rules the Atlantic system with contempt. They were insolent, and wh they were on the line of the Morgan road the question came up as whether or not they should obey those rules, and that matter w referred again to Mr. Hutchinson and taken up by him with M Huntington, and Mr. Huntington settled the matter.

Q. What other men at that time, besides Mr. Towne and M Stubbs, did you come in contact with in connection with the manag ment of this through line?

A. I came in contact with the officers of what was known as t Galveston, Harrisburg & San Antonio system. At the time M Towne was made general manager of these roads in Texas from Paso to La Fayette, or Vermillionville, Mr. Fillmore was made ge eral superintendent. He appointed a Mr. E. G. Thompson superi tendent of the Galveston, Harrisburg & San Antonio, and he h jurisdiction to La Fayette, and our dealings as to detail matters we with Mr. Thompson, and if we got into any snarl that need straightening out Mr. Hutchinson would take it up with Mr. Hu ington.

Q. Mr. Hutchinson was in charge of what part of th

1431 through line?

A. In 1883 and up to 1885?

Q. I am speaking entirely between 1883 and 1885.

A. He had control simply over the Morgan steamship lines a railroad lines.

Q. As defined by you?

A. Yes.

Q. And Mr. Towne had direct charge over what part of t through line?

A. From La Fayette to San Francisco and also the Central Paci

Q. Do you know of any facts tending to show that the Cent Pacific Railroad had anything to do, in 1883 and 1884, with t

management and operation of the roads composing the Sunset-Gulf line? If so, state what those facts were.

A. This is 1883 and 1884?

Q. Yes; from 1883 to 1885.

A. Well, the jurisdiction of a number of Central Pacific officers was extended over the lines in Texas. Stevens, who was general superintendent of motive power and general master mechanic, exercised authority all the way to La Fayette. The superintendent
1432 of bridges, a man named Adams, was an old Central Pacific man, who was sent over to fill that office. There was a division engineer named Lindburg, a Central Pacific man, sent over to take a position on the El Paso end of the Galveston, Harrisburg & San Antonio. There was a man named Seymour, who was sent over as superintendent of the Galveston, Harrisburg & San Antonio.

Q. And there was also Mr. Towne?

A. Mr. Towne, of course, was general manager, and Mr. Fillmore general superintendent.

Q. Do you remember seeing, during this period, any bulletins posted at La Fayette?

A. Yes; the bulletins of the west end were always posted on the bulletin boards at La Fayette.

Q. How were they headed?

A. They were headed generally "Central Pacific Railroad Company and leased lines."

Q. And generally what was the purport of instructions or orders contained in those bulletins? What was the nature of the bulletins?

A. They were notices of appointments or general orders issued for the guidance of employees.

Q. Prior to 1885 did you ever meet with Mr. Huntington,
1433 Mr. Stanford or Mr. Crocker on any inspection trips over the east end of the Sunset-Gulf route?

A. Between 1883 and 1885?

Q. Yes.

A. Yes; I was on several inspection trips with Colonel Charles F. Crocker, meeting him at El Paso and going over the lines with him; and I was on one or more with Mr. C. P. Huntington, one with Governor Stanford, and several with Mr. Timothy Hopkins.

Q. Did they give any instructions in regard to the operation of this through line?

A. They would not to me, but they would comment on work that was going on and ask for information about it, as to what was being done; and of course their commands and orders would be issued to my superior officer, Mr. Hutchinson. I knew of numerous instances where, after going over the road, they would take these matters up with him and give instructions.

Q. And how did he regard those instructions?

A. As a subordinate. He would obey them—after argument a good many cases. Mr. Hutchinson was a very argumentative tleman. He did not like to give up his position, but he would yie positive instructions.

1434 Q. He was a man who would not yield to anything except higher authority?

A. That is it.

Q. Was there anything in those early times in the constructio the G. H. & S. A. which you observed, the materials used or ot wise, to show a connection with the Central Pacific Railroad C pany? If so, what were those evidences of connection with the tral Pacific?

A. Well, they were very numerous and apparent at once railroad man. For instance, the G. H. & S. A. had on its lines, o ating them, a number of Central Pacific locomotives. It ha number of its own of exactly the same design, and the most stri feature of the design was a very exaggerated and clumsy loo smokestack, which was known as a Stevens smokestack, designe Mr. Stevens, the general master mechanic of the Central Pacific, which was used on the Central Pacific locomotives and the G. H S. A. locomotives. Then, as to box cars, there was a box ca Central Pacific box car, of Mr. Towne's own design, of which was very proud, which he said was an equally good stock car box car. He ought to have put it an equally bad stock car

1435 box car, because it was neither. It had about twelve openi in it to protect against thieves and dust and rain, and al the new G. H. & S. A. box car equipment—which at that time quite new—was built on that plan. The trucks were identica design with the Central Pacific trucks. The method of hanging brakes, the draw heads, the wheels—a great many wheels were a ally made in Sacramento; and, again, in the style of architectur the buildings—the buildings put up on the west end of the G. H S. A. were identical in design with buildings on the Southern Central Pacific lines; the depots were the same design.

Q. How about the rails?

A. A great many of the rails were rolled by the same mak There was one maker in particular that I heard Mr. Hunting speak of—Cammel, of Sheffield—who, he said, had made him the rails for the Central Pacific he had ever gotten, and that he ordered rails from him for the G. H. & S. A. They were the s weight, the same cross section, and the same length as the Cen Pacific rails. The switches and frogs were actually Central Pac because they were made in Sacramento and were shipped down the line of the G. H. & S. A.

1436 Q. How about the train rules?

A. The train rules for the lines west of La Fayette were the Central Pacific rules. In all of my correspondence with the officers of the lines west of La Fayette I never remember their using any letterheads except "Central Pacific and leased lines."

Q. Coming, now, to the period 1885 and subsequently, do you remember the lease to the Southern Pacific Company of the railroad companies which composed the Sunset-Gulf route?

A. I do.

Q. About what time was that lease?

A. February 1, 1885.

Q. That was about the time you remember it?

A. Yes.

Q. What changes, if any, took place a short time subsequent to that lease, in the positions of Mr. Hutchinson and yourself?

A. In February, 1885—I do not know that that is the exact date of the lease, but that is what is fixed in my mind—in February, 1885, the lines were divided at El Paso. The lines west of El Paso were known as the Pacific system, and those east as the At-
1437 lantic system. Mr. Hutchinson was made general manager of the Atlantic system, and his authority was, therefore, extended from La Fayette westward to El Paso. Mr. Towne was general manager of the Pacific system, or lines west of El Paso.

Q. And what was your position?

A. Shortly after this circular, not over three or four or five months, or something like that, Mr. Hutchinson made me his assistant, which extended my authority to El Paso. I was made assistant general manager for the Atlantic system.

Q. What other changes, if any, were there in the personnel of the organization exercising control over the system?

A. I should say, before leaving that question, that Mr. Stubbs was at the same time appointed general traffic manager of the entire Southern Pacific system, and his supervisory and critical powers were extended over the Atlantic system and all the way to New York.

Q. With those exceptions, what changes, if any, were made in the personnel of the organization in charge of the Sunset-Gulf route or of the Southern Pacific system?

A. I do not know of a single change. The men who had been in charge on the Texas lines, on the lines west of La Fayette,
1438 were retained. There were no changes in personnel, and the whole concern went on as it did before, with the exception that the jurisdictional line between Mr. Towne and Mr. Hutchinson was shifted from La Fayette to El Paso.

Q. Was there any change in the general nature and extent of t common control and management of the system?

A. Absolutely none.

Q. Prior to the lease the authority over the entire system was e ercised by the head officers of what company?

A. By the head officers of the Central Pacific.

Q. And subsequent to the lease such authority was exercised by t head officers of what company?

A. Of the Southern Pacific Company, who were the same men the officers of the Central Pacific.

Q. Explain briefly the nature of the duties performed by you assistant manager and afterwards as general manager of the Atlan system part of the Southern Pacific system.

A. As assistant manager, Mr. Hutchison used me for the operati work altogether—construction and maintenance. He seldom we out on the line, and I looked after those matters when necessary a reported to him. Of course that was always done under his juri diction. I performed the same duties when I was general ma ager.

1439 Q. Did you change your residence at any time, say whi you were general manager?

A. In 1889, when I was made general manager, I thought, in co pliance with the laws of Texas, that I should live in Texas, and moved to Houston. I was so much of the time, however, in Louisia that I concluded the next year that I would move back to New O leans. There was, however, some objection made to that by the Tex authorities, who threatened suit if I did not go back, so I moved ba to Houston.

Q. And you remained a resident of Texas for how long?

A. From 1889, with the exception of one year, until 1895.

Q. How long did the Southern Pacific Company operate the lin in Texas under this lease which you have mentioned?

A. From the beginning of the lease, in the early part of 188 until 1889—I think July, 1889, or thereabouts. In July, 1889, th Southern Pacific Company, in compliance with laws passed by Texa had to give up its operations of the Texas lines. The Texas lin after that were operated by their own officers, elected by the stock holders, and the control of the Southern Pacific over those lines wa simply through its stockholding interest.

1440 Q. When was the lease over the Louisiana lines dissolved A. December 31, 1901.

Q. And such control as the Southern Pacific Company has ov the Louisiana lines has been exercised since that date in wh manner?

A. Through the holdings of stock. In other words, its relations to the Texas and Louisiana lines are the same now. It has a stock-holding interest only, and these lines are operated by their own officers.

Q. During the period from 1885 to 1895 did you come in contact with the "big four" interests—I mean Mr. Huntington, Gov. Stanford, Mr. Charles Crocker, while he was alive, and the representatives of the Hopkins estate?

A. In those years, yes; quite frequently.

Q. In what way did you come in contact with them?

A. Through visits to the property and accompanying them over the properties.

Q. What kind of interest or control, if any, did they show or exercise on those occasions?

Mr. McCLENNEN. That is objected to as calling for a conclusion and an opinion of the witness.

1441 The WITNESS. On trips that I would make over the line in company with Mr. Hutchinson I would hear the discussions between them and Mr. Hutchinson and instructions given by them as to what they wanted done. When I was alone they, of course, would not give instructions to me direct, but they would ask for information and frequently discuss matters with me, and then I would receive instructions, sometimes in line with these criticisms, from Mr. Hutchinson to vary our practice.

By Mr. BLAIR:

Q. And when you were general manager?

A. When I was general manager, from 1889 to 1895, my duties were not very different from what they were when I was assistant manager. That is to say, Mr. Hutchinson was retained by Mr. Huntington as his representative without any particular title, and as to traffic matters and general policy matters I still got instructions from Mr. Hutchinson as Mr. Huntington's representative. I did not get instructions from Mr. Huntington or any of the other owners of the property until I moved to San Francisco.

Q. Do you know how these instructions were regarded and acted upon by Mr. Hutchinson or yourself?

1442 A. Well, they were always respected. I say sometimes after considerable argument by Mr. Hutchinson, but when the instructions were finally given they were always obeyed.

Q. I understand you to say that you became a resident of California in 1895?

A. Yes; in the autumn of 1895.

Q. What was your official title at that time?

A. General manager of the Southern Pacific Company. Shor after that I was made fourth vice president.

Q. Just explain, briefly, the extent of your jurisdiction and nature of your duties in that capacity.

A. As general manager I had authority over the operating maintenance departments. Mr. H. E. Huntington, as the dir representative of his uncle, was living in San Francisco, and he charged with construction matters. Traffic matters were under J. C. Stubbs, and I never had anything to do with them. Land m ters were under a separate department, and the land agent repor to Mr. Huntington.

Q. I suppose I may assume that, on going to California, you m it your business to become familiar with the lines in being then of Southern Pacific system?

1443 A. Yes. I can remember that plainly, because it seemed me a matter that I never could get in my head. The syst was so intricate and there were so many branches and connecti that I almost despaired of ever getting it straight.

Q. You finally became familiar with the system west of El P and especially the lines in Oregon, California, and Nevada?

A. Yes; I made it a point, in the first year I was there, to be on the line almost all of the time.

Q. Did you pay especial attention to the recent additions and tensions, and the reasons therefor?

A. Yes.

Q. I mean by "recent" those that were recent at the time came to California.

A. Yes.

Q. Has your official connection since that time been such as to m you familiar with the subsequent additions and extensions to system?

A. Yes; because, in 1901, the Union Pacific interests had bo the interests of the Southern Pacific, and on Mr. Harriman becom president of the Southern Pacific he made me assistant to the p dent, and that threw under my jurisdiction the constructio

1444 new lines, in addition to the maintenance and operation existing ones; but other departments than the construc still reported to Mr. Harriman direct. In other words, my appo ment was as assistant to the president, with such duties as might f time to time be assigned.

Q. I exhibit to you a map which has been offered in evidence is marked "Defendants' Exhibit No. 7," and is also marked "No and purports to be a map showing in red the lines operated on 2, 1890, and subsequently, and in blue the new construction

July 2, 1890, and in hatched or dotted blue the lines acquired since July 2, 1890, and I would ask you to examine that map and state whether you are familiar with it and whether you have seen it before?

A. Yes; I am familiar with it. It was prepared in my office, under my direction.

Q. Does its representation of the lines as explained in the legend and as embraced in my question accord with your recollection and knowledge of the facts?

A. Yes; it does.

Q. I wish you would hold that map in your hand, or if you have a copy with which you are more familiar you can take that copy,
1445 and consider, first, the lines thereon shown of the Southern Pacific system in Oregon.

A. The numbers on the Oregon lines run in a series from 1 to 14.

Q. You mean the numbers in circles on the map?

A. Yes; alongside the lines.

Q. I take it from this map that on July 2, 1890, the road had been completed from Portland to the Oregon boundary line. Is that correct?

A. Yes; "lines operated on July 2nd colored red." The line was completed through to Portland.

Q. The numbers 1 to 14 on this map indicate additions and extensions to the Oregon line from July 2, 1890, to the present time; is that correct?

A. Yes. I said the line was built through to Portland at that time.

Q. So that the numbers are simply for the purpose of indicating the additions and extensions, the red lines having no numbers?

A. Yes; I can see, of course, that there might be some doubt, but with this explanation there should not be any. For instance, take the number 10. That circle is near the red line, but the red
1446 line is defined as being in operation at that time, so that the 10 represents a little line from Marshfield to Myrtle Point, on the left of the circle.

Q. Now, Mr. Kruttschnitt, take the addition or extension corresponding to No. 12 and state when that was constructed and its general purpose.

A. No 12 is a local line built from Hillsboro, Oregon, over to Tillamook. It was projected to tap the timber in that part of Oregon west of the Willamette River and south of the Columbia, which is, I suppose, the finest body of standing fir timber in the world; and that line was completed about eighteen months or two years ago. It is entirely local.

Q. Take, again, the line indicated by No. 9 and state its nature and purpose.

A. No. 9 is a local road running from Yaquina Bay across the main line of the Southern Pacific up into the Cascades. It was bought by the Southern Pacific Company from local owners as a feeder. From the ocean side they get excursion business from the bay valleys to the seacoast and fish from the seacoast to the interior, but the bulk of the traffic comes from that part of 9 east of the main line, where it runs into the timber. That is known as the Corvallis & Eastern. It is a corporate name.

1447

Q. Without going into detail as to all the additions and extensions to the Oregon lines, what was their character?

A. They were all short local lines, intended to develop the country and to bring traffic to the main line.

Q. So that the additions and extensions to the system, so far as Oregon is concerned, since July 2, 1890, were of the character of branches and feeders?

A. Just ordinary, normal development of the country by short feeders.

Q. Now, Mr. Kruttschnitt, let us come to the additions and extensions to the system since July 2, 1890, in Nevada.

A. In Nevada the numbers run from 64 to 67. Shall I begin with 64?

Q. I wish you would begin with 64 and explain what that is.

A. The line from Mound House, which is just to the right of Carson City, down to Keeler, was a narrow-gauge line.

Q. Where is Keeler?

A. Near Owens Lake near the circle marked 64.

Mr. McCLENNEN. Right on the east shore of Owens Lake.

1448

The WITNESS. That road was bought as a feeder and also with the intention to incorporate it into a low-grade line on the east side of the Sierras, to run from Mojave all the way up about the Columbia lakes, and to make a short cut from southern California over to the line of the Central Pacific instead of running through Sacramento and then east. That is the dotted part that was purchased.

By Mr. BLAIR:

Q. What was its condition when purchased? What kind of road was it?

A. It was in very fair condition as a narrow-gauge road.

Q. It was a narrow-gauge road?

A. Three-foot gauge. That part of it in full blue lines from Mojave up to and on the left-hand side of Owens Lake was built a few years ago by us under contract with the Los Angeles Aqueduct

Commission. They had an enormous amount of stuff to carry up there for their aqueduct, and we made an arrangement with them, on special rates, to build that line for their use. We built it as a broad-gauge line. The full blue lines up near the Central Pacific——

Q. While you are on this 64: Is that still partly a
1449 narrow-gauge road?

A. Yes. I was coming to that.

Q. I beg your pardon. I thought you had passed that point.

A. The full blue lines near the Central Pacific make a connection from a station called Churchill over to Hazen on the main line that was built as standard gauge; and at about the same time that we built that the Tonapah mines were opened in Nevada, and there was such heavy traffic there that the gauge was widened from Churchill down to Tonapah Junction; so the line is at present standard gauge from Hazen through Churchill to Tonapah Junction. Then comes a piece of narrow gauge from Tonapah Junction down to Lone Pine, which is the junction with the Los Angeles Aqueduct line, and then broad gauge into Mojave. They never widened the gauge of the intermediate part, because there is a very high mountain summit there, with a great deal of curvature and a heavy grade, and the traffic does not warrant our going to that expense as yet.

Q. What is the gauge from Churchill to Mound House?

A. That we have widened also; that is standard gauge.

Q. You may now, if you please, describe the others.

1450 A. No. 66 was built according to the policy I just outlined; in other words, up to the point marked "Westwood Junction" it was located and built as part of the through line up to Klamath Lakes, where it was joined with this No. 14. There is a great deal of timber in that country, and particularly around Westwood Junction and the little town of Westwood, there is an enormous tract of timber, owned by the Red River Lumber Company of Minnesota, and we made a contract with them to build this line to Westwood under a guarantee of very large lumber traffic from their new mill.

Q. About what time was that line built?

A. Well, that line was opened within the last twelve months; it has just been completed.

Q. Now, the line you have been describing is No. 66, is it?

A. Yes. No. 65 is a little blue dot there, just a local branch of the Central Pacific, almost a switch.

Q. What is 67?

A. No. 67 is a little branch about seven or eight miles long, built to a little settlement called Metropolis; they put in a dam there and
1451 an irrigation system for reclaiming those desert lands, and that was built for their accommodation.

Q. While we are in the neighborhood, will you explain wh
No. 68 refers to?

A. No. 68, which is in Utah, is what is known as the Lucin cut-o
It is a line running from Ogden to a place called Umbria Junctio
directly across Salt Lake; instead of deflecting around to the nort
it saves, in distance, about twenty-two or twenty-three miles and
a level track instead of going over the Promontory Range of mou
tains there, which are about 1,000 feet high.

Q. When was that constructed?

A. The Lucin cut-off was completed, I think, in 1902 or 1903;
think it was completed quite a little while before I left San Fra
cisco.

Q. Those lines which you have just been describing, correspondi
to Nos. 64, 65, 66, 67, and 68, now stand in what corporate name?

A. The Central Pacific.

Q. In what corporate name was the line 64 when it was bei
constructed, and just afterwards?

A. No. 64, when we bought it, was known as the Carson
Colorado Railroad, part of it. Then, after we bought i
1452 we changed the name to Nevada & California, because y
will notice there is a road running from Carson City to Re
which is also the Carson & Colorado. In other words, the Car
& Colorado ran from Reno to Carson City through Mound House a
Churchill down to Owens Lake, and we bought the part from Mou
House to Churchill, so that that left two roads with the same na
and we changed the name to Nevada & California; and it kept th
name, and it has that name now; but it was sold to the Central P
cific in 1912.

Q. What we will call, then, the Hazen-Mojave line was put in t
name of the Central Pacific Railroad Company in 1912?

A. Yes; February, 1912.

Q. How about the line corresponding to No. 66?

A. That was built under the name of the Fernley & Lassen Ra
road. The Fernley & Lassen Railroad was incorporated and bu
from Fernley, on the Central Pacific line up near Lassen Peak,
about the Klamath Lakes. The construction was built in the na
of that company, but it was sold to the Central Pacific. I do n
know just the date, but about the time of its completion.

Q. Were they put in the name of the Central Pacific
1453 the act of consolidation of February 27, 1912?

A. Yes; the road was not constructed at that time, but t
surveys were finished, and they were transferred at that same time

Q. Why were they not originally constructed in the name of
Central Pacific?

A. Well, it was the custom generally not to build those branches in the name of any one company until we determined just how they were going to be financed and how existing mortgages would affect them; and after they were completed those things would be considered, and they would be transfered to the property that they seemed to belong to naturally.

Q. They were constructed by the Southern Pacific Company?

A. They were constructed by the Southern Pacific Company always.

Q. And whether or not they should be constructed was determined by the officers of what company?

A. By the officers of the Southern Pacific Company.

Q. Now, let us turn our attention to the additions and extensions since July 2, 1890, to the Southern Pacific system in California.

1454 A. In further answer to that last question I would say that sometimes the charters of these companies did not permit of the construction of these branches, and changes would have to be made in the charters before they could be transferred.

Q. And that is the reason why they were brought into the name of the company by acts of consolidation?

A. Yes. The numbers from 15 to 19 cover additions and extensions of main lines in California, and from No. 20 to No. 63 of branch lines. There is a multitude of those.

Q. What does No. 63 cover?

A. No. 63 covers the line into the Imperial Valley, thence through the northern part of Lower California into Yuma, and also a little branch built for the United States Government from Yuma up to the Laguna Dam.

Q. I will not ask you to explain all these different lines, except those that involve additions to the system in California, which carry through or main line traffic, say, from No. 15 to No. 19.

A. You say you want me to describe those?

Q. Yes.

A. No. 15 is an extension of what is known as the West Side
1455 Line, on the west side of the San Joaquin River from Los Banos down to Armona. That completed the line on the west side of the San Joaquin, and with the completed line from Goshen up to Lathrop and Tracy gives a double track through the San Joaquin Valley.

No. 16 is the extension of the Southern Pacific coast line from Point Santa Margarita down to Ellwood.

Q. At what time was that coast line completed and opened for business?

A. It was completed and put into operation early in 1901.

Q. Which of those additions were eventually put in the name
the Central Pacific Railway Company?
I mean the additions in California; I am speaking entirely of t
A. Well, part of No. 14, which runs from Weed up to the C
fornia line; then this one marked No. 27, from Chico to Sterling C
Q. That is a little branch or feeder?
A. A little branch up into the timber.
Q. How about No. 26?
A. No. 26, which is the Sacramento Southern, a little
running from Sacramento down alongside the Sacram
1456 River.
Q. And, I suppose, part of 64?
A. All of 64 has been made Central Pacific.
Q. With those exceptions?
A. With those exceptions; all the others are S. P.
Q. You may explain when the line corresponding to No. 14
constructed, and for what purpose.
A. The line from Weed, which is the south junction of No
with the main line via the red line—that is, through Grant's
and Medford—is a line with excessively heavy grades and a h
curvature, and Mr. Harriman, on one of his visits over the sys
asked whether it was not possible to get a line to substitute for
with less grade and less curvature. We told him that surveys
reconnoissances had been made east of Mt. Shasta and that a b
route was practicable that way. At that time there was a
lumber road running from Weed up to Grass Lake, a little sta
there south of the Oregon line, a timber road, and we bought th
the nucleus of this line east of the Cascades. Then we started b
ing from Grass Lake northerly and built through Klamath
up to a little place called Kirk. Then we started from Eu
1457 on the Oregon line, which is parallel 44, and built south
around the line called 5, which was destined to meet this
line through Kirk and to afford this low-grade line to Portland
a line of good alignment as against very heavy curvature; but
construction has been stopped where it is marked on this map,
nothing is being done now, and probably never will until traffic
very much better and conditions get better.
Q. Is traffic sufficient to justify the completion of that line, in
opinion?
A. Not now.
Q. Why was No. 14 put in the name of the Central Pacific?
it built in its name?
A. No; this little line from Weed was a local line, and as mo
the construction proceeded from the south end the whole line wa
in the name of the Oregon Eastern, all the way from Eugene

to Weed Junction, and as it had to be assigned either to the Central Pacific or the Southern, it was concluded to assign it to the Central Pacific, because it sprang from their part of the through line.

Q. With the exceptions you have mentioned, I understand all the other lines in California now stand in the name of the Southern Pacific Railroad Company?

1458 A. Yes; they belong to it. Some of them are still in the names of these local corporations.

Q. Most of them, however, are in the name of the Southern Pacific Railroad Company?

A. Yes. There was one omission. When I said the lines colored blue had been assigned to the Central Pacific I should have said there is one marked 19, which is the Dumbarton cut-off; that belongs to the Central Pacific.

Q. That extends from what point?

A. From Niles to Redwood City.

Q. What was the purpose of its construction and when was it constructed?

A. Its construction was determined upon by Mr. Harriman when he was in San Francisco at the time of the fire and earthquake in 1906. There was great demoralization of the ferry service through congestion, and he suggested to the people of San Francisco whether it would not be a good thing to have a crossing of San Francisco Bay that would be independent of trouble to the ferry system and fogs, which are very frequent here and annoying, and a company was formed and a franchise gotten from the United States Government to bridge the bay there; hence that line. We use that line now

1459 for bringing freight into San Francisco instead of transferring it slowly and dangerously when there are heavy fogs on the bay by ferry from Oakland over.

Q. It is an important part of the system?

A. Very.

Q. And you get into San Francisco and use that line by going from Niles across this blue line that you have been speaking of to what point?

A. To Redwood; thence northerly to San Francisco.

Q. Now, this Dumbarton cut-off stands in the name of what company?

A. The Central Pacific.

Q. And the line from Redwood to San Francisco in what name?

A. The Southern Pacific Railroad.

Q. So that to utilize that line for the purpose indicated you use a line standing in part in the name of the Central Pacific and a line standing in part in the name of the Southern Pacific Railroad Company?

A. Yes.

Q. At what times were the other lines put in the name of the Southern Pacific Railroad Company?

1460 A. That was by this act of consolidation.

Q. Was it at one time, or by different acts of consolidation?

A. It was by one general act of consolidation. I do not just remember when, but perhaps ten or twelve years ago.

Q. At what time was the west side line completed?

A. That was in 1891. No. 17 is also part of the completion of the coast line of the Southern Pacific Company. It gave a direct low-grade line from Montalvo, that junction, eastward to Burbank, and gave a low-grade line in place of a very heavy grade line via the red line between the two points.

Q. When was that completed?

A. That was completed about the same time, in 1901. No. 18 is what is known as the Bay Shore cut-off. It is our low-grade entrance into the city of San Francisco. That substitutes a water-grade line at no point exceeding about fifteen feet above tidewater for the red line that came up to over 300 feet above tidewater on very heavy grades and very crooked tracks through the streets and the residence part of the city, with every crossing almost at grade. The new line has no crossings at grade.

1461 Q. It is a substitute in part for the red line from San Francisco to Gilroy?

A. Yes.

Q. How long is that?

A. It is a little over ten miles.

Q. Now, 19 and 20?

A. No. 19 relates to the Dumbarton cut-off, and No. 20 is just a little spur there.

Q. What is this line from Famoso northeast?

A. Well, that is a branch line; that runs from Famoso to Porterville. It gives a loop line east of the main line running in the foothills of the mountains there, in a fruit country; and that part of it running from Porterville to the circle marked 47 is a little road known as the Porterville & Northeastern. That we built up there to tap some lumber country and fruit country.

Q. Now, the other lines; what is their general character and purpose?

A. The other lines are all nothing but branch lines, of greater or less length, built to develop some particular part of the country, to act as feeders to the main line.

Q. So that the additions and extensions of the lines in California since July 2, 1890, have been the additions to the main line which you have described and branches and feeders?

1462

A. Yes.

Q. Now, coming back to this west side line, as I understand the map, that for the first time created a through line from San Francisco to Los Angeles and beyond, standing in the name of the Southern Pacific Railroad Company?

A. The first time trains could be sent over Southern Pacific rails from San Francisco to Los Angeles.

Q. By "Southern Pacific rails" you mean rails or road belonging to the Southern Pacific Railroad Company?

A. Yes; and prior to that we sent them down from Tracy through Lathrop to Goshen, over the line of the Central Pacific.

Q. So that up to 1891 the line of the Central Pacific from Lathrop to Goshen formed a part of the Sunset-Gulf route?

A. Yes.

Q. An essential part?

A. A very important part, because the coast line had not been finished and the west side line had not been finished, and there was no way to get to New Orleans except to go by that piece of the Central Pacific.

1463 Q. Is the line from Goshen north still used as a part of the Southern Pacific system for transportation of traffic via El Paso?

A. Yes; the largest towns are on that line, but we use the two lines interchangeably as double track; we run some trains up one side and some up the other, to give both sides service, and we do the same with freight trains.

Q. What effect has the possession and use of those lines in the manner described by you upon the efficiency of the Sunset-Gulf route line?

A. It enables us to operate very much more economically and efficiently, because we give those towns more service than we otherwise could if we had to run separate trains.

Q. And so far as the through route is concerned you have practically a double track?

A. Yes.

Q. And since the completion of the coast line in 1901?

A. That gives us a third track. The coast line was built for the purpose of cutting out the very heavy grades from Burbank north, you might say, to Bakersfield. That is a very crooked road with a very heavy grade, and the coast line has a very light grade and
1464 is very straight. It is also a scenic line, and a favorite route for passengers. The low grades, the absence of curvature, and the beauty of the road were the controlling reasons why that line was built.

Q. To what point had that line extended when you moved to Cal
fornia?

A. On the south Ellwood was the terminus, a little west of San
Barbara, and on the north Santa Margarita. In other words, t
termini shown on this map.

Q. We have been speaking of lines in Oregon, California, a
Nevada, and we have gone over the changes since July 2, 1890,
the system in those States. I will now ask you what railroads co
posed a part of the Sunset-Gulf route east of El Paso?

A. In 1890?

Q. Yes.

A. What railroads composed the rail part of the Sunset-Gu
route?

Q. East of El Paso.

A. Well, the Galveston, Harrisburg & San Antonio, that extend
from El Paso to Houston; the Texas & New Orleans. from Houst
to Orange, or the Louisiana State line; the Louisiana Weste
1465 from Orange to Lafayette; Morgan's Louisiana & Texas Ra
road & Steamship Company, from Lafayette to New Orlea

Q. Do these same lines compose that part of the system or did the
same lines compose that part of the system when the through li
was opened in 1883?

A. Yes.

Q. Do they now compose that part of the system?

A. Yes.

Q. There have been, then, no material changes in the Sunset-Gu
route east of El Paso?

A. None except the building of a few local branches and feede

Q. When the through line was opened in 1883 the steamship pa
of the line ran between what ports?

A. New Orleans and New York.

Q. Between what ports is the steamship line now operated?

A. We operate a line of freight steamers from Galveston to N
York, a combined freight and passenger steamer service from N
Orleans to New York, and two steamers between New Orleans a
Havana.

1466 Q. When was the change or when was the line put in betwe
Galveston and New York?

A. It was put in, roughly, I should say, ten or twelve years ago.

Q. For what purpose?

A. For the purpose of cutting out 362 miles of rail haul where t
cost of operation was, of course, greater than the cost of operati
by sea; and also because of certain restrictions put by the Texas co
mission on cotton from Texas to New York via Louisiana. They p
up a tariff wall there at the State line that made it almost impossi

for us to get any New York cotton via rail lines, so we put on the Galveston line.

Q. What company now owns the steamships that compose the water haul of the Sunset-Gulf route?

A. The Southern Pacific Company.

Q. Now, referring to the additions to, or changes in, the Southern Pacific system since July 2, 1890, which we have been going over, who determined what additions or changes should be made?

A. They were always determined by Mr. Huntington or one of his associates; Mr. Charles F. Crocker; for a while after Mr. Crocker's death, Mr. George Crocker.

1467 Q. Upon what recommendations or information did those men act?

A. Well, those recommendations about building these lines would come up from all parts of the organization. Sometimes the recommendation would be started by a traffic man. Our usual policy was, when a traffic man started it, he would confer with the operating department, and together they would investigate the possibilities of the country, the amount of freight that might reasonably be expected, and the cost of construction. Then it would go from the head of the operating departments and the traffic departments up to Mr. Huntington.

Q. In determining the making of additions or changes was regard paid to the needs and requirements of the lines standing in the name of any particular corporation?

A. None whatever. Additions were made with respect to the system as a whole, and as I said, always after a careful investigation as to the possibilities of the country and the amount of freight that might be gotten, because very often those suggestions would come from local people who would be anxious to have a road. Of course they would be perfectly willing for us to build it and pay for it, but

1468 there might not be the traffic there to justify it.

Q. How were the lines in different corporate ownerships regarded and treated in the matter of extensions?

A. Absolutely the same; there was no discrimination or distinction between them.

Q. Were they treated as separate properties or as parts of one system?

A. Parts of one system, because frequently those branches, when built, might be in one corporation or the other and terminals would not be obtained in the name of that branch, but whatever property there was at the junction, no matter what corporate name it stood in, would be used by both corporations, both the Southern Pacific and the Central Pacific Railroad lines.

Q. What has been the character of the growth and development o the Southern Pacific system since July 2, 1890, to the present time?

A. There have been no additions to the system except additio very much in the nature of what we have been going over here branches built into some attractive territory or cut-offs to redu grade or give a better traffic line. It has been an ordinary, natura and normal growth.

(Whereupon a recess was taken until 2.15 o'clock p. m.)

1469 AFTER RECESS.

JULIUS KRUTTSCHNITT, the witness under examination when rece was taken, resumed the stand and testified further, as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Kruttschnitt, are you familiar with the series of map which have been prepared showing the stage of development of th Southern Pacific system at different times? I refer to the map which have been offered in evidence and numbered 1 to 6.

A. Yes. These maps were prepared in my office, under my direc tion, and I am familiar with them.

Q. Are you familiar with a statement which has been offered i evidence as petitioner's Exhibit No. 42, showing when different par of the Southern Pacific system were constructed or opened for busi ness?

A. I do not remember seeing petitioner's Exhibit No. 42, but if i has been compiled from the printed statements numbered map No to map No. 6 that were prepared in my office and attached to th maps, it must be correct.

1470 Q. Those printed statements to which you refer show what

A. They show the construction in five-year periods.

Q. Giving the dates of construction or opening for business of di ferent parts of the system?

A. Yes.

Q. Over the period covered by the six maps?

A. Yes.

Q. And those were prepared in your office, under your direction

A. Yes.

Q. And you are familiar with them?

A. Yes.

Q. And they correctly show the dates of construction and openi of different parts of the system?

A. They do.

Q. So that you are familiar generally, in that way, with th growth and development of the Southern Pacific system?

A. Yes; I am.

Q. Will you please look at this map, which purports to show
1471 the stage of development which the Southern Pacific system had reached March 1, 1885, being map No. 5?

A. This shows the construction prior to March 1, 1885.

Q. While the map shows it, in order that we may get it in convenient shape, just state what were the principal changes or additions made between that date, March 1, 1885, and July 2, 1890. I do not mean that you should call attention to the little stems and branches, but state in a few words the material changes which took place between March 1, 1885, and July 2, 1890.

A. The line from near Redding to Ashland, in Oregon, was completed, completing the through route from San Francisco to Portland. The line from San Francisco through Gilroy had been extended down the Salinas Valley to Santa Margarita, and had been extended from Saugus to Ellwood.

Q. In the opposite direction?

A. In the opposite direction. And the line on the west side of the San Joaquin River had been extended from Tracy about to Los Banos.

Q. Does that include the principal changes, other than the growth of branches and feeders?

A. Yes. There were a great many small branches built,
1472 but those were the principal material changes in the through lines.

Q. Can you tell us, from your general knowledge derived in the way in which you have indicated, what material differences, if any, there were between the system on February 1, 1883, and on March 1, 1885?

A. There was no great change. They were substantially the same. In 1883 the line down the west side of San Joaquin Valley had not been built, and the coast line had not been built, and the line to Oregon had not been built. With those exceptions, the condition of the system was very much the same.

Q. I understood you to say that you were familiar with the other maps showing the growth and the development of the system since 1870?

A. Yes.

Q. Mr. Kruttschnitt, from your general knowledge and experience as a railroad expert and from your particular knowledge of the lines composing the Southern Pacific system, how would you characterize the growth and development of the Southern Pacific system?

A. I think I have already characterized it as being a
1473 normal and gradual growth, to meet the necessities of the territories served by these lines.

Q. Has it the characteristic of system growth?

A. Absolutely.

Q. Mr. Kruttschnitt, when you came to California in 1895 as general manager of the Southern Pacific system, what arrangements, if any, did you find in existence for the handling of through business over the Southern Pacific line west of Ogden and the Union Pacific line east of Ogden, in relation to through passenger service and in relation to the handling of through freight?

A. They were operated absolutely as one line. The through schedules were always made by conference between the officers of the two lines, for both passenger and freight, just as through schedules on our own Southern Pacific lines were made by conference between the officers affected.

Q. Did you have through passenger trains?

A. We had through passenger trains and through freight trains.

Q. Did you have through rates of freight and through passenger tariffs?

A. Yes.

1474 Q. And an agreed division of these rates?

A. I understand so. I had nothing to do with traffic; I had to do with the making of the schedules and the running of the through trains, but I knew that those divisions were in, and were arranged by conference between traffic officers of the two lines.

Q. Was there any expression to you of dissatisfaction on the part of the Union Pacific officials, when you came to the coast, with respect to the arrangements in existence for operation of the Southern Pacific part of this through line, in connection with the Union Pacific line, as one through, continuous line?

A. I never heard of a complaint. Of course those schedules were generally made by conference between the general superintendents and they would not come up to me unless there was some issue of disagreement; but I do not recall any cases where there were any disagreements. My recollection is that schedules were always arranged satisfactorily without being referred to me.

Q. Were those arrangements for through transportation via Ogden kept up by you during the time you were in California?

1475 A. Yes.

Q. What was the nature and extent of the cooperation between you and the Union Pacific in reference to those through schedules?

A. I do not see how there could have been any more harmonious action than we had; that is to say, if the Union Pacific had any suggestions to make as to schedules they made them, and they were generally agreed to by us, and vice versa. Sometimes the suggestion would come from them and sometimes from us.

Q. What material changes, if any, were made in the arrangements r handling through business via Ogden when the merger of the entral Pacific and the Union Pacific occurred, in 1901?

A. When the merger occurred I had control of the schedules on th sides of Ogden, and there were no changes made.

Q. After the unmerger, in 1913?

A. I want to qualify that by saying, not that there were no anges, but the policy was not changed.

Q. As arrangements for the handling of through transportation developed and improved generally, were there corresponding changes developed in the method of handling business via Ogden?

A. There were. We always maintained that service as good as any the country, and for long periods of time I think the trains that e had on there, and at the present time particularly, are better than y trains in the United States.

Q. You mean the through trains?

A. The through Chicago-San Francisco trains via the Union acific and Central Pacific.

Q. That is, with reference both to passenger and freight?

A. Yes.

Q. After the unmerger, in 1913, have there been any material anges in the arrangements for handling through business via the gden route?

A. None in policy. Of course, schedules are rarely kept in effect y great length of time. In other words, there are questions of mpetition with other lines that may determine the times of leaving r the times of arriving; but those changes were always reached by greement between the officers of the two roads.

Q. In your opinion, is the arrangement for operation of the through line via Ogden from San Francisco east over the Union Pacific as good now as it was during the merger eriod?

A. It is as good. I think it is better, because we have been making nprovements all the time, and my judgment about the matter is rne out by the judgment of the public, by the way they use the ne, by the amount of traffic, both passenger and freight, that we over it.

Q. During the whole of the period above referred to what have en the relations between the officials of the Southern Pacific Company and the officials of the Union Pacific Railroad Company with spect to the arrangements for the handling of through traffic via gden?

A. They were always perfectly cordial and cooperative.

Q. And that continues so to the present time?

A. Yes; I do not recall any complaints made since the unmerger

Q. What kind of through service has been produced by the a rangements for the handling of through business via Ogden?

A. Well, we have, as I said, I think, the best transcontinental service that way of any road in the United States, and m
1478 judgment is borne out by the verdict of the public in usi the line and from expressions we get from people who tra over the line and who make shipments over it. And, then, we ha the still better evidence of the traffic that we control that way.

Q. What has been the success of the Ogden route in competitio say, with the Western Pacific and the Denver & Rio Grande or t Santa Fe or any other all-rail route with which your line comes competition?

A. Well, as to the Santa Fe, we get a greater proportion of t traffic to and from northern California. The competition with t Western Pacific—I suppose the condition of the Western Paci to-day will show that; they have not handled much.

Q. In your opinion as an expert railroad man, what can you s as to the arrangement for the operation of the lines in questi using the language of the statute, for all purposes of travel a transportation as one continuous line, so far as the public and t United States are concerned?

Mr. McClennen. That is objected to as calling upon the witn to make a construction in law of the meaning of the words as used the statute and to express an opinion on a question of law,
1479 well as on the question of railroading, with no evidence qualification of the witness to express an opinion on so m as involves a question of law.

Mr. Blair. You may confine yourself to the railroad part of th language.

(The question was read as above recorded.)

The Witness. From my connection with the line, which dates fr 1895 to the present time, or twenty years, I do not recall a sin complaint from either the Union Pacific or any of the public or a of the officers of the United States Government that the lines w not operated according to law, and from my conference with t Southern Pacific officials when I came over here I understood th the relations with the Union Pacific had always been of the s character, entirely cooperative and cordial, and the schedules arranged as to cause no complaint whatsoever.

By Mr. Blair:

Q. Do you know of any other lines in the country under in pendent management which are operated more closely as a thro

ontinuous line than the Southern Pacific part of the line west of Ogden and the Union Pacific line eastward?

A. I do not. We have connections with several roads at El
480 Paso and Ogden, but in none of them do we cooperate as fully as we do with the Union Pacific.

Q. You treat the Union Pacific differently from your other outside onnection?

A. I should say, in the running of a through line and the arrangements of schedules, yes. To make my meaning perfectly clear about hat, I will say, take the Texas & Pacific, for instance, with which we onnect at El Paso. The Texas & Pacific may very well at times suggest a certain train and certain arrivals, and if we can not meet their leas we tell them so flat-footed—"We can't do this; we can not fix . Sorry, but it can not be done." With the Rock Island it is much he same way; but with the Union Pacific we always get together and nd the means to do it.

Q. When you came to California in 1895 what lines were being perated under lease by the Southern Pacific Company?

A. Well, all of the lines that were in the Central Pacific corporaion and all the lines owned by the Southern Pacific Railroad and the outh Pacific coast roads.

Q. Would that include all the lines of the system?

A. Also the lines in Oregon, the Oregon-California line and its ranches and connections.

Q. And the lines in Arizona and New Mexico?

481 A. In Arizona and New Mexico also; and, at that time, the lines in Texas and Louisiana.

Q. According to that statement, the lines in Texas came out from nder the operation of the lease in 1889?

A. Yes; but you asked me as to 1885.

Q. No; I said 1895.

A. Yes; that is right; the Texas lines were taken out of the lease n 1889.

Q. And the Louisiana lines were taken out from the operation of he lease in 1901?

A. Yes.

Q. With that explanation, it would be true to say that the lines you ound being operated by the Southern Pacific Company under the ease included all the lines of the Southern Pacific system west of l Paso?

A. Yes.

Q. Referring, now, to the lines standing in the name of the Central acific west of Ogden, and to the lines of the system forming a part f the Sunset-Gulf route, what was your policy in respect to the

upkeep of equipment and the general maintenance of those two sy
of lines?

A. I prescribed the standards of maintenance, and the
1482 was no difference made between the lines at all. I exacted
high a condition of perfection in track and in maintenance
bridges and structures on one line as I did on the other. Indeed, m
policy as to maintenance had already been established on the Sun
lines east of El Paso, and I simply carried the same policy over in
California on the Central Pacific.

Q. There was no subordination of one set of lines to the other?

A. Absolutely none.

Q. Was there any discrimination or difference between the Ce
tral Pacific lines and the other lines of the system, or were they
treated alike?

A. None, except such discrimination as was justified by the dens
of the traffic. In other words, certain improvements might be jus
fied on certain parts of the Central Pacific because the traffic wa
ranted it, or might be warranted on other parts of the system b
cause the traffic there was heavier.

Q. During all this period, from the time you came to Californi
to the present time, to what degree of efficiency have the lin
1483 standing in the name of the Central Pacific been maintained

A. I think and know that the lines of the Central Paci
are maintained in as good order as those of any railroad in th
United States.

Q. How does this standard of maintenance compare with th
standard of maintenance of the lines composing the Sunset-Go
route?

A. As a rule, the maintenance of the Central Pacific, because of th
greater amount of money spent on it on account of the heavie
denser traffic, and on account of the country it runs through, is ge
erally better than the Sunset lines, part of which, east of San Anto
and Texas, runs over low and wet countries where it is very diffic
to keep the track up in as good condition as the tracks upon th
deserts of Utah and Nevada. Up to a year ago it was our custom
carry out an annual inspection, and to mark each section on th
entire line, graded as you would grade examination papers at co
lege. Each feature of maintenance was marked as a maximum
ten, and the average cast up, and we gave prizes to the man who ke
his section best. In looking over the last record we have, for 19
as we abandoned this practice on account of forced economie
1484 and on account of bad earnings in the last year, I find that th
Central Pacific lines from San Francisco to Ogden averag
up 93.3 per cent.

A part of the Sunset line from San Francisco to El Paso was a point under that; it was about 92.3.

Q. Who made those markings?

A. They were made by a jury of operating officers, a jury of about twelve men, division superintendents and division engineers, the general superintendent and the general manager.

Q. Did the same jury mark the division which included the Central Pacific line, to which you referred, that marked the division of the Southern Pacific?

A. Not exactly, but the general manager would be a member of all the Central Pacific juries; the general superintendent of the northern division was a member of all Central Pacific juries; the general superintendent of the Southern lines was a member of all the Sunset juries, and so was the general manager. Now, below that the jury was composed of officers disconnected from that part of the track being inspected.

Q. What reasons exist for maintaining the Central Pacific
1485 line in question up to this high state of efficiency with respect to equipment, service, and so on?

A. The reasons are that if we do not maintain the line in the highest state of efficiency and give the best service we will lose the business.

The Atchison is competing strongly for California business; the Western Pacific has, and we have always had, competition in southern California with the San Pedro road.

Q. Is there any part of the traffic which you secure in competition with those lines which could not be induced to go over the Sunset Route?

A. Yes; quite a good deal. There is a great deal of traffic that is competitive with the Santa Fe that we could not get to go over the Sunset at all.

Q. What in your opinion would be the result if you allowed the service to be impaired on the western end of the Ogden route?

A. It would be loss of traffic and necessarily loss of earnings, and there is only one word that could characterize such a policy, and that is that it would be suicidal, because the Southern Pacific has such an interest in the Central through ownership of stock and through guarantee of bond issues that it can not afford to lose any traffic for the Central Pacific that it can possibly retain, and self-
1486 interest alone makes us keep it up to the highest standard of excellence.

Q. In your opinion, would the loss of traffic which you say would result from impairment of service on the line west of Ogden inure to the benefit of the Sunset-Gulf route?

A. I do not think so; I doubt if any of it would go that way. It would be taken by the Santa Fe, which is our most vigorous and active competitor.

Q. You spoke of the interest of the Southern Pacific Company in the line standing in the name of the Central Pacific. Can you give us the amount of stock owned by the Southern Pacific Company in the Central Pacific?

A. Yes; the Southern Pacific Company owns all of the stock. The common and preferred aggregate, in round numbers, $85,000,000.

Q. What proportion of the dividends to the Southern Pacific stockholders is contributed by the earnings of the Central Pacific lines; do you remember—roughly?

A. About 30 to 33 per cent.

Q. You spoke of the guarantee of the bonds; can you give us what bonds of the Central Pacific are guaranteed by the Southern Pacific Company?

1487 A. Yes; they are four issues. First, the four per cent refunding mortgage bonds aggregating about ninety-eight and a half million dollars. Then the French, or European loan, aggregating about forty-eight millions and a half. Then there is the through short-line mortgage, which is the mortgage on the Lucin cut-off, $9,600,000. Then the three and one-half per cent bonds of the Central Pacific, $11,600,000. The total of all these issues is $169,000,000 or thereabouts.

Q. And the Southern Pacific Company is the guarantor of all those issues?

A. All those bonds.

Q. As a matter of fact, have you ever entertained the idea of impairing the service on the line west of Ogden or of failing to maintain that service up to the highest state of efficiency?

A. No. I consider that we would be incompetent railroad managers and unfit for our trust if we did. We require the traffic and we require the earnings to pay the dividends on this stock and the interest on these bonds.

Q. Have you ever seen any advantage to the Southern Pacific Company in doing so?

1488 A. In letting the Central Pacific run down?

Q. Yes.

A. No. As a matter of fact, the track, the locomotives, the cars, the signals, and the bridges are all of the highest standard. I know that there is no road in the country that has a higher one.

Q. What do you include in "service"?

A. There would be train service, the degree of safety and regularity with which it is conducted; the smoothness of the track, the

comfort with which people are drawn over it, the regularity of freight schedules, and the delivery of freight. As to rates—well, of course, rates are the same now on all roads, so I don't suppose it is worth while to mention those.

Q. Do you include everything that contributes to the good will of the public towards the line?

A. Yes. That would be also in solicitation, cultivating pleasant relations, not only through freight solicitors, but through our entire staff, requiring the staff to mix with the public, get acquainted, find out how they are being served, and if there are any complaints, and anticipate them before they get to a condition where they
1489 cause irritation or appeals to commissions. We would rather settle these questions with the people direct, rather than have them go to the commissions, and I think the commissions prefer that themselves.

Q. Did you have anything to do with the settlement of the indebtedness of the Central Pacific to the United States?

A. No; nothing whatever.

Q. Do you remember when the Central Pacific Railway Company was created, and the transfer to it of the properties before that standing in the name of the Central Pacific Railroad Company?

A. I do, very well.

Q. What effect, if any, did that have upon the operation of the lines under your jurisdiction?

A. None whatever, so far as operations were concerned. I do not know that we would have known it, except that we had to discriminate in marking the cars and stationery between "Railway" and "Railroad".

Q. What changes, if any, took place in the operation and management of the property after 1898 or 1899, after the creation of this new company?

A. What changes in the operation?

1490 Q. If any.

A. There were no changes in the operating policies, but after the settlement of the Government debt we started making a great many improvements that had been held up pending this settlement and there was great change in that respect.

Q. Did you observe any changes in the extent of the common control or centralized management of the Central Pacific in respect to the lines standing in the name of the Central Pacific Railroad Company after the change of the name to "Central Pacific Railway Company"?

A. Absolutely none.

Q. During the whole time that you have been connected with the Southern Pacific system, since the lease to the Southern Pacific Company in 1885, has there been any break in the continuity of the lease-

A. I do not think so; I doubt if any of it would go that way. It would be taken by the Santa Fe, which is our most vigorous and active competitor.

Q. You spoke of the interest of the Southern Pacific Company in the line standing in the name of the Central Pacific. Can you give us the amount of stock owned by the Southern Pacific Company in the Central Pacific?

A. Yes; the Southern Pacific Company owns all of the stock. The common and preferred aggregate, in round numbers, $85,000,000.

Q. What proportion of the dividends to the Southern Pacific stockholders is contributed by the earnings of the Central Pacific lines; do you remember—roughly?

A. About 30 to 33 per cent.

Q. You spoke of the guarantee of the bonds; can you give us what bonds of the Central Pacific are guaranteed by the Southern Pacific Company?

1487 A. Yes; they are four issues. First, the four per cent refunding mortgage bonds aggregating about ninety-eight and a half million dollars. Then the French, or European loan, aggregating about forty-eight millions and a half. Then there is the through short-line mortgage, which is the mortgage on the Lucin cut-off, $9,600,000. Then the three and one-half per cent bonds of the Central Pacific, $11,600,000. The total of all these issues is $169,000,000 or thereabouts.

Q. And the Southern Pacific Company is the guarantor of all those issues?

A. All those bonds.

Q. As a matter of fact, have you ever entertained the idea of impairing the service on the line west of Ogden or of failing to maintain that service up to the highest state of efficiency?

A. No. I consider that we would be incompetent railroad managers and unfit for our trust if we did. We require the traffic and we require the earnings to pay the dividends on this stock and the interest on these bonds.

Q. Have you ever seen any advantage to the Southern Pacific Company in doing so?

1488 A. In letting the Central Pacific run down?

Q. Yes.

A. No. As a matter of fact, the track, the locomotives, the cars, the signals, and the bridges are all of the highest standard. I know that there is no road in the country that has a higher one.

Q. What do you include in "service"?

A. There would be train service, the degree of safety and regularity with which it is conducted; the smoothness of the track, the

comfort with which people are drawn over it, the regularity of freight schedules, and the delivery of freight. As to rates—well, of course, rates are the same now on all roads, so I don't suppose it is worth while to mention those.

Q. Do you include everything that contributes to the good will of the public towards the line?

A. Yes. That would be also in solicitation, cultivating pleasant relations, not only through freight solicitors, but through our entire staff, requiring the staff to mix with the public, get acquainted, find out how they are being served, and if there are any complaints, and anticipate them before they get to a condition where they
1489 cause irritation or appeals to commissions. We would rather settle these questions with the people direct, rather than have them go to the commissions, and I think the commissions prefer that themselves.

Q. Did you have anything to do with the settlement of the indebtedness of the Central Pacific to the United States?

A. No; nothing whatever.

Q. Do you remember when the Central Pacific Railway Company was created, and the transfer to it of the properties before that standing in the name of the Central Pacific Railroad Company?

A. I do, very well.

Q. What effect, if any, did that have upon the operation of the lines under your jurisdiction?

A. None whatever, so far as operations were concerned. I do not know that we would have known it, except that we had to discriminate in marking the cars and stationery between "Railway" and "Railroad".

Q. What changes, if any, took place in the operation and management of the property after 1898 or 1899, after the creation of this new company?

A. What changes in the operation?

1490 Q. If any.

A. There were no changes in the operating policies, but after the settlement of the Government debt we started making a great many improvements that had been held up pending this settlement and there was great change in that respect.

Q. Did you observe any changes in the extent of the common control or centralized management of the Central Pacific in respect to the lines standing in the name of the Central Pacific Railroad Company after the change of the name to "Central Pacific Railway Company"?

A. Absolutely none.

Q. During the whole time that you have been connected with the Southern Pacific system, since the lease to the Southern Pacific Company in 1885, has there been any break in the continuity of the lease-

hold operations except the taking out from the lease of the lines
Texas and Louisiana?

A. No; I do not recall any.

Q. As an operating man, if there have been any changes they wo
not evidenced in the operation of the properties?

A. No.

1491 Q. In your opinion, are the lines of railroad standing
the name of the Central Pacific Railway Company, considere
by themselves, competitive naturally or otherwise with the other lin
of the Southern Pacific system?

Mr. McClennen. That is objected to because it calls upon the wi
ness to apply to "competitive" his own opinion of its meaning
law and in the statutes governing or prohibiting combinations.

Mr. Blair. The same kind of questions were asked by the petition
in examining its own witnesses.

The Witness. Certainly not.

By Mr. Blair:

Q. Disregarding the branches and feeders, how would you descri
the Southern Pacific system as it now stands?

A. Disregarding branches and feeders?

Q. The branches and feeders being disregarded and considerin
the main line, how would you describe the Southern Pacific syste
by its termini we will say?

A. I would say that the Southern Pacific system termini were Ne
Orleans, Ogden, and Portland.

Q. Could the lines from Portland to New Orleans be correctl
characterized as a system of connecting lines extending between tho
two cities?

1492 A. Yes. We always claim that, in soliciting the freight, th
we have a through line from New York or New Orleans rig
through to Portland, Oregon.

Q. And then you have this——

A. Then we have another line from San Francisco to Ogden.

Q. What is the total length of your line from Portland to Ne
Orleans?

A. I remember it in installments; not together. I will have to ad
it up. It is 3,262 miles.

Q. And add the mileage of the water haul to New York.

A. That would make it, roughly, 5,068 miles. It is about 1,80
miles from New Orleans to New York by water.

Q. What is the length of this divergent stem or tangential of
shoot from San Francisco to Ogden?

A. Known as the Central Pacific?

Q. Known as the Central Pacific.

Mr. McCLENNEN. The question is objected to as containing a manifest misuse of the term "tangential stem" when applied to a part of what has been described as the principal and best transcontinental railroad in the country.

The WITNESS. The distance from San Francisco to Ogden
1493 is 783 miles.

By Mr. BLAIR:

Q. Mr. Kruttschnitt, you are somewhat familiar with railroad terminology, are you?

A. Yes; but "tangential offshoot" is a new one on me.

Q. Well, that is a legal phrase, not a railroad phrase. Would you say that "divergent stem" would correctly describe the line from San Francisco to Ogden?

A. I should think it fairly would. It is certainly a line running generally at right angles with the main line through to Portland, and running east, whereas the other line is running north.

Q. Is it usual or unusual for a railroad system in this country to include a line, whether it be called a divergent branch or stem, which, in connection with other railroads, forms a through line which may compete for traffic with the parent system?

A. I would say that the use, by lines, of these divergent stems to build up new traffic routes and to secure traffic that they otherwise could not get is the most common practice imaginable. You might take the Railway Guide and the folders of the different rail-
1494 road systems, and you could pick out enough to swamp the stenographer.

Q. That had what characteristics?

A. That used these divergent lines in connection with other lines to control traffic as against the main stem.

Q. Does that mean, then, that it is usual in the railroad systems of this country for there to exist branches or stems or divergent parts of the system, which, in connection with other lines, form through lines that offer alternative routes for traffic with the parent system?

A. Yes. A striking example of that is the Gould system of roads. They have a line from St. Louis in the same interest via the Denver & Rio Grande, Missouri Pacific, and Western Pacific right into San Francisco. They have another line via the Iron Mountain and the Texas & Pacific through Arkansas, northern Texas, and El Paso, where, in connection with the Southern Pacific, they have another line into San Francisco. They use this divergent Iron Mountain and Texas & Pacific system to build up another route, so a man can ship by their line from St. Louis either direct or via southwestern lines through El Paso and into San Francisco.

Another example in point: Take the Chicago, Milwaukee
St. Paul, which has a through line now of its own fr
1495 Chicago via Milwaukee and the Dakotas to Puget Sound,
has a divergent stem from Chicago to Omaha, where it c
nects with the Union Pacific, and has another line to Puget So
that way, or it can connect with the Union and Southern Pa
through Ogden and then via Southern Pacific's Portland lin
Portland and the Union Pacific line, again, to Puget Sound,
third line to Puget Sound.

Take the Baltimore & Ohio: It forks at Cumberland, and one
runs direct to Chicago. Another line, divergent stem, makes of
St. Louis. This main line from Baltimore to St. Louis is, of cou
competitive with their line from Cumberland to Chicago and
from Chicago to St. Louis, of which there are half a dozen that
can use.

Take the Santa Fe: The Santa Fe was originally built from
cago to Los Angeles. They have a divergent stem, which
bought in about 1898 or 1899, that puts them into San Franci
They can either take freight in that way, direct, or they can
junction points, use the Southern Pacific lines, or they can use
Union Pacific lines into San Francisco.

Q. They have also a line, have they not——

A. They have also a line diverging at Newton, Kan
1496 running to the Gulf of Mexico, where they connect
steamships and take New York freight via the Gulf route,
north and south line into interior Kansas; or there is still ano
line that diverges from their north and south line and connects
their main line at Albuquerque, New Mexico, that they have
cently been working, in competition with our Sunset line. Ye
the same time, they have an overland line through Chicago, an
connection with their connections at that point, compete with
ocean and rail lines.

There is another striking example in the Pennsylvania. The P
sylvania forks at Pittsburgh. They have one main line runnin
St. Louis and another to Chicago. Those lines via the Chicago
by means of the Chicago & Alton or the Chicago & Eastern Illi
or any number of five or six lines at least, can be built up into a c
petitive route, competing with the Pittsburgh-St. Louis line.
also have lake connections at Buffalo, at Toledo, at Cleveland,
at Erie, where, by means of steamships on the Lakes, they can b
up three or four different lines from Philadelphia or New Yor
Chicago, competing with their direct lines.

1497 Q. Does this part of your system from San Francisc
Ogden, which we will not call by any name, form a thro
line by connection with other railroads east thereof, which may

pete for traffic with the line which we have called the Sunset-Gulf route?

A. Yes.

Q. What is the connection it forms at Ogden?

A. The principal one and the most important one is the Union Pacific. Another one is the Denver & Rio Grande.

Q. The Union Pacific carries it how far?

A. To Omaha; Council Bluffs.

Q. And thence it has its eastern connections?

A. From Council Bluffs it has a number of eastern connections—the Chicago & North Western; the Chicago, Milwaukee & St. Paul; the Rock Island; the Chicago, Great Western; probably half a dozen lines by which it can reach St. Louis and Chicago from Council Bluffs.

Q. We will hereafter call that line the Ogden route. When you came to the Pacific coast in 1895 did you find actual competition between this Ogden route and the Sunset-Gulf route?

A. I did. There always has been.

1498 Q. What was the character of this competition as to vigor or weakness and inactivity?

A. There were certain parts of California, notably the northern parts, where shippers generally would exercise their right of routing by sending freight via Central Pacific. When you would get into southern California there were parts where they would almost always ship their freight via the Sunset. There is a territory in between that where it could be sent either way. We—I mean the Southern Pacific interests—had solicitors in there. Our policy was, naturally, to get the long haul on that freight. It was to persuade the shipper that we could give him good service via the Sunset line and would like him to send it that way. If we could persuade him to do it, it was all right. If we could not, he would order it sent via Central Pacific. In other words, we had two kinds of goods to offer him—transportation via the Central Pacific or transportation via the Sunset—and we would naturally try to sell the goods that were the most profitable to the company.

At the same time, in that territory, there were Illinois Central solicitors, Union Pacific solicitors, Chicago & North Western solicitors; Chicago, Milwaukee & St. Paul, Chicago Great Western,

1499 and Rock Island solicitors, all trying to get that freight to move via the Central Pacific, so that they would get a division.

Q. Since the unmerger in 1913 of the Union Pacific and Southern Pacific, has this competition between the Ogden route and the Sunset-Gulf route continued?

A. It has.

Q. What is its condition now?

A. It is active.

Q. Carried on in the same way in which you have indicated?

A. Yes.

Q. I believe you have already answered it, but I will ask you agai Have you ever considered it to the interest of the Southern Pacific influence this competition by impairing in any way the service ov the Ogden route?

A. We have not; and I could not conceive of any officer bei stupid enough or shortsighted enough to try to do it; because, as have said before, it would be suicidal for Southern Pacific interes to try to get freight to move away from the Southern Pacific and th lose it, and not get it for the Sunset but lose it to the Atchis

1500 Q. Would it be possible, in your opinion, to impair the ser ice on the Ogden routes west of Ogden and confine the effe of that impairment of service to business competitive with the Sun Gulf route?

A. No; it would be impossible.

Q. Please explain that.

A. It would be impossible for the reason that if the service wa not good on the Central Pacific people would decline to ship the and then we would have only a small chance of getting for t Sunset Route the freight that had been lost to the Central Paci The shipper would probably exercise his option to ship via San Fe or Western Pacific, and we do not want to risk that.

Q. Would any lessening of the efficiency of the service over t Ogden route be felt in its influence on traffic which was not co petitive with the Sunset-Gulf route?

A. Will you please repeat that?

Q. That is, would it affect the traffic which would seek to get ov the Ogden route, which is not competitive with the Sunset-Gu route?

A. It would affect it to this extent: If we lowered the efficiency the service, or the excellence of the service, we would los

1501 from the Central Pacific without any certainty of getting by the Sunset.

Q. Mr. Kruttschnitt, please state any facts that you may kn which would affect the question of whether or not the propo separation of the Central Pacific lines from the Southern Paci system would benefit the public in the matter of rates or service, otherwise.

Mr. McCLENNEN. That question is objected to on the ground th whether or not restraints upon competition between railroads a permissible or exert a beneficial or other influence upon the pub welfare is a legislative question not open to consideration by

court, and therefore the inquiry is immaterial, incompetent, and irrelevant.

Mr. BLAIR. While counsel does not agree with the statement of counsel for the petitioner as to restraints of commerce, he states the object of the question is to bring out facts which will enable the court to determine whether there has been any restraint of commerce, and not to bring out facts justifying such restraint.

(By request of the witness, the reporter repeated the pending question as follows:)

"Q. Mr. Kruttschnitt, please state any facts that you may
1502 know which would affect the question of whether or not the proposed separation of the Central Pacific lines from the Southern Pacific system would benefit the public in the matter of rates or service, or otherwise."

The WITNESS. We have always considered the Central Pacific and the Southern Pacific lines as one and the same system. One set of lines has been considered as complementary to the other, and building them up as we have done and working them as we have done gives us two routes from San Francisco points to eastern points to offer to the public.

In presenting to the public the benefits of these two routes, we have got to consider the question of rates, of service, and of solicitation.

At the present time the fact that the Southern Pacific can offer these two routes has no effect whatever on rates, because there are seven or eight lines from California to the east, all of which are competitive with the Sunset line or with the through line made up of the Central Pacific, Union Pacific, and eastern connections.

For instance, take the two Southern Pacific lines to begin with. That is two. The Western Pacific gives a third; the Atchison is a fourth; the San Pedro line is a fifth——

1503 By Mr. BLAIR:

Q. The San Pedro line in connection with what line?

A. The San Pedro, in connection with the Union Pacific, is a fifth. The Union Pacific line to Puget Sound points and their steamship line to San Francisco is a sixth. The Union Pacific line to San Pedro and a steamship line to San Francisco, a seventh. Direct ships through the Panama Canal, an eighth; and ship connections over the Tehuantepec Railroad.

Now, if you go back to the time when the Southern Pacific was building up this system, and there were only two lines, you might say, reaching California, one the line via Ogden and one the Sunset line, and traffic managers had full control of the rates and could fix them pretty much to suit themselves, possibly the Southern Pacific might have had some influence on fixing rates in California. Year

by year, however, that influence has lessened until at the present time with commission regulation of rates and with the competition of these other seven or eight carriers, that influence is absolutely nothing.

If the Central Pacific, either as an independent line or if con-
1504 trolled by the Union Pacific, as has been frequently suggested that it should be, reduced rates from California, those reductions would be met at once by all of the other lines, and they would accomplish nothing; and they would adopt a rate policy, if separated or in connection with the Union Pacific exactly the same as is adopted now. In other words, they would simply maintain the rates that were fixed by the commission.

Q. In your knowledge and experience of the railroad business, that is what would rationally happen?

A. Yes.

Q. Please state what effects the separation would have in the matter of service.

Mr. McClennen. That question is objected to on the ground that whether or not restraints upon competition between railroads are permissible or exert a beneficial or other influence upon the public welfare is a legislative question, not open to consideration by the court; and therefore the inquiry is immaterial, incompetent, and irrelevant.

The Witness. The system as a whole, as it has been gradually added to and developed, has interwoven the Central Pacific lines with the Southern Pacific Railroad lines in such a way that
1505 the efficiency of both as means of transportation and with power to serve the public has been increased and is greater by working the properties together than by working them separately. The efficiency of both of the properties would be seriously impaired and lowered by separating them. There are quite a number of reasons that lead to that conclusion.

By Mr. Blair:

Q. Will you please state them?

A. In the first place, if the lines were separated, the Southern Pacific Company would have no line to Portland whatever. The line from Tehama to the Oregon State line is owned by the Central Pacific, and the Southern could not use it.

Q. The Southern Pacific lines in Oregon would be cut off, then, from the rest of the system?

A. From the rest of the system; yes. The Central Pacific, after separation, would be deprived of the use of the Benicia short line between Sacramento and San Francisco for the use of their passenger traffic.

Q. What effect would that have?

A. That is vital. It shortens the distance fifty miles, which is a great deal on a passenger trip; and at the time of the negotiations for the purchase of the Central Pacific that was one of the things most strenuously insisted on by the Union Pacific, at they should be allowed to continue the use of that line.

Q. We will get to that feature of the case afterwards, but speak thout reference to that now.

You mean vital to the operation of what line?

A. Vital to the Central Pacific.

Q. From——

A. From Sacramento to San Francisco.

Q. And as a part of the through line from Ogden?

A. And as a part of the through line from Ogden. All of the uthern Pacific branches springing out of the Central Pacific line tween Fresno and Sacramento would be cut off; they would be orced from the rest of the Southern Pacific system, and there uld be no means of getting the traffic picked up by those branches to the Southern Pacific main lines.

Q. How many such branches are there?

A. Here is a branch from Fresno to Pollasky and from Berenda Raymond, from Merced to Stockton, from Galt to Lodi, from Woodbridge to Valley Springs, and from Brighton to Placerville. Then all of the Southern Pacific's traffic from Oregon down into the interior of the San Joaquin Valley, and vice sa, would have to be carried by a very roundabout way instead of ough Sacramento, Stockton, and Lathrop down the valley. The uthern Pacific would have to carry it around by Benicia, Tracy, mona, and Goshen. In other words, it would be deprived of the of the Central Pacific all up the San Joaquin Valley.

Mr. HERRIN. And you would have to use the ferry?

The WITNESS. And we would have to use the ferry also. The rease in distance is about forty miles, and the equivalent handicap the ferry transfer about thirty more. In other words, it takes two rs between the time a freight train is brought into Benicia until s ready to leave Port Costa, so that it is equivalent to about enty miles in distance.

By Mr. BLAIR:

Q. Would that be a serious impairment of efficiency?

A. It would be a very serious impairment of efficiency, and a very ous handicap. Then, again, all freight, all traffic originating on San Joaquin Valley lines of the Southern Pacific destined to San Jose and the Salinas Valley would have to move around via Oakland and then down the South Pacific coast road into

San Jose, as against the direct route via Niles into San Jose. T
difference there is about sixty-three miles.

Q. Would that be a serious impairment of the efficiency of tho
lines?

A. It would be a serious impairment of the efficiency of those lin
It would be almost prohibitive.

The Central Pacific could not reach San Francisco at all exc
by the bay ferries, which is a serious handicap.

Q. Why?

A. They could cross by the Dumbarton line and get into Redwoo
which is a Southern Pacific point, but they could not get into S
Francisco unless they had the use of that line.

That is as to the actual physical impediments. There are a gr
many others. Take the question of operating expenses. At junctio
points where, at present, the business is done by one set of employe
if the lines were divorced, the employees would have to be doubl
at all of those points. The expense would, therefore, be increas
and the expense would finally have to be borne by the traffic or t
public. The expenses of keeping operating accounts, passeng
1509 accounts, accounts of every description, would be double
There would have to be two sets of accounting officers.

The expenses of advertising and solicitation would be doubled.

The Southern Pacific has no general shops. The Sacramento sho
have been used as the general shops for the entire system. T
Southern Pacific would have to build new shops, and again the
would be a large increase of expense there.

The service over these lines in the San Joaquin Valley and also i
the upper Sacramento Valley, where both companies have lines, i
conducted absolutely irrespective of corporate ownership, so that th
public is given better service by running trains over these lines re
gardless of the ownership than it could get if the lines were sep
rated.

There would be numerous junction points, connections to be m
with trains, that would be run by one road regardless of the othe
There would be increases of rates, because the commission alway
allow a greater rate when two roads make up the route between tw
points than where one does.

Q. And that is in consequence of the increased expenses?

1510 A. In consequence of the increased expenses. Then the
is a much more efficient use of equipment, both locomotiv
and passenger and freight car equipment, by using them regardl
of the ownership of the rails, than if the ownership were separate
It requires a fewer number of locomotives and cars to equip the
lines. We get more service out of them. If we had to buy mor
there again the expense, both for capital and operation, would

increased and the traffic would, somehow or other, have to bear it, and, ultimately, the public would have to pay the rates.

Then, there is another reason that would increase the expenses of operation very considerably. The Southern Pacific lines are operated on oil fuel almost exclusively now. The Central Pacific gets its oil fuel from the Southern Pacific lines, where the wells are, at a nominal rate of freight, or, I think now, the principle is, where the lines are operated together, that they do not pay anything. The Southern Pacific, on the other hand, gets its ties and lumber from the lines of the Central Pacific. All of those expenses would be increased by separation. The Central Pacific would have to pay tariff rates on its oil fuel, and the Southern would have to pay tariff rates on its lumber.

1511 Of course the greatest expense of all—which I was almost going to overlook—would be the expense of duplicating the terminals. The Central Pacific has no terminal in San Francisco. The Southern Pacific has no terminal in Oakland; and at these junction points where Southern and Central Pacific lines intersect, the normal condition is that one line owns nearly all of the terminals and the other owns little or nothing.

Q. And how are those terminals used?

A. They are used absolutely regardless of ownership. Take Fresno, for instance——

Q. Let us go over those terminals in detail. Have you a list of the terminals jointly used, which stand in the name, sometimes, of the Southern Pacific Railroad and sometimes in the name of the Central Pacific Railroad?

A. Yes; I have had a list made up here.

Q. Take the terminal at Tehama.

A. At Tehama the Central Pacific owns eighty-six per cent of the terminal and the Southern fourteen.

Q. What does that percentage mean?

A. It is the percentage of the expenditures in creating the terminal; that is, for real estate, buildings, switch tracks, and everything that constitutes a terminal.

1512 Q. Have you had those joint terminals valued so as to be able to state what they represent in money?

A. Yes. This statement that I am reading from was prepared by our valuation engineers, who were computing the reproduction costs of all of the lines of the company.

Q. When was that made?

A. June 30, 1912.

Q. Was it made with reference to this suit or was it prior to this suit?

A. No; it was made in reference to a general order that was given to find the reproduction cost of all of the properties.

Q. Have you sufficient information to be able to form an intelligent opinion as to the correctness of the valuation?

A. I understand, in a general way, that these valuations—some of them, at least—have figured in valuations made by the California commission, and our valuation engineer tells me that his figures have generally been accepted by the Commission's engineers. There is certainly no great difference between them.

Q. And you know the methods which have been adopted to arrive at these valuations?

1513 A. Yes. These methods were prescribed before the unmerging of the properties and emanated from my office.

Q. Are they correct?

A. As nearly as we could possibly make them.

Q. What is the amount of money represented in the terminals at Tehama credited to the Central Pacific?

A. Their property is valued at $129,000.

Q. You are using round figures, I suppose?

A. Yes. I did not think you wanted the odd dollars.

Q. That is right.

A. That is the nearest thousand. And for the Southern Pacific $21,000.

Q. Are those terminal facilities now used indiscriminately by the railroad, standing in the name of the Southern Pacific Railroad Company and the railroad standing in the name of the Central Pacific?

A. They are used absolutely as if they were one concern.

Q. Are they necessary for the use of both companies?

A. They are.

Q. Could the Southern Pacific Railroad be operated without the use of the part of the terminals credited to the Central Pacific Railroad?

1514 A. No; they would have to reproduce them.

Q. Are these shares an undivided interest, or are particular real estate and particular buildings standing in the name of the Southern Pacific Railroad, and particular real estate and particular buildings standing in the name of the Central Pacific?

A. Particular real estate and particular buildings are standing in the name of the Central Pacific, and particular buildings and particular real estate are standing in the name of the Southern.

Q. That would be true of all the terminals we are about to speak of?

A. Yes; it is true as to all that are on this list, and these are all of the common terminals.

Q. We are not offering the list in evidence, but we will bring it out as we go over the terminals, one by one, in your testimony.

You are not speaking of undivided interest in any of these cases, but of actual ownership of particular terminals, buildings, and real estate by these two companies?

A. Yes.

1515 Q. At Galt, what is the value of the real estate and buildings standing in the name of the Central Pacific and forming part of the terminal facilities at that point?

A. $113,000 Central Pacific, or ninety-six per cent; $4,600 Southern Pacific, or four per cent.

Q. By $4,600 Southern Pacific you mean that buildings and real estate stand in the name of the Southern Pacific Railroad Company valued at the amount you stated?

A. Yes.

Q. And that the proportion between the value of such buildings and real estate and the value of the buildings and real estate standing in the name of the Central Pacific is as four per cent to ninety-six per cent?

A. Yes.

Q. Are the facilities at Galt jointly used by the operation of the Southern Pacific lines and the Central Pacific lines?

A. Yes; just as at Tehama, as if they belonged to one concern.

Q. And such use is necessary for the operation of the two sets of lines?

A. It is.

1516 Q. And in case of a separation what would it be necessary for the Southern Pacific lines to do at Galt?

A. They would have to reproduce facilities that were sufficient for their business; that would be approximately what stands in the name of the Central Pacific?

Q. Now, at Merced.

A. At Merced the cost for the Central Pacific facilities was $889,000, or ninety-nine and one-half per cent. For the Southern Pacific, $4,660, or one-half of one per cent.

Q. And what you have stated applies to those?

A. What I have stated applies to those in the same way; it is not an undivided interest, but the title to the buildings and lines is in the names of the companies specified, and each one of the companies is using the facilities as if they belonged to them, and if the properties were separated, why the company that owned substantially no terminals would have to provide them.

Q. And that would be true of all the joint terminals to which I am calling your attention, and which are on the list that both of us have before us?

A. Yes.

Q. At Fresno.

1517 A. At Fresno, the Central Pacific terminals, $6,400,000, or 98.9 per cent of the total; the Southern Pacific terminals, $72,000, or 1.1 per cent.

Q. Go over this list and mention the joint terminals.

A. At Radum and Remillard: Central Pacific, $52,000, or 54.5 per cent; Southern Pacific, $43,000, or 45.5 per cent.

At Marysville: Central Pacific, $705,000, or 85 per cent; Southern Pacific, $124,000, or 15 per cent.

At Lodi: Central Pacific, $618,000, or 89 per cent; Southern Pacific, $78,000, or 11 per cent.

At Berenda: Central Pacific, $77,500, or 99 per cent; Southern Pacific, $933, or one per cent.

Goshen Junction: Central Pacific, $82,000, or 62 per cent; Southern Pacific, $51,000, or 38 per cent.

San Jose: Central Pacific, $25,000, or 1.5 per cent; Southern Pacific, $1,704,000, or 98.5 per cent.

Sacramento: Central Pacific, $26,870,000, or 88.5 per cent; Southern Pacific, $3,483,000, or 11.5 per cent.

Stockton: Central Pacific, $1,117,000, or 79 per cent; Southern Pacific, $298,000, or 21 per cent.

Madera: Central Pacific, $226,000, or 99 per cent; Southern Pacific, $807, or one-half of one per cent.

Tracy: Central Pacific, $432,000, or 46 per cent; Southern Pacific, $500,000, or 54 per cent.

1518 Elmhurst: Central Pacific, $60,000, or 98 per cent; Southern Pacific, $1,200, or 2 per cent.

Oakland: Central Pacific, $46,500,000, or 100 per cent.

The floating equipment; that is, the ferryboats on San Francisco Bay and at Benicia: Central Pacific, $1,412,000, or 69 per cent; Southern Pacific, $626,000, or 31 per cent.

Q. In case of a separation, would the Southern Pacific's floating equipment be sufficient?

A. No; it would have to provide additional equipment on San Francisco Bay. It owns the equipment at Benicia now.

Q. Under the system as it now exists, the floating equipment is sufficient for the needs of both sets of lines?

A. Both roads; both corporations.

Q. And that is true of the terminal facilities which you have included in your list?

A. Yes.

Q. At present they are amply sufficient?

A. Yes.

Q. Now, what is the sum total of the joint terminals owned by the Central Pacific?

1519 A. The sum total of all those I have read out is $85,715,000, owned by the Central Pacific Company, or 92.4 per cent; and $7,013,000, or 7.6 per cent, owned by the Southern Pacific.

This, you will observe, does not take in the San Francisco terminals, because this is simply at points where both roads reach. The Central Pacific having no line into San Francisco, the San Francisco terminals are not put in, but it would be just the reverse at Oakland; the Southern Pacific owns all in San Francisco and the Central Pacific nothing.

Q. The totals which you have mentioned include the floating equipment?

A. They do.

Q. Which are $1,400,000 Central Pacific and $626,000 Southern Pacific?

A. Yes; the totals do.

Q. Will you please explain your method of arriving at these figures?

A. I would say that in giving these amounts I have used the nearest thousand in all these valuations, except in giving the totals, where I have given the exact totals.

1520 Q. And the difference would be inappreciable, compared with the sum total?

A. Yes.

Q. Are those all the junctions, or the principal ones, where you have joint terminals standing in the name of one or the other of these sets of lines? For instance, my attention has been called to Redwood.

A. The Central Pacific has nothing at Redwood. Of course it might be put in there; I have not given the valuation of the Southern Pacific's land there because the Central Pacific's line there runs into the Southern Pacific's main line outside of Redwood at a junction switch, and it does not share the use of the terminals.

Q. Have you any idea as to the value of the terminals standing in the name of the Southern Pacific Railroad Company in San Francisco?

A. I do not remember it, but I can get it and give it to you if you wish. I can get it by tomorrow.

Q. If you can give it to us approximately, it would serve the purpose.

A. Well, I am afraid I can not. I have not looked at it
1521 lately. It is a very large sum, I know; paralyzingly large, and for that reason I do not want to quote it, I do not remember it nearly enough.

Q. And the Central Pacific Railway Company has no terminals in San Francisco or terminal property?

A. No. Am I to understand that I am to get that figure y
asked for, and furnish it [referring to previous question asking
value of terminals standing in the name of S. P. R. R. Co. in S
Francisco]?

Q. Yes; please furnish it and put it in.

A. Very well.

Q. Have you ever estimated how many millions would have to
expended, say, by the Southern Pacific Company in case of a sepa
tion to supply the necessary terminals which now belong to the C
tral Pacific Railway Company?

A. This statement shows it, and the total I read out shows th
the Central Pacific owns, of this total, about $85,714,000, and
proximately that much would have to be spent by the Southe
Pacific to reproduce those facilities.

Q. That is what I wanted to understand.

A. But we have got to remember this, that there is a question
a good many of those points whether the facilities are there to
produce.

1522 Q. What do you mean by that?

A. I mean that whereas the estimated cost of reproduci
the Oakland facilities is $46,500,000, there is no land in Oakland
duplicate those; you can not find it. You would have to spend a v
sum of money, certainly approximating those eighty-five millio
and then probably would not get as good as you have now.

In the same way the Central Pacific could not come into S
Francisco and find the room; it is not there, room to reproduce wh
the Southern Pacific owns. Therefore, the reproductive value to-d
of what the Southern Pacific owns is X-dollars. It does not foll
at all that the expenditure of that amount would reproduce the faci
ties for another road, because they could not find the location.

Q. And the reproduction of the facilities is, in your opinion, nec
sary for efficient management and operation of the lines of the Sout
ern Pacific system which would remain after the Central Pacific lin
were taken away?

A. Substantially those sums would have to be spent to get t
facilities for the Southern Pacific Company if it were robbed of t
Central.

1523 Q. Do the properties standing in the name of the Southe
Pacific Railroad Company—that is, lines and facilities—pa
ticipate in this through line, which we have called the Ogden rou

A. They do.

Q. At the risk of repetition, will you state particularly how th
contribute and participate in that through line, the Ogden route?

A. I mean that all of the points on the Southern Pacific lines i
California and on their branches that they built to collect freig

the Central Pacific has the use of those facilities just as much as if they owned them.

Q. Now, coming to the through line itself, without reference to the facilities for gathering in traffic and the branches and feeders, to what extent do the lines standing in the name of the Southern Pacific Railroad Company form part of the through line from San Francisco to Ogden?

A. Well, there is a line from San Francisco to Sacramento via Benicia; all of the passenger trains use that line and some of the freights.

Q. And the terminal facilities in San Francisco are entirely in the name of the Southern Pacific Railroad Company?

A. And are used by the Central for their traffic.

1524 Q. And if the through line via Ogden were deprived of the use of the Southern Pacific lines and properties, what effect would that have upon the efficiency of that through line and its value to the public?

A. It would reduce it by forcing them to use a roundabout way from Sacramento to get into Redwood or into San Fransisco via Oakland and the ferries; and the object of the Redwood line, as I have explained, was as a substitute for the ferries at times when there are heavy fogs on the bay, when we practically have to tie up the freight boats, and that means a congestion of traffic. The Central Pacific lines bringing traffic into Sacramento could not reach any of the branches north of San Francisco Bay—for instance, Rumsey or the Napa Valley branch or the Santa Rosa branch. There are Southern Pacific tracks intervening there that they would not have the right to use.

Q. Now, take the road which we have called the Sunset Line or the Sunset-Gulf route. Do the lines of railway and other properties of the Central Pacific Railway Company participate in that through line?

A. Yes; in shipping freight from the Oregon lines over the 1525 Sunset line. The Central Pacific line from the Oregon State line to Tehama, from Tehama down to Sacramento, from Sacramento through Stockton to Goshen, is all Central Pacific, and that would be used for Portland traffic going over the Sunset line. Traffic leaving San Francisco would have the choice of two roads—it could either go via Portland and down the west-side line to Goshen and thence over the Sunset line east; or it could go to Tracy, thence over the Central Pacific lines to Goshen. In other words, we would have a double track in the San Joaquin Valley by the use of the two lines there.

If we could not use the Central Pacific, we would be reduced to one track down the valley.

Q. What effect upon the through line from Portland via El Paso, or the through line from San Francisco via El Paso, would the separation of the Central Pacific lines from the Southern Pacific system have in the way of efficiency of the service or the value of the service that you could offer to the public?

A. It would decrease the efficiency of the Sunset line by being deprived of all the facilities, branches, and short cuts afforded by the use of the Central Pacific, and their efficiency would be materially reduced.

1526 Q. Now, Mr. Kruttschnitt, in respect to all these impairments of the service which you have referred to as likely to follow from a separation of the Central Pacific lines from the Southern Pacific system, could that be obviated by any practical cooperation between the Central Pacific Railway Company as an independent line and the Southern Pacific Company as an independent line?

A. Not practically. I suppose if the lines were separated there would be some tendency on the part of both to reproduce the facilities from which they had been excluded.

(At the request of Mr. Blair, the question was repeated as above recorded.)

Q. (Continuing.) I do not mean whether they could be obviated by each line reproducing what it lost through the separation, but whether they could go on and operate as they are being operated now.

A. They certainly could not. I do not mean by that that they would not interchange freight; they would be compelled to do that, but the cost of interchanging freight and handling it would be materially increased over what it is now, and no kind of cooperation with the lines severed would make up for the absolute identity of use of the two properties that exists at the present time.

1527 Q. I call your attention to a pamphlet containing an agreement dated February 8, 1913, for the sale to the Union Pacific of the stock of the Central Pacific Railway Company, which was put in evidence by the petitioner as Exhibit No. 20. It was in the form of a printed pamphlet but is now typewritten in the exhibits. Are you familiar with that tentative agreement?

A. I am.

Q. Who represented, mainly, the Southern Pacific Company in the negotiations preceding that agreement?

A. A subcommittee of the executive committee of the Southern Pacific board of directors, composed of myself as chairman, Mr. H. W. DeForest, and Mr. J. N. Wallace, and all of the negotiations were conducted by us with a corresponding subcommittee from the executive committee of the Union Pacific.

Q. Without making you appear vain, may I say that you were the principal representative of the Southern Pacific in those negotiations?

A. I had to be on account of my office.

Q. You took part in all the negotiations?

1528 A. Yes; every one of them; every conference that was held.

Q. Please state whether or not this tentative agreement was entered into voluntarily so far as the Southern Pacific was concerned.

A. It was not only not entered into voluntarily, but it was entered into under the strongest kind of compulsion.

Q. What was that compulsion?

A. A threat by the Attorney General of the United States that if we didn't make the agreement he would at once enter summary proceedings to compel us to do it.

Q. To compel you to enter into the agreement or to secure a forced sale of the stock and the cancellation of the lease?

A. Well, to put us into court and force us to sell the stock if we did not reach an agreement with the Union Pacific. When this threat was made our committee went to Washington, and I personally protested to the Attorney General against being put in that position, stating that we were not the culprits or the defendants in this unmerger suit, and it seemed to the Southern Pacific stockholders to be very unjust to dismember property because of some offense committed by the Union Pacific, and Mr. Wickersham in reply stated that

1529 he appreciated the justness of our objection and protest, but he added "I am going to apply equal compulsion to the Union Pacific to make them give you good terms."

The difficult problem for them to solve was how to sell $126,000,000 of Southern Pacific stock, and Mr. Wickersham meant that in fixing up terms for the sale of this stock he would apply pressure on them so that we would not be the only ones coerced.

Q. So that the Union Pacific, in the price which they were willing to pay, was not altogether a free agent either?

A. No.

Q. Please state the reasons why the Southern Pacific yielded to the compulsion which you have spoken of and made the tentative agreement which they did not want to make.

A. The Southern Pacific, up to the time of the unmerger, had been financed by the Union Pacific. In other words, it had no cares of its own as to raising money for improvements; the Union Pacific was doing all that, acting as its banker. The Southern Pacific owed the Union Pacific a considerable sum of money at the time of the unmerger, and almost the first question that confronted the directors was what to do in the face of this threat of the Attorney Gen-

1530 eral; and, as the threat was to institute summary proceedings

which would put us into court at once, we considered that the time was propitious for making a better settlement with the Union Pacific than we could probably make at any other time, because the Attorney General had it in his power at that time to exercise a very strong pressure on the Union Pacific that he would not have or might not have at some future time if a suit were brought for the dismemberment of the Southern Pacific properties.

Q. Now, besides the debt which you owed to the Union Pacific, had the Southern Pacific other financial obligations which it would have to meet in the near future?

A. Yes; quite a good many. The Southern Pacific was building a great many lines, and it had incurred obligations to the communities through which those lines were to run to build them. They were under construction, and they had raised large sums of money to meet construction expenses.

Q. What do you believe would be the effect of a suit to disrupt the Southern Pacific system by separating the Central Pacific lines upon the ability of the Southern Pacific to meet its financial requirements at that time?

1531 A. Well, we felt that it would be a cloud on the Southern Pacific's credit, and with this suit hanging above us, or pending, it would be practically impossible for us to raise money, and this sale represented an opportunity to get a large sum of money to finance the Southern Pacific for what we estimated would be probably two or two years and a half ahead.

Q. I believe you have already answered this, but I will ask you again, in this connection: What was your belief at that time as to the price you would obtain under the circumstances from the Union Pacific, as compared with the price you could expect from a forced sale if the Government was successful in the threatened suit?

A. Not only the sub-committee, but the entire executive committee, the entire board, and the Southern Pacific protective committee that had been formed outside of the board, with which the board cooperated and acted, were unanimously of the opinion that we could not, without the pressure exercised by the Attorney General, hope to get as favorable a price at the end of litigation for dismemberment.

Q. Does this tentative agreement contain any stipulations which were put in for the purpose of mitigating or avoiding some
1532 of the injurious consequences which would result from the separation of the Central Pacific from the Southern Pacific system?

A. Yes; all those points were very carefully guarded.

Q. Let me ask you to mention those points which were intended to mitigate loss and inconvenience to the Southern Pacific Company so far as that was possible.

A. I was just starting to answer that, that the Attorney General greed with us in insisting that the Central Pacific should allow the outhern Pacific Company to retain the line from Tehama to the regon State line; that maintained the integrity of its Portland ne.

Q. That is, the line of the Central Pacific Railroad Company om Tehama to the State line was to be retained by the Southern acific Company after the separation from the Central Pacific?

A. Yes; and all of the terminals were to be made joint. In other ords, the Southern Pacific Company would not be called upon to end this very large sum of money, some eighty-five millions of ollars, but would continue to enjoy the use of those common ter-inals.

Q. And would not depend upon the consent of whoever acquired the Central Pacific to give you the use thereof?

33 A. No. That was embodied in this agreement, that it was to be perpetual; and also we covered in that the use of the gen-al shops at Sacramento. We were to be given the use of those for e years, until the Southern Pacific Company could build shops of s own.

Q. Did the Union Pacific undertake to relieve the Southern Pa-fic Company of its obligations resulting from the guarantee of the nds of the Central Pacific, to which you referred in another part your testimony?

A. Yes; they agreed to assume all those obligations; the Southern acific Company was relieved altogether.

Q. What was the financial standing of the Union Pacific? Was such as to cause you to feel that you could be relieved by that ligation on their part of these immense obligations on your part?

A. We were thoroughly familiar with the standing of the Union acific, because several of us had been directors of the Union Pacific fore the unmerger, and we knew that its financial strength was obably greater than that of any other railroad in the country, d that they were amply able to carry out the arrangements they made in this tentative agreement.

34 Q. As to this issue of bonds, which is familiarly known, especially in Southern Pacific circles, as the European loan, do u know whether that was a loan secured by a mortgage on the rail-ad or real estate, or was it secured by collaterals?

A. It was secured by collaterals.

Q. Whose collaterals?

A. Southern Pacific collaterals, made up, in the main, of stock of e Houston & Texas Central, the Houston East & West Texas, the , H. & S. A.—you do not want those names in full, do you?

Q. Go ahead.

A. The Oregon & California, the Southern Pacific of Califor the Southern Pacific Terminal Company, and quite a number bonds of the G., H. & S. A. That was the collateral, aggregating I remember, about seventy-six millions, that was deposited to se those European bonds.

Q. Do you remember about the date of that loan?

A. Only by the year; it is known as the European loan of 1911.

Q. And when was it to mature?

A. I think it was a thirty-five year loan; that would mak 1946.

1535 Q. What was the rate of interest?

A. The rate of interest on the face of the bonds?

Q. That is all I am asking for now.

A. Four per cent.

Q. What were the undertakings of the Union Pacific with re ence to that particular loan?

Mr. McClennen. Do you refer to some undertakings outside?

Mr. Blair. No; just for convenience to put it in here. The ag ment, of course, speaks for itself; but as a basis for questions that not occur in the agreement, I will ask him to state it.

Mr. McClennen. Then, without my objecting, it may be und stood that all Mr. Kruttschnitt's testimony means, in reference this agreement, is his rephrasing of what appears in Exhibit 20.

Mr. Blair. That would be a little too broad. All that Mr. Kr schnitt says with reference to what appears as a part of this te tive agreement is made with reference to the copy in the record, the copy in the record is, of course, controlling. Does that sati you?

Mr. McClennen. Yes. It does not mean additional ag

1536 ments?

Mr. Blair. No.

By Mr. Blair:

Q. What were the undertakings generally of the Union Pacific w reference to this European loan?

A. The European loan was handled by a syndicate of Fre banks, and they undertook to get the consent of those bankers t substitution of collateral by the Union Pacific to take the place the Southern Pacific collateral, and also to get them to agree to abrogation of the Central Pacific lease by the Southern Pacific Co pany. They failed in getting their consent to the abrogation of lease, and then the other followed, that under certain conditi they would furnish collateral in lieu of what we would put up.

Q. It was a condition of that European loan that the bonds would fall due, and could be called, if you parted with the Central Pacific Railway Company, was it not?

A. If we either broke the lease or parted with the stock.

Q. And one of the agreements of the Union Pacific was that it would try to get the French banks to waive that?

A. Yes.

1537 Q. Do you know whether they succeeded?

A. No; they did not; they failed.

Q. I believe you have already stated that an alternative to entering into this agreement was to face an immediate suit by the Attorney General to subject the stock of the Central Pacific Railway Company to a forced sale?

A. Yes.

Q. Did you or your associates believe at the time that at a forced sale you could secure those conditions which were agreed to by the Union Pacific, to mitigate the consequences of a disruption?

A. No; I said that everybody connected with it, all of the directory of the Southern Pacific, and also the protective committee of stockholders that was acting with us and counseling with us, all thought that we never could get that price under a forced sale.

Q. I am not speaking of the price; I am speaking of the other conditions.

A. We thought we could not get a mitigation of those onerous conditions, because at a forced sale there would not be anybody to coerce the purchaser.

Q. Or to make the purchaser give you, for instance, the

1538 999 years' lease of the Tehama line?

A. Yes. In other words, all of this agreement was taken up, all the essential features were taken up, on several occasions with the Attorney General, because we were acting, really, pretty much under his orders, and this was discussed, paragraph by paragraph, with him by both committees.

Q. Were any conditions put in that tentative agreement at the instance of the Union Pacific?

A. Yes; a number. They started out without any mention of the Venicia cut-off, and after a few days they realized the importance of that line to them, and they insisted that they would not continue negotiations unless we would agree to give them such trackage rights over that line as were tantamount to a half ownership. They were also insistent upon the joint use of terminals, because the Central Pacific had none in San Francisco, and they would have to use the Southern Pacific Company's, and they were insistent upon trackage rights over the line from Redwood into San Francisco.

Q. Did they make those the conditions upon which they would enter into the agreements about which we have been speaking?

A. To use a pet phrase of their chairman, they were
1539 "fundamental". In other words, that meant that they would quit and would not come to see us any more unless we yielded those points.

Q. They did not want the Central Pacific lines except under those conditions?

A. No.

Q. Without going into details, please state whether this agreement was ever carried out, and why it was not ever carried out.

A. It was executed by the companies, but of course it was subject to the approval of the California State Commission, and they declined to approve it, so that it never went into effect.

Q. The European loan is still outstanding?

A. Yes.

Q. And the conditions forming part of the contract are still in force?

A. They are.

Q. Have you ever calculated what would be the financial loss to the Southern Pacific Company if that loan was called by reason of violation of the condition that the Southern Pacific Company
1540 should maintain its lease of the Central Pacific Railway Company and its ownership of the Central Pacific Railway stock?

A. I did, some time ago; I asked the comptroller for the cost of that money at maturity of the bonds and the cost at the present time in case the loan were called, because we wanted to do something that was forbidden by the agreement, and I wanted to see what the consequences would be.

Q. Just state generally.

A. The money will cost us, when the loan matures, 5.2 per cent. If the loan were called now, in 1915, it would cost us 8.2; that is, it would cost us three per cent per annum for four years that it has been alive, on, roughly, $50,000,000, or about $6,000,000 if the loan were called.

Then, if we had to borrow this money again in the open market we are told by banker friends that it would probably cost us at least one per cent more than the original cost; in other words, the cost at the present time, with discounts, commissions, and expenses would be about 6.2 per cent. Therefore, for thirty-five years less four—that is thirty-one years—we would have to pay annually one per cent more on $50,000,000. One per cent on that is $500,000, or $15,500,000 for the next thirty-one years.

1541 Q. That would be a loss suffered by the Southern Pacific Company?

A. Yes; through a call of that loan, plus the six million.

Q. And the call of the bonds could legally be made if you parted ith the Central Pacific Railroad Company, either the stock or the ase?

Mr. McClennen. That question is objected to as calling upon the itness to express a legal opinion as to whether an agreement to aintain a lease which operated as a suppression of competition is ch a legal agreement that it could be enforced by the purchaser of nds or others.

Mr. Blair. If counsel can find any way by which the bankers or the lders of those bonds could be prevented from calling that loan der the circumstances it would be very gratefully received by coun- l for defendants.

Mr. McClennen. I should be very glad to undertake the grounds pon which you could successfully resist such a call.

The Witness. Yes; if we part with the stock or the lease. There no earthly doubt of that; the language is too plain.

(Whereupon an adjournment was taken until to-morrow, Thurs- ay, March 11, 1915, at 11 o'clock a. m.)

542 NINETEENTH DAY.

Room 921, Flood Building,
San Francisco, Cal., Thursday, March 11, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock m. before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Ed- ard F. McClennen, Esq., and Edward E. Gann, Esq., special assist- nts to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. lair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. oulds, Esq., for the Southern Pacific Company.

543 Julius Kruttschnitt, the witness under examination when the adjournment was taken, resumed the stand and testified rther as follows:

Direct examination (continued) by Mr. Blair:

Q. What is the present number, about, of the stockholders of the outhern Pacific Company?

A. Nearly 33,000.

Q. Are there any controlling stockholders? That is to say, is here any group of stockholders who own a controlling amount of tock?

A. Not that I know of, and no actions that have been taken si
I have been in my present position indicate that such is the case.

Q. Does the Huntington estate own any stock?

A. I do not think they own any.

Q. Does the Crocker estate own any stock in the Southern Pac
Company?

A. I am under the impression that some of the Crocker child
may own a few shares, but the number is insignificant; I do
think H. E. Huntington owns more than qualifying shares.

1544 Q. Does the Searles or Hopkins interest own any stock?

A. I think not.

Q. Does the Stanford interest, or do the heirs, own any stock?

A. I think not.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Under the nomenclature adopted by the Southern Pacific C
pany, is the chairman of the board of directors the chief execut
officer of the company?

A. There is no such office; the title is chairman of the execut
committee of the board, and he is the chief executive officer.

Q. Your predecessor as chief executive officer was whom?

A. R. S. Lovett.

Q. He had occupied the position from the death of Mr. Harrim
approximately?

A. Yes.

Q. Do you bear in mind when Mr. Harriman died?

A. In September, 1909.

1545 Q. Up to the year 1880 the Central Pacific Railroad was
only means of access by rail to California for transcontine
freight, was it not?

A. Up to 1880?

Q. Yes.

A. I think that is right.

Q. The first inroad on that monopoly came when the Texa
Pacific reached a junction with the Southern Pacific line in Te
in 1881?

A. I do not remember the date when the Texas & Pacific joined
line building from the west in Texas. I know, of course, where t
met; it was at Sierra Blanca, about ninety-three miles east of
Paso, but the year I do not remember.

Q. Do you bear in mind that that junction was the first breal
the monopoly?

A. As I say, I do not remember what date that was.

Q. Do you remember whether the Texas & Pacific junction preceded the Atchison junction?

A. No; I remember approximately when the Atlantic & Pacific, or the Atchison, got into California, but I do not remember the date of the junction that you refer to, at Sierra Blanca.

1546 Q. Approximately, when was it that the Atchison or the Atlantic & Pacific got into California?

A. That was about the same time that the Sunset line was opened, early in 1883.

Q. It preceded the Sunset line by a little, did it not?

A. I do not remember the month; it is impressed in my mind from going over my notes and records as simply the early part of 1883. Of course it would have to be very early to precede the Sunset line, which was completed, as I remember, about the middle of January and was opened about the 1st of February.

Q. Of 1883?

A. Yes. So far as my knowledge would go, I should say it was probably a little after the completion of the Sunset line.

Q. For convenience, the term "Atchison" or the term "Santa Fe"—either is intended to be the Atchison, Topeka & Santa Fe?

A. Yes; I understand what you intend to mean by it.

Q. When the Atchison first was in position to bring freight part way by rail to California, what junction point did it carry to?

1547 A. When it was first in position?

Q. The first time that any junction had been made, so that it could deliver to California rails; what was the junction point?

A. Well, on their rails it would have been The Needles on the Colorado River; but their advent to Southern California was marked by a lease from the Southern Pacific Railroad of the line from Needles to Mojave. I should say perhaps a more accurate answer to that question would be that they first delivered freight for California at the Mojave junction, where they delivered it, of course, to the Southern Pacific lines.

Q. The movement from The Needles to Mojave Junction was then made over the Southern Pacific rails?

A. Southern Pacific ownership, but leased to the Santa Fe.

Q. Do you bear in mind the date of that lease, approximately?

A. No; but of course it was prior, necessarily, to the early part of 1883, because their line was opened at that time. That line was leased to them up to, I think, 1911, when it was sold to them.

1548 Q. Did the Southern Pacific Railroad Company or the Central Pacific Railroad Company actually operate the line from Mojave to The Needles at some time?

A. That I do not know.

Q. That is, you do not know whether the lease was coincident w
the opening of the line—the lease to the Atchison?

A. I do not know whether the Southern Pacific or the Cent
Pacific interests ever operated that line.

Q. Did the Atlantic & Pacific as a company ever operate its l
to The Needles?

A. To The Needles?

Q. Yes.

A. I think so, but I can not be certain about that. In general t
amongst railroad officials we used to allude to that as the Atlanti
Pacific.

Q. The first time that that line became of consequence was a
its operation was undertaken by the Atchison?

A. Yes; that is to say, after they reached Mojave and be
operations into California.

Q. The Texas & Pacific has always remained depend
1549 upon the Southern Pacific rails to get into California, ha
not?

A. We have gotten most of their traffic, but they are not depend
upon us. At El Paso they connect with the Atchison. They co
get in by the Atchison rails; and for a number of years they
nected there with the Rock Island. They could have gotten a
siderable distance farther west with the Rock Island and then joi
up with us; but they had at El Paso a choice of two roads, the Sa
Fe or our own.

Q. If they did employ the Rock Island, the freight would stil
dependent upon the Southern Pacific rails to get to California?

A. Yes; from their junction point with us or from junction po
of the Rock Island with the Santa Fe.

Q. What is the most westerly junction of the Rock Island with
Southern Pacific rails?

A. By "Rock Island" I would understand that you mean
Rock Island interests. The junction is really of the El Pas
Southwestern, which owns, as I understand it, or controls the R
Island at the present time. Their most westerly junction with
Tucson.

Q. Then, unless otherwise noted, we may understand that "R
Island" means the Chicago, Rock Island & Pacific?

1550 A. With the El Paso & Southwestern. That is, it make
what is known as the Rock Island system.

Q. Tucson is in Arizona?

A. Yes.

Q. Any delivery by the Texas & Pacific to the Atchison w
necessitate, up to the nineties, a use of Southern Pacific rails to
into California?

A. Yes; up to 1883, when they had their own line to Mojave.

Q. To go back, I asked you about the most westerly junction of the Rock Island with the Southern Pacific, which you said was Tucson. How long has that been a junction?

A. Eighteen months, perhaps.

Q. Prior to that, was the point Benson?

A. Yes; at Benson.

Q. That is also in Arizona?

A. Yes.

Q. As a practical matter, the Southern Pacific was not treating that as a gateway, was it?

A. Which—Tucson?

Q. No; Benson.

A. What do you mean, not treating it as a gateway? Not
1551 interchanging?

Q. It was not interchanging at Benson?

A. Yes; we have always interchanged. It has always been the policy of the Southern Pacific to interchange at connection with whatever point they connect.

Q. Were the joint through rates put in on that as a junction point?

A. I am afraid I can not go much into detail as to traffic matters, as I am not familiar with them. Of course I was entirely familiar with the interchange through establishing the interchange of cars at that point, and I know we were interchanging cars with them at Benson prior to the interchange at Tucson.

Q. Excepting the line from the Needles to Mojave, the Southern Pacific or the Central Pacific, or the two together, continued to have a monopoly of the rail communication to California up to the time that the Atchison extended its own line into San Francisco Bay?

A. Well, it did not extend its own line. A line was built from Stockton southerly, which the Atchison acquired about 1898, and a branch was built from Stockton to San Francisco, and at that
1552 time they got into San Francisco; I think about 1899, perhaps.

Q. Perhaps May 10, 1899, would not discord with your recollection?

A. No; I only remember in a general way that it was shortly after my moving to the Pacific coast that the Atchison acquired what was known as the Valley Road, the San Joaquin Valley Road, which was started by San Francisco local people and built down towards Bakersfield; and my recollection is that the San Francisco connection, involving the construction of their Franklin tunnel, which was quite a long tunnel and a difficult piece of work, was not built until after the Atchison had bought out this property. That would accord

fairly well with the date that you name, which would be about a year or a year and a half after that.

Q. Up to that time, apart from the road from The Needles to Mojave, the Central and the Southern together continued to have a monopoly of the rail entrance into California?

A. No; Mojave itself was in California——

Q. I said with that exception.

A. Yes. There were no other rail lines from the east into California at that time.

1553 Q. In 1883 was Mojave the end of the Atchison operations?

A. No. My recollection is that there were local lines in California known as the Southern California Railway that had lines into Los Angeles, and that they built northward to Mojave; and shortly after 1883 that the Atchison got into southern California. They acquired the Southern California Railway.

Q. What points did those Atchison lines reach?

A. In southern California?

Q. In southern California. I do not care, of course, for the villages, but——

A. It is almost easier to tell you what they did not reach. They reached every point of importance in southern California.

Q. They reached Los Angeles?

A. They reached Los Angeles, they reached Pasadena, they reached Riverside, they reached Redlands, they reached Colton and San Diego.

Q. Did they reach out to the port of San Pedro?

A. No; they did reach Rodondo, which was a little north of San Pedro.

Q. Was that a shipping point?

1554 A. Yes; that is a seaport.

Q. After the advent of the Atchison at San Francisco by the next addition to the rail communication with San Francisco was the Salt Lake-San Pedro route, in 1905, was it not?

A. Yes.

Q. And the next was the Western Pacific from Salt Lake, in the summer of 1910?

A. Yes; but before that, say, from about 1884 or thereabouts there was a means of getting freight into California regardless of either the Atchison or the Southern and Central Pacific, and that was via Union Pacific route to Puget Sound and their steamers from Puget Sound into San Franscisco.

Q. That possibility came into existence about 1884?

A. As I remember it, yes; 1884. Then the old Oregon Railway & Navigation Company was completed.

Q. The Oregon Short Line breaks off from the Union Pacific at Granger and at Ogden?

A. At Granger and at Ogden, and runs to Huntington; and the Oregon Railway & Navigation Company, or, as it is known now, the Oregon-Washington Railway & Navigation Company, ran from Huntington to Puget Sound and Portland. It would be
1555 more accurate to say that in 1884 that competitive line was to Portland and thence by steamer to San Francisco instead of Puget Sound points, which I said at first.

Q. In practice, did that line carry much California freight?

A. I do not know much about that myself, but I remember it was urged in the Union Pacific unmerger suit that that was active competition, and I think the court itself said there was quite a considerable amount of freight carried that way.

Q. You refer to the printed opinion of the court?

A. The Union Pacific unmerger opinion. It is a shorter line by 475 miles from New York to San Francisco than the Sunset Line is, and it is handicapped with a sea mileage of only about 700 miles against 1,800 miles of the Sunset.

Q. Have you read that Union Pacific unmerger opinion recently?

A. No.

Q. So that you are speaking from some past recollection of it?

A. From past recollection; but that opinion made a very strong impression on me at the time I read it.

1556 Q. Really that opinion of the Supreme Court was the first time you had ever known that that was practically a competitive line, was it not, for California freight?

A. Not at all. When I came to California in 1895 the Southern Pacific was having a very, very strenuous time with that line. My recollection is that they were engaged in a very vigorous rate war with the steamers to Portland at that time, because we were called on to put on extra passenger service, and to quicken up passenger trains and to quicken up freight trains, and do all sorts of things to meet the competition of the Portland steamship line.

Q. Did you know of the scant courtesy paid to that line by the defendants in the merger suit when it was urged by the Government as a competitive line?

A. Did I know of the scant courtesy?

Q. Yes.

A. Yes; there were a good many positions of the defendants in that suit as to which we have had to change our views very radically, and we have had to adopt the views of the Supreme Court, because they would not adopt ours.

Q. How long did this rate war between the Union Pacific
Portland and boats to San Francisco with the Central Pac
keep up?

1557 A. My recollection is that it was quite vigorous shor
after I came to California, and then there was a lull or co
promise or patch-up of some sort, and then it broke out again
lasted for several months, certainly. Then there was some sort
an arrangement made by which the fight was patched up. I supp
that the two periods of active warfare lasted, I should say, a y
or eighteen months.

Q. The mileage from Ogden to San Francisco Bay is appro
mately the same as from Ogden to Portland over the Oregon Sh
Line and the Navigation Company's line, is it not?

A. From Ogden to San Francisco Bay it is 783 miles.

Q. That is by the Lucin cut-off?

A. By the Central Pacific line. By the other line from Og
to Portland I think it is a trifle more, but they are not very m
different.

Q. That line would undoubtedly be—that is, the line from Og
through Portland to San Francisco—would undoubtedly be an
economical means of moving freight, would it not?

A. Why?

Q. As compared with the Central Pacific lines. Would
not?

1558 A. For the movement from Ogden—yes; from Ogde
San Francisco the distance would be greater, but from Atla
coast points to San Francisco the distance would be greater than vi
Central Pacific line, but much less than via the Sunset line. In o
words, it is a shorter traffic route, made up of sea and land tr
portation, than the Sunset line is. It is about 3,900 miles, as I
member it, against 4,400 for the Sunset.

Q. When freight traveling westward had got as far as Ogden
was destined to San Francisco nothing but the selfish rivalry of
railroad against another would ever send it up through Portlan
get it to San Francisco, would it?

A. The desire to get all of the revenue instead of a part of it m
very well induce them to do that. As a matter of fact it did for
a while induce them to do that.

Q. It nevertheless, as a matter of the ultimate economical car
of freight, would be a more expensive route?

A. Yes; but you have to define what you mean by "the ulti
economical handling of freight". For instance, a road may get
of freight and it may at the beginning assume perhaps
1559 per cent of the expense of carriage; if after assuming
per cent it has got very shortly to deliver it to a conne

and divide the remainder it may get very little net out of it, whereas if by assuming the fifty per cent initial expense it can secure to itself the entire other fifty per cent of the earnings it may be very economical for them to take it around the long way.

Q. You would subscribe to the theory that the expenditures of the railroads, cost of doing the business, must eventually reflect themselves in the rates which the public pay, would you not?

A. I think so, but we have never been able to get the public to think that. Then you have got to define what you mean by "the cost of doing business". That varies very much with how the freight is handled. There are very many shipments of freight where the Southern Pacific makes a great deal more net money at the same through rate by carrying this freight around by its long line, the Sunset line to New York, than it gets by taking it over its short line, the short line to New York, of which the Central Pacific is a small part.

Q. So far as the actual expense of carrying the goods is concerned, however, when you have a train loaded with freight at Ogden
1560 destined, we will say, to Sacramento, whatever may be the more profitable to the particular railroad, there is much more expense involved in carrying that up to Portland and transshipping it by boat to San Francisco Bay and transshipping it by rail there to Sacramento than by carrying it from Ogden to Sacramento, is there not?

A. That supposition of yours is of course entirely theoretical. I do not know of any such case that would ever occur. If, however, a trainload of freight should leave New York to go to San Francisco, either via Portland and the steamship line or via Ogden and the Central Pacific, it is in exactly the same fix as a trainload of freight leaving a California terminal and having the option to go to New York via the Central Pacific-Union Pacific short line or to go via the Sunset long line. As I tell you, a great deal of freight business may be profitable to us by taking the long way; and that is why we solicit it that way, rather than to take it the short way and accept only a small part of the through rate. In the one case we get it all; in the other case we get a part only.

Q. That is, more profitable because you get the whole rate, and not more profitable because the carriage is less expensive? That is true, is it not?

1561 A. Well, it would be more profitable because, out of the through rate, we would get more net by the long haul than by the short; and, after all, it is the net earnings we are seeking, and not simply the gross.

Q. You spoke of my dealing with a theoretical occurrence. Has not the competition from Ogden through Portland and by boat to San Francisco been very largely theoretical only?

A. As I say, we thought that way, but the court differed from us and we have accepted the court's view of that competition.

Q. You have acquired no more knowledge of the subject than you had at the time when you thought that that competition was purely theoretical, before the court corrected you on the subject? Am I right?

A. But does not the correction of an error necessarily imply the acquisition of more knowledge? I think we have.

Q. The only new piece of information that you have obtained on that subject is the opinion of the court?

A. Yes; and we have obeyed that.

Q. Well, then, to correct my inquiry slightly, and apart from the competition of the court's over the Oregon Short Line and

1562 through Portland, and such competition as was furnished by the Atchison, the Central Pacific, and the Southern Pacific had a monopoly of the California railroad transportation in 1899, did it not?

A. Apart from the Portland competition and apart from the Atchison, you ask whether the Southern Pacific lines had a monopoly in 1899?

Q. Yes.

A. There was still the ocean route via Cape Horn, around Cape Horn. There were steamers and sailing vessels——

Q. I meant to say railroad competition. I will ask to have the question read.

(The question was read by the reporter as follows:)

"Q. Well, then, to correct my inquiry slightly, and apart from the competition of the court's over the Oregon Short Line and through Portland and such competition as was furnished by the Atchison, the Central Pacific, and the Southern Pacific had a monopoly of the California railroad transportation in 1899, did it not?"

The WITNESS. I should say yes.

By Mr. MCCLENNEN:

Q. In 1899 did the Atchison have any branches or feeders north of Mojave?

1563 A. I think not, but they had the use of all of our branches from connecting points. Divisions were made with them by which they got into all of our branch points.

Q. Did you have running agreements for joint rates for transcontinental freight from all your branches over the Atchison through the eastern part of the United States?

A. If by that you mean whether the Atchison could get direct into all of our branch points, yes. They do that still. The arrangements have been so satisfactory to them that they have, up to

ent time even, built few or no branches, finding it better to ize our rails, under traffic arrangements, than to build their own. y have in the last two or three years built some unimportant nches into some tracts of land that were being developed for nge culture or orchard culture, say, east and southeast of Fresno; y have built a few branches, but that was into country really that did not reach.

Q. With those exceptions, they are still depending upon your rails everything off of their main line from Mojave to San Francisco y?

A. I would say that they still find it to their interest to use our branch rails north of Mojave, rather than to build their own lines.

Q. To put it in another way: They have not, with the few exceptions that you have mentioned, built branch lines north of Mojave?

A. They have not.

Q. To go back: Is the interchange of transcontinental freight with Atchison conducted under joint through rates from your various al points to junction with their lines in California and thence by Atchison rails to eastern destination?

A. I understand, and know, from handling the cars for the two s, that the Atchison uses our branch points and local points for reception and despatch of freight precisely as if they were their n. They keep their cars standing on our sidetracks for the use their patrons, directions of their traffic officials and agents are sent ct to our transportation officials, and they are respected just as uthern Pacific instructions are.

Q. Does the Southern Pacific carry that freight to the Atchison ls on its local rates or does it put in a through joint rate with the Atchison?

A. I can not answer as to the details of rates, but I can not conceive of the Atchison consenting for a moment to pay the uthern Pacific local rates to junction points. They would certainly ild their own lines rather than do that. I am simply assuming that reversing the conditions that if we were in their place we would t do it for a moment; we would not stand it. However, our traffic n can give you exactly what those rates are.

Q. Have you any idea of the volume of tonnage originating on uthern Pacific rails that is carried transcontinentally by the Atchi-n?

A. If by that you mean tons, no; I have not.

Q. Or dollars?

A. Or dollars; no; because my duties have always required me to l in trains and cars. Measured that way, I know that it is substan-l. Take from such points as San Jose and other Santa Clara

Valley points where they reach over our rails. I know that in the busy season we have hundreds of Atchison cars that they have sent in for their traffic brought on our tracks that we have to look out for and distribute for them.

Q. That is, westward bound?

1566 A. Eastward bound. Then, of course, whatever freight they take westward for those points we have to deliver for their account also.

Q. And you have no idea whatever as to what that would amount to in tons or dollars?

A. No.

Q. Such cooperation in the handling of traffic as occurs between the Southern Pacific and the Atchison is that which the natural business interests of the two corporations leads to?

A. Yes; naturally.

Q. If the Central Pacific and the Southern Pacific Railroad Company were operated separately in California, undoubtedly the same interests would lead to the same cooperation in the handling of traffic, would it not?

A. If the future owners of the Central Pacific should pursue as broad and liberal a policy as the present owners, I should say yes.

Q. That is, the natural business interests of the two concerns would dictate such arrangements if sensible counsel prevailed?

A. Well, different people might give a different construction

1567 to the term "business interests". I have tried to indicate to you what the Southern Pacific construction is, how we have treated our connections whenever they have built in to us, but it does not follow at all that that same construction of those words would be given by some one else. I think we have given the right construction to them, because we have maintained very pleasant relations with all our connections, and from the mere fact that as strong a company as the Atchison, financially and in other respects, has never built short branches into this local territory, leads me to believe that our policy has been broad and has been satisfactory not only to us but to them. It does not follow that any other company might do the same. I have known companies that did not do it at all that way, they try to build up tariff walls at junction points that could not be pierced by their competitors and connections.

Q. The new owners of the Central Pacific Railroad Company could be pretty sure of finding the present officials of the Southern Pacific Company open to arrangements of this kind on reasonable terms, could they not?

A. The new owners of the Central Pacific?

Q. Yes; assuming a separation.

A. If there were a separation, we should assume the same attitude towards the Central Pacific, which might then be a competitor, as we do towards other competitors; but, of course, that use of the Central Pacific by the Southern Pacific lines would be very different from its use of them at the present time.

Q. The terminals at junction points have had their extent determined largely by the volume of traffic handled at those points, have they not?

A. Yes; with liberal provisions for future expected increases.

Q. You would not expect an increased tonnage or traffic at the junction point to result immediately from the separation of the Central Pacific from the Southern Pacific?

A. No; I should not.

Q. The terminal facilities at these various junction points would, for some time to come, remain extensive enough to handle all the tonnage or traffic to be expected at those points?

A. No; because all those common points, both Southern and Central Pacific, would have to maintain yard crews, switch engines, and so forth, to handle their respective traffic; they would require, instead of the same tracks on which to load their cars—they would require other tracks; so that in the separation of the two lines, it does not follow that the adequacy of the terminal would be beyond question.

Q. Do the Atchison and the Southern Pacific maintain separate crews at the different junction points of those two roads?

A. At almost every one. I think at every one, except perhaps Mojave, where they have no yard division and they have contracted with us to do their work, but at all other junction points they do.

Q. Do you find that it results in an excessive duplication of agencies for handling traffic?

A. Why, if the Atchison and the Southern Pacific were under common management, I am convinced that in California alone hundreds of thousands of dollars in operating expenses would be saved by combining forces at all those junction points.

Q. Would you carry that theory to its logical conclusion, if applied to all the railroads of the country, and say if they were all combined under one control it would result in an enormous saving, in the elimination of duplications?

A. Yes; an incalculably large saving, assuming that the management were able and efficient.

Q. You have to assume that as a constant quantity in all these reasonings?

A. Yes; but what I had in mind, to come out with it plainly, was that this unified management should not be exposed to the withering effect of Government regulation, because the management of trans-

portation concerns by the Government has been singularly u
cessful.

Q. That is, the same considerations which would make it
policy to keep together the Southern Pacific and the Central P
would have made it good policy to keep together the Central P
and the Union Pacific and other connecting and contributing
of the country?

A. No; I do not agree with that at all. I think the reasons
tating the separation of the Union Pacific and Southern P
system were much stronger than the reasons that have prompte
Government to institute this suit. I have never been able to se
reason whatever for this, and I could see some reason for the

Q. What was the harm in the Union-Pacific Southern P
merger to the public interests?

A. That, I think, has been pointed out very fully i
1571 Supreme Court decision. I should not like to trust my
ory enough to quote from that the numerous reasons they
Their reasons filled up, as I remember it, fifty or sixty or perh
hundred pages, closely written.

Q. Have you no independent views as to the harm in that m
of the Union Pacific and the Southern Pacific? I am not askin
to attempt to quote the opinion of the court, but only to give
own reasons.

A. Well, suppose we put it on a simple mileage basis. The
tention in the other case was that the Union Pacific and the C
Pacific, together making up about one-half of the through li
New York, stifled the competition of the Sunset line extending
New York to San Francisco. There are a great many people
believe that there is little or nothing in that; that the mere o
ship of a fraction of a through rail line could not stifle compe
the other way. In this case the Government goes still farthe
says that the ownership of 783 miles would stifle it. Then if w
the line to Sacramento, say 89 miles, that line to Sacramento
stifle it. It is really a reductio ad absurdum.

Q. I am afraid I did not make quite clear my qu
1572 which was your reasons for saying that the Union P
Southern Pacific merger was injurious to the public inte

A. Well, suppose we go the other way. If, certainly, the o
ship of 1,783 out of 3,400 is more nearly an ownership of 3,400
than is 783, and if we extend it further and assume that the
Pacific combination owned 3,000 miles out of 3,300, that would
very nearly owning the whole line. If they owned the whole
then no one could deny that one line was in direct competitio
the other and controlled it.

Q. Have you now stated all the reasons that occur to you why the Union Pacific-Southern Pacific merger was injurious to the public interest?

A. I have not said that it was injurious to the public interest.

Q. In your opinion, was it?

A. No; I think not.

Q. Then in that respect, at least, you would not differentiate that from the present situation, the situation in the present case?

573 A. Well, I have said—I will try to make it plain to you—that if the ownership of what has been called an offshoot line or tangential line of 1,700 miles—well, we will first say of 3,300 miles—is injurious, the ownership of 3,000 miles is less injurious, the ownership of 1,700 miles is still less so, the ownership of 783 miles is still less so, and the ownership of 80 or 90 miles is still less.

Q. Am I right in understanding you to mean that the present injury bears the relation to the other of 783 to 1,783?

A. No; I do not admit that the present arrangement injures the public in the least, because in this case the Government is trying to pull to pieces a system which was consistently built up as a whole from the very beginning. In the other case an outside corporation had purchased a system of more mileage than its own and added it to it. Now, in that respect the two cases are profoundly different. If the Government's contention is right in this case, in my opinion it could go down the line of the Southern Pacific lines in California and lop off first this and then that, by saying "You can hook up this line with some other line and make it a competitive line; 574 therefore chop it off at the junction", and so on down to New Orleans, until we would have nothing but a bare right of way and two rails leading from New Orleans to San Francisco, which would mean ruining the property. It could not exist.

Q. Do you considerately state this last as your understanding of the result of the contentions made in this case?

A. What I have just said?

Q. Yes.

A. Yes. If that were done, we would be reduced to-day to the condition of the Western Pacific, which is a line without branches and without support, and which is in a bankrupt court.

Q. Which do you mean would be so reduced—the Southern Pacific or the Central Pacific?

A. Either one; if you pursue this theory to its logical conclusion—that you have no right to own a divergent stem.

Q. Does it accord with your conception of strict accuracy to describe the Central Pacific Railroad as a divergent stem?

A. It seems to me that the language is quite accurate. Here 575 is a system, and its main stem is running from New Orleans

through San Francisco to Portland, Oregon. Then, at a poi
about one-third or one-fourth from one end runs a branch eastwa
783 miles.

Q. That is, a stem to your mind connotes a branch and a trun
does it?

A. Yes; as a simile, take a tree. It is pretty exact that the ma
or trunk line would be the line from New Orleans to Portland, a
one of the branches extending at practically right angles to the trun
is the Central Pacific Railroad.

Q. When did the Central Pacific Railroad Company acquire i
characteristic of being a stem?

A. You might say when the main trunk had developed.

Q. An converted into terms of date, that would be when?

A. That simile to a tree is perhaps a little unfortunate, becau
the branch does not grow before the stem; but you might make
simile that would fit exactly by stating that the line from Ogden
San Francisco was the trunk and two branches spreading one to t
north and one to the south; that would be a more symmetrical tr
than the other, because, in the first place, it would be a bran
1576 on one side, and, in the second place, it would be symmetri
development, both northward and southward.

Q. It would be more consistent with railroad parlance to speak
the line from San Francisco to Ogden as a main trunk line, wo
it not, than to speak of it as a branch or stem?

A. I do not know; I rather think we are quibbling on the meani
of words. I do not know that there is any strict construction th
you can base on railroad parlance.

Q. Well, I wanted to see how seriously and how much for pict
esqueness and how much for accuracy you had adopted these ter
of stem and branch, and for that purpose I am asking you wheth
it would not be more accurate, using language in the more comm
sense, and speak of the line from San Francisco to Ogden as a m
trunk line?

A. I am quite willing, to get along pleasantly—as you say, "
picturesqueness"—to take back what I said and speak of the l
from San Francisco to Ogden as the trunk and the developm
northward to Portland and southward and southeastwardly to N
Orleans as the branches.

Q. This branch from San Francisco, through New Orleans
New York, do you regard that as competitive with the tru
1577 line made up of the Central Pacific, Union Pacific, and C
cago & North Western or some of the other lines to Chica
and the New York Central or some of the other lines to New Yo
City?

A. Yes; certainly.

Q. They are no less competitive because the main trunk line is broken into sections, in different ownerships, are they?

A. No less so, treating the Ogden lines as a unit, and no less so as long as the rates are absolutely controlled by an agency outside of the roads themselves. The rates for the two roads are the same. No component part of the Ogden line has any influence whatever on those rates and can not control the competition.

Q. In 1899 the two lines, the one all-rail from San Francisco to New York and the other rail to New Orleans and thence boat to New York, were competitive systems of transportation?

A. Yes; I have just said that; but the Central Pacific, as a part of the Southern Pacific system, has no control over that competition whatever.

1578 Q. How did the power of the Central Pacific Railroad, had it chosen to exercise it over that competition, compare in your mind with the power of the Union Pacific Railroad over that competition?

A. I have already said, and I will repeat, that the line through Ogden, being made up of the Central Pacific part of the Southern, the Union Pacific, the Chicago & North Western, and the New York Central, four lines, it was beyond the power of any one of those four lines to control that competition.

Q. Well, would you divide the competitive power into four parts and attribute it to each of the sections to get fairly accurately the situation?

A. No; I do not think of it that way at all.

Q. Do you think the Union Pacific had greater power over that competition than the Central Pacific had?

A. I do not know; I don't think so.

Q. Do you think it had as much power as the Central Pacific Railroad?

A. I can not split fractions with you, and I can not measure in fractions the power of each of those lines; but I do say that, and I think there that I have the Supreme Court behind me again,

1579 the Central Pacific had absolutely no power in stifling this competition or in fixing rates from California to the east.

Q. I have not asked you to put it as accurately as in fractions, but I have asked you, and it would seem a fairly simple question, whether, in your opinion as a railroad man, experienced in these two roads, the Union Pacific Railroad had more power over this competition or less power than the Central Pacific.

A. I do not think there is any difference. As long as the line is made up of a number of components, I do not see that any one of the

component lines has any more or less power than the other in controlling the rates or the competition.

Q. Since 1883 the Central Pacific Railroad has had a ready outlet eastward over the Denver & Rio Grande, or the Rio Grande Western, with eastern connections to New York, has it not?

A. My recollection is that the D. & R. G. entered transcontinental business about that time, in 1883 sometime.

Q. The Central Pacific Railroad Company could, at any time from 1883 onward, have conducted a transcontinental business without

1580 out the assistance of the Union Pacific, could it not?

A. As a matter of fact, it did do business with the D. & R. G. from the time it was opened.

Q. Save this inlet as far as San Francisco Bay, which the Union Pacific had by way of Portland and by boat to San Francisco, the Union Pacific, up to 1905, anyway, was absolutely dependent upon the Central Pacific Railroad to do a transcontinental freight business, was it not?

A. With those exceptions, yes. There were no ways by which it could get into California except those two ways you have mentioned.

Q. Taking these relative parts of the two railroads, the Central and the Union, into consideration, it would still leave it as your considerate, final opinion that the Central Pacific Railroad Company was in better position than the Union Pacific Railroad to exert an influence over the transcontinental competition?

A. Yes.

Q. And you are content that that last answer should be taken as the standard of your accuracy in the forming and expression of your opinion?

A. No; I would not say that you could base your opinion

1581 as of my good judgment on one answer out of the multitude that I have given you to your various questions. I have meant that all of my answers should be accurate, but I would not like to say that out of perhaps two or three hundred answers I have made you you should take one and measure the accuracy of all by the accuracy of one out of the two or three hundred.

(Whereupon a recess was taken until two o'clock p. m.)

1582 AFTER RECESS.

JULIUS KRUTTSCHNITT, the witness under examination when recess was taken, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Since 1883 the Central Pacific Railroad Company or the Southern Pacific Company after it took up the operation, has routed through freight in through cars through Ogden over the Denver &

io Grande, Missouri Pacific and eastern connections, all the way the Atlantic coast, has it not?

A. I think so.

Q. And has received through cars over those routes westbound?

A. Yes.

Q. And has operated under joint through rates on that traffic?

A. As I have told you, I am not familiar with the rate arrangements, but I have always assumed, as the officer in charge of the actual physical handling of the traffic and the interchange between the lines, that there must be satisfactory rate arrangements, else the freight would not move that way. I can give ositive evidence only as to the interchange of freight. It was unestionably the case that there was an interchange, and there is ow, between those lines and the Central Pacific at Ogden.

Q. And during all that period the Central Pacific Railroad, in ase of any hesitation as to rates on the part of the Union Pacific ailroad, has always been in a position to present as argument the ossibility of using the Missouri Pacific and its connections, if the nion Pacific would not join in a rate satisfactory to the Central acific?

A. You mean to ask whether the Central Pacific would use the nion and the Missouri Pacific for trading purposes, one against he other, for urging or pushing up divisions?

Q. Whether they were in a position to do so. I am not asking hether they ever did have occasion to exercise that power, but that hey did have that power.

A. Well, of course, with a junction point on several connections, hey could trade with them as to the best divisions that they could et.

Q. With those connections eastward from Ogden they were really in a better position to trade with the Union Pacific on fixing of rates than the Union Pacific was in a position to rade with the Central Pacific?

A. No; I do not see that. I do not see why that should be so. I o not believe it was so. I do not just catch your idea.

Q. I mean this: Suppose that the Central Pacific Railroad was onvinced that a given rate should be put through, or a given service hould be put through; if they met with opposition from the Union acific in what seemed to the Central Pacific the right course, the entral Pacific always had the other eastward line to fall back on and o use as an argument with the Union Pacific, whereas the Union Paific, if it thought a given rate should be put in, which the Central acific did not approve of, the Union Pacific was not in a position to nforce its argument by any showing that it could accomplish the

through service in any other way except over the Central Pacific tracks?

A. No. From 1883 it was not in a position to claim that if the Central Pacific did not make proper arrangements with it for the handling of traffic, it would send it over another rail line; but it had the strong arm of the Government and the law behind it to

1585 compel the Central Pacific to make satisfactory arrangements.

The officers of the Central Pacific were in danger of prison penalties if they did not cooperate freely with the Union Pacific and make of it a through line, just as much as if it had been in common ownership.

Q. Just what do you mean by that?

A. I mean that the Pacific railroad act, which was always present to the officers of the Central Pacific, forbid them from putting an obstruction in the way of the freest kind of movement of traffic between the Union and the Central Pacific; so that, whatever their wishes may have been, and whatever their power, if unrestrained by this law, may have been, they could not exercise it without the danger of getting in jail.

Q. That is, you refer to the requirements of the Pacific railroad acts, that the Union and the Central must be operated as one through line, so far as the public was concerned?

A. So far as the Government and the public was concerned, and especially if the Central Pacific offered objections or put obstructions in the way of the free movement of freight—I am not a lawyer

1586 but it seems to me that they would have violated that act.

Q. You did not mean to convey the idea that the Pacific railroad acts, prior to the passage of the Hepburn Act, compelled the Central Pacific to agree to a rate dictated by the Union Pacific, do you?

A. Well, that is a question. If the Central Pacific did anything to obstruct the free movement of traffic, I should say that, in my opinion the act would have been violated. I do not suppose that that would go, or that you would construe my answer, as going to the absurdity of saying that the Union Pacific would name any unreasonable rate it chose and the Central Pacific would be compelled to observe it. I suppose that recourse could have been had to the courts, or to some tribunal, to settle the matter. Possibly in that case, however, the law would have acted on the Union Pacific and punished them for being unreasonable, because it applied to both lines.

Q. So far as you know, those requirements of the Pacific railroad acts relative to the Central Pacific and the Union Pacific are peculiar so far as the railroads of this country are concerned?

1587 A. No; they are not peculiar. There is an identical provision inserted in the charter of the California & Oregon.

Q. With reference to what?

A. With reference to the connections with the Oregon & California. The through line to Portland via Central Pacific was to be operated in the same way. The language, as I remember, is identical.

Q. From San Francisco to Portland?

A. Yes.

Q. Do you know of any other such provisions?

A. No. There may be others, but I do not know of any.

Q. You spoke in your direct examination of the possible control over rates that the Southern Pacific at one time had. Do you remember the testimony to which I refer?

A. Yes.

Q. Of what period did you mean to speak?

A. Without specifying it by years, I had in mind the period prior to the time when the Interstate Commerce Commission, first, and the State commissions, afterwards, exercised the close supervision over rates that they are exercising to-day and have been exercising with increasing diligence for the past eight or ten years, say. It has not all come at once, but it has come gradually, until for the last few years the control has been absolute.

1588

Q. You did not have in mind to define any period by any particular change in legislation, but rather a gradual growth as the commissions have exercised the authorities that the legislatures have given them. Am I right?

A. I had in mind the gradual increase in the authority and increase in the closeness of the supervision by commissions. As I remember it, when the interstate commerce law was first passed, it was not very rigidly enforced, and there was considerable liberty still left to the railroads; and that liberty has been gradually circumscribed until they have none at the present time, and have not had for a number of years.

Q. Speaking of the latter period, and of the earlier period, would it be safe to say that the earlier period continued up to ten years ago?

A. From the very nature of the case, the control of the railroads over the ability to make rates was gradually being weakened all the time. I can not fix the exact period in years when that control had been taken away completely from them; but certainly they have not enjoyed that liberty or ability to make their own rates for quite a number of years, now.

1589

Q. The control of the Southern Pacific over rates lasted at least up to the period of the Union Pacific merger, did it not?

A. Up to 1901?

Q. 1901.

A. No; I should doubt that very much.

Q. You bear in mind that the Interstate Commerce Commis act was passed in 1887?

A. I think so.

Q. And you say that it was some years after that before the rail roads began to feel the restraint upon their rates that that commis sion exercised?

A. Yes; I said that, substantially.

Q. How many years do you have in mind?

A. Well, you want me to say definitely, and I have told you twi that it is indefinite in my mind. It is very much like one man choi ing another, by gradually taking away his breath. If you shou ask me when, actually, did the moment occur when this man lo control of his breath and did not have any more, I could not te you; I do not know. I could tell you that at a certain poi
1590 he had been choked, and that the choking began, I though at a certain time; but when he lost consciousness or when h was "done up" I could not tell you. It is exactly the same way wi the railroads. I know that they have no control over their rat now. I know when the Interstate Commerce Commission act w passed, in 1887, the commission did not have the authority at th time immediately to exercise the absolute control that they exerci now; but their increments of power were given from year to ye Their reports would continually be asking for more power and mo power and more power, and some years it would be granted and so years it would be deferred and not granted. But there did come time when they had absolute control. It is a matter of history; do not know just when that year was, but I know it is quite a lo while since the roads have had the power to control their own rat

Q. To make the analogy perfectly clear, you mean by the ma who was choked, the railroads; and by the man who was doing th choking, the Interstate Commerce Commission?

A. That is what I had in mind; yes.

Q. The power which the Southern Pacific Company has lost ov the control of the California rates has been that only which th
1591 Interstate Commerce Commission has taken away from it?

A. Why, no. Let me think a moment. I think Utah alon of all of the States crossed by the Southern Pacific, is the on State which has not a railroad commission. There are railroad com missions in all the other States crossed by the Southern Pacific, t which they are more or less subject, or to which they are subject ab solutely as to intrastate traffic; and they are, of course, subject to th Interstate Commerce Commission on all other traffic.

Q. My question was, obviously, too indefinite. I had reference interstate rates. On them the Interstate Commerce Commission

the only thing which has reduced the control of the Southern Pacific Company over California interstate rates?

A. Yes; except that the States are all the time attempting, indirectly, to control interstate rates. Every once in a while they get jerked up in court and straightened out; but before that is done they exercise more or less control.

Q. On page 1522 you were asked the question:

"Q. And the reproduction of the facilities is, in your opin-
1592 ion, necessary for efficient management and operation of the lines of the Southern Pacific system which would remain after the Central Pacific lines were taken away?

"A. Substantially those sums would have to be spent to get the facilities for the Southern Pacific Company if it were robbed of the Central."

Am I right in understanding you to refer there to the situation in which the Southern Pacific Company will be placed if the Supreme Court of the United States should decide that it was contrary to the Sherman Act for the Southern Pacific Company to retain control of the Central and should direct the Southern Pacific Company to dispose of its holdings in the Central?

A. My answer was given on the supposition that if such a decree were rendered by the Supreme Court it would be that we must sell the stock of the Central Pacific, which would convey the entire property, and that the detrimental results which would follow to the Southern Pacific Company were those which I enumerated; and among those results would be the deprivation of the use of those common terminals; and the first thing the Southern Pacific would have to do would be to endeavor to reproduce those terminals at junction points. I do not think they could reproduce them
1593 for less than the sums given, because I explained that the sums named by me were the sums reached by a corps of engineers appointed, I should say roughly, about five years ago to determine the reproduction cost of all of those properties. Those data were being required all the time in contentions with communities, with counties and States, and perhaps with the Federal Government, and we wanted to have the information. It was carefully worked out, and I believe it to be accurate.

Q. The robbery to which you refer was one to be accomplished by the decision of the Supreme Court of the United States, as I understand it.

A. Perhaps I should not have used that term. It slipped out rather unconsciously, but what I had in mind was that this whole litigation seemed to me to be so absolutely unnecessary and to have sprung so evidently from the mind of the Attorney General long

after the unmerger decision was rendered, as a means to carry ou
most easily to himself the decree of the court in the unmerger ca
and the separation of the properties seemed to me to be so monstrou
considering the way they have grown, that I used the word "robbed"
Perhaps I should not, out of respect to the gentlemen here a
1594 out of respect to the court, and with this explanation perha
I ought to withdraw the term.

Q. It expresses, at the time you used it, your attitude of mind t
ward the proceedings taken by the Government's officers?

A. Well, if you want me to be frank——

Q. I certainly do.

A. It did, and I can seldom think about these proceedings witho
a good deal of heat and exasperation. The Attorney General nev
dreamed of bringing this suit at the time of the decision of the Su
preme Court, and it never appeared, as a suggestion even, as a mea
of carrying out the decree until forty days after the decree was re
dered.

Q. Do you happen to remember how much time elapsed after t
decree in the Union Pacific merger case, the final decree, had be
rendered and carried out before these present proceedings were b
gun?

A. Yes; I remember it reasonably well. The merger decision w
rendered on the 2nd or 3rd of December, 1912. As soon as it w
rendered the Union Pacific people took up with the Attorney Ge
eral a means of carrying out the decree and of selling their South
Pacific stock. They proposed one method of disposing of t
1595 which the Attorney General refused to approve or, rath
the Attorney General first made a proposition which the Un
Pacific declined to consider. They made a counter-proposition wh
the Attorney General declined to consider, and they took the matt
to the court to get their ruling on it, and they declined to approve i

Now, that decision of the court was rendered in the early part
January of 1913, perhaps the 8th or 9th of January; and up to th
time the Attorney General, who had been visited by the South
Pacific stockholders' protective committee, had never suggested th
selling of the Central Pacific stock.

On the 10th or 11th of January, or two days after this decis
of the Supreme Court, and following a visit by the Union Paci
committee to Washington, it was first announced that a new plan w
to be sprung, and that new plan was to make the Southern Pac
sell the Central Pacific stock for an equal number of shares of t
Southern Pacific held by the Union Pacific.

In other words, the problem was to dispose of $126,000,000 wo
of stock, and here was a short cut, by disposing of $85,000,000
stock in one block. That was done regardless of the feelings

the Southern Pacific stockholders or their willingness to do it,
1596 and immediately after that the Southern Pacific subcommittee—because the Southern Pacific was actually divorced on the 13th day of January, and my first official act was to go down to Washington, following the visit of the stockholders' protective committee, and protest to the Attorney General against threatening or against exacting that the Southern Pacific should part with the Central Pacific stock; and it was then that I protested against this injustice of making us pay the penalty in a litigation that had been lost by the Union Pacific, and it was then that I received his assurance that he knew he was putting us in a position of duress, but in compensation for that, he would exercise power on the Union Pacific to make them pay a good price, and to make them relieve this trade of most of its disagreeable consequences, such as loss of the line to Portland and the loss of terminals, and so forth.

That must have been subsequent to the 13th of January, or as I say, forty days after the decision of the Supreme Court; yet the Supreme Court had said nothing about requiring us to sell the stock, and nobody else had said anything about it. The Attorney General apparently conceived this as a good way of helping the Union
1597 Pacific to sell this big block of stock.

Q. Apparently I did not make my question clear, and therefore I will divide it.

Do you remember when it was that the Union Pacific finally disposed of its Southern Pacific holdings, pursuant to the final decree in the merger case?

A. I would have to think over that. I can not be very accurate about it, but I can be reasonably so. My recollection is that the final plan for disposing of the Southern Pacific stock by the Union Pacific was approved in the early summer of 1913, perhaps in the month of May or thereabouts.

Q. And do you bear in mind that it was some nine months after that was a closed matter before this present suit was begun?

A. It was quite a long while. I do not remember just when, but it was quite a long while.

Q. Has this heat and indignation of which you have spoken been present in your mind at times when you were considering the matter of the evidence to be presented in this case?

A. No; I do not think I have shown any heat beyond, as I say, my concession as to the use of the term "robbed", at
1598 any time in this investigation, or at any time, as you say, thinking over the evidence I was going to give in this case.

Q. As you reflected upon the action of the Attorney General, you realized, of course, did you not, that if the holding of the Central Pacific Railroad Company by the Southern Pacific Company did in

fact offend against the provisions of the Sherman Anti-trust Act that it might be a part of his sworn duty to present the matter to the proper court?

A. I do not think the Attorney General knew the conditions when he determined on this. If he had, I do not think he ever would have done it.

Q. So far for what you have said. Now, won't you just kindly answer the question which I will ask to have read, and in answering it bear in mind that perhaps inadvertently you have used rather serious language concerning the judicial and executive departments of the Government.

(The question was read by the reporter as above recorded.)

The WITNESS. I would answer, certainly, if he considered it part of his sworn duty, it was his duty to present it.

By Mr. MCCLENNEN:

Q. The Attorney General who exerted this compulsion was
1599 Mr. Wickersham?

A. Yes.

Q. And you hardly lay that up against his successor now, Mr. Justice McReynolds, do you?

A. Well, I would say—as I have said; I was going to be very frank with you—the only reason Mr. McReynolds brought the suit was that he found it practically prepared when he came into office, and he just let the matter drift along, probably saying to himself, "Why, this is none of my funeral; the previous administration went into this and I will let it go along; if these people are not guilty the courts will find so, and if these people are guilty the courts will find so equally well." I have no feeling whatever against Mr. McReynolds about it. My only feeling was due to the fact that it was evident to me, and it was evident to any man who followed what was being done by the Union Pacific committee, the Southern Pacific committee, and the Attorney General, after the rendition of the Union Pacific decree, that this idea never entered the head of Attorney General Wickersham until it was necessary to use it as a means of
helping the Union Pacific to dispose of a very large block of
1600 stock. That is my frank opinion, formed after being in these negotiations for months.

Q. Did Attorney General Wickersham inform you that the Supreme Court, or some members of it, in the course of the argument had inquired as to whether or not the holding of the Central Pacific by the Southern Pacific was not in violation of the Sherman Act?

A. You ask if he informed me of that?

Q. Yes.

A. No; he did not; because I knew, and our attorneys were present
t the time the Supreme Court judge, on the argument of the case,
ade that remark; but he did not make it in just the way that you
o. It may have been at some other time, but this whole thing seemed
o have started in the argument of the case before the Supreme Court
hen one justice said: "If the Union Pacific bought this Southern
acific simply to get the Central, why not let them have the Central
art alone and prohibit them from having the rest?" And one of
is associates very pertinently remarked: "That is all right, but what
ould the Southern Pacific stockholders say to that proposition?"

Now, it occurred that way, and it occurred in the presence of
601 our counsel and was so reported to me after it occurred.

Q. Up to that time you had heard no suggestion from Mr.
Vickersham of the disposal of the Central Pacific Railroad by the
outhern Pacific Company?

A. None whatever. The decree was rendered early in December,
nd the first time that either I or the Southern Pacific protective
ommittee learned of this was about the 10th or 11th of January. I
m certain I am not out more than one or two days, because of
ourse when we heard of that we hurried to Washington to make our
bjections and to protest, and I could not do that until the 13th of
anuary, because I had not been appointed to my present position at
at time.

Q. Did Mr. Wickersham inform you that, in his opinion, the hold-
ng of the Central Pacific by the Southern Pacific was contrary to
he Sherman Act?

A. As nearly as I remember his exact language, it was that he had
oncluded that we could not hold it, and that if we did not trade it
f to the Union Pacific, he would immediately institute suit and
ake us do it.

Q. He said he had concluded that the Southern Pacific Company
ould not hold the Central Pacific Railroad?

A. That was the thought conveyed—the idea conveyed.

602 Q. And the context indicated that what he meant was that he had concluded that it was contrary to the Sherman Act?

A. Naturally; because he said he would immediately enter suit to
ake us do it, if we did not do it in negotiation with the Union Pa-
ific.

Q. As the matter appeared to you, as the head of the committee of
he Southern Pacific Company to negotiate on this subject, it seemed
o you that if the Southern Pacific Company was to dispose of the
entral Pacific Railroad, the most promising opportunity, in the
nterest of the Southern Pacific Company, was to dispose of it to the
Jnion Pacific Railroad Company?

A. Because Mr. Wickersham said that he would make it the mo
opportune occasion to get rid of it. He admitted the justness of o
protest, and said that he would offset it, as far as he could, by coerci
the Union Pacific to grant the most favorable terms.

Q. That is, he indicated to you that he would endeavor not to ha
the performance of his duty to cause this unmerger if it was co
trary to the Sherman Act, to operate in such a way as to put you
an unfair trading position with the Union Pacific Railroad Co
pany?

1603 A. Well, at that time it was not his duty; it was simp
his opinion. It had not been tried out by the courts; it ha
never been passed on by the courts, and what he said was substa
tially this: "Under threat to put you into court immediately a
compel you to sell the stock of this company, you must acquiesc
my position that you part with it."

I used the term "duress" when I spoke to him. I said, "We a
in a position of duress. We are not free agents here," and he s
at once, "I appreciate that, and as far as possible I will help in pu
ting the Union Pacific under duress," which he had the power to d
because he had the right to say how they should dispose of th
$126,000,000 of Southern Pacific stock.

Q. In answering you have chosen to state what his duty was
you conceived it rather than as he may have conceived it. What
say to you is that what you have characterized as duress is his i
forming you in advance that he had reached the conclusion that h
ought to bring proceedings to compel the Southern Pacific Compa
to dispose of the Central Pacific Railroad Company and give y
the opportunity before he instituted those proceedings to mak
disposal of it without litigation. That is it, is it not?

1604 A. Yes. I used the term "duress" in speaking to him, a
he accepted the correctness of the language by using it o
himself at once, saying "I appreciate that I put you in a positi
of duress, but I shall put the other people in the same position
order to make them give you favorable terms."

Q. In selecting that language, which you did in your direct e
amination, to convey your idea, do you think that you were fa
fair to a Government official who is not a party to this suit, is
longer in office, and who perhaps was actuated by proper moti
and thought that he was doing his duty?

A. So was I.

Q. You think you were entirely fair to him in the assertions y
made yesterday, do you?

A. I have already said to you that perhaps I should not have u
the word "robbery". I think it never does any particular good
display any temper or heat. It slipped out rather inadverte

with no disrespect to Mr. Wickersham, whom I know quite well and esteem highly; but when you spoke of Mr. Wickersham's idea of his sworn duty I had my ideas of my—not sworn duty, but my
1605 duty, which is just as binding on me as if it had been sworn, and it is my opinion against Mr. Wickersham's opinion, and there is no disrespect whatever, as far as I can see, after what I have said about Mr. Wickersham in what I have testified to here.

Q. To avoid any misunderstanding, it was not your intention, in any language that you used, to indicate that Mr. Wickersham's conduct was in any degree improper?

A. Well, now, you are getting down to cut things pretty fine. If you should ask me whether it is proper for a high Government official to use his power and to simply use his opinion that has not been passed on by a court to coerce a party who is not engaged in a litigation to do something that he is unwilling to do—I do not want to use any offensive term, but I do not think he did just what he should have done; and I do not know of anything in his oath of office that would require him to do that. I appreciate thoroughly that his oath of office might require him to enter a suit, but I do not admit that his oath of office justified him in taking a position to compel a corporation to cut itself in two, to separate a part of its property, and perhaps the most important part, that was the parent stem of the whole company, simply to comply with an idea or an opinion
1606 of his.

Q. Did you deem it more proper that he should proceed to file the suit without giving you warning and an opportunity to dispose of the property without litigation?

A. That was his option. He used the means that he thought would most surely bring about the end that he was seeking; and it has been shown that his selection of his weapons was done with judgment. He succeeded.

Q. Again I will ask you whether, in your judgment, it would have been more seemly if he should have filed the suit without first informing you and giving the Southern Pacific Company an opportunity to part with the stock without litigation?

Mr. HERRIN: We object to the continuation of this discussion of the witness's opinion as to the duties of the Attorney General. It does not seem to be elucidating any question in the case, and it is immaterial.

Mr. MCCLENNEN. It might have been unnecessary to go into it if the witness had not voluntarily projected into the case his criticism of the Government officials, which seems to me, although not representing Mr. Wickersham, to require, as a mere matter of com-
1607 mon decency, the spreading upon the record of as accurate a statement as may be of Mr. Wickersham's position.

Mr. HERRIN. The ground seems to be covered entirely.

The WITNESS. I have tried to explain to you in half a dozen dif
ferent ways that I meant no particular disrespect to Mr. Wickersham
but had, perhaps, used a little too forcible language in expressing
my opinion as to what had been done.

By Mr. MCCLENNEN:

Q. But when I asked you if you intended it as a criticism of the
propriety of Mr. Wickersham's conduct I understood you not to be
willing to go so far as to say that you did not.

A. Did not what?

Q. Did not intend it as a criticism of the propriety of Mr. Wicker
sham's conduct.

A. Well, there comes in a quibble on language, as to just what
you mean by "propriety" and just what I have in my mind as the
meaning of "propriety".

I said to Mr. Wickersham's face, and I have repeated it here on the
stand half a dozen times, that I thought his position in forcing
1608 us into a position of duress was very harsh and unjust, and I
do not think he could be offended by reading that in the
record, when I had said it to his face. I said it without the slightest
disrespect. He accepted it just in the way in which I said it. He
showed no offense at it; and I have said very little more here, except
as I say, the inadvertent use of a word that might be considered
offensive, which I have told you two or three times I would retract.

Q. Who were the committee of the Union Pacific Railroad that
negotiated with you in the matter of this contract of February
1913?

A. Mr. Lovett, chairman, and Mr. Vanderlip, and Mortimer Schiff.

Q. Did the two committees meet the Attorney General jointly at
any time?

A. Twice, I think, they met him jointly.

Q. Did the Attorney General, in his discussion of the terms of
the contract of February, 1913, go with you into any question other
than whether the contract was of such a nature as to accomplish the
unmerging of the combination between the Central and the Southern?

A. I do not remember anything much that he said, except
1609 this: that prior to the making of this agreement of February
1913, there had been numberless meetings—I might almost say
that these committees were constantly together; we would meet in the
morning and adjourn for luncheon, and meet after luncheon and
work until five or six o'clock, and we would meet at a club some
where at perhaps eight or nine o'clock at night and work anywhere
up to eleven o'clock or one o'clock; and in between times the Union
Pacific people would visit the Attorney General. We visited him

alone several times. The Southern Pacific protective committee, which was entirely separate from ours and had nothing to do with the directory but represented a certain proportion of stock, had been to Washington.

As a result, this agreement was drawn up, and my recollection is that we took it down there substantially as it is printed in this book; it was submitted to him and he looked over such parts as he wanted to see, and expressed himself as satisfied.

Q. And this last was all the part which you took in the negotiation of that agreement or its terms?

A. No. Prior to that I told you of a visit where I had pro-
1610 tested against the coercion of the Southern Pacific and putting us in a position of duress. That was at one of the meetings where we went alone.

Q. This prior protest of yours had reference to the general question of whether you should be informed that if you did not dispose voluntarily of that stock, a suit would be brought for the unmerger? Is that it?

A. I have said a number of times, or tried to say, what happened at his, what I might call "the protest meeting". I went down there immediately after my appointment as chairman, with our subcommittee. The stockholders' protective committee had been down to protest against this action as to Central Pacific stock; and it was at the meeting where I went with our Southern Pacific subcommittee that this discussion about duress took place. Then, after that, my recollection is that when he expressed his determination to bring his suit unless we parted with the Central Pacific stock, we went down there once with the Union Pacific committee, and he went over the map, pointing out this line to Portland, saying that he thought that line should be conceded to the Southern Pacific, or that they should be allowed to retain it and——

Q. You mean from Tehama?

1611 A. From Tehama to the State line. And I think the question of joint terminals was taken up, to which he offered no objection. In other words, he at that meeting indicated the extent to which he would mitigate the consequences to the Southern Pacific Company, or the extent to which he would exercise duress on the Union Pacific. After that we negotiated this contract, and the next joint conference we had with him was to submit this and to receive his approval of it.

Q. He took no part in the question of the amount that the Union Pacific Company should pay for the stock?

A. I think not; because that had been tentatively agreed to as soon as we learned of his determination to have the stock sold, or to compel it in a suit.

Q. He took no particular part in the question of whether or not the Union Pacific should be given the use of the Benicia cut-off?

A. No; that was an afterthought. I do not think the Union Pacific themselves, in the beginning, appreciated the importance of it; but when they did, they were very strenuous in insisting that they should get it.

Q. He took no part in the question of the joint use of terminals, the consideration of those provisions, did he?

1612 A. I just told you that at this conference we did discuss on a map showing the different properties, the position we would be in if we did not get the Tehama State line road, and he said then that the Southern Pacific should be allowed to hold that. I think at the same meeting the question of joint terminals was considered, and to that he offered no objection. I think we also stated that there might be other parts of the composite system which either one side or the other might want to retain rights on, or obtain rights on, from the others. Possibly the Dumbarton line was considered. I think it was, because we wanted rights on that, and the Union Pacific people demurred, at first, to letting us have them.

Q. The suggestion as to the joint use of terminals, the use by the Southern Pacific of the Central Pacific's line from Tehama to the Oregon State line, the use by the Union Pacific of the Benicia cut-off and the use to which you have referred of the Dumbarton cut-off and so forth, were matters which were suggested to him by one of the other of the committees, to ascertain whether he would consent to a contract for a disposal which included those provisions?

A. I do not know what the other committee suggested to him. I have tried to tell you as closely as I could what
1613 happened at the meetings that we had with him with our sub-committee. As to what happened at the meetings with the Union Pacific committee—the Union Pacific committee saw him on a number of occasions, and I do not know what suggestions they made.

Q. As to these various provisions to which I have referred, the suggestions did not come from him, but, on the contrary, they were submitted to him to see whether he would approve of them or consent to them; is not that true?

A. I do not know.

Q. So far as your committee is concerned, that was the course which those matters took, was it not?

A. I think I have testified to that two or three times, but I will testify to it again, as to our committee. I can not, however, tell what the Union Pacific committee suggested to him, or what they said at their sole meetings with him.

Q. I have not asked you that; I have asked you whether, with respect to those various terms, the Attorney General suggested those terms to your committee, or whether, so far as the negotiations of your committee with the Attorney General were concerned, they were submitted to him by the committee to see whether he would sanction a dissolution which included those terms. Is it not the latter?

A. My recollection of it is that when our subcommittee went there to protest that we pointed out to him on the map, very much as I have pointed out here on the map, what would result from a sale of the Central Pacific stock; and we pointed out the loss of the terminals, the loss of the Tehama State line road, the Dumbarton Point road, and everything else that we could think of. It was after that that we got his answer that he appreciated the position in which he had put us, and that he would also exercise pressure on the other side to make them give fair terms. No doubt, as a consequence of that visit to him by us, when we went there jointly he said to them what he did say, that he would exact the retention of the Tehama State line road by the Southern Pacific, and that the Southern Pacific be a party to the use of the Dumbarton cut-off and the joint use of the terminals.

Q. The failure of the contract to receive the approval of the California State Railway Commission was due to the fact that that commission would not approve of the Southern Pacific Company giving to the Union Pacific Company rights over the Benicia cut-off while excluding other railroads from the use of that cut-off?

Mr. BLAIR. We object to that question on the ground that the decision of the Railroad Commission of California is in writing and is the best evidence of the grounds upon which they refused their approval of the contract in question.

Mr. HERRIN. It is entirely incompetent to ask the witness what ground they acted on when the grounds upon which they acted are made of record.

The WITNESS. Shall I answer?

Mr. BLAIR. Yes; subject to our objection.

(By request of the witness the reporter repeated the question as follows:)

"Q. The failure of the contract to receive the approval of the California State Railway Commission was due to the fact that that commission would not approve of the Southern Pacific Company giving to the Union Pacific Company rights over the Benicia cut-off while excluding other railroads from the use of that cut-off?"

The WITNESS. Those were two of the reasons; but the reasons w
very voluminous, as I remember. It is a pamphlet of probably fift
or twenty pages.

1616 By Mr. MCCLENNEN:

Q. Did you know of the efforts made on behalf of
Southern Pacific Company to secure the approval of that commissi

A. I suppose that they did. I do not know exactly what eff
they used, but this agreement was sent out here to counsel, an
think counsel appeared before the commission, and they can prob
say about that better than I can as to just what was done; bu
know that the matter was presented to the commission and th
agreement asked, and it was refused.

Q. Do you know of statements made to the commission on beh
of the Southern Pacific Company to the effect that this dissolu
and this arrangement would be beneficial to the people of Califor

Mr. BLAIR. Counsel objects to that on the ground, first, that i
incompetent and irrelevant to any issue in this case; second, on
ground that the entire testimony before the commission was take
writing, and that the testimony is the best evidence; and on the
ther ground that the witness was not present at the time and ha
personal knowledge.

1617 (By request of the witness the reporter repeated the pen
question, as follows:)

"Q. Do you know of statements made to the commission on be
of the Southern Pacific Company to the effect that this dissolu
and this arrangement would be beneficial to the people of Califor

The WITNESS. I had so many things to keep me busy at that
that I did not read the opinion or the testimony before the com
sion, and I simply got my information at the time from counsel,
would tell me what had been done.

By Mr. MCCLENNEN:

Q. Did you, as the chief executive officer of the Southern P
Company, know that it was being represented to the California
road Commission that this dissolution would be beneficial to
people of California?

A. I did not. I did not know what counsel used in argument
it was not necessary that I should know.

Q. Did you know that it was represented to that commission
it would tend to increase the competition if this dissolution
place?

A. I did not.

Q. On learning of the intention of the Attorney Ge

1618 to institute proceedings for the dissolution of the holdi

the Central Pacific by the Southern Pacific, you took counsel on the question, did you not?

A. Certainly.

Q. And received the opinion of Mr. John G. Johnson, of Philadelphia?

A. We did.

Q. And were advised by Mr. Johnson that it was probable that such proceedings by the Attorney General would be successful?

Mr. BLAIR. Counsel objects to this as obviously incompetent and improper testimony, to seek to obtain, as evidence, the advice of counsel given to his client.

The WITNESS. Am I to answer?

Mr. BLAIR. Yes; we have nothing to conceal.

(The question was repeated by the reporter as follows:)

"Q. And were advised by Mr. Johnson that it was probable that such proceedings by the Attorney General would be successful?"

The WITNESS. No; it is untrue.

By Mr. MCCLENNEN:

Q. Were you informed that the California Railroad Com-
619 mission was advised that Mr. Johnson had given such advice?

A. I do not know.

Q. You do not know whether you were informed of that or not?

A. I do not know. I was not present when counsel appeared before the California commission, and I do not know what they said. I have not read the testimony; I have not read it up to the present time, because it was not necessary that I should.

Q. Did you personally have anything to do with employing Mr. Johnson for his opinion?

A. I did.

Q. And you were personally the recipient of the opinion which he gave?

A. I was.

Q. Did you communicate that opinion in any way to Mr. Herrin?

A. I did.

Q. And did you communicate it to Mr. Sproule?

A. Possibly. I do not remember. Sproule was on in New York several times, but I do not know whether he was there when we had this opinion and discussed it or not.

620 Q. Did you communicate the opinion to Mr. Herrin before the proceedings before the California Railroad Commission?

A. Mr. Herrin was in New York when Mr. Johnson gave me his opinion.

Q. Was he present when the opinion was given?

A. Mr. Johnson gave it orally, and then afterwards gave me a written opinion substantially the same as his oral one, but not identical. Mr. Herrin was present when the oral opinion was given, but I do not know whether he has ever seen the written opinion.

Q. Was that before the hearings before the California Railroad Commission?

A. I think they were.

Q. And it was before you had executed the contract with the Union Pacific Railroad Company?

A. Yes.

Q. May I call your attention to defendants' Exhibit 7? Why just east and west of Auburn, on the line between Roseville and Ogden, is it marked in blue, the legend indicating that blue is new construction since July 2, 1890?

A. Oh, those two little blue dots on the main line?

Q. Yes.

1621 A. That is double track. There are some pieces of double track built around Auburn and opened quite recently. It is marked that way for this reason: The second track was not built alongside of the first, but in order to reduce grades both east and west of Auburn the new low grade line leaves the old line and is sometimes as much as three to four miles off; therefore that is treated as a separate road. Then it comes back near Auburn and runs near the old line for a while, and then diverges again.

Q. Strictly speaking, there should be both red and blue there?

A. Well, no; perhaps the blue, more accurately, could have been put alongside the red, but the scale is so small that it would have been difficult to indicate it, and that is the reason.

Q. There is no question but what, ever since 1869, there has been a through track there?

A. Certainly, a through track; and in double tracking we used the old track on the heavy grade as the westbound track, and the new track was built for an eastbound track on a lesser grade, and sometimes, as I say, the topography of the country required the new

1622 line to be built as much as three or four miles away from the old one.

Q. The line from Roseville to Redding was opened, do you recall about 1872?

A. Roseville to Redding? I have the date here somewhere. That appears on one of these other maps. I could look it up for you, but it will take some little time. This is simply the construction and 1890. If that was opened in those days it would appear on what you have marked Exhibit 42, and I have it somewhere on these maps, but I would have to run over them to pick it out.

Q. It so appears on Exhibit 42, at page 973. When the line was
lvanced from Marysville north, was it advanced with a view to
e ultimate construction of a through line to Portland, or merely as
feeder to the main line of the Central Pacific?

A. That is long before my connection with any part of the com-
ny. In 1876 I was not in the railroad service, and I really do not
ow what the impelling motive at that time was.

Q. What is the earliest date when you have any valuable knowl-
ge of that part of California?

A. When I came to California in 1895, and in going over
23 these lines, I naturally acquired more or less information as to
the time they were built, or about how long they had been in
istence; but as to the time you question me, 1876, that was two
ars before I entered the railroad service, which was in 1878.

Q. When you came here in 1895, what was the character of the
untry and the extent of the population between Marysville and the
lifornia north line?

A. I really did not bother myself much about the population in
ere. The road at that time was built through to Portland, and
etty much the same towns were in existence at that time as are in
istence now. I suppose some few towns have been laid out since,
t there is no very material change. There has been, of course, a
eatly increased population and settlement in the twenty years that
ve elapsed.

Q. What was the local traffic from that north line of California
own to Marysville? Did it amount to much, or didn't it?

A. Yes; the local traffic on that line, or, rather, the products of
that country, were grain, wine, fruit, and some hay.

24 Q. Was the country, so far as you could judge from what
you saw in 1895, from your railroad knowledge, such as to war-
nt a feeder for the Central Pacific through that country?

A. It was; it was a country of almost unparalleled richness. It is
e upper Sacramento Valley, one of the finest tracts of land in the
orld.

Q. Is it true that with the exception of that line, no line of rail-
ad was built or acquired between 1872 and 1901 for the Central
acific Railroad Company?

A. I will have to refer back to these maps 1 to 6 to understand
at. We have got limits on these maps every five years, and on
is small map "Construction since 1890"; but your limits come two
ars after the first map, the lower limit, and your upper limit comes
ne year after this map, Exhibit 7, was made; so that without sitting
own and carefully comparing maps of those different periods I
n not answer that question. But Exhibit No. 42 will show that;
shows the date of the building of all the Central Pacific branches,

does it not? If you will let me look at Exhibit 42, perhaps that shows it—it ought to.

I find that the line from Redding to Delta was built in 1884 and from Delta to the Oregon line in 1887.

1625 Q. Now, my inquiry was whether, with the exception of that line, there was any line built for or acquired by the Central Pacific Railroad between 1872 and 1901.

A. My answer is yes; the line from Redding to Delta was built in 1884, and from Delta to the State line in 1887.

Q. I expected that, if you wil note, in my question. My inquiry was as to any other line.

A. You excepted the line to Redding.

Q. Well, if you so understood it. Now, the question is, With the exception of that line from Roseville to the northern boundary of California, through Marysville, Tehama, and Redding, was any line built for or acquired by the Central Pacific Railroad Company between 1872 and 1901?

A. Well, from the examination I made of Exhibit 42 in the brief time I have had I should say no.

Q. After the Union Pacific Railroad Company acquired control of the Southern Pacific Railroad Company, were all the new lines that were built or acquired, which were contiguous to the Central Pacific Railroad Company, acquired by the Central Pacific Railroad Company?

A. Not immediately.

Q. Which ones were not?

1626 A. Well, in 1912 the Central Pacific acquired lines that were built in the names of other corporations; that is, the two ends of the line, between Eugene and Weed, the Fernley and Lassen line, the Chico to Sterling City line, the Nevada and California line, and the Sacramento Southern.

Q. Those lines had all been built in the names of separate corporations?

A. Yes.

Q. They were neither the Central Pacific nor the Southern Pacific Railroad Company's?

A. No; independent.

Q. If the Southern Pacific were required to give up the control of the Central Pacific Railroad, would there be any of the lines of railroad owned by the Central Pacific Railway Company which would be isolated from the main lines of that company?

A. If by "giving up control" you mean if they were ordered to sell the stock of the Central Pacific Railway, yes; a part of what is known as the Oregon Eastern, from Eugene southward, would be cut off from the Central Pacific lines.

Q. That is, Eugene to Oak Ridge?

A. Yes.

1627 Q. Would there be any other?

A. I don't think so.

Q. The line from Weed to Kirk and the line from Eugene to Oak Ridge were constructed under a plan eventually to connect Oak Ridge with Kirk?

A. Yes.

Q. So as to make a through line from Weed to Eugene that way?

A. It was made to improve the through line from San Francisco to Portland by substituting for the existing line between Eugene and Weed a new line with easier grades and less curvature.

Q. The distance by the intended route from Kirk to Oak Ridge is about how far?

A. You mean the gap between Kirk and Oak Ridge?

Q. Yes; but measured not as the crow flies, but as a railroad goes.

A. You mean the uncompleted gap?

Q. The uncompleted gap.

A. I think, in round numbers, 100 miles; perhaps it is 101 or something like that. It is about 100 miles.

1628 Q. Is that through a country giving promise of contributing considerable freight?

A. From Kirk to Oak Ridge, no. The only freight that is promised is some stock and a good deal of lumber; it is a very heavily timbered country.

Q. The value of that connection would be chiefly to complete the through line?

A. Yes. The principal local traffic on that line is between Weed and the Klamath Lakes country. That Klamath Lakes country is a very rich country and it is developing very rapidly.

Q. What is the character of the country from Kirk to Oak Ridge with reference to ease of construction?

A. From Kirk northward to Odell it is not very difficult and not very expensive, but from Odell to Oak Ridge it is excessively expensive. That is the climb over the mountains.

Q. Have estimates been made of the expense of the completion of that line?

A. Yes.

Q. And what is the probable expense of completing from Kirk through to Oak Ridge?

A. About twelve millions.

1629 Q. Was there any intention of connecting this road which runs northwesterly to Westwood Junction with any other line to the north, west, or east?

A. You mean to build north, west, or east from Westwo
Junction?

Q. Yes.

A. Yes; I testified yesterday that that line from Fernley up to We
wood Junction is on the location and forms part of a projected l
on the east side of the Sierra Nevada Range, its northern termi
being about the junction with No. 14, somewhere near Klamath Fa

Q. About what distance?

A. Klamath Falls is right near the circle with 14 in it, just no
of the Oregon State line.

Q. A matter of about 150 miles?

A. I do not remember, but the distance to Klamath Falls is a li
greater than from Westwood Junction to Fernley. The construc
part is 130 miles, and I suppose that the other part would be 150
160, the uncompleted part.

Q. Has that been surveyed and estimated?

A. Yes.

Q. What is the probable expense of making that c

1630 nection?

A. That I do not remember. It is not an active prob
with us, and I don't remember.

Q. My attention has just been called to the scale on this m
Is the distance from Kirk to Oak Ridge as high as you estimate it

A. Yes. Do not forget that between Kirk and Oak Ridge you
notice a lot of little zigzags. They are just the development o
the mountains, and increase the distance much greater than the
tance you would measure by the eye between those points.

Q. What is the extent now in miles, approximately, of the nar
gauge part of the line from Hazen, Nevada, to Mojave?

A. There are about 137 miles still narrow gauge on the line fr
Hazen to Mojave.

Q. Is the track of a character adapted to relaying wide g
there—rails, I mean?

A. No; the ties are too short, the rails are too light, and the cu
are too sharp.

Q. Have any estimates been made of the expense of making
standard gauge?

1631 A. Yes.

Q. And approximately what is that?

A. I can not remember. We have hundreds of projects and
veys that we have made and filed away, and I can not remembe
but the cost is very great, and, with the present traffic, it would
pay, so it has simply been laid aside.

In order that you may understand where the heavy expense c
in, proceeding from Owens, which is the southern end of the na

gauge part, and running northerly to somewhere near the Nevada State line, the alignment is reasonably good, the grades quite fair, and the line could be relaid as a broad-gauge track by putting in new ties and heavier rails and ballasting; but from the Nevada State line over to Tonopah Junction there is a summit there higher even than the Central Pacific's summit. It is the highest point on the Southern Pacific lines; it is seven thousand and some two or three hundred feet. The grades are excessively steep. They can be negotiated by very light narrow-gauge trains, but the curves are so sharp that it would be utterly impracticable for a broad gauge, and the entire line would have to be rebuilt at a very heavy cost.

Q. If the Southern Pacific Company were to be deprived
1632 of the Central Pacific Railroad, it would isolate all its Oregon lines from the balance of the system, would it not?

A. It would.

Q. It would also isolate certain branch lines between Sacramento and Goshen, would it not?

A. It would.

Q. Would it isolate any others?

A. It would not actually isolate any others by cutting connections, but the means of getting from one part of the system to the other, with such traffic as we have nowadays, would be almost equivalent to isolation. In other words, the extra distances and the extra expense imposed by the inability to use parts of the Central Pacific would be so great that the Southern Pacific would have to build other lines.

I pointed out yesterday, to get its San Joaquin Valley business into San Jose, if deprived of the Central Pacific lines, would require it to send that business northward to Port Costa, then into Oakland, and then south by the South Pacific coast road into San Jose, an additional distance over the Central Pacific line via Niles of sixty-three miles.

Then, again, in sending its business from Tehama southward,
1633 if it were deprived of the right to use the tracks from Davis into Sacramento and thence down through Stockton and Lathrop to the San Joaquin Valley, it would have to go the round-about way via Benicia, crossing the straits there, then to Port Costa, then down to Tracy and the west-side line. It could not reach the east-side line of the San Joaquin Valley at all, where all the large towns are.

Q. About what is the distance from Alcalde to the coast line of the Southern Pacific?

A. Well, I can not give you that offhand. This map does not show, but there is a range of mountains in between, which is the reason it has never been built. It means heavy grade and expensive

construction, and it is over a God-forsaken country, where there is no traffic at all; pretty much a desert.

Q. A country that God has forsaken permanently, so that it is not developable at all?

A. Well, you can not tell what He means to do hereafter. A good deal of that desert country, of course, has been made extremely valuable and profitable by the discovery of oil, but that country has been pretty thoroughly explored and they have found nothing there at all.

Q. What is the condition of the country from Tres Pinos
1634 to Alcalde?

A. Well, that was the original projected line of the Southern Pacific as against the coast line, but they never built from Tres Pinos to Alcalde because there are mountains and grades in there, and it is a very bad country, a very unproductive country.

Q. The lines of the Atchison north of Bakersfield are isolated from the rest of their system by about seventy miles, are they not?

A. Yes; that seventy miles of our track they use between Bakersfield and Mojave under a trackage agreement.

Q. That is, they operate their own trains over your track?

A. Yes.

Q. The rational arrangement, if the Central Pacific and the Southern Pacific were separated, would be to make some similar trackage agreement from Tehama to the north boundary of California?

A. Well, it might.

Q. The natural course between those points that you have mentioned shortly ago in your testimony; that is, between the San Joaquin Valley and San Jose, is what?

1635 A. If the separation were made actually all kinds of shifts would be made by both companies, no doubt, to reduce in every possible way the hardships of separation, but no trackage arrangements and no kinds of joint arrangements could possibly replace, in efficiency and in economy, the management or arrangements that have prevailed ever since the beginning of these roads, being built as one and the same concern. That is, you could not tear them apart without causing them a great deal of unnecessary additional expense, and without causing a great deal of additional friction in the interchange of business.

Q. The natural arrangements as to the use of terminals at the junction points would provide for their joint use by the two railroads, would they not?

A. But the commission has declined to allow that.

Q. Not with respect to the Central Pacific and the Southern Pacific yet, I think.

A. Yes; their language was substantially that we could not give trackage arrangements to one line, or to give joint use of terminals without throwing them open to all others.

Q. That is, you mean the California commission?

A. Yes, and they have jurisdiction, as I understand.

1636 Q. Well, are there any terminals at the junctions between the Southern Pacific and the Central Pacific that are physically accessible to any other railroad?

A. Why, substantially all of them would be.

Q. For instance, what other railroad touches the junction point at Fresno?

A. The Atchison.

Q. Does it now make joint use of the terminal?

A. No.

Q. It has a separate terminal of its own?

A. It has, the Atchison; and then there are some local electric roads recently built there.

Q. Is the situation at Fresno such that the Atchison would have occasion to use more terminal facilities than it has?

A. I expect the Atchison would be simply delighted to have our terminals thrown open to them.

Q. How about Sacramento?

A. For Sacramento there is the Western Pacific that would have access to them. Then there are two electric lines that run in there, and the Atchison is projecting a line in there.

1637 Q. Where is the Atchison projecting that line from?

A. From Stockton.

Q. Is the Atchison doing much transcontinental freight business with Sacramento at present?

A. I don't know. I do not suppose they are doing as much as they would like, else they would not want to build in there.

Q. You do not know whether they get any over your rails or not from Sacramento—transcontinental business?

A. I can not tell you. They can if they want to. We have arrangements with them at all of our points by which they can get freight.

Q. What are the passenger terminals for the Atchison in San Francisco?

A. The Atchison have a room in the State Ferry Building on the water front. They bring their passengers from Port Richmond by ferry and deliver them in the State building.

Q. That terminal is owned by the State?

A. By the State of California.

Q. And is the entire terminal where the Southern Pacific and the Central Pacific passengers come into San Francisco also owned by the State?

1638 A. Yes; that entire building. In that building there is the Santa Fe, the Northwestern Pacific, the Western Pacific, and

the Southern Pacific lines. All of them are in that building. T
space is divided up amongst them, but the building is owned by
State, and its policing and jurisdiction are under the State. T
railroads simply pay a rental for the right to land there and to l
their passengers there. The Southern Pacific, however, for its p
sengers from the south, from its coast line, and for the Central Pac
line over the hills at Niles and thence over the Dumbarton Brid
has a passenger terminal of its own in the city of San Francisco
Third and Townsend Streets that is owned by the Southern Pacific

Q. Mr. Blair was going to ask you later what those terminals
San Francisco amount to in money. Has that information been
tained yet?

A. You mean what we paid for them?

Q. No——

Mr. BLAIR. You remember when your examination left off yes
day you were to secure the value of the terminal facilities in the n
of the Southern Pacific Railroad Company in San Francisco,
Mr. McClennen asked you whether you have the figures.

1639 The WITNESS. Yes. Of course that is a little different qu
tion from this. He asked about passenger facilities alone.

Mr. BLAIR. Yes.

The WITNESS. This is passenger and freight. That is, all
terminal real estate, property, and improvements owned by
Southern Pacific Company in the city of San Francisco amount
$64,727,000.

By Mr. MCCLENNEN:

Q. Is that a valuation made up under the same conditions that
have described with reference to your other terminal valuations?

A. Yes; and furnished by our valuation engineer; the same
who furnished the values I gave yesterday.

Q. How does the Western Pacific deliver its freight in San Fr
cisco.

A. It brings it over by a barge, puts the cars on a barge and bri
them over to this side.

Q. And does it have yardage for them in San Francisco?

A. Yes; they bought considerable terminal property. To w
extent they have improved it I don't know. I have n
1640 been down there, but I know they have some kind of fre
terminal there.

Q. Now, the same question with reference to the Atchison.

A. The Atchison bring their cars over the same way—by barg
and they have made pretty considerable expenditures in San Fr
cisco. They have quite a large yard on the water front—about
foot of Third and Fourth Streets.

Q. Do any of the railroads have industrial tracks in San Francisco—in and about San Francisco?

A. Yes. I know we have got a lot. The Atchison has got some. I do not know what the Western Pacific has. The State also owns a few.

Q. Does the Atchison deliver over your industrial tracks to some extent in San Francisco?

A. My recollection is that there is an arrangement by which they have access to them everywhere. We have some joint tracks with them. In other words, in territory where our improvements encroached on what they thought were their rights and where they intended to build and where they encroached on what we thought was our territory we have built joint spurs, each road contributing and each road using.

1641 Q. Are there any other railroads coming in that make any use of those tracks?

A. On all of the tracks built after a certain date, under the new charter of San Francisco, the tracks can be used. As to the tracks built before that, if we grant the use to one road under this commission's order, we would have to grant it to all.

Q. There is no other railroad coming in at the present time, is there, except those that we have mentioned—the Southern, the Central, the Atchison, and the Western?

A. No; I do not think I have heard of any more projected in.

Q. You have referred to the misfortunes of the Western Pacific Railway, and in connection with what might happen if there was a dissolution between the Central and the Southern. You do not mean, do you, to convey the idea that the Central Pacific Railroad would be left, for operating purposes, in any such condition as the Western Pacific always has been?

A. What I meant to convey was this: If this lopping off of particular branches and tangential offshoots, as they have been called, was successful in the case of the Central Pacific and Southern Pacific, I do not know just where it would stop; and if the

1642 Government chose to institute proceedings against other lines in the country, they would have a whole lot of lean through lines, a lot of independent tangential offshoots.

Q. You were aware of the fact that the Central Pacific Railroad was constructed with Government assistance to become part of a through line of railroad across the country, were you not?

A. Yes; I know the Government lent it its credit, and they had to pay woefully for it. Still, what you say is a fact. However the assistance was given and however onerous the terms, it was built to form a through line with the Union Pacific.

Q. The Southern Pacific Railroad also availed itself of Gover
ment subsidies under the Atlantic & Pacific Railroad act and th
Texas & Pacific Railroad act, did it not?

A. I do not know. The Southern Pacific has a considerable amou
of land to which it has laid claim, and much of which, after giving i
the Government is trying to take away.

Q. Mr. Kruttschnitt, you feel that the Government of the Unite
States is misbehaving a good deal, do you not?

1643 Mr. BLAIR. I object to that as calling upon the witness
express opinions upon matters that have absolutely nothi
whatever to do with this suit, and also as inviting the witness
criticize and be frank, and afterwards counsel finds fault with hi
for criticizing the Government and charges him with lese majeste.

Mr. MCCLENNEN. I do not know that I know fully what that la
thing is as applied to this case, but the question was invited by th
volunteering of the criticism by the witness as to the effort of th
Government to take away land from the Southern Pacific.

The WITNESS. That was merely the mentioning of a fact. Th
was not an opinion; that was simply a fact.

(By request of counsel for the petitioner, the reporter repeated th
pending question.)

The WITNESS. I do not know. I am not much of a lawyer and I
do not want to commit contempt of court.

Mr. BLAIR. I think you can properly decline to answer that que
tion, if you want to.

By Mr. MCCLENNEN:

Q. The projection of the Southern Pacific Railroad southwar
from San Francisco was to meet, first, with the Atlantic
1644 Pacific line, and, second, to meet with the Texas & Pacific lin
was it not?

Mr. BLAIR. Counsel for defendants objects on the general groun
that these matters occurred in 1872 and the witness has stated that h
went into the railroad business in 1878, and that such answers as h
gives would be based on information open to anybody.

Mr. MCCLENNEN. The questions are put to ascertain, if possible
from what source the witness derived the idea that the Southern
Pacific Railroad was a tangential offshoot and to see whether in
reaching that idea he had knowledge of the early development of th
railroad.

(By request of counsel for petitioner, the reporter repeated the
pending question, as follows:)

"Q. The projection of the Southern Pacific Railroad southward
from San Francisco was to meet, first, with the Atlantic & Pacific
line, and, second, to meet with the Texas & Pacific line, was it not?"

The WITNESS. I do not know what their motives for starting it were; but I would say that my characterization of the Southern Pacific line as a tangential offshoot was simply to agree with you and not differ in words and language.

1645 By Mr. MCCLENNEN:

Q. Do you not recall that it was Mr. Blair who inoculated you with the idea of a tangential offshoot?

A. No; I used the term with respect to the Central Pacific. You disagreed with me and asked me if I did not think it was more of a trunk line. I immediately accepted your view, and said I would hereafter speak of it as a trunk line and of the Southern Pacific as a tangential offshoot.

Q. Well, if I should assert that the two lines were both trunk lines, would you then accept my real view rather than the one that you understood me to have?

A. I do not see that the language affects the matter one way or the other. I will agree to anything you want, as to that.

Q. The Southern Pacific Railroad does not bear the relationship primarily of a feeder to the Central Pacific Railroad, does it?

A. The Southern Pacific?

Q. Yes.

A. I would say from the way the lines were built that it did, because the Central Pacific built it.

Q. Does the Central Pacific Railroad bear the relation
1646 of a feeder, primarily, to the Southern Pacific Railroad?

A. Well, now, if we can agree on the exact meaning of "primarily"—perhaps I should say that I ought to understand just what you mean by "primarily" before undertaking to answer that.

Q. What I mean is to distinguish between such a line, for instance, as that from Westwood down to the Central Pacific Railroad, which apparently has no present object except to furnish traffic to the Central Pacific Railroad and take traffic for local delivery from the Central Pacific Railroad, and a railroad the chief object of which is to do a long-haul business, which it receives locally and perhaps delivers locally or perhaps delivers to another railroad to deliver locally. Do I make my distinction clear to you?

A. I think so.

Q. Having that distinction in mind, you would not characterize the Southern Pacific Railroad as primarily a feeder to the Central Pacific Railroad, would you?

A. Knowing as I do the way the system grew up, I think I should primarily say that. Here was a main line built from Sacramento,
1647 San Jose, and Oakland to Ogden, and almost coincident with its opening we find tentacles being thrown out north and south,

part of them in the name of the Central Pacific and part i
the name of the Southern Pacific Railroad. Those were primari
feeders to that line. What else could they be? The freight was
brought on to that line, feeding it, and thence went east.

Q. It was with that sort of a question in mind that I asked y
some time ago whether you did not know that those lines were pr
jected southerly not primarily as feeders to the Central Pacific b
as part of a system which it was intended should run to the easte
part of the country.

A. Of course that antedates my coming to California; but
understand, and the records show it, that a great many of the Sou
ern Pacific lines around San Francisco Bay were built by independe
parties and were bought by the Southern Pacific, certainly not
run and connect with the Atlantic & Pacific and Texas & Paci
but for the purpose of collecting freight as feeders. Assuming th
what you say is true, that they were intended to go down and m
these lines, I do not know at what date that policy was formulat
in the minds of the owners.

Q. From the time the Southern Pacific Railroad started
1648 from Goshen there was not a year of pause before the ti
when there was a through line to New Orleans, was there?

A. I do not think so.

Q. Were you aware of the fact that the building of the first secti
south from Goshen—twenty miles or so—was done for the speci
purpose of securing the Government subsidy?

A. No.

Q. Which required a certain amount of building per year?

A. No; I do not know that.

Q. In respect to transcontinental business, has the Central Paci
Railroad Company ever, through its officials, competed against t
Southern Pacific Railroad Company, in practice?

A. It could not. They were one and the same thing. The offic
of the Central Pacific were the officers of the Southern Paci
Money from the same pockets built both.

Q. Do you bear in mind in making this last answer your earli
answer that you were ignorant of those matters which were pri
to 1878?

A. I do not mean to have my answer considered as meaning th
I do not know anything that occurred prior to 1878. I do know, a
every man in the Southern Pacific Company knows, that the
1649 two roads were one and the same thing, only for the co
venience of the owners there were different corporate nam
used. That was impressed on me when I came here in 1895, and t
impression has grown and strengthened over since.

Mr. McCLENNEN. The last part of the answer, beginning "I know, and every man in the Southern Pacific Company knows", and so forth, petitioner moves to strike out, as not responsive, hearsay, and an expression of opinion volunteered by the witness.

By Mr. McCLENNEN:

Q. The result of the holding of a single control over the Central Pacific Railroad and the Southern Pacific Railroad at the same time has been absolutely to suppress and prevent any competition between those companies, has it not?

A. I say there is an absolute contradiction in that language. I can not conceive how one part of a company can compete with the other.

Q. So that the result which I have just stated has followed, has it not?

A. If your question is whether one part of the Southern Pacific property or system competed with the other, I would say no.

1650 Q. That it has not?

A. That it has not.

Q. If the two railroads were under separate control, they would, in the nature of things, with their connections, compete strongly on transcontinental business, would they not?

A. If the Central Pacific Railroad and the Southern Pacific Railroad were under separate control, with their connections, they would form competitive lines, certainly.

Q. They would compete strongly?

A. Certainly; just as they are doing now. That is exactly the case now. The Central Pacific and its connections is competing strongly with the Southern Pacific Railroad and its connections; but the Central Pacific Railroad by itself can not compete with the Southern Pacific Railroad by itself, because they are one and the same thing.

Q. You mean that the connections are competing, but that the Central Pacific and the Southern Pacific are not competing?

A. No; I mean that that part of the Southern Pacific known as the Central Pacific, in connection with lines east thereof, is com-

1651 petitive with that part of the Southern Pacific known as the S. P. R. R. and its connections east thereof.

Q. You are familiar with the use of the term "competitive" or "competing" as signifying the effort to obtain business as against another, are you not?

A. I suppose that is a fair definition of it; yes.

Q. As between the Central Pacific and the Southern Pacific, there is at present no such effort with respect to transcontinental business put forth by either one of those companies, is there?

A. I have just said that there is the most active competition between the Ogden line, of which the Central Pacific is a part, and the Sunset line, of which the Southern Pacific Railroad is a part.

Q. I understood you to say that. Now, will you not attend to my question, which I think is simple, and please answer it. I will ask to have the question read.

(The question was repeated by the reporter as follows:)

"Q. As between the Central Pacific and the Southern Pacific there is at present no such effort with respect to transcontinental business put forth by either one of those companies, is there?"

1652 The WITNESS. I would say again, as between the Central Pacific in itself and the Southern Pacific Railroad in itself, it is inconceivable to my mind that there should be competition, because they are one and the same concern.

By Mr. MCCLENNEN:

Q. You really mean that you do assent to my question, do you not?

A. I can not answer it any differently. I should like to meet your views, but I am afraid it might be costly to me just to accept your language. I want to use such language as will express exactly what I believe about it.

Q. Let me start again and see if I can not make my question a little more free from any possibility of doubt. The Central Pacific Railroad itself, or its officials, or those in control of its operations, does not to-day try to get transcontinental business against the Southern Pacific Railroad, its officials, or those in control of its operations, does it?

A. The Central Pacific Railroad does not exist. The Central Pacific Railway does. The officers of the Central Pacific Railway do not operate it, and make no effort to get traffic. It is nothing but an organization. The Southern Pacific Company is operating the Central Pacific Railway. There is certain freight which the Southern Pacific Company can not get to go by the Sunset Route. There is some which it can not get to go by the Central Pacific. There is some which may go either way. What would naturally go by the Southern Pacific is solicited that way; what naturally would go by the Central is solicited that way. As to what is in between, it tries to get the shipper to adopt that movement which will yield the Southern Pacific the maximum revenue.

1653

Q. Which means that it tries, as to that indeterminate volume, to get it to go through El Paso and Galveston or New Orleans.

A. Whichever way gives it the best revenue.

Q. Well, that is the way, is it not, on all transcontinental business that gives it the best revenue?

A. Ordinarily, yes; the longest haul.

Q. In the ordinary course of things, if the Central Pacific Railroad and the Southern Pacific Railroad were manned by different sets of officials and independently controlled, each one of those railroads would be striving to get for its railroad, as against the other,
1654 all of the transcontinental business that it could, would it not?

A. Well, what does "striving" mean? What would you define that to be?

Q. I will leave you at large, and let your answer be taken in any way that you wish "striving" to be understood.

Mr. BLAIR. Counsel for defendants object, on the ground that it is hardly fair for a lawyer to put a question to a witness and then not tell the witness what his question is intended to mean.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. I would say that in striving to get business, the two roads must use certain means to obtain the end that they are seeking. The only way they can get business is through differences in rates, in service or in solicitation. I testified on my direct examination that there can be no difference in rates at the present time because the roads do not fix them. For business such as you refer to from California east, they are fixed by the Interstate Commerce Commission; so that the roads have absolutely no control over the rates. Therefore, we may dismiss that. As to service, I have,
1655 on my direct examination, shown that the Central Pacific, under the ownership and management of the Southern Pacific, can not afford to let the condition of its property or the character of its service retrograde in the least; because if they do, the condition would become exactly the same as if the Central Pacific were independent and did the same things. The traffic would be lost to its principal competitor, which is the Atchison Company. Therefore I can not conceive of any stronger effort being made by the Central Pacific divorced, and the Central Pacific with the Southern Pacific, than is being made now.

As to solicitation, the Central Pacific route is represented in the field by seven solicitors, from seven or eight different lines that profit by the freight going that way at the present time; and I can not see how the number of solicitors would be increased if the road were divorced.

Q. Now, my dear sir, you are a man of a high degree of intelligence, and I am led by that to ask you whether you intended to answer my last question. Did you?

A. I did.

Q. Now, I will ask to have it read, and to have you answer it again and see if you can not answer it more fully and directly.

1656 (The question referred to was read by the reporter as fo
lows:)

"Q. In the ordinary course of things, if the Central Pacific Rai
road and the Southern Pacific Railroad were manned by different se
of officials and independently controlled, each one of those railroa
would be striving to get for its railroad as against the other, all of th
transcontinental business that it could, would it not?"

The WITNESS. I believe that my answer fully answers your que
tion, as I understand it.

By Mr. MCCLENNEN:

Q. Would the plain word "yes" be an inaccurate answer to m
question?

A. My dear sir—permit me to use the term that you employed—
you are a lawyer and you know thoroughly well that there are hu
dreds of questions that can not be intelligently answered by yes o
no; and the question you put to me can not be answered in that wa

Q. You mean by that, that you do not know whether, in the ord
nary course, if these two railroads were separately manned and sep
rately controlled, each would be striving, through its official
1657 as against the other, to get all the transcontinental busine
that it could?

A. The answer I have already made is the only intelligent answ
I can make to your question. I am sorry I can not answer it wi
yes or no.

Q. Could you answer this last one that I have put?

A. It is the same question, couched in a little different language.

Q. Let me have it read again and see if, after it is read, you ca
answer it any more directly.

(The question was repeated by the reporter, as follows:)

"Q. You mean by that that you do not know whether, in the ord
nary course, if these two railroads were separately manned and sep
rately controlled, each would be striving through its officials,
against the other, to get all the transcontinental business that
could?"

The WITNESS. I do not see that either a yes or no answer wou
give my opinion on the matter, which, I understand, after all, is wh
I am here for. I can not answer it with a mere yes or no.

By Mr. MCCLENNEN:

Q. At the present time the Southern Pacific Company are
1658 to get all of the transcontinental freight that can reasonably b
induced that way to move via the Sunset Route, does it not?

A. It offers two lines to the shipper and tries to get him to use th
line which will be most profitable to the Southern Pacific.

Q. And that is the Sunset Route, is it not?

A. Yes.

Q. The Atchison Railroad apparently endeavors to get the California shippers to send their transcontinental freight by its route, does it not?

A. I suppose it does.

Q. And if the Central Pacific Railroad were separately manned and controlled you would expect it to do the same, would you not?

A. Yes.

Q. You have spoken in your direct examination of the dividends received by the Southern Pacific Company from the Central Pacific. Has it received, since the institution of the present suit, twenty-six per cent on the capital stock of the Central Pacific Railway Company?

A. What you allude to is no doubt this: The regular dividend of the Central Pacific is six per cent. The surplus over its dividends naturally goes to the credit of its profit and loss account, where it belongs, of course, to the stockholders of the Central Pacific Railway Company. Those stockholders, or that stockholder, is the Southern Pacific Company. The Central Pacific Railway had in its profit and loss account somewhat over, I think, twenty-two or twenty-three per cent——

Q. Do you mean per cent there?

A. No. Thank you. I mean twenty-two or twenty-three million dollars. About a year ago, I think, a dividend of seventeen or seventeen and a half per cent was declared. In other words, the Southern Pacific Company simply put into its treasury money which belonged to it, and which, for the time being, was in the treasury of the Central Pacific Railway Company—a mere bookkeeping transaction.

Q. What do you mean by "a mere bookkeeping transaction" in that connection?

A. I mean that the Southern Pacific Company owns every share of stock of the Central Pacific Railway Company, all of the property of that company, all of its earnings; everything it has got belongs to the stockholders, or the stockholder, which is the S. P. Co. This surplus can either be left in the name of the Central Pacific Railway Company, or it can be taken by the owner, by the declaration of a dividend, which is what was done.

Q. The effect was to reduce the surplus of the Central Pacific Railway Company from $21,000,000 or $22,000,000 down to about $2,000,000, or something like that, was it not?

A. No. I think it left about $6,000,000 or $6,500,000 in the profit-and-loss account.

Q. You spoke of seventeen per cent. Was not the amount seventeen million dollars odd, on a capital stock—common stock—of about $68,000,000?

A. Yes; I think I did use those figures inadvertently. The dividend was evidently twenty per cent on the Central Pacific stock that involved the payment of $17,000,000.

Q. That was additional to the regular six per cent dividend?

A. Yes.

Q. About what was the date of this extra dividend?

A. That is of record. I do not remember. I will have it hunted up and give it to you, if you want it.

Q. I shall be obliged if you will do that. You first had to do with the upkeep and maintenance of the Central Pacific Railroad in 1895; am I right?

1661

A. Yes; when I came to California.

Q. Was the upkeep and maintenance of that railroad up to 1901 rather limited?

A. Do you mean to ask whether it was kept in bad condition?

Q. First, I will ask you was the condition of it as it existed in 1901 materially improved up to 1901?

A. Yes; materially.

Q. What were the improvements that took place during that period?

A. The improvements were simply in the maintenance of a better running surface on the track of the Central Pacific. By "surface" we mean eliminating little wavy irregularities in grade of the track and irregularities in alignment; but at all times it was carefully kept up and safely operated.

Q. Prior to 1901, was it deficient in equipment, both passenger and freight?

A. Prior to 1901?

Q. Yes.

A. No; it was fairly well equipped.

Q. Was it short of locomotives?

1662

A. I can not tell you that, because we used the locomotives and the equipment absolutely interchangeably. It was run from one line to the other, just as we do at the present time. We did not pay much attention to the assignment of locomotives or cars, either passenger or freight, to one corporation or another. We had them and put them in the name of any corporation, sometimes in the name of the Southern Pacific Company, and use them indiscriminately.

Q. Was a great deal of the mileage system laid on rails that were too light for the traffic being conducted over them, being generally from 60 to 62 pounds down?

A. Not down. Perhaps some of the branches had lighter rail than 62 pounds. As I remember it, the prevailing rail on both the Union and Central Pacific at that time was 60 to 62 pounds, with some 90 on the heavy grades.

Q. Were the properties maintained in as good and safe condition as such shortage of equipment and lightness of rail as there were permitted?

A. The properties were maintained in safe condition and safely operated. I do not recall any trouble we have ever had on the Central Pacific that would be traceable to improperly maintained track.

1663 Q. Was the condition over the whole Southern Pacific system from 1895 to 1901 substantially the same?

A. From 1895 to 1901?

Q. Yes.

A. Yes; the conditions, as I have said before, over the Central Pacific line and over the Sunset line, were substantially the same; they were both kept in very good order.

Q. Is this a correct statement:

"Prior to 1901 the Southern Pacific was deficient in equipment, both passenger and freight; were short of locomotives; a great deal of the mileage of the system was laid on rails that were too light for the traffic being conducted over them, being generally from 60 to 62 pounds down. The properties were maintained in a good and safe condition as such shortage of equipment and lightness of rail permitted."

A. That is fairly correct; yes.

Q. Well, it is perfectly correct, isn't it?

A. Yes; I would not make any exception to that. I think it is correct.

Q. You recognize that as substantially what you stated in your testimony in the Union Pacific merger case?

A. I don't remember what I testified; if it is in there
1664 I testified to it, and it is correct; and it is also in accordance with my understanding at the present time.

Q. When did you reach that understanding?

A. What; that the properties had been maintained and were short of improvements that required the expenditure of capital?

Q. Yes.

A. Well, I knew that from the time I came over here in 1895 up to the time, you might say, of the settlement of the Central Pacific's debt to the Government. We did not know at that time what was going to become of our properties, and whether we would be bankrupted by the loss of this Central Pacific line. We did not know

what terms the Government was going to exact, and we were chron-
cally hard up for money until the settlement was reached.

Q. The Union Pacific Railroad was, in 1901, in much better condi-
tion than the Central Pacific Railroad, was it not?

Mr. BLAIR. Are you referring simply to the year 1901?

Mr. MCCLENNEN. Just read the question.

(The question was read as above recorded.)

The WITNESS. The Union Pacific had been through with its
1665 trouble with the Government for several years, and it was in
a position to get money to make improvements, and those im-
provements were well advanced, or perhaps nearly finished in 1901.
The Central Pacific was several years after the Union Pacific in
getting its debts to the Government settled up, and by about the time
that had happened, and the credit of the Southern Pacific system was
improved, Mr. Huntington died; but before his death substantially all
of the improvements made on the Central Pacific, which amounted
to a reconstruction of over 300 miles between Ogden and Reno, and
the addition of a great deal of new equipment, and the building of
the Lucin cut-off, all the plans for those improvements had been
formulated and worked up, and were only awaiting the improve-
ment of the company's credit through the settlement of its trouble
with the Government to put them into effect.

Mr. Huntington died in 1900, and there was a period of a year or
eighteen months when there was practically no head to the property.
Mr. Harriman then bought a majority of the stock, or a large part
of the stock, of the Southern Pacific, which practically gave him
control, and as soon as he got control these plans were brought up
by his instructions and submitted to him, and he ordered them
1666 in effect at once, and the building was started, and then the
building was done, and the Central Pacific was delivered over
in such condition that Mr. Harriman told me himself that it was in
better condition than the Union Pacific.

Mr. MCCLENNEN. The petitioner moves to strike out the answer as
not responsive, as hearsay and a statement of opinion, and a some-
what more general treatise than the question called for.

Please read the question, and I will ask to have it answered.

(The question was repeated as above recorded.)

The WITNESS. The Union Pacific in 1901 was in better condition
than the Central?

By Mr. MCCLENNEN:

Q. Yes.

A. Yes; because it had been reconstructed.

Q. When did the reconstruction of the Union Pacific begin?

A. Oh, some time prior to 1901. It was pretty well finished in 1901.

Q. It was as early as 1897 or 1898 that that reconstruction began?

1667 A. I do not know. Mr. Harriman bought the Southern Pacific in 1901, and one of the first things he did was to ask me to go to New York. Oh, no; he sent his chief engineer of the Union Pacific and the president of the Union Pacific over to San Francisco to look at these plans, and I suppose they made him a report on them, which was evidently favorable, because it was followed by instructions from him to go to New York with the plans. They were explained to him, approved at once, and construction was started.

Q. What classes of traffic are there between California and east of the Missouri River that can be moved as well through Ogden as through El Paso, if any?

A. Well, as to details of moving traffic and the effect of origin and destination, I do not feel myself competent to give definite information. That is a matter that is handled by the traffic department that I am unfamiliar with.

Q. Do you have in mind nothing that could not be moved through Ogden as readily as through El Paso?

A. I have never given the matter that you speak about any particular study, and I don't think I am competent to answer it.

1668 Q. Well, then, you do not chance to know of any at present, in your present state of mind?

A. No.

Q. Is the Ogden route, as Mr. Blair defined it in his questions, competitive with the Sunset-Gulf route as far south as San Diego on transcontinental traffic?

A. I do not know. San Diego, you know, is not on our line; it is on the Atchison line. I do not suppose we get much show on San Diego business on any of our routes.

Q. Are the two routes competitive as far south as Los Angeles?

A. The Ogden route and the Sunset?

Q. Yes.

A. I should say very little.

Q. With such inferior knowledge as you say you have on this department, where would you draw the line of a substantially competitive area in southern California, or the southern part of California?

A. I am afraid you are asking me another of those questions of the choking man. I can not exactly put a limit. I know at Los Angeles, for instance, that our strong line to southern California for southern California business is our Rock Island connection through El

1669 Paso, and that line is our strong line for competing with
Atchison.

Q. On southern California business?

A. On southern California business. Now, if we found it nec
sary—and our traffic people have found it necessary—to arrange
through lines with the Rock Island, it was because of the fact, e
dently, that they could not get that stuff to move over the Ogd
route.

Q. Could you say whether or not Tehachapi Pass is approximat
the division line?

A. I could not.

Q. Can you say how far north in California and Oregon the t
routes are competitive on transcontinental business; that is, t
Ogden and the El Paso routes?

A. No; I could not set a limit.

Q. It certainly runs farther north than San Francisco, doesn't i

A. On some commodities; yes. We get some things from Oreg
that do go over the Sunset Route.

Q. And you do not happen to know any of those that could not
moved over the Ogden route?

A. No; I simply know, from general information, about th
1670 moving of traffic that we do get hops from Oregon to New Yo
via the Sunset Route. As to the attractions of that route,
do not know what they are, whether they are climatic or otherwis
but it is certainly preferred by shippers, because they ship that wa
They have the say as to which way the stuff shall go, and they say th
stuff shall go that way.

Q. You know, do you not, that you have a very attractive solici
ing organization in the Southern Pacific Company?

A. I am glad to know that. I hope we have. That is all that i
left to us now—to work on the public, to be sweet to the shipper, t
see if we can coax him our way.

Q. There used to be a good many other means, did there not?

A. I have heard so; I do not know.

Q. In the territories tributary to the Southern Pacific rails an
the Atchison rails south of Tehachapi there have been arrangement
made at times, have there not, to divide the traffic as between the tw
roads?

A. I don't think so.

Q. So that the Atchison should have approximately fifty per cen
and the Southern Pacific fifty per cent?

A. There could not have been that arrangement, because there
1671 were some others to come in, and there would be nothing le
for them. I know of no arrangements for dividing the traffi

Q. Have you ever heard of any such arrangements with reference to the citrus fruit traffic?

A. I have not.

Q. There are not very many others to come in south of Tehachapi, are there?

A. We have been fighting the Atchison for years to put up our percentage, so I do not see how there could have been any fixed; and we have been extending our electric lines, particularly in southern California, to get what we conceive was a better slice of the citrus fruit traffic, but in addition to us there is the San Pedro, Los Angeles & Salt Lake that has to have a piece. They want some.

Q. I had reference not to the whole citrus fruit traffic, but that tributary to the rails of the Southern Pacific or the Atchison. That would not change your answer, I take it?

A. No; I do not know of any such arrangement.

Q. Soon after Mr. Blair presented to you the question of divergent stems and tangential offshoots, you referred to several railroads
1672 that were possessed of those attributes. The first you mentioned was the Gould system, at page 1494. Those are all cases, are they not, where the double line has resulted from the building out and acquisition of branches, feeders, stems, or tangential offshoots?

A. I do not know how they grew, but years ago, when I was in Texas, the Texas & Pacific, the Iron Mountain, the Missouri Pacific, and the Denver & Rio Grande were all considered Gould properties, and the St. Louis Southwestern also; and they are referred to generally to-day as Gould properties, and they all appear on this map that I got from a folder case in a hotel—one of the folders of the Missouri Pacific, marked Missouri Pacific-Iron Mountain, and all the lines are marked equally heavy. Of course, at the present time they have also got the Western Pacific marked on it.

Q. And this answer would apply equally, would it, to these various other stem lines?

A. No; I would not say that at all. You asked me specifically as to the Gould lines.

Q. Well, now, as to these others that you mentioned. Was the development of them such as I have mentioned—these feeders and branches?

1673 A. No; the Chicago, Milwaukee & St. Paul, they have a very important line from Chicago to Omaha, and their other line is also a main and very important line from Chicago through Milwaukee, La Crosse, the Dakotas, and Montana to Puget Sound points. That line they have just recently completed.

Q. Those two lines of the Chicago, Milwaukee & St. Paul are, to your mind, competitive, are they?

A. Those two lines?

Q. Yes.

A. No; not one part of the St. Paul with the other; but you could build up in connection with a line to Omaha several competitive lines to Puget Sound.

Q. Do you chance to know, in the case of that railroad or any of those that you have mentioned, the amount of competitive tonnage that they carry as compared with their local and noncompetitive business?

A. No; I do not.

Q. You spoke of one of the competitive lines, that of the Union Pacific to San Pedro and thence by boat to San Francisco?

A. Yes.

Q. When did that line go into operation?

1674 A. In 1905, I think.

Q. Do you know anything about the amount of San Francisco transcontinental tonnage carried over that line?

A. I do not.

Q. Did you know during the period of your connection with the Union Pacific?

A. No.

Q. Is it a large matter?

A. I suppose it could be large or small, just as they chose. I don't know just what it is. I mentioned it because it is a much shorter line from New York to San Francisco than the Sunset, very much shorter; it is 720 miles shorter.

Q. The Western Pacific has never succeeded in controlling a very large amount of the transcontinental traffic of California, has it?

A. No.

Q. The Western Pacific and the Southern Pacific have some agreement as to division on freight delivered by the Southern Pacific to the Western Pacific, and vice versa?

A. That is a traffic matter which I am not familiar with; but I do know that with the Western Pacific, as with the Atchison, we

1675 have thrown open our local points freely to them on divisions. I do not know what the divisions are, but on divisions that they have accepted as satisfactory and it has put them, as it has the Atchison, into all local points of the Southern Pacific. It is in pursuance of our policy of having our lines used to the maximum extent.

Q. The division agreement, do you happen to know, between the Western and the Southern is a fifty per cent division of the rates west of the Missouri River, irrespective of the extent of the haul made by the Southern Pacific?

A. I have no idea what the division is. I assume it is satisfactory because shortly after I was made chairman there were complaints that reached me from the Gould offices, complaints of discrimi-

and unjust treatment of the Western Pacific, and that we were unwilling to let them take local freights from our lines; and when I looked into the details and sent them to the Gould people, it shut them up completely and showed them that the complaints were groundless.

Q. Water competition suffers a considerable disadvantage when the origin or destination of the freight is on the interior, requiring transshipment, does it not?

A. Water transportation is at a disadvantage?

1676 Q. Yes.

A. Yes, some; just in the way in which you name.

Q. The isolated branches of the Southern Pacific or those which would be isolated if the Central were taken from the Southern Pacific, between Fresno and Sacramento, are all short lines, are they not?

A. Yes.

Q. Does the Central Pacific maintain terminals at Ogden?

A. The terminals at Ogden, excepting the shops, which are the sole property of the Central Pacific, are owned by the Ogden Union & Terminal Railway Company, fifty per cent of the stock of which is owned by the Central Pacific and fifty per cent by the Union Pacific.

Q. That amounts to really a joint ownership and operation of those terminals by the Central Pacific, does it not?

A. As I remember it, they are operated—I think they have tried it all sorts of ways—but I think at the present time there is a terminal superintendent that operates them.

Q. When the Southern Pacific and Union Pacific were unmerged it did not have any effect upon the rates, did it?

A. When the Union and Southern were unmerged?

1677 Q. Yes.

A. I don't think so; I don't see how it could, because the through rates are made by the commission, and the Union Pacific was the only line that was interested in the through rates. The other rates were local rates in California with which they had nothing to do.

Q. It did not change the methods of doing business, did it?

A. No.

Q. In the same way, the merging of the Southern Pacific and the Union Pacific in 1901 did not change the methods of doing business?

A. It did not change the methods of doing business in the operating department; but I can not say whether there were any changes in the rates. Yes, I do recall one operating change that they made; they closed the Roseville gateway as tight as they could, and all Oregon freight went via Granger up to Portland.

Q. That is, all that did not go Sunset?

A. Well, of course, what went Sunset was almost negligible.

Q. But there was no closure of the gateway from Oreg

1678 so far as the Sunset was concerned?

A. No.

Q. The closing of that gateway had the effect of practically pr venting any Oregon freight from traveling from Roseville to Ogd if destined east?

A. That is right; it prevented any freight destined east from usi the Southern Pacific lines from Portland to Ogden.

Q. Were there changes in the operating officials in 1901?

A. Yes; a good many.

Q. Did it reduce the number—do you know?

A. Yes; a good many at a good many points; added some and to off others. There were a great many employees at joint statio particularly in the east, that were taken off. Then Mr. Harrim who required help in administering such a large property, appoint two new officers as his assistants. He took one Southern Pacific m and made him head of the traffic over all of the roads, and he to another one and made him head of operation, construction, and mai tenance over all the properties. He took another Southern Paci man and made him head of the treasury department, and he to another Southern Pacific man and made him head of his legal d partment.

1679 Q. Did this have the effect of cutting down expenses of o eration a good deal?

A. Some; yes; but there was some increase through the creation new offices, but that increase was wiped out many times over throu the increased efficiency of working the properties.

Q. On page 1510, in speaking of increase of expenses of operati if the Southern were divided from the Central, you referred to t fact that the Central Pacific Railroad gets its oil fuel from w near the Southern Pacific lines and that the Southern Pacific g its ties and lumber from near the lines of the Central Pacific. Wo those facts increase operating expenses if the two lines were divid

A. Why, yes; as I testified on my direct testimony. That is j what I did testify to—that it would increase the operating expe largely.

Q. And it would increase the operating revenue of the other r correspondingly, would it not?

A. If the other road got the business; but there is no guara that it would. If the Central Pacific were made independent sold to the Union, which seems to be the desire of the Gov

1680 ment, the Central Pacific might buy its fuel over east and the Southern Pacific might not get a dollar of revenue for carrying it.

Q. In expressing your opinion as to the desire of the Government, which was not, to be sure, asked just then, whom do you mean now by "the Government?"

A. I associate this whole matter, you understand, with Mr. Wickersham's original threat to me that if we did not sell, then he would sue; and now the Government is carrying out his threat. We did not sell, it is true, through no fault of ours, and here we are in the midst of a lawsuit to make us sell.

Q. What individuals of the Government do you now refer to as having this desire?

A. Oh, I think of the Government as a great big fellow with a great big stick, without any particular man in view.

Mr. ORR. But the stick administration has been changed—the man with the big stick.

The WITNESS. I don't know that, except that it seems to me that the stick is larger than it used to be, and used more frequently than it used to be.

By Mr. MCCLENNEN:

Q. And again, this free expression of your opinion as
1681 to the desire of the Government is consistent with your conceptions of accuracy, is it?

A. I think what I said about the Government and the big stick and the frequency of its use is quite accurate. I wish to disclaim any idea of lese majeste, though, defining by that the offense of not having a very high respect for the Government. I think that is the translation of it.

Q. Do you desire to be understood as indicating that you think the officials of the Government instituting and pressing this present prosecution are doing it in cooperaton with the Union Pacific and its officials?

A. Why, no; I especially said I had no idea of committing lese majeste.

Q. The Southern Pacific Railroad and the Central Pacific Railroad, operated separately, would, in view of the different ownerships of the terminals, each be in a good position to negotiate with the other on terms of joint use, would they not?

A. Certainly any roads running into the same point and desiring to use the same properties are in a position to negotiate, but the use
of those properties to each party could never be as efficient, and
1682 the properties could not be as low in cost of operation as when the properties are united and built as though two sets of lines have been built up.

Q. In reply to Mr. Blair you stated some figures as to the loss to the Central Pacific Railway Company if the European loan were called.

Mr. BLAIR. I beg pardon; I said loss to the Southern Pacific Company as the guarantor of the loan.

The WITNESS. Yes; the Southern Pacific Company.

By Mr. McCLENNEN:

Q. Did you mean that those figures were made up on the supposition that if the railroads were separated the Southern Pacific Company as guarantor would meet the obligation to the exoneration of the principal on the obligation of the Central Pacific Railroad Company?

A. We know that under the agreement it could be called at once and we are certain that it would be called, and as guarantors we certainly would have to make good.

Q. I only asked you if in stating those figures you stated them on the assumption that the Southern Pacific Company would be the one that would pay that loan, and not the Central Pacific Railroad

1683 Company. Were the figures made up on that assumption?

A. On that assumption, which I consider a certainty.

Q. Do you mean to convey the impression that the Central Pacific Railroad properties and franchises are not worth the amount of their bonded debt?

A. I do not know. I didn't say that. I said nothing about it. What I did say was what I repeated in an answer here. Can you not let me get you a copy of the agreement? That would be better than my quotation from it.

Mr. BLAIR. We intend to offer it.

The WITNESS. I have not read it very recently, but I am giving you my recollection of what penalties will accrue to the Southern Pacific if the agreement is forfeited.

By Mr. McCLENNEN:

Q. What I am calling attention to is certain figures that you gave and I am trying to find out simply whether those figures were based on the assumption that the Southern Pacific met the loan under the guarantee and did not get reimbursement from the principal debtor, the Central Pacific Railroad Company. Now, is that the assumption that you made?

A. That is the assumption that I made.

Q. Now, when you made that assumption did you assume that the Central Pacific Railroad properties and franchises were not of value sufficient to meet their bonded indebtedness?

1684

A. I do not know. I did not think about that. My attention

ways has been fixed on what obligations or what duties would devolve upon the Southern Pacific Company if this agreement were broken. Of course, the first thing we have got to do is to pay the penalty, and then look around to see how we can get reimbursed.

Q. That is, unless you could get the principal debtor to pay the principal first?

A. I say, unless we could get reimbursed sometime.

Q. That loan was floated in 1911?

A. Yes.

Q. And was floated on its face?

A. Yes.

Q. At what was it floated?

A. You can figure backward. I asked the comptroller to figure for me what the money cost us, taking into account the discount and commissions and expenses, and he told me 5.2 per cent. Now, that was an easier way for me to get the information than to ask
1685 him what was the discount and what was the commission and what were our expenses. I probably would never have remembered about that, but I do remember the one figure of 5.2.

Q. The 5.2 estimated rate is made upon the basis of the bonds having been floated at some discount, which is to be cared for by distribution over the period of the currency of the bonds, is it not?

A. Yes.

Q. And the figure of loss that you gave was based upon the assumption that the new loan would be floated when interest rates were higher, so that the discount would be greater?

A. No; that is part of it. You quote me wrongly there. My first statement was that if the bonds were called to-day, 1915, and had to be paid—I do not care whether the Central Pacific pays them or the Southern Pacific, but I am assuming that the Southern Pacific primarily would have to pay them because they are the ones to whom the managers of the loan would look. If the bonds were called within four years after issue, and this discount and commission and expenses had to be taken up in four years instead of in thirty-
1686 five, the money for the four years already elapsed would cost us 8.2, or three per cent more. I then stated if the money to pay those bonds at their face value had to be raised to-day at current rates, the new loan, I do not think, could be gotten at better rates than about 6.2. In other words, there would be about one per cent, certainly three-quarters of one per cent, higher than we have got on the loan arranged for now.

Q. And if this requirement to meet the loan should come at a period when interest rates were low again, it would remove a substantial part of the loss which you have figured?

A. Yes; but those lucky things never happen. They generally happen the other way; they come when money is higher.

Q. You have spoken of the similarity of equipment used in Texas to that used over the Central Pacific Railroad in the eighties or early nineties; that would be the normal thing to expect where a railroad was operating its own line and a series of leased lines, would it not?

A. Yes; when the same concern owned all of those lines it was natural to expect that there would be identity of design and equipment and rails and so on.

Q. The lines east of Lafayette or Vermillionville were
1687 never published as leased lines of the Central Pacific Railroad Company, were they?

A. The lines east of Vermillionville? No; I think not.

Q. You have spoken of the Central Pacific Railroad and the Union Pacific Railroad as operated as one line. By that you meant, did you not, that they have had joint rates and have operated through cars and through trains, both freight and passenger?

A. No; I meant much more than that. We have arrangements with a good many lines for through rates, through cars and passengers, but I stated that with no line was our cooperation as close with the Union Pacific, ever since I have known anything about it, and I understand that our treatment of them, after I went to California, was in no wise different from what it was before.

Q. Well, in what other ways than in arranging for through rates, through cars and through trains and through billings have you cooperated?

A. Well, in this way: Your connection may suggest a new train or a through car; you may say that you see no necessity for a new train or no necessity for a through car, and you do not care about hauling it. Indeed, that you have balanced expected increased revenues with expected increased expenses, and that
1688 you think it will not pay, and you don't propose to do. When propositions from the Union Pacific have come, we have not taken that position.

Q. Now, is there any other respect in which the line has been operated as a through line?

A. Well, after making through rates, hauling of the through trains that they want you to haul, hauling all the through cars that they ask you to haul, cooperating with them in getting business as we have done, I don't see how much more you can do, unless you turn over the management of the road to them.

Q. I think you misunderstood the question. I did not ask you what more you could do, but is there any more that you do do?

A. Then I will say no; I do not see how we could do any more.

Q. The effort of the Central Pacific Railroad Company or those in charge of the Central Pacific Railroad, at all times between 1883 and 1901, was to induce such traffic as possible to travel not over the Union Pacific but over the Sunset line? I refer to freight traffic.

A. Yes; but after getting whatever was possible over
1689 the Sunset Route, there was a good deal left to go over the Union Pacific or the Central or other lines as they came into California, and the influence of the Central Pacific has always been to have the balance of the freight go in connection with the Union.

Q. But it has been the systematic effort of the Central Pacific to divert as much to the Sunset line as possible, has it not?

A. Where we have seen an opportunity of making the service of the Sunset line appear more attractive to the shipper than the other we have done it; but there is a large amount of freight that we can not by any possibility get to go over the Sunset line. I have always known it, the public knows it, and that we help the Union Pacific to get for their line.

Q. And that discrimination was practically continuous from 1883 up to 1901, was it not?

Mr. BLAIR. Counsel objects to the use of the word "discrimination" as involving a statement of fact not based on anything that the witness has said.

The WITNESS. Ido not think, in doing what we did, we went
1690 any further than was contemplated by the law that chartered the two lines. There were other lines, plenty of them, soliciting freight. We never threw any obstructions in their way. The Milwaukee could get it from Omaha; the Denver & Rio Grande always had solicitors in San Francisco soliciting freight their way; if they could get it, well and good.

By Mr. MCCLENNEN:

Q. You mean that you did not refuse to haul it or purposely delay or put physical obstructions in the way of it?

A. Certainly not.

Q. But the effort was always the other way? The effort of your company was to get it via the Sunset Route?

A. Unless we knew in the first place that there was no earthly reason for attempting it.

Q. And that was irrespective of whether it originated on the Southern Pacific tracks or the Central Pacific tracks?

A. We have always treated the two concerns as one, as they actually are.

Q. If the line from San Francisco to Omaha were operated as a through line, the natural effort of all officers on all parts of that

line would be to get as much traffic as possible to go that wa
would it not?

1691 A. If it were operated as one line?

Q. Yes.

A. The trouble would be then, it seems to me, that if it wer
divorced from the Central Pacific it would be a limb trimmed o
from the trunk, or whichever way you choose to call it, and added
a limb projecting out from the Union Pacific on the other side, an
would be more objectionable even than the present arrangement.

Q. Well, "limb" is conventially used to characterize more later
branches than those that project straight onward, is it not?

A. I don't know; it depends on the tree. I have seen vertic
branches at Monterey, hundreds of them, growing right straight o
from the tree.

Q. But going back again, the natural effort of any one continuo
line is to get as much traffic to travel over that line as possible,
it not?

A. I should think so; but what I meant to say is that if that li
from San Francisco to Omaha were made one, joining the Centr
Pacific and the Union Pacific, the Union Pacific would be in t
position of having three lines, one to San Francisco, one to L
Angeles, and one to Puget Sound, and they would be in absol
control of the Pacific Coast business.

1692 They have two lines to each one of those places now, a
the addition of the San Francisco-Ogden line and the Ogd
Omaha line would give them three routes to each one of th
Pacific coast terminals.

Q. Do you think that would put the Union Pacific in as absol
control of the Pacific coast business as the Southern Pacific was
1899?

A. I do not think any possible conception of putting a road in c
trol of traffic could begin to amount to what this proposed arra
ment would be. It would make them absolute masters of the Pa
coast.

Q. In what respect more masters of the Pacific coast than
Southern Pacific was of California in 1899?

A. In 1899?

Q. Yes.

A. There were plenty of roads into California in 1899 that co
dispute with the Southern Pacific for the carriage of freight.
this case that you suggest there would be three roads at each
of these points, and all of these roads would be competitive with
others, to certainly a much greater extent than this case of the C
tral Pacific and the Union Pacific line with the Sunset

1693 should say it would be an absolutely monumental control of traffic.

Q. Are any of those many roads that you referred to as in a position to dispute, in 1899, now out of business in California?

A. No. We have gone over that a great many times, but I will go over it again.

In 1883 we said that the Atchison had reached California. In 1883 the O. R. & N. had reached Portland, and by means of its steamships, would compete for traffic. The Canadian Pacific at one time ran ships down the coast to San Francisco, competing for traffic. The Northern Pacific did. There were a good many ways you could get into San Francisco, in those days, independently of the Southern Pacific.

Q. Do you think of any more just now?

A. No. If I do, I will let you know. I do not think of any more just now.

Yes, I think of one more. There is the route around the Horn. There is the route around the Isthmus of Panama.

Q. The effort of the Central Pacific Railroad officials, or those operating that road, to get business via the Sunset route, went so far at times, did it not, as to bring the traffic destined from Ne-
1694 vada to New York and Boston back to Sacramento, down to El Paso and around to New Orleans, and thence to New York?

A. When you consider the roads were all as one, that was a very advantageous way to carry freight if the shipper did not object.

Q. And it was carried that way to a considerable extent?

A. I think some was carried that way.

Q. And the effort was made to carry it that way?

A. No doubt; to get the longest haul.

Q. When was this system of competitive examinations on the efficiency of maintenance and upkeep over sections put into operation?

A. I put it in operation in 1895, when I came to California. I had used the system on the lines east of El Paso for perhaps three or four years before that.

Q. Is the major part of the business of the Central Pacific Railroad its transcontinental business or its local business?

A. I would rather not answer that without reference to the books. I would say that I do not know.

Q. That is, the balance is not sufficiently prominent one way or the other so that you carry it in your mind?

1695 A. I never do carry those matters; I can not. If you really want to know, however, I will get the information and let you have it.

Q. Would your answer be the same with reference to the Southern Pacific line, the Sunset line?

A. The proportion of local and through business?

Q. Yes.

A. Yes; I will get that for you.

Mr. BLAIR. He asked you whether your answer would be the same—as to whether you knew or not.

The WITNESS. Yes. I do not know.

By Mr. McCLENNEN:

Q. You do not know at present?

A. No.

Q. Did you mean to convey the idea by your answers that if there was a dissolution between the Southern Pacific and the Central Pacific the transcontinental rates would be increased?

A. No. I do not think I said that. I certainly did not mean to convey that impression, because the Interstate Commerce Commission fixes these rates, and I do not see how they could be increased.

1696 Q. Have you read the testimony given by the witnesses on behalf of the petitioner in this case?

A. The Government's witnesses?

Q. Yes.

A. Some; yes.

Q. But not all?

A. No.

Q. Was the effort which the officers of the Southern Pacific Company directed to be made to get the California Railroad Commission to approve the contract of February, 1913, a serious and enthusiastic one, or perfunctory?

A. I am afraid you will have to ask these gentlemen who made it. I do not know just how they behaved. I was not here.

Q. Was it your desire that that commission should approve the contract?

A. It certainly was. It was sent over here to counsel with the request that they present it before the commission and ask their approval. Just how they carried out their mission, I do not know. I assume that, as good counsel, they naturally used their best endeavors.

Mr. McCLENNEN. That is all.

1697 Redirect examination by Mr. BLAIR:

Q. I understood you to say, Mr. Kruttschnitt, that there are no terminal buildings or other terminal facilities in San Francisco standing in the name of or belonging to the Central Pacific Railway Company.

A. No; there are not.

Q. Does the Santa Fe have connections with the Western Pacific in central California? And if so, name some of the towns where it joins or meets the Western Pacific.

A. It meets them at Oakland, Stockton, and, I think, in Sacramento now, because I understand the Santa Fe has recently made some arrangements with an electric line to get into Sacramento, and that would put them in connection with the Western Pacific.

Q. What was the condition of the Union Pacific track in 1895 as compared with that of the Central Pacific?

A. They were about the same. The Union Pacific at that time, and the Central Pacific also, were laid almost entirely with 60 and 62 pound rails.

Mr. BLAIR. That is all.

(Whereupon at 6.15 o'clock p. m. an adjournment was taken until to-morrow, Friday, March 12, 1915, at 11 a. m.)

1698 TWENTIETH DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Friday, March 12, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

1699 ROBERT NEWTON LYNCH was called as a witness on behalf of the defendants, and having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. San Francisco.

Q. What is your occupation?

A. Vice president and manager of the San Francisco Chamber of Commerce; also vice president and manager of the California Development Board.

Q. What is the California Development Board?

A. The California Development Board is a State-wide institution that has as its representatives official appointees of the various supervisors of the State and affiliates more or less directly with all of the chambers of commerce of the State in common matters of State-wide interest.

Q. What matters, generally, do they concern themselves with?

A. The main point of emphasis in the development board i
1700 agricultural development and all the things that go with it
the raising of the efficiency of the various chambers of com-
merce in the State, and attempting to gather together all the com-
mercial interests of the State in common purposes for the benefit o
the State.

Q. Does that board have representation in practically every count
of the State?

A. Yes; some thirty-two counties, I think, have official representa
tion on the board, and those counties that have not representatio
generally affiliate sympathetically in the work.

Q. What is the chamber of commerce that you speak of?

A. The Chamber of Commerce of San Francisco has a membershi
of nearly 3,000 merchants and shippers, retail merchants and whol
salers, manufacturers, and banks. It is comprehensive of all of th
commercial interests of San Francisco.

Q. In a general way, what is the purpose of that organization?

A. The purpose is to foster and advance the commerce of San Fra
cisco, to facilitate the doing of business. It has various departmen
which look after those interests, and look after the interests o
1701 the harbor, through a marine department.

Q. Does it concern itself with transportation questions?

A. The question of transportation is one of the most vital matte
with the chamber of commerce, one of the most vital with which
deals, and it has a well-qualified transportation department, wi
experts to deal with transportation questions.

Q. What are your duties as manager of the chamber of commerc

A. As manager and one of the directors of the chamber, I have t
executive oversight of the activities of the chamber and direct t
various departments under the board of directors.

Q. Did you ever have occasion to consider the proposed separati
of the lines of the Central Pacific Railway Company from the oth
lines making up the Southern Pacific system?

A. The organization made a very exhaustive and thorough stu
of that question and took a position upon it.

Q. When was that?

A. About the beginning of 1914, February or March.

Q. When was your attention first called to that subject?

A. Attention was first called through a decision of t
1702 railroad commission, which objected to certain relations b
tween the Union Pacific and the Southern Pacific lines. T
railroad commission advised the public, and we took notice of it, th
such a separation would possibly cause an increase in rates; and

brought the subject acutely to our attention as a matter of very grave interest.

Q. You understood, did you, in a general way, that the California Railroad Commission had made a decision as to such proposed separation?

A. Yes; that decision was available to us and advised of the danger of the raise in rates because of a double management and possible interference with service.

Mr. McCLENNEN. The last part of the answer, beginning with "and advised of the danger", and so forth, the petitioner moves to strike out as not responsive, hearsay evidence of the decision, and a statement of an immaterial opinion.

By Mr. HERRIN:

Q. Now, it was some time after the decision before you took thorough action in the matter, was it? What was the next action of your board? Did they consider the matter?

A. We learned that there was an intention on the part of the
1703 Government to begin suit to dissolve the Central and Southern Pacific lines. On the getting of that information we went to every source of information that we could get to find the facts in the case and what our interests were.

Q. What investigation did you make yourself of the matter?

Mr. McCLENNEN. This is objected to as immaterial, incompetent, and irrelevant.

The WITNESS. We inquired of the railroad commission; we also inquired of the Southern Pacific Company the facts in the case, and we gathered all of the data together and estimated it.

By Mr. HERRIN:

Q. Who were "we"? You spoke of "we".

A. The chamber of commerce.

Q. And what individuals are included?

A. The official board of directors directed me as manager to get this information.

Q. How many directors have you?

A. Twenty-one.

Q. Then did you have meetings and discussions on the subject?

A. Yes.

1704 Q. Did you discuss this matter with other individuals than those mentioned?

A. Yes; we took the matter up with the various chambers of commerce in the State, and we took up the matter with our own traffic experts.

Q. Did the chamber of commerce take official action in any form?

Mr. McCLENNEN. That is objected to as immaterial, incompetent, and irrelevant, and a thing that should be proved by the records of the chamber of commerce, not by oral testimony, if it would be proved at all.

The WITNESS. The chamber of commerce passed a resolution upon the subject, stating its position in connection with this matter.

By Mr. HERRIN:

Q. Have you a copy of that resolution?

A. Yes [handing paper to counsel].

Q. Was the resolution, a copy of which you present here, adopted by the chamber of commerce?

A. It was adopted by the chamber of commerce and signed by its president; it is a matter of record of the chamber.

Q. How was it adopted; by what vote? You say the
1705 chamber of commerce. Was it by the directors or by general meeting of all the members?

A. The directors of the chamber take action on behalf of the members.

Q. Then this was a vote of the directors?

A. The board of directors of the chamber.

Mr. HERRIN. I offer this resolution in evidence.

The WITNESS. All our members were advised of our action, and no dissent was made.

Mr. McCLENNEN. This latter part of the answer petitioner moves to strike out as not responsive to the question.

By Mr. HERRIN:

Q. Do you remember the date of adoption of that resolution?

A. No; it may be on the resolution itself.

Q. I do not think it appears on the copy you present.

A. It was, as near as I can remember, in February of 1914.

Mr. McCLENNEN. The petitioner objects to the introduction of this resolution on the ground that it is immaterial, incompetent, and irrelevant; purports to express an opinion upon a question of
1706 law, based upon what evidence does not appear, and as containing a narrative of facts which must of necessity be hearsay, and a part of which are already shown to be inaccurate by the evidence introduced by the defendants' witnesses in this case, and as containing facts that disclose that the information and large parts of the phraseology must have been furnished by the Southern Pacific Company or its counsel, either directly or indirectly.

(The resolution was received in evidence and marked "Defendants' Exhibit (Lynch) No. 22, March 12, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. HERRIN:

Q. Was this adopted by unanimous vote?

A. Yes.

Q. Did you have any dissent in your organization on the subject?

A. No.

Q. To sum it up, you seem to be opposed to the separation of these lines?

A. Yes.

Mr. MCCLENNEN. That last is objected to as calling for an opinion of the witness on immaterial matter.

1707 By Mr. HERRIN:

Q. In this investigation and discussion—which was general, was it not?

A. Yes.

Q. (Continuing.) And a matter of public interest, was it not?

A. Very great public interest.

Q. Did you discuss the matter with your members generally?

A. Yes.

Q. And did you discuss the matter with any other organizations, or the officials of any other like organizations?

A. Yes.

Q. What organizations do you have reference to?

A. We took the matter up with the Los Angeles Chamber of Commerce and the Sacramento Chamber of Commerce and the San Jose Chamber of Commerce, and similar organizations throughout the State.

Q. What response, if any, did they make to your application?

Mr. MCCLENNEN. This is objected to as immaterial, in-
1708 competent and irrelevant, and calling for hearsay and an opinion of persons not submitted here for cross-examination, on a matter that is not a proper subject for opinion evidence, and as a manifest attempt to get before the court matter that can have no legal bearing, by bringing in the opinions of persons that the counsel for the Government has no opportunity to cross-examine to find to what extent their opinions have been actuated by their interest in the Southern Pacific Company and those persons associated with it.

Mr. HERRIN. I will withdraw that question, and restate the question in this way, as counsel objects to showing what action was taken; and I appreciate the point that he has no opportunity to cross-examine. I will put the question in this form:

With all the persons with whom you discussed the matter, or had communication with, did you find any dissent, or was there any dissent expressed to you from the view and position which was taken by your organization, the chamber of commerce?

Mr. McCLENNEN. The petitioner renews the same objections stated to the withdrawn question.

The WITNESS. None whatever.

1709 By Mr. HERRIN:

Q. Now, Mr. Lynch, I will ask you if, in your examination of this matter, you made a special effort to determine in what respects, if any, this proposed separation of lines could be of advantage to your clients—that is, the members of this chamber of commerce—and also in what respects, if any, it would be to the disadvantage or prejudice of those people? Did you consider those matters? Did you make an effort to find out in what respects it would be of advantage or disadvantage?

Mr. McCLENNEN. Petitioner objects to this question as too general in form, calling for an opinion, for matter which is immaterial, incompetent, and irrelevant, from a person not shown to be an expert upon the questions of transportation and the questions of law involved.

The WITNESS. As exhaustively as possible. The chamber had the matter under consideration for several months, and every possible point from any source was considered, both personally and by the board of directors.

By Mr. HERRIN:

Q. The membership of this chamber was made up of many individuals and firms who are large shippers of freight and

1710 passengers?

A. Yes.

Q. Large patrons of these transcontinental lines and other railroads?

A. A very large percentage of our membership is concerned with firms of that character.

Q. It was considered by those people, those individuals?

A. Yes.

Q. What points, if any, did you find that would result to the advantage of these shippers or of the public by this proposed separation of the Central Pacific from the Southern Pacific?

Mr. McCLENNEN. That is objected to as incompetent, irrelevant and immaterial, and calling for an opinion by the witness not shown to be an expert on the subject, and on a matter not a proper subject for opinion evidence.

The WITNESS. We found no advantage to the shippers whatever that was not counterbalanced by much greater disadvantage.

By Mr. HERRIN:

Q. Did you find disadvantages by the proposed separation?

1711 Mr. MCCLENNEN. The same objection.

The WITNESS. We found many disadvantages that appealed to us very strongly, and which dictated our continuous policy in opposition.

By Mr. HERRIN:

Q. You may state, Mr. Lynch, in a general way the disadvantages that you found that would result from the separation of the Central Pacific lines from the Southern Pacific.

Mr. MCCLENNEN. The same objections as stated to the last two questions.

The WITNESS. The San Francisco Chamber of Commerce is vitally interested in the creation of a distributive area from San Francisco over the entire western territory.

We found the disadvantage that, if these roads were divided, it would cause an awkward situation in service, and it would be very disadvantageous; that it would probably cause a raise in rates, and that it would interfere with through schedules that exist under the present arrangement.

By Mr. HERRIN:

Q. The rates you speak of are local rates, rates local to the coast; or are they transcontinental rates?

Mr. MCCLENNEN. The same objection.

1712 The WITNESS. Rates, mainly, from the coast. We are interested, of course, in the lowest distributive rates that we can get, and with the plain warning of the railroad commission that rates would be raised proportionately to the cost of the service, it seemed clear to us that any double cost of operation would inevitably cause a raising of the rates.

Mr. MCCLENNEN. The answer of the witness, beginning with "the plain warning of the railroad commission", and so forth, petitioner moves to strike out as irresponsive and an inaccurate statement of the opinion of the commission, and an attempt to put in hearsay evidence of what that decision was, and as containing a statement of an opinion which is immaterial on a matter on which the witness is not qualified to express an opinion.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. MCCLENNEN:

Q. How long have you been a vice president of the chamber of commerce?

A. Something over two years.

Q. How many vice presidents are there?

1713 A. Three.

Q. Is the position of vice president a salaried position o volunteer position?

A. The position of vice president in the chamber is an elective p tion, and as such is not salaried.

Q. Does it carry with it any specific duties?

A. The vice presidents—I might say I also am manager, and—

Q. I wanted to keep the two things separate. Let us deal with vice presidents first.

A. Very well. As vice president of the chamber I have the du of presiding at meetings and taking over the duties of president his absence. It is an executive office.

Q. You said there were how many vice presidents?

A. Three.

Q. How long have you been manager of the San Francisco Ch ber of Commerce?

A. Something over two years.

Q. And is that a salaried position?

A. It is.

1714 Q. Is it a position which consumes all the time of the cumbent?

A. Yes.

Q. That is, it is an occupation in itself?

A. It is an occupation in itself, in connection with the devel ment board.

Q. And prior to two years ago, what was your relation to chamber of commerce?

A. Prior to that I was vice president and manager of the devel ment board for some four or five years, and the chamber of c merce had the same relation to the development board that the ot chambers of the State.

Q. That is, this California Development Board you have spo of?

A. Yes.

Q. Is the California Development Board, of itself, any part of chamber of commerce?

A. No; it is a separate organization having, as a great many its members, similar membership in the chamber of commerce.

Q. Does membership in the chamber of commerce, as such, c membership in the development board?

A. No.

1715 Q. What are the duties of the vice president of the devel ment board?

A. The duty of the vice president of the development board is to take over the duties of the president of the board. It is an executive office, without salary.

Q. That is, the duties of presiding at meetings and——

A. The duties of presiding at meetings and membership on its executive committee.

Q. How many vice presidents are there in the development board?

A. One.

Q. What are the duties of manager of that board?

A. To manage the various activities of the board, conduct its office, and to carry out the policies of the executive committee.

Q. Is that a paid position?

A. It is.

Q. Is that an occupation in itself?

A. Yes.

Q. You said you had held that position for five years before being in the chamber of commerce?

A. Perhaps three years; five years altogether.

1716 Q. I beg your pardon. Three years before?

A. Yes.

Q. During the first three years were you a member of the chamber of commerce?

A. Yes.

Q. How long had you been a member of the chamber of commerce?

A. Almost the entire time; probably two years of the time.

Q. During the last five years have you had any other occupation than those stated?

A. No; except that at the beginning of the time I was pastor of a church and occasionally spoke. During these five years my entire occupation and salary have been derived from these positions.

Q. Prior to the five years, what was your occupation?

A. I was the executive officer of the North of Bay Counties Association, which is the combination of the various chambers of commerce in the five counties immediately north of San Francisco Bay; and also secretary of the Pentaluma Chamber of Commerce.

Q. How long had you occupied those positions?

1717 A. Three or four years previous.

Q. And were those your sole occupations?

A. No. Coincident with those positions I was pastor of a church.

Q. And prior to that period, what was your occupation?

A. I was a student.

Q. And your present age is what?

A. Thirty-nine.

Q. Was the resolution, defendants' Exhibit No. 22, drafted by an individual or a committee [handing paper to the witness]?

A. I do not recall.

Q. You recall nothing on that subject?

A. No. This resolution was one of many actions taken by t chamber. It, by verbal vote of the board of directors, took a positi against this question and instructed me to get further informatio and this resolution is issued as one of the attitudes or actions of t chamber consistent with its general policy.

Q. Were you present at the meeting of the board of directors which this resolution was adopted?

A. Yes.

1718 Q. Was it brought to that meeting in final form?

A. I do not remember.

Q. You have no recollection on that subject at all?

A. No. I could recall from the records of the chamber, possib

Q. Have you any recollection as to whether there were any amen ments suggested at the meeting of the directors to the resolution th was first proposed at that meeting?

A. I do not recall any.

Q. What is the first that you recall of hearing this resolution re or reading it yourself, in the form in which it now exists?

A. I have no recollection. It is over a year ago. I just recall th as the general attitude of the chamber on the subject.

Q. Did you present this resolution?

A. I think not.

Q. Don't you know?

A. No.

Q. You do not know whether you did or not?

A. I am almost certain that I did not.

1719 Q. Were you presiding at the meeting at which it was p sented?

A. No.

Q. Did you speak at the meeting upon the resolution?

A. I think not.

Q. Don't you know?

A. I do not absolutely know; but as to matters considered by board, as a rule, I attempt, as far as possible, not to influence general action on the question; being the manager of the chambe take the instructions of the chamber itself upon these questions.

Q. How many directors were present at the meeting at which resolution was adopted?

A. I do not remember; but I could get the information readily.

Q. Do you bear in mind anything, approximately, about the nu ber?

A. No; I did not refresh my mind on that subject at all. I just happened to have this resolution from our records that I brought with me.

Q. How many directors are there of the chamber of commerce?

A. Twenty-one.

1720 Q. For what periods of time are they elected?

A. For one year.

Q. They are all elected at a stated annual meeting?

A. Yes.

Q. You have no recollection whatever of whether there were five, ten, fifteen, or twenty directors present?

A. There must have been a majority; there must have been a quorum.

Q. That is, there must have been at least eleven directors present?

A. Yes.

Q. Beyond that, so far as your recollection goes, you can not assist us as to the number that were present?

A. Not at the time when this particular resolution was adopted.

Q. Can you remember the name of any one of the directors present?

A. Not from my memory.

Q. You do not now recall a single one of the directors present?

A. The fact that our president signed it makes me almost

1721 certain that Mr. Michaels, the president of the chamber at that time, was present.

Q. Beyond that, can you assist at all as to the persons who were present?

A. No, sir.

Q. And you have no independent recollection of Mr. Michaels being present?

A. No.

Q. You simply judge of that by seeing his signature in typewriting on the resolution?

A. That is it. I am almost certain of it, because Mr. Michaels was president of the chamber and was handling the matter very definitely.

Q. Can you give me the names of any of the twenty-one gentlemen who were directors of the chamber of commerce at the time this resolution was passed?

A. Yes.

Q. Will you do so, as fully as you can?

A. Mr. C. F. Michaels, president; Mr. R. I. Bentley, Mr. Joseph Sloss, and myself, as vice presidents and directors; Mr. F. J. Coster,

Mr. M. H. Esberg, Mr. George C. Boardman; if I were given su
ficient time I could recall all of them, I think.

1722 Q. Take all the time that you need. From your position
manager and vice president I should hope that, with reas
able delay, you might be able to remember a few of them.

A. There has been an election since then, in which the directo
were changed, and I was trying to give you the names of those th
were present at the time about which you are inquiring.

Q. Yes; I just wanted those who were present at that time.

A. Yes. R. H. Swayne, Constant Meese, E. R. Dimond, P
Carroll, B. F. Schlesinger, and W. N. Moore. Do you wish me
take time to remember all of them?

Q. If you can, I should like it.

A. Mr. B. Sinsheimer, R. Vollmer, Seward McNear, and J.
Fagan. Those are all that I recall just at the moment. It may
that during the testimony others who were members of the boa
at that time may come to me.

Q. When, in the year, does the annual meeting of the chamber
the election of directors occur?

A. In January.

1723 Q. Then this resolution was passed some time soon af
January?

A. Yes.

Q. And that would be some time soon after January of 1913?

A. 1914, as I recall.

Q. 1914?

A. Yes.

Q. Were there any lawyers upon the board of directors?

A. We have an attorney for the chamber, Mr. Allen Wright, w
always sits with the board of directors, and is our legal adviser.
also had, and have, a traffic attorney, Mr. Seth Mann, who is the
torney for the traffic department of the chamber.

Q. Did either of those gentlemen render any written opinion up
the legality of the holding of the Central Pacific Railroad by
Southern Pacific Company?

A. Not that I know of.

Q. Were they requested to make an investigation of the le
questions involved?

A. No; the point at issue with us was our commercial——

Q. Bear in mind all I have asked you; just confine yourself
that.

1724 Mr. BLAIR. I think the witness has a right to finish
sentence in order to show the reason why a legal opinion
not asked.

Mr. McCLENNEN. I have made my suggestion, and you have heard the suggestion of counsel for the defendants. I will pause a moment for you to exercise your judgment as to what you shall do and then I will continue.

The WITNESS (continuing). The one point at issue with us was the commercial disadvantages that might arise out of what was threatened. We were not passing upon the questions of law.

Mr. McCLENNEN. Petitioner moves to strike out the last part as not responsive.

By Mr. McCLENNEN:

Q. You took no legal advice on the subject at all, on the question of the legality of the holding?

A. Our attorney was in consultation with us constantly on the subject, and rendered it from his viewpoint.

Q. Did he investigate the subject?

A. Yes.

Q. Was he requested by the directors to investigate the subject?

1725 A. It was part of his duty to be in very intimate touch with it.

Q. Was he requested, so far as you know, by the directors, to make an investigation?

A. You mean by specific resolution?

Q. I do not care whether by specific resolution, general resolution, or otherwise; I simply indicate to you an inquiry as to whether he was asked to make a serious investigation of possibly a complicated question of law, and render an official opinion upon it such as he would care to stand by on his reputation as an attorney. Was he requested to make such an investigation?

A. I do not know whether it was done in that form. As attorney for the traffic bureau, he was in touch with the transportation committee of the chamber, reporting to the board of directors, and this matter was a live issue in the chamber and was being constantly considered.

Q. Did you hear him deliver any opinion as to the legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. I consulted him regarding the matter.

Q. Did you hear him deliver any opinion on that subject?

1726 A. He was of the opinion that——

Q. First, I asked you whether you heard him deliver any opinion; simply that.

A. Yes.

Q. He did?

A. Yes.

Q. How long a time did it take him to deliver the opinion which you heard him deliver?

A. The opinion I heard him deliver——

Q. I merely asked you as to the time—the length of time. If you will favor me with that first I would like it.

A. Any opinion that I heard him deliver was delivered as the result of constant consideration of the question, which had been before us for some time.

Q. I suppose you did not attend upon him constantly during his consideration of the question, did you?

A. No.

Q. So that you are merely stating your supposition or hope as to the extent of his consideration of the subject, are you?

A. Yes.

1727 Q. Now, I will come back to the question. How long a time did it take him to deliver the opinion which you heard him deliver on that legal proposition?

A. I may have misunderstood the question. The opinion I heard him deliver was in regard to our interest in the matter.

Q. I have not asked you about that; I have asked you simply how long it took him to deliver the opinion.

A. I could not tell.

Q. A matter of a few minutes, or some hours?

Mr. HERRIN. I think there is a difference between the witness and counsel. As I understand it, Mr. McClennen wants to know how many minutes it took him to talk his opinion out, not how long he was considering it.

By Mr. MCCLENNEN:

Q. I mean how long in your presence he occupied in stating his opinion on this question of the legality or otherwise of the holding of the Central Pacific Railroad by the Southern Pacific Company; not any question of commercial expediency, but a simple proposition of law. How long did it take him to deliver his opinion on that subject, so far as you heard him deliver it?

1728 A. I do not recall any categorical decision he made as to the legality of the question. I misunderstood your question. As I say, I presume whatever was involved in his consideration of the legal nature—we were not seeking an opinion from him on the legality of the whole matter, but as to the practical issue in the matter and what our interests were.

Q. Was any independent legal opinion obtained by you on the question of the legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. I think not.

Q. Was any legal opinion obtained by any of you from any of the counsel or attorneys for the Southern Pacific Company?

A. No; except such data as we asked the Southern Pacific Company to furnish us, and there was a great deal of material extant upon that general subject.

Q. At the time of the passing of this resolution you voted in favor of it yourself, did you not?

A. Yes.

Q. Were you aware at the time that the Attorney General of the United States had expressed the opinion that the holding of the Central Pacific Railroad by the Southern Pacific Company was in violation of law?

1729 A. Yes.

Q. Had you, in the course of your very careful investigation into these matters, read the testimony that was introduced before the California Railroad Commission when they were considering the question of approving the contract of February, 1913, between the Union Pacific Railroad Company and the Southern Pacific Company?

A. Only in a casual way.

Q. Had you read it through casually?

A. Yes.

Q. Had you read that part in which Mr. Sproule, the president——

A. I beg your pardon; I did not read that testimony; I read the decision itself.

Q. Not the testimony?

A. No.

Q. Had you become aware, before this resolution was passed, that Mr. Sproule, the president of the Southern Pacific Company, had stated to the California Railroad Commission that Mr. John G. Johnson, of Philadelphia, as counsel for the Southern Pacific Company, had advised them that a suit by the Attorney General

1730 to cause the Southern Pacific Company to give up the Central Pacific Railroad Company would probably prevail?

Mr. HERRIN. That is objected to as assuming a fact which does not appear in the testimony, and, on the contrary, I think the opposite appears.

(The question was read as above recorded.)

The WITNESS. No.

By Mr. MCCLENNEN:

Q. In view of the objection, and perhaps to refresh your recollection, I ask you whether you read or otherwise heard the fact stated in the testimony of Mr. Sproule before the California Railroad Com-

mission, which is quoted on pages 399 to 401 of the record in the present case and which reads:

"Q. Now, with respect to the position of the Attorney General, did the Southern Pacific directors or executive committee take the opinion of outside counsel on any of these questions?

"A. They called in as an independent counsel Mr. Johnson; I forget his initials.

"Q. Johnson of Philadelphia?

"A. Johnson of Philadelphia.

"Mr. McCUTCHEN. John G. Johnson?

1731 "A. John G. Johnson, of Philadelphia, and submitted the matter to him.

"Mr. HERRIN. They submitted first the question as to whether the Southern Pacific could take its own stock?

"A. First whether it could take its own stock, and his opinion confirmed the opinion of our Kentucky counsel, Judge Humphrey that we could not take our own stock, directly or indirectly. The second point upon which he was asked to advise the executive committee was whether there was reasonable ground for the Attorney General's position and as to what would be the probable result of action by the Government as outlined by the Attorney General, and his conclusion was that it was impossible that the Southern Pacific could retain the Central Pacific.

"Q. He thought there was enough question about it to justify our going on with this trade?"

Were you, before this resolution to which you have testified was passed, advised that Mr. Sproule had so stated to the California Railroad Commission?

A. No; except that in the general information of our office we understood that at one time there was some agreement whereby

1732 the Union Pacific was to take over some portion of the Central Pacific by agreement of the various officers. Our organization was not interested in the legal points that you have mentioned but we were interested in questions of fact upon which the Attorney General might have made his decision that it was against the law. We felt here, independent of the railroad, that there might be questions of fact from the western viewpoint which the Attorney General might not have taken into consideration, and our attitude upon the proposition was to try to get to the attention of the Attorney General all questions of fact and thrash them out. We felt, in the beginning of this suit, that the Attorney General was acting in behalf of the public, and we felt we were clients of the United States Government in this matter and that this suit was probably brought

the interest of the public and the shippers and people whom the railroads might be conceived to be exploiting. We were very much concerned to prevent, so far as we could gather them, not in any legal form, but to gather them and present to the Attorney General before suit was brought, any material that we could gather that might influence the Government in its decision as to whether this was against the law; but we entered not at all upon the techni-
1733 cally legal questions involved; that was left ultimately to the Attorney General at the beginning of the suit.

Q. And you had no views as to what the legal situation was?

A. Yes; I had personally. I do not recall what the attorney of the traffic bureau may have had upon that subject.

Q. Did you remember, when you voted for this resolution, these words in it, "Nor is there, in our opinion, any sufficient legal reason requiring that such suit be brought," or did they escape your attention?

A. That phrase, so far as I had any contact with it, was based upon the fact that we felt that the facts underlying the legal question might be at fault. We had no opinion—at least I had no opinion personally—as to the technical legality of the proposition.

Q. So that you did considerately express this legal opinion that is contained in this resolution? It was not an oversight, your voting and going on record as to what your legal opinion was?

A. So far as we knew the facts of the case, I think that was a question of opinion.

1734 Q. Did you study law at all, in your student days, or in connection with your preparation for the ministry?

A. Yes.

Q. At what school did you study?

A. I did not study law at any school, but I made some preliminary studies in early years, which did not add anything to my present legal knowledge.

Q. How many of these gentlemen upon the board of directors are dependent upon the good offices of the Southern Pacific Company to get prompt handling of freight and conveniences in connection with their shipping?

A. Do you mean how many are shippers?

Q. I do not think by amplifying the question I would make it any clearer. I will have it read as I put it, if you will deal with it in that form.

(The question was read as above recorded.)

The WITNESS. I think the majority of them are shippers of freight.

By Mr. McCLENNEN:

Q. Of this list of gentlemen that you have given us, were the
any that were any more active than others in this matter of inves
gation and consideration and resolving?

1735 A. The president and the chairman of the executive co
mittee, most naturally, have taken up many of the detai
more than most of the directors, but all of the directors attend t
sessions, which are held weekly, and participate in all the discussio
and decisions.

Q. Who was the chairman of the executive committee?

A. M. H. Esberg.

Q. Who was the one who secured from the Southern Pacific th
facts which you say were furnished you by the Southern Paci
Company?

A. Myself and Mr. Michaels and Mr. Esberg.

Q. Were they the only ones?

A. I just remember to have come in contact with those three g
tlemen, with some officers of the Southern Pacific.

Q. From what gentlemen connected with the Southern Pacific
you get your facts?

A. Mr. Sproule.

Q. From Mr. Sproule exclusively.

A. All of the facts secured here, I think, were from Mr. Spro
While I was east on this matter Mr. Shoup furnished material wh
we requested.

Mr. HERRIN. What Shoup was that?

1736 The WITNESS. Paul Shoup.

By Mr. McCLENNEN:

Q. What position did Paul Shoup occupy in connection with
Southern Pacific Company?

A. I do not know. I think he is president of the Pacific Elec
Company in Los Angeles.

Mr. HERRIN. In Los Angeles; yes.

By Mr. McCLENNEN:

Q. Is he an attorney?

A. Not that I know of.

Q. Now, from what persons connected with the Southern Pa
Company or otherwise was this information obtained appearing
this resolution, "The ownership of the Central Pacific Railr
Company by the Southern Pacific Company does not in any s
constitute a combination in restraint of trade"?

A. I do not know that that was furnished by the Southern Pa
Company.

Q. Do you know who was the source of information upon that question, for the statement that appears here?

A. No.

Q. Do you know who furnished this information, "On the
1737 contrary, the lines of railroad owned by the Central Pacific Railroad Company and the lines of railroad owned by the Southern Pacific Railroad Company, all of which are, and have been since 1885, leased to and operated by the Southern Pacific Company, were built and extended practically as one system of railroads and by one ownership and control"?

Who furnished that information; do you remember?

A. No; I do not remember, any further than that the general history of the Central Pacific and the Southern Pacific matters were contained in various statements that were made, and were matters of easy confirmation on the part of old residents of the State.

Q. Did you happen to see the proposed answer in this case to be filed for the Southern Pacific Company before those words of this resolution were drafted?

A. Do you mean did I personally see them?

Q. Yes.

A. No; I have never read the answer.

Q. You have never taken occasion to compare that sentence in the answer?

A. No.

Mr. HERRIN. The answer was drawn long afterwards.

1738 Mr. MCCLENNEN. I do not know just when the answer was drawn, so I said "proposed answer".

Mr. HERRIN. I can assure you that the answer was not drawn until after you brought your suit.

Mr. MCCLENNEN. I did not know but some advance sheets had been given out.

Mr. HERRIN. No; we did not know what sort of allegation you might make until you drafted the petition.

By Mr. MCCLENNEN:

Q. I should have asked, instead, whether you permitted the attorneys for the Southern Pacific Company the use of this extract from your resolution so that they could draw their answer.

A. We had no contact with the attorneys for the Southern Pacific at any time. This resolution was a matter of public record.

Q. Do you know from what sources you got this information appearing in the resolution?—

"The Central Pacific Railroad, the main line of which is from Ogden to San Francisco, was the original nucleus of this system of railroads."

A. That was a matter of common knowledge to all Cal
1739 ifornians.

Q. You do not remember just where you got it, whether yo
got it from the Central Pacific Company or not?

A. No; I did not draw this resolution.

Q. Have you any further recollection, now, as to who did prese
this resolution?

A. No. I could secure information on those points from ou
records, if desired.

Q. Do you know from what source these various dates of openin
and completion of various lines were obtained for this resolution?

A. No; further than the fact that we secured from this railroa
and from all the sources of information that we could upon the sub
ject the data which was doubtless a matter of such records.

Q. Have you any recollection from what source you got that?

A. My strong impression is that dates of that kind were secure
from data that was asked from the railroad as to the history of th
development of their lines.

Q. Did you do the asking—you personally, I mean?

A. You mean as to that information?

1740 Q. Yes.

A. I frequently did ask for information upon the subje
and made definite requests.

Q. Did you personally get this information from the Southe
Pacific Company?

A. I can not synchronize it with this particular phrase, but I g
information of a similar nature from the railroad company.

Q. The various dates of opening of the various lines which a
given with some precision here, even to months at times, runnin
back over a period of something like thirty years or more; have yo
any recollection of whether those dates were furnished to you pe
sonally by the Southern Pacific Company?

A. They furnished much information of that character. I do n
recall those particular dates at the moment.

Q. They were furnished to you?

A. Yes; for the board of directors.

Q. Did you furnish those dates to the board of directors?

A. Yes.

Q. Does that fact assist you at all in determining wh
1741 drafted the resolution?

A. No.

Q. Then occurs this phrase:

"The capital stock of the Southern Pacific Railroad Company w
at all times held in substantially the same ownership and control a
the stock of the Central Pacific Railroad Company, and as soon a

any section of the Southern Pacific Railroad was opened for operation it was leased to and operated by the Central Pacific Railroad Company as lessee."

Do you remember from what source you got that information?

A. No; unless it was from the records which were furnished by the company.

Q. Did the company furnish you this information that the stock in the two companies was at all times in substantially the same ownership?

A. Information of that character was furnished to us by the company.

Q. Did they furnish you with information that in 1885, at the time the lease was made, substantially the only stockholders in the Southern Pacific Company and the Southern Pacific Railroad Com-
1742 pany were Mr. Huntington, Mr. Stanford, Mr. Crocker, and Mrs. Hopkins?

A. No; those names did not occur in any information that I remember receiving from the company. The general facts of the history of the matter were furnished to us upon request, and were made, with all the other information that we could get, the basis of the resolution.

Q. Did they inform you that at the same time there were some 2,600 stockholders in the Central Pacific Railroad Company?

A. I had no information on that subject, that I remember.

Q. Did they inform you that at that time large quantities of the stock of the Central Pacific Railroad Company had been sold to British and European investors?

A. I do not remember of any such information being furnished.

Q. This resolution was voted upon by you in total ignorance of the fact that during a long period of time there had been a large number of stockholders in the Central Pacific Railroad who were not stockholders in the Southern Pacific Railroad, was it not?

A. This resolution was voted upon by me upon the idea of
1743 getting the matters for decision before the Attorney General and bringing out the facts, whatever they were; realizing that our economic interests, distributive interests, were very seriously threatened.

Q. You wanted to get the facts before the Attorney General very accurately, did you not?

A. Yes.

Q. You intended that the Attorney General should understand by this resolution that he had your assurance, the assurance of the San Francisco Chamber of Commerce, that the stock holdings in the two companies had at all times been substantially the same, did you not?

A. Whatever we stated in the matter was for the purpose of bring-

ing the matter up to his attention and, as far as our information went, that was the impression.

Q. And you were wholly ignorant of the fact of this large number of stockholders in the Central Pacific Company who were not stockholders in the Southern Pacific Railroad Company or the Southern Pacific Company?

A. Yes; we did not have the accurate information in regard to the stock holdings in those matters. We were under the general information and belief that the holdings were practically coincident.

1744 Q. Who told you that?

A. That was our general understanding.

Q. You got it from somebody telling you, did you not? Or did you proceed to pass a resolution and send it to the Attorney General of the United States just on some general understanding, without knowing anything, by specific inquiry, as to the specific fact?

A. We were not laying any great stress to the Attorney General or attempting to be, to the Attorney General, the source of accurate information, except as to our general interests and to bring up these general questions, representing, as we did, the shippers, merchants, and manufacturers, and those whose interests were very vitally involved. We wanted the matter to be very thoroughly discussed and brought out.

Q. Did you realize, when you participated in this resolution, that you were practically informing the Attorney General of what might be an important fact, namely, the common ownership during all times of the stock in the Central Pacific Railroad and the Southern Pacific Railroad?

A. We were bringing that point to issue in his mind, certainly.

1745 Q. And making that assertion?

A. As far as our information and belief went, we presumed it was.

Q. Leaving aside for the moment your belief, can you give me a single person who ever gave you any such information?

A. No; I do not remember getting it, as far as I am personally concerned, from any individual. It was a matter of common knowledge or common understanding; that was all.

Q. It was a matter of common understanding?

A. Yes.

Q. Did you take occasion to look into the reports filed with the California Railroad Commission which showed the number of stockholders in these companies?

A. No.

Q. Was it a matter of common information that those reports showed that the Central Pacific Railroad had 2,600 stockholders in 1885?

A. I did not know it.

Q. Was it common information that those reports showed that the Southern Pacific Company and the Southern Pacific Railroad Company had but a handful of stockholders in 1885?

1746 A. No.

Q. Do you know who created this atmosphere of general information as to the common ownership of stock in the two companies?

A. No; unless it was derived from the general history of the affairs of the companies.

Q. You were one of the most efficient collectors of facts for this board of directors in dealing with this problem, were you not?

A. I had occasion, in the course of my duties, to get any information which might come; but the board of directors itself is composed of men of very wide experience and very intimate knowledge of conditions in California and throughout the coast, and the one point of emphasis which we had at all times, however loosely we may have drawn any resolution as to questions of law—we recognized that this suit was threatening, very seriously, the vital interests of California, and we were concerned to develop those questions.

Q. What I am trying to get at is this: While one might see how you might pass a resolution expressing the desires of your body as to what should be done about this suit, what I am trying to

1747 get at is how you found it consistent with the dignity of your position to vote in favor of a resolution that should spread before the Attorney General's eyes so many definite statements of fact, without having any more information than you now are able to give me, as to the sources of these facts, which you were expressly going to present to the Attorney General for him to base a serious judgment upon as to whether he should proceed; you knowing, of course, that his proceeding must depend upon his understanding of what the facts were.

A. This resolution was drawn with our understanding of certain facts; but more so, our understanding of our interests involved, and we undertook to present those to the Attorney General, not in the form of this resolution, but in the form of a delegation of our board of directors and others interested, who directly went to Washington and submitted themselves to the Attorney General to present our case, at which time we did not undertake to argue questions of law with him, but to give him the attitude of such people as we represented upon this important matter, and we were not impertinently trying to instruct him as to the law involved in the matter.

Q. You wanted to give him the benefit of your knowledge
1748 of the facts?

A. Our knowledge of any facts out here, from the fact that the matter seemed to very seriously threaten the commercial interests of the Pacific coast.

Q. On this very important fact as to whether the stock of the two companies had always been owned by the same people, just what did you personally do to justify yourself in informing the Attorney General that that was the fact?

A. We did not undertake to inform him on that subject.

Q. Did you not mean that in your resolution, where you said, in your statement of facts:

"The capital stock of the Southern Pacific Railroad Company was at all times held in substantially the same ownership and control as the stock of the Central Pacific Railroad Company"?

A. We presented that to him as our information and belief, for just what it was worth.

Q. And where did you get the information?

A. I do not know as we had any accurate information as to the exact situation; at least I did not have it. It may have been in the possession of some of the others.

Q. Why did you present it as information to the Attorney
1749 General?

A. Because that was our best information and belief upon that subject.

Q. What information did you have?

A. We drew that doubtless from such matters as were furnished us from various sources that we investigated.

Q. Can you give me any assistance as to the source of that piece of information?

A. I am quite sure that the history of the road and the ownership was furnished to us by the companies involved.

Q. You are quite sure that that statement emanated from the Southern Pacific Company, are you not?

A. Not absolutely sure; but doubtless it did.

Q. You are sort of kind of sure, are you not?

A. I would not care to answer it just in that form. I was supplied, for our office, with a large amount of material in regard to the history of these matters. We believed that that was the case when we presented the matter; but the vital question with us was not that question, but was entirely apart from the ownership. While, of course, that was a matter of general discussion in the press, we had a great deal of material in the press upon the matter, and I
1750 am not so sure but a good deal of this was derived from a very complete statement which I just vaguely recall was made

in the press. These matters were discussed very widely and were made a matter of special editorials and statements in the press, and discussions of various kinds.

Q. Oh! You mean that you wanted the Attorney General to make up his mind on this question with an exact knowledge of the views of the local situation, and so you gained these things from the local newspapers and put them in the form of a resolution; is that it?

A. No. We were attempting to give to the Attorney General the attitude of the commercial interests of the Pacific coast in that matter, and we naturally confined ourselves to those matters when we appeared before the Attorney General.

Q. Do you chance to remember whether, in the mass of material furnished you to which you have referred, by the Southern Pacific Company, you found a resolution that read about like this one, defendants' Exhibit 22?

A. No.

Q. You do not remember one way or the other?

A. No; I do not remember of any such thing. I am quite
1751 certain that no resolution was given to us by the Southern Pacific Company.

Q. You do not know, from your knowledge of the facts, but what every word of the text of this resolution was prepared in the office of the Southern Pacific Company?

A. From my knowledge of our own organization, I would say that would not be true. The Chamber of Commerce of San Francisco has no such relations with the Southern Pacific as would suggest such a procedure.

Q. Are there any gentlemen connected with the chamber of commerce who are connected in any way with the Southern Pacific Company?

A. No.

Q. None whatever?

A. None whatever. You said members or directors?

Mr. HERRIN. He is talking about members.

The WITNESS. I beg your pardon. The Southern Pacific Company is a member of the chamber of commerce, in common with all the other companies. I thought you said "directors".

By Mr. MCCLENNEN:

Q. No; I was referring to members.

A. All the transportation companies, I think, are mem-
1752 bers, and the steamship companies. We represent, broadly, the general interests of San Francisco.

Q. Do you remember whether Mr. Coster took any part in this investigation?

A. Mr. Coster, as I remember, was quite alive to all the developments of the case.

Q. And collaborated with you in gathering information upon the subject?

A. He was present at all the meetings at which the matter was discussed, or at least many of the meetings at which the matter was discussed.

Q. And visited some of the meetings of the other boards or bodies of a public nature, with you?

A. I do not recall that he did. Most of it was done by correspondence.

Q. Conducted by you?

A. Generally by myself; yes.

Q. And do you know whether Mr. Coster is in any way connected with Thomas A. Graham, assistant freight traffic manager of the Southern Pacific Company?

A. No.

Q. Do you know of their being interested in the same
1753 business?

A. No. Mr. Coster is president of the California Barrel Company.

Q. Do you know whether Thomas A. Graham has any interest in the California Barrel Company?

A. I never knew that he had.

Q. Do you know whether there is any relationship between those two gentlemen?

A. No.

Q. Do you know whether Thomas A. Graham furnished any information in this matter?

A. I do not recall any.

Q. Did Mr. Coster furnish any?

A. I do not recall.

Q. Did you send out any telegrams on this matter?

A. Yes.

Q. Did you send a telegram to the Attorney General?

A. Yes.

Q. Did you send telegrams to the other bodies?

A. Yes.

Q. At whose expense?

A. At the expense of the chamber of commerce.

1754 Q. Without reimbursement?

A. Absolutely.

Q. Absolutely?

A. Yes.

Q. Who were the members of the committee that went to Washington?

A. Mr. R. H. Swayne, Mr. M. H. Esberg, and myself, together with Mr. Fremont Older, who is the editor of the San Francisco Bulletin. I do not recall the others who went. We were met there by Mr. Teal, of Portland, and Mr. Kinney, president of the Los Angeles Chamber of Commerce.

Q. Which chamber of commerce paid the expenses of that trip?

A. The various directors paid their own expenses. The Chamber of Commerce of San Francisco paid my expenses.

Q. Did you lay this resolution before the Attorney General at the time of that visit?

A. I think not. I think we stated our general position. We were there to confer with him in regard to the matter.

Q. Did you give him any of the facts set forth in this resolution?

A. I think not. He may have had this probably before
1755 him by correspondence, but when we went to Washington we went purely to confer with him as citizens and shippers.

Q. How strong is the probability that he had this before him by correspondence before you went there?

A. May I look at the resolution just a moment?

(Counsel handed the resolution to the witness.)

The WITNESS. He very probably had this before him; and, as I recall, this resolution was passed at a very early stage of our investigations, and at a time when there was a great deal of pressure on the question, and we were anxious to raise the issues that were involved in the matter.

As we went into the question, we confined ourselves entirely to a statement of western conditions. We wanted the Attorney General to have the benefit of the atmosphere of the West and the interests of the public at large in the West as far as we were able to convey it to him.

We based our action most largely upon the Railroad Commission itself, its decision; and the vital part of our resolution was, of course, the resolution itself, the last paragraph.

By Mr. MCCLENNEN:

Q. With this last statement before you, when should you
1756 say that the resolution was passed?

A. I should say in February of 1914. It may have been earlier. I have not the exact date.

Q. Did you go to Washington before the suit was started?

A. Yes.

Q. About what time should you say that you went to Washington?

A. I think it was at the end of February, or early in March of 1914.

Q. If I inform you of the fact that this suit was filed in court on February 11, 1914, will that assist you in stating the time when this resolution was passed?

A. It was doubtless much before that, if that were the case. I was in Washington at the time when the suit was brought. In fact, we presented such matters as we had to the Attorney General the day before the suit was brought. Immediately on hearing our case, the suit was brought in Salt Lake. The dates I do not have in mind. It was just my best impression, that I was east at the end of February.

Q. Was it your attitude, having in view the atmosphere to which you have referred here about, that you wanted to have the
1757 Southern Pacific Company retain the Central Pacific Railroad Company, even if it was contrary to law?

A. No.

Q. Was this question of the attitude of the chamber of commerce submitted to any meeting of the members of the chamber of commerce?

A. I do not recall at the moment. Our members were fully informed at all times as to our attitude. We issued a statement, as I recollect—a complete statement—to our members of the action of the chamber. The matter was reported very completely in the press, and no protest of any kind that I recall from any of our members was made. It was all done with the knowledge and consent of our membership.

Q. Have you ever taken any instructions in argumentation, Mr. Lynch?

A. No.

Q. Could you not state pretty positively that this matter was not taken up at any meeting of the members of the chamber of commerce?

A. No; I can not state that. I have just a very vague impression that it may possibly have gone out as a matter of referendum. Sometimes we do that on questions, if there is any doubt on any
1758 question in the chamber. If there is no division of opinion, no protests, we frequently submit questions to the chamber; and there being no debate upon this, no protests or differences of opinion among the membership of the chamber, it may be that no definite referendum went out. I do recall a statement which was made to our membership of the exact situation, and in going to Washington as a member of the committee it was well known in San Francisco what the object of our visit was.

Q. You say that the chamber maintains and then maintained a transportation department?

A. It does.

Q. Who was at the head of that department?

A. Now or then?

Q. Then.

A. W. R. Wheeler was the traffic manager and Seth Mann was the attorney.

Q. How long had W. R. Wheeler been the traffic manager?

A. During the entire existence of the chamber—that is, two or three years—and previous to that as a traffic organization which existed, composed of shippers and others in San Francisco or shippers in San Francisco.

1759 Q. Has this chamber of commerce existed only three years?

A. The chamber of commerce was the result of an amalgamation, some three or four years ago, between the merchants' association and the merchants' exchange and the chamber of commerce and the traffic bureau, a traffic bureau which existed as a semi-independent organization. They were all put together to represent all of the interests of the city.

Q. Mr. Wheeler had occupied that position with the chamber and an analogous position with one of these other bodies?

A. For some years, yes.

Q. And was familiar with transportation matters?

A. Yes.

Q. He, personally, was rather favorable to the expediency of an unmerger of these railroads?

A. You are asking me a question on that?

Q. Yes.

A. I do not know what his original position was previously. You mean the Union Pacific——

Q. No, I mean with reference to this matter.

A. I do not know as to that.

1760 Q. In the course of looking up the atmosphere of this community, did you make any inquiries of Mr. Wheeler as to his views upon the question?

A. My recollection is that Mr. Wheeler was absent from the city at the time, and Mr. Mann was consulted upon the question.

Q. How long was Mr. Wheeler absent?

A. I do not remember. I just recall that Mr. Wheeler was not, at that time, just at this particular time, present in the city, and Mr. Mann was the one with whom the matter was discussed.

Q. Where was Mr. Wheeler when you were waiting upon the Attorney General, which appears to have been about February 10, 1914?

A. I do not know. He may have returned to San Francisco.

Q. Do you happen to remember whether he was in Washington at that time?

A. No; he was not.

Q. This investigation into this subject, leading up to this resolution, had been going on over a period of how many months?

1761 A. Possibly two or three months, as far as I was concerned. The traffic department had, of course, knowledge of the general situation, and our directors had general knowledge of the situation.

Q. And was Mr. Wheeler absent all of those three months?

A. I do not recall.

Q. Do you recall whether when passing upon this transportation problem, rate problem, and so forth, you took the precaution to inquire of the head of your transportation department what his views were?

A. The matter was handled as an executive matter from the board of directors.

Q. I am not quite sure whether you mean yes or no to my question by that answer.

A. I do not recall that we consulted Mr. Wheeler in the matter.

Q. And you never got far enough into this question of the probable effect upon transportation facilities yourself to ask the opinion of Mr. Wheeler?

A. No; I do not remember talking to Mr. Wheeler about this question. I think that was due to his absence from the city. As I

1762 recall it, the board took action upon this question and telegraphed to Mr. Wheeler—that is my recollection—in Washington, stating its decision in the matter, and possibly asking him to influence the question.

Q. This atmosphere in San Francisco was dependent in part upon the idea that the separation would cause an increase in rates, was it not?

A. That was a part of our apprehension.

Q. And apart from such language as occurs, if any, in the printed opinion of the California Railroad Commission, who was it that told you that it was going to cause an increase in rates?

A. I think our sole information on that point was derived from the railroad commission and from the fact that the principle of regulation seems to be well established that a larger cost in operation, a larger cost in investment, would be the principle upon which rates would be raised or lowered.

Q. Did you make any investigation to see to what extent the separate operation of the Santa Fe into San Francisco had tended toward the increase of rates?

A. No; that did not occur to us as being analogous. The increase in rates that would follow in this case appeared to us

1763

to be very clear; that two roads, or a road having its terminals, if it were disrupted and other terminals had to be created, a larger cost would be involved for the same service.

Q. Did you make any investigation to see what the possibilities were of arranging for a joint use of the existing terminals by the two companies?

A. The decision of the railroad commission brought that out and seemed to lay down the principle that, under our State regulations, the joint use would open them up to all roads to use the terminals, and seemed to be objected to very strongly by the railroad commission.

Q. That is, the joint use by the railroads of the terminals was objected to by the railroad commission?

A. As I understand; as I recall that position. The railroad commission would not permit two roads to make a joint use of a terminal without opening the question up to all railroads coming into San Francisco.

Q. Did it seem to you that it would be disadvantageous to the shippers to open the terminals up to the use of all roads?

A. No; we did not consider that.

1764 Q. You did not consider that?

A. We did not consider that point further than that the joint use, opening up the terminals in that way, would not be desired by the two companies, or any two companies desiring to use the terminal.

Q. In your experience with commercial bodies, have you found that a few intelligent, energetic men, interested in a project, can frequently exert quite an influence upon the opinion of such a body?

A. That is not a general experience with the San Francisco Chamber of Commerce, because its board of directors is so representative, and attends the meetings so consistently, and are only excused upon definite leave of absence which is given to them. The average attendance of our twenty-one directors is somewhere near sixteen or seventeen of our directors, and matters are threshed out in a conference of our representative men, men representing widely divergent business.

Q. Then I understand your answer to be that your own experience has been the opposite?

A. In this organization.

Q. Your experience has been to the contrary?

1765 A. My experience has been to the contrary, though I quite understand that commercial organizations are sometimes differently conducted.

Q. When last before to-day was this matter called to your attention?

A. I have been reading the account of the proceedings, of course, before this. I have been following with some interest these matters. I was requested to be a witness here.

Q. You mean you have been reading the testimony day by day as it has been coming in here?

A. In a casual way; yes.

Q. Have you read the testimony that was put in on behalf of the Government?

A. No; I have just been following——

Mr. HERRIN. Do you mean in the newspapers?

The WITNESS. In the newspapers; yes. I mean the newspaper accounts of this immediate hearing.

By Mr. MCCLENNEN:

Q. You meant just in the newspapers?

A. Yes. I have not been following——

1766 Q. It had not occurred to you that it was in the newspapers until Mr. Herrin spoke just now?

A. No; I have been reading the newspapers steadily—the only place I have had any opportunity of following the case.

Q. Did you get a pretty comprehensive idea, do you think, of what the testimony was in the newspapers?

A. No; very casual.

Q. When last before this morning was the matter of your knowledge, your conclusions, the sources of information that you had, the things that you did, called to your attention, or when last did it have your attention before testifying this morning?

A. The president of the Southern Pacific communicated with me, and I was asked to be a witness to the events that occurred in connection with the action of the chamber of commerce.

Q. And that communication came when?

A. Some two or three days ago.

Q. What did you do by way of refreshing your recollection on these subjects that I have just been talking about?

A. I consulted the president of the chamber at the present

1767 time and the chairman of the executive committee and the chairman of the transportation committee, speaking of the report, and I looked over the file of our matters, and I just happened to pick up this resolution, which I saw in the files, and brought it with me.

Q. Just as a matter of your own forethought in picking out this particular resolution?

A. Yes.

Q. When did you first learn that the Southern Pacific desired to introduce this resolution in evidence?

A. I had no knowledge that they wanted the resolution. I just happened to have it in my pocket, and it was asked for and I presented it.

Q. Did you bring any other paper?

A. Yes; I brought a statement which I made at the conclusion of the whole matter, for the information of our executive committee.

Q. You mean a narrative of the facts?

A. A statement of our position, which epitomized the reasons why our chamber of commerce took action upon the matter, as I have stated.

Q. Has that statement been published?

A. It was a statement for the information of our own
1768 executive committee, so far as I had it; and I also think I have a statement which we made to our members in that connection.

Q. Did you ever see any of the telegrams sent by any of the other boards of trade or chambers of commerce to the Attorney General relative to this suit?

A. I do not recall. I remember telegrams being sent.

Q. Do you remember whether you ever saw any of them?

A. No.

Q. Do you know who suggested the phraseology of them?

A. Very probably I did; that is to say, from the office, or Mr. Michaels, the president of the chamber.

Q. Did you get any information in connection with this matter from E. L. McCormick?

A. I have had personal conversations with Mr. McCormick on the subject. I do not remember any written.

Q. Is he a member of the chamber?

A. Not personally, I think. He may be.

Q. You know him as one of the vice presidents of the Southern Pacific?

A. Yes; and in all the information which we received from
1769 the Southern Pacific we recognized at all times the sources of the information and estimated it as from its source, our chamber not at all being connected or in any way influenced by the personal interests of the Southern Pacific. We were very much concerned with our own interests in the matter.

Q. You suggested to these other commercial bodies that they should send telegrams to the Attorney General?

A. As I recall, that was done from our office. We advised other organizations of our action and what we had done. Now, they may have copied our telegrams, but we suggested to them the situation.

Q. When did you first learn of the decision of the California Railroad Commission relative to the agreement of February, 1913, between the Southern Pacific and the Union Pacific Companies?

A. Do you mean personally? You mean my own information?

Q. Yes.

A. I do not recall exactly when; it was some time previous to this time.

Q. Was there a lapse of time between the coming out of that decision and your taking up this investigation or was that de-
1770 cision the immediate cause of your taking up the investigation?

A. As I recall, this decision created quite a little comment amongst our members. It was a matter of knowledge of our traffic department.

Q. Did those investigations you made proceed right away on that decision?

A. No; our activity in the matter was due, so far as I can remember, to a published statement that the Attorney General was very seriously considering it. As I recall, there was six months given, six months' time, which was a matter of knowledge to us in the organization, after the failure of this Union Pacific-Central Pacific control and the failure to ratify the agreement. As I remember, there was at that time six months given to these roads to adjust themselves to the situation, and the matter became acute with us when that six months, I think, had expired, and it seemed imminent that the suit, such as was ultimately brought, was contemplated by the Government.

Q. Now that we have gone somewhat more at length into this, do you think that you could give us any assistance at all as to where this resolution came from, the text of it?

A. No; it came out of all the information that we had.

1771 Q. Well, somebody obviously drafted this resolution, put it into language?

A. Yes; and drafted it from such information as we had in our files.

Q. And you have no information whatever as to who drafted it?

A. No.

Q. Did the board of directors appoint any committee to draft the resolution?

A. I do not recall that they did.

Q. Did you ever draft any resolutions?

A. I do not recall drafting this resolution. It may have been possible.

Q. It may have been that you drafted this yourself?

A. Yes.

Q. And presented it?

A. There is a possibility; I do not recall it.

Q. Is there any way that you can think of by which you could determine who drafted the resolution?

A. Only so far as it might appear in our records. I will be glad to look up our records and see what happened.

Q. You think the drafting was a matter that was spread
1772 on the record?

A. It may or may not have been. The person who presented the resolution might give that much of a hint as to who drafted it.

Q. Do you remember whether or not there was any increase in rates after the dissolution between the Union Pacific and the Southern Pacific?

A. No.

Q. Did you investigate that subject at all?

A. At that time? Let us see, what was the date of that?

Q. Well, the decision came down in December, 1912.

A. That occurred before my connection with the chamber. So far as I know, there is nothing on record in the chamber protesting against the dissolution of the Union and the Southern Pacific. The increase of rates in that connection would not appeal to us as analogous.

Q. What is the church of which you were pastor?

A. Baptist.

Q. I mean the particular church; not the denomination.

A. The Baptist Church of Petaluma.

Mr. McCLENNEN. That is all.

1773 Redirect examination by Mr. HERRIN:

Q. You spoke of the Union Pacific-Southern Pacific dissolution; do you know whether or not that was opposed or favored by the same men that took a decided stand in this matter that you testified to?

Mr. McCLENNEN. That is objected to as incompetent, irrelevant, and immaterial.

The WITNESS. So far as I know, the chamber took no official action upon the question. The sentiment was probably favoring the dissolution.

By Mr. HERRIN:

Q. The sentiment was favoring that dissolution?

A. So far as I know; yes.

Q. There was an undercurrent of criticism in the cross-examination implying that the Southern Pacific had something to do with this action. Will you state how far the Southern Pacific controls the

action of the chamber of commerce, and generally what the relations of that body are to it?

Mr. McCLENNEN. Do you mean by that, action by direct vote or indirect?

Mr. HERRIN. In any way, any possible way in which the
1774 Southern Pacific can exercise control over the chamber of commerce.

The WITNESS. The attitude of the chamber of commerce toward the Southern Pacific Company has generally been shown in forms of antagonism. The transportation department, controlled by its board of directors, is very much interested in the adjustment of rates, and we have frequent occasion to bring suits against the Southern Pacific in order to secure lower rates, or better rates in comparison with other places; and while the chamber acts in cooperation with all interests, it represents the public interest, and in no sense does it represent any railroad interest. The chamber of commerce is influenced consciously only by what it conceives to be to the interest of the general public and the commercial and commerce interests of San Francisco.

By Mr. HERRIN:

Q. It has repeatedly taken a position against the Southern Pacific, has it not?

A. Yes; we have many suits before the State commission and before the Interstate Commerce Commission, both. The organization
is generally thought of as representing shippers as against the
1775 interests of transportation companies. The organization, however, tries to take a fair and impartial position upon all questions. It only takes the shippers' interests when they represent the general interests of the community.

Q. You cooperate with the transportation companies as far as your interests are identical?

A. If our interests are identical, we cooperate heartily.

Q. But I suppose you rather represent the interests of the shipper than that of the railroad company, as such?

Mr. McCLENNEN. That question is objected to as leading, immaterial, and calling for an opinion.

The WITNESS. There is frequent complaint from the railroads that that is our attitude. We endeavor not to represent the private interests of individual shippers, but we do represent the interests of the membership in the chamber of commerce at large.

By Mr. HERRIN:

Q. Don't you know that one of the grievances of the Southern Pacific is that your chamber of commerce is so often in antagonism to them?

Mr. McCLENNEN. This question is objected to because it sounds very much like testimony.

1776 The WITNESS. The chamber of commerce constantly finds itself compelled, in the interest of the public, to complain legally and otherwise against the interests of the Southern Pacific and of other companies.

By Mr. HERRIN:

Q. You spoke of Mr. Teal, of Portland; what was Mr. Teal?

A. Mr. Teal is attorney and traffic manager of the Portland Chamber of Commerce.

Q. And he met you in Washington?

A. Yes.

Q. What was he there for?

A. For the same purpose as we were.

Q. Did he align himself with you, or was he against you?

Mr. McCLENNEN. That is objected to as immaterial, incompetent, and irrelevant and too general.

The WITNESS. He was with us.

Recross-examination by Mr. McCLENNEN:

Q. Did you, in your investigation of the atmosphere hereabout, notice any Union Pacific atmosphere?

A. I do not recall any such, so far as I understand your question.

1777 Q. What were the reasons why the individual members of the chamber of commerce seemed to you to favor the dissolution between the Southern Pacific and the Union Pacific?

A. So far as I could judge it was because the union of those two lines rather placed the control of affairs in the East, and we are very much concerned here, in our distributive propositions, to develop from the western standpoint, and we are very gratified to have a road dominated and interested from the standpoint of western conditions, when, if the roads were dominated, as they probably were under the Union Pacific and Southern Pacific union, entirely from the East, and united with other eastern roads, it would put a premium upon the distribution of goods from the East rather than the distribution from the West. So far as we know, these roads have been built from the west east, and with a more accurate knowledge of the distributive conditions and general development proportionate to the development of the territory throughout the West.

Q. You mean there was a fear that the Union Pacific would not understand the local conditions in California?

A. And that their interests would be, at some local points, antagonistic.

1778 Q. Were you aware that the Southern Pacific was a Kentucky corporation, having its chief executive officer resident in New York City?

A. I am aware of the fact that it has its corporate home in Kentucky. That is general knowledge, and as I understand it, all the operation and administration of the road is conducted from San Francisco.

Q. Do you know where its general counsel has his office?

A. No.

Q. Did you notice that the transportation interests of California suffered materially during the domination of the Union Pacific Railroad?

A. I have no accurate information on that subject.

Q. Did you ever observe anything indicating that?

A. The general fact that the road was administered from eastern points would seem to put the whole force of the development of this territory from the eastern angle instead of the western angle; and all of our hopes, manufacturing and otherwise, are based upon, or our desire is to be, the beginning of railroads and not the end of railroads. As long as it was controlled from the East we were more or less in danger of having eastern interests dominate the situation.

1779 From our standpoint, if we desire it to face from here east——

Q. Pardon me, but just what did you understand my question to be?

A. I would have to hear the question just exactly.

(The question was repeated by the reporter, as follows:)

"Q. Did you notice that the transportation interests of California suffered materially during the domination of the Union Pacific Railroad?" "Did you ever observe anything indicating that?"

The WITNESS. No.

By Mr. MCCLENNEN:

Q. Was your attention sufficiently called to transportation matters during this investigation into the California atmosphere so that you gained any information as to the extent, if any, to which the service to and from California, and in California, improved during the period when the Union Pacific Railroad was in control?

A. Just general knowledge and general impression on that question; but an analysis of the fundamental situation would certainly lead to a desire that in the development of this western territory it should be dominated, so far as possible, from this end

1780 and not from the other end.

Q. And your apprehension was that if this separation took place it might result in the Union Pacific's control all the way into San Francisco; is that it?

A. Well, our apprehension was that in the dissolution of those lines out here, if the main line were dominated entirely from the East, it would cause our interests to suffer, especially as it would tear apart the various branches that had been constructed and adapted to the distributive area with which we were concerned.

Q. And you were afraid that this dissolution would result in the dominance of the Union Pacific over what you call the main line?

A. That was the general idea; a general idea that had some influence.

Q. What do you refer to as the main line?

A. The line from Ogden to San Francisco, around by the way of Stockton, extending up to the Oregon line and down through the center of the State to some point. We could not see any advantage that would come to us in such a dissolution, and we could see some very grave disadvantages, with awkward service resulting, or expensive service.

1781 Mr. McCLENNEN. The petitioner moves to strike out the last part of the answer, beginning with "We could not see", as not responsive to the question or, indeed, an answer to any question, and as a statement volunteered by the witness.

(Whereupon a recess was taken until three o'clock p. m.)

1782 AFTER RECESS.

Mr. BLAIR. The defendants put in evidence, as defendants' Exhibit No. 23, the hereinafter mentioned certified copies of the reports of the Central Pacific Railroad Company and the Southern Pacific Railroad Company, filed with the Secretary of the Interior pursuant to section 20 of the act of July 1, 1862 (12 Stat., 489), incorporating the Union Pacific Railroad Company, and so forth, and section 2 of the act of June 25, 1868 (15 Stat., 79), relative to filing reports of railroad companies, to the extent only of such portions of said reports as are now particularly mentioned.

Mr. McCLENNEN. The petitioner reserves the right to state objections to this offer on seeing just what is comprised in it.

Mr. BLAIR. 1. Report of the Southern Pacific Railroad Company for the year ending June 30, 1868, including in this offer the letter of transmission dated New York, September 25, 1868, and signed by C. P. Huntington, and excluding from the offer the list of stockholders, the same being included in the offer of the petitioner.

1783 2. Report of the Southern Pacific Railroad Company for the

year ending June 30, 1870, being entitled "Annual Report of the Southern Pacific Railroad Company to the Secretary of the Interior for the year ending June 30, 1870", to the extent only of paragraphs numbered together as one paragraph, 5th, 6th, and 7th.

3. Report from the Southern Pacific Railroad Company for the year ending June 30, 1871, including in the offer the letter of transmission, dated New York, September 30, 1871, and signed "C. P. Huntington, president". The whole of this report, without any exception, is included in the offer.

4. The report of the Southern Pacific Railroad Company for the year ending June 30, 1873, including the letter of transmission, dated New York, October 7, 1873, signed by C. P. Huntington, president. This offer includes the letter of transmission and the following pages of the report down to the signature of C. P. Huntington, president, and so much of the report annexed of A. N. Towne, general superintendent, as is included from the beginning down to the words "Below please find report of the earnings and operating expenses for the road for the years ending June 30, 1872 and 1873". The rest of the report of Mr. Towne is not included in the offer. The offer
1784 includes the attached report of B. B. Redding, land agent.

5. The annual report of the Southern Pacific Railroad Company for the year ending June 30, 1874, being a printed annual report of the railroad company transmitted by letter of Mr. Huntington, dated New York, December 8, 1874. There is included in this offer the said annual report to the extent of the letter of transmission by C. P. Huntington, addressed to the Secretary of the Interior, dated New York, December 8, 1874, and the annual report of the board of directors, signed by C. P. Huntington, president, which ends on page 14; and there is also included the report attached thereto of A. N. Towne, general superintendent; excluding from the offer of Mr. Towne's report that part thereof which begins on page 17 with the words "The earnings and operating expenses for the year ending June 30, 1874, as compared with 1873, were as follows", down to the words on page 21, "Total amount expended on this account for the year, $4,937.31", the balance of the report of Mr. Towne being offered in evidence, but the report of the general passenger and ticket agent, of the freight auditor, of the secretary, the chief engineer, and the land agent are not included in the offer.

6. Annual report of the Southern Pacific Railroad Company for the year ending June 30, 1875, being a copy of the
1785 printed annual report of the directors to the stockholders. There is included in this offer only the report to the stockholders by Charles Crocker, president, pages 1 to 6 of said report, no other part of the report being included in this offer.

7. The report of the Southern Pacific Railroad Company for the year ending June 30, 1876. This offer includes only the letter of transmission signed by C. P. Huntington, agent and attorney, dated New York, September 25, 1876, and division 4th of the report, which refers to the accompanying report of the chief engineer for a description of the lines below, and the said report of George E. Gray, chief engineer, dated San Francisco, August 10, 1876.

8. The report of the Southern Pacific Railroad Company for the year ending June 30, 1877, to the extent of the letter of transmission signed by C. P. Huntington, agent and attorney, dated New York, September 29, 1877, and division 4th of the report referring, for description of the lines, to the accompanying report of the chief engineer and also to the extent of said chief engineer's report, being report dated San Francisco, July 3, 1877, directed to the
1786 president and directors of the Southern Pacific Railroad Company and signed by George E. Gray, chief engineer.

Now come the Central Pacific Railroad reports.

9. The report of the Central Pacific Railroad Company for the year ending June 30, 1873, to the extent only of the letter of transmission of Mr. Huntington, dated New York, September 23, 1873, and signed by C. P. Huntington, vice president, and to the extent only of the annexed annual report of the board of directors, excluding from such annual report of the board of directors the reports of General Superintendent A. N. Towne and Secretary E. H. Miller and including the report of S. S. Montague, chief engineer.

10. The report of the Central Pacific Railroad Company for the year ending June 30, 1875, to the extent only of the letter of transmission signed by C. P. Huntington, vice president, dated New York, September 3, 1875, and to the extent only of the report by General Superintendent A. N. Towne annexed thereto, from the beginning of his report to the word "passengers" on page 10 thereof.

11. The report of the Central Pacific Railroad Company for the year ending June 30, 1876, to the extent only of the report of
1787 General Superintendent A. N. Towne, found in the annual report of the board of directors, made part of the report to the Secretary of the Interior, omitting from the offer of the report of General Superintendent A. N. Towne, beginning with the word "passengers", page 14, to the words "I respectfully refer you to the report of chief engineer", page 21 of said general superintendent's report.

12. The report of the Central Pacific Railroad Company for the year ending June 30, 1877, including the letter of transmission of C. P. Huntington, vice president, dated New York, October 3, 1877, to the extent only of the report of General Superintendent A. N. Towne found in the printed annual report of the board of directors

of the Central Pacific Railroad Company, made part of the report to the Secretary of the Interior; the portion of Superintendent Towne's report included in the offer to begin with the words "to appease public clamor", in the third line from the top of page 31, and to extend to the end of the report on page 32 thereof.

(The foregoing extracts from the reports of the Southern Pacific Railroad Company and the Central Pacific Railroad Company were received and thereupon marked as a whole "Defendants' Exhibit No. 23, March 12, 1915", and will be found in the volume of defendants' exhibits.)

1788 Mr. BLAIR. Defendants put in evidence an extract from a return filed by the Central Pacific Railroad Company with the California Commission of Transportation for the year ending December 31, 1877, being a statement of the roads belonging to other companies operated by the Central Pacific Railroad Company under lease or contract, giving name, description and length of each, said statement being set forth in the appendix to the biennial report of the Commission of Transportation of California for the years ending December 31, 1877 and 1878, at page 77 of the appendix.

Similar statement for the year ending December 31, 1878, found at page 317 of the appendix of the biennial report of the commission of transportation for the years ending December 31, 1877 and 1878.

The reports of the railroad commission for 1879 were not available, if any ever were issued.

Similar statement for the year ending December 31, 1880, set forth in the third annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1880, 1881, and 1882, on page 191.

Similar statement for the year ending December 31, 1881, found in the same report, on page 373.

1789 Similar statement for the year ending December 31, 1882, said statement being set forth in the appendix to the fifth annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1884, on page 67 thereof.

Similar statement for the year ending December 31, 1883, said statement being set forth in the appendix to the fifth annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1884, at page 232 of the appendix.

Similar statement for the year ending December 31, 1884, said statement being set forth in the appendix of the seventh annual report of the Board of Railroad Commissioners of the State of California for the year ending December 31, 1886, on page 69 of the appendix.

(The foregoing statements were received and thereupon marked, collectively, "Defendants' Exhibit No. 24, March 12, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence the fact, and counsel for the defendants agree that such is the fact, that the reports of the Central Pacific Railroad Company to the California Railroad Commission state that the number of stockholders in the company for the following years are as follows:

1790

1877	89	1889	Number not shown.
1878	82	1890	1,703
1879	No report found.	1891	1,700
1880	411	1892	1,700
1881	1,340	1893	1,681
1882	1,880	1894	1,713
1883	2,198	1895	1,651
1884	2,600	1896	1,630
1885	2,237	1897	1,617
1886	1,916	1898	1,427
1887	1,826	1899	480
1888	1,796	1900	16

1791

Petitioner also puts in evidence, and counsel for the defendants agree that such is the fact, that these reports of the State in 1877 show that the number of stockholders resident in California is 62 and the par value of their holdings $43,256,300.

For 1878 the number of stockholders resident in California, 56; the par value of their holdings, $43,260,000.

For the year 1880 the number of stockholders resident in California, 46; and the par value of their holdings, $25,672,000.

For the year 1881 the number of stockholders resident in California, 48; and the par value of their holdings, $18,272,800.

And that the reports for the subsequent years do not state the number of stockholders who are resident in California or the par value of their holdings.

The petitioner puts in evidence the inventory of the estate of Charles Crocker, deceased, filed July 12, 1889, to the extent of all parts thereof containing any reference to the capital stock of the Central Pacific Railroad Company, namely, the item which reads as follows:

1792

Capital stock:

Central Pacific Railroad Co., viz:

17,599 shares, various numbers	527,970	
34,049 shares at $30,		$1,021,470
16,450 shares, various numbers	493,500	

Coupons unpaid on 17,599 shares paid Nov. 12, 1888.

Mr. HERRIN. You say you put that in from a report filed. Filed where?

Mr. MCCLENNEN. Filed with William A. Davies, clerk, by F. [illegible] Houghton, deputy clerk.

Mr. HERRIN. My point is that you are not reading from the original file. I want to know where you got it.

Mr. MCCLENNEN. The copy from which counsel for the petitioner is reading is a copy made from and compared with the inventory now on file in the office of the Crocker Estate Company, 525 Crocker Building, San Francisco.

Mr. HERRIN. Who was the custodian of that?

Mr. GANN. Charles E. Green, secretary of the Crocker Estate Company.

Mr. HERRIN. So Mr. Charles E. Green gives you the inventory which he says was filed with the clerk of the court?

1793 Mr. MCCLENNEN. That is the history of that.

Mr. HERRIN. And from the copy that he assures you was a copy of that original you make this copy which you have read?

Mr. MCCLENNEN. Yes.

Mr. HERRIN. All right. We will look that over and see if we want to add anything to it.

Mr. MCCLENNEN. The petitioner puts in evidence the certified copy of the decree of distribution of the estate of Leland Stanford, dated December 28, 1898, filed in the county recorder's office of San Francisco, Book 1802 of Deeds, page 219, to the extent that it shows that the shares of stock of the Central Pacific Railroad Company belonging to the estate which were distributed were 32,973 shares.

Mr. HERRIN. We will look that over and see what, if anything, we want to add.

Mr. MCCLENNEN. The petitioner notes on the record the fact that in October, 1914, the petitioner requested counsel for the Southern Pacific Company to produce the original transcontinental agreements of September 28 and November 8, 1883, of which printed copies have been put in as petitioner's exhibits 18 and 19, and

1794 that the originals have not been produced.

Mr. BLAIR. Counsel for defendants states that if there were any such originals they belonged to a time and a régime which has left no evidence of their existence at the present time, so far as he has been able to ascertain.

(Whereupon, at 4.30 o'clock p. m., an adjournment was taken until to-morrow, Saturday, March 13, 1915, at 11 o'clock a. m.)

×

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

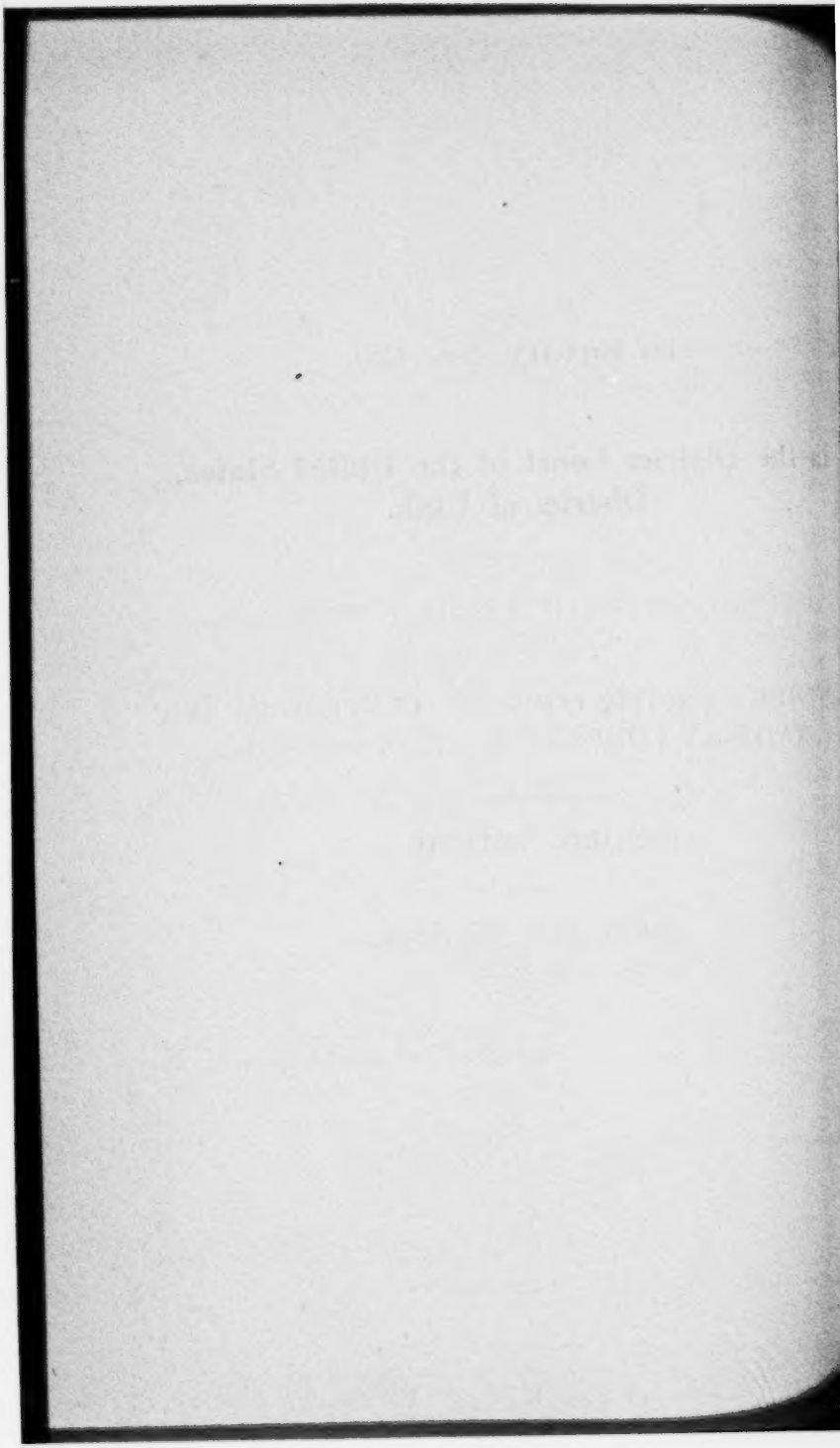
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 3.

DEFENDANTS' EVIDENCE.

Pages 873 to 1221, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915



1795 TWENTY-FIRST DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Saturday, March 13, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

1796 JOHN M. ESHLEMAN was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. El Centro, California.

Q. How long have you lived in California?

A. Since 1896.

Q. What is your profession?

A. Attorney.

Q. How long have you been a practicing attorney in California?

A. I graduated from the university in 1892. It was either the next year or the following year, about 1893 or 1894; I can not remember offhand.

Q. When did you become a member of the California Railroad Commission?

A. January, 1911.

Q. How long did you hold that office?

A. Four years.

1797 Q. Were you chairman of the commission while you were on it?

A. I was president. That is the term used.

Q. That commission, as we all know, by the constitutional provisions, has very full and plenary power over rate questions and railroads generally?

A. It has been so charged.

Q. There is no doubt about it, is there?

A. I do not think so.

Q. You did not find any items of power which were taken from you particularly by the constitutional provisions?

A. I have not discovered any.

Q. During your incumbency of office as the president of the commission, was it active in the discharge of its duties?

A. It tried to be; yes; and I think it was.

Q. That is, the members devoted their entire time to the duties of their positions?

A. Yes.

Q. Did you have many contested cases?

A. Very many.

Q. Involving generally what questions, as to railroads?

1798 A. Involving primarily the rates. Also a great many matters of service.

Q. The commission has powers of controlling the service?

A. Yes.

Q. It was given power to fix the rates absolutely?

A. Yes.

Q. So that every phase of railroad operation would come within your purview in these cases that were heard before you?

A. Yes.

Q. Do you recall the matter of a contract between the Union Pacific Railroad Company and the Central Pacific Railway Company concerning a proposed sale of stock of the Central Pacific Railroad by the Southern Pacific Company, and making leases of certain of the lines in California, which were submitted to your commission for approval?

A. I do.

Q. Were you present at the hearing before the commission?

A. I was.

Q. You presided as president, did you?

A. I did.

Q. Did the subpœna served upon you requiring your attend-

1799 ance in this case require the production of any papers?

A. It did not, to my recollection. I have not got the subpœna with me.

Mr. HERRIN. May we use copies of the opinions that were given in that case without producing the original record, Mr. McClennen? I have a printed copy.

The WITNESS. I have the volume in which the opinions are printed.

Mr. HERRIN. You may make a comparison if you want to, Mr. McClennen.

Mr. MCCLENNEN. Of course, I shall want to save some objections to the opinion.

Mr. HERRIN. Yes; but I was speaking of the use of these copies—

Mr. MCCLENNEN. These printed copies you have here may be deemed to have the same force as certified copies.

The WITNESS. I suppose you are probably aware that the courts under the law take judicial cognizance of the decisions of the railroad commission.

By Mr. HERRIN:

Q. I understand that is so with respect to the State courts.

1800 A. Yes.

Q. I hand you a printed volume of opinions and orders of the Railroad Commission of California, volume 2.

A. Would there be any objection to my using my own volume?

Q. Certainly not. And I ask you to refer us to the first opinion, main opinion or report, of the commission given in the case I have mentioned.

A. That is found, beginning on page 233 of the second volume of the opinions and orders of the railroad commission.

Mr. MCENERNEY. It is decision No. 477.

The WITNESS. Yes; then it is followed by a supplemental opinion on page 249, and there is a subsequent opinion on a modified application.

Mr. MCENERNEY. No. 504 is the third one, Mr. Eshleman, I think.

The WITNESS. At page 504?

Mr. MCENERNEY. No; decision No. 504.

Mr. HERRIN. Page 257.

The WITNESS. The main opinion is beginning on page 233. The supplemental opinion begins on page 248.

Mr. MCENERNEY. You will see it in your index here.

1801 By Mr. HERRIN:

Q. I will not go further than those two opinions at present.

A. Very well.

Q. Did you prepare the opinion in decision No. 477?

A. I did.

Q. Also in decision No. 478?

A. I did.

Mr. HERRIN. I offer that opinion in evidence, and ask to have it marked and copied in the exhibits.

What is the syllabus, Mr. Eshleman—a mere condensation?

The WITNESS. Yes. That is not a part of the opinion.

Mr. HERRIN. Then we will omit the syllabus, unless it is desired by counsel for the petitioner, and just copy the main report of the commission as an exhibit.

Mr. MCCLENNEN. Petitioner objects to the introduction of this opinion, as immaterial, incompetent, and irrelevant to any of the issues in the pending case.

(The opinion referred to was received and marked "Defendants' Exhibit (Eshleman) No. 25, March 13, 1915," and will be found in the volume of defendants' exhibits.)

1802 Mr. McCLENNEN. This offer is of decision No. 477 only?

Mr. HERRIN. Yes.

By Mr. HERRIN:

Q. Of course the opinion speaks for itself and appears to deal with some of the traffic conditions that would be affected by the putting into operation of this agreement. I call attention to the clause in the opinion, near the top of page 240, reading:

"We do not believe it necessary to the determination of the questions that are now presented for us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated."

I will ask you, Mr. Eshleman, if you gave special consideration to the traffic conditions that were involved in that agreement and reached any opinion upon those subjects?

Mr. McCLENNEN. This is objected to as incompetent, irrelevant, and immaterial.

The WITNESS. We did; particularly as regards traffic conditions affecting intrastate business.

By Mr. HERRIN:

1803 Q. I will ask you to state what effect the severance of these lines, as proposed by that agreement, would, in your opinion, have upon intrastate traffic?

Mr. McCLENNEN. The petitioner objects to this question on the ground that it is immaterial, incompetent, and irrelevant, calls for an opinion as to probabilities in a matter which is not material to the issues in this case, and as to which the witness is not qualified to express an opinion, and as calling for an opinion based upon facts which have not been shown in the present case and concerning which the petitioner, of necessity, has no opportunity to test the accuracy, by examination of the witnesses or otherwise from whom the facts were obtained upon which the opinion of the present witness is based.

Mr. HERRIN. I will state that the petitioner introduced in evidence the contract which was considered by the railroad commission in the opinion just introduced, and that contract, in connection with the opinion, makes clear the matters that were considered by the railroad commission, and I deem it unnecessary to take up time here to amplify those things which already appear from the record. I will ask for an answer to my question, and will ask to have it read.

1804 (The reporter repeated the pending question as follows:)

"Q. I will ask you to state what effect the severance of

ese lines, as proposed by that agreement, would in your opinion ave upon intrastate traffic?"

The WITNESS. In my opinion it would have a dual effect: First, ne of convenience; second, one of price; that is, the rate.

In the particular case it was agreed by the parties before the com- ission that the granting of the application would not be used by hem as a means of increasing any of the rates that, after the sev- rance, applied upon traffic that at such time would go over two ines, that before the severance would only go over one line.

The commission was of the opinion, and I was then and am still, hat this severance ultimately would of necessity affect all rates that hereafter applied upon traffic over two lines.

The Interstate Commerce Commission and the California Railroad Commission, as well as most commissions, have recognized the fact hat a higher rate shall prevail for what is known as a joint move-
ment over two lines than prevails for a similar movement
1805 over one line under like circumstances. That being the case, as to every movement in California that at the present time nd then was made over the one line, Southern Pacific controlled properties, there would be a right on the part of the owners when the ownership was divided to demand a higher return for the joint movement than was given for the single movement.

To illustrate that I have had taken from the tariffs—and these, of course, are subject to check, but they are taken from the tariffs— some illustrations of movements that would be required to be over Southern Pacific and Central Pacific after the divorce, that are now over only Southern Pacific controlled lines. If you desire, at this time, I will give those.

Mr. HERRIN. Yes; proceed.

Mr. MCCLENNEN. This question is objected to on the same grounds as the preceding one, and also as introducing into the record in- stances which are further immaterial to the present case.

By Mr. HERRIN:

Q. Proceed, Mr. Eshleman.

1806 A. Lumber is probably the most important commodity han- dled by the Southern Pacific Company. According to their last annual report, copies of which I will be glad to submit, which I have from the files of the railroad commission, 18.34 per cent of their traffic is lumber. Most of this lumber originates on one line and is used upon the other line, if we have regard to the division between the Central Pacific and the Southern Pacific.

For instance, the rate from Weed to Colton is $6.50 per ton. That movement would be from Weed to Goshen Junction by way of the Central Pacific, thence from Goshen Junction to Colton by way of the Southern Pacific. The rate applying for the single movement

over the Southern Pacific controlled line from Weed to Colton is $6.50; the local rate from Weed to Goshen Junction is $6.30, and the local rate from Goshen Junction to Colton is $5.00, making a combination of $11.30 per ton, or $4.80 increase, provided, when the roads were divided the public authority and control would permit the sum of the locals as the new rate to apply. I do not mean to intimate that that would be, because while, as I have already said, it is conceded by those who are engaged in regulating, including the
1807 Interstate Commerce Commission, that where rail movement is over two lines there should be the higher rate. It has never been conceded, except in rare instances, especially with regard to less than carload freight, that a joint movement shall have a rate which is equal to the sum of the locals. I did not mean to imply that the rate would be $11.30. I do mean to imply, however, that if we follow the precedents that have been established, and I think could be justified if these roads were divorced, the rate from Weed to Colton would be more than $6.50. It is my opinion that the Southern Pacific and the Central Pacific, for that joint movement, could justify a rate higher than $6.50, provided the $6.50 at the present time is a reasonable rate.

I have numerous instances, but I will only take a few, as I do not want to burden the record with many of these.

Take from Santa Cruz to Ione. It would be by Southern Pacific from Santa Cruz to San Jose, thence by Central Pacific from San Jose to Galt, then by Southern Pacific from Galt to Ione, a three-line movement. The rate from Santa Cruz to Ione over the Southern Pacific controlled line for the single movement is $2.65, the rate over the S. P. from Santa Cruz to San Jose is $1.20, and from San Jose to Galt it is $1.60, and from Galt to Ione $1.60, making a total,
1808 based on the sum of the locals, of $4.40, or $1.75 greater than the present single-line rate. Here again I do not mean to intimate that the commission could be forced to allow the sum of the locals. I am of the opinion, however, that it could be forced to allow more than the present rate of $2.65, provided the present rate of $2.65 is not unduly high.

On cement we have a like condition. Cement, of course, is manufactured at comparatively few places in the State, and the commodity rates apply from those places. From Davenport, where there is a cement factory, to Newman the present rate is $2.00. That movement is over the Southern Pacific from Davenport to San Jose, over the Central Pacific from San Jose to Tracy, and over the Southern Pacific from Tracy to Newman. The rate by this line, which is the line over which the rate now applies, is $2.00. The sum of the locals over the three-line movement would be $3.65. It may be noted that this could be routed from Davenport to Newman entirely over the

lines of the S. P., by going to San Francisco and thence to Newman by Southern Pacific line, so it may be a case where there would not necessarily be any change, but the present rate only applies through Niles and is a three-line movement.

1809 Take the rate from Bay Point to Placerville, where it would be impossible to carry traffic, if the roads were divided, other than over two lines; the rate at present is $3.00 per ton. That traffic is carried by Southern Pacific from Bay Point to Sacramento, by Central Pacific from Sacramento to Brighton, and by Southern Pacific from Brighton to Placerville. The rate applying now over the Southern Pacific controlled lines is $3.00. The sum of the local rates that are in effect there on segments of these lines that I have designated amounts to $3.80, being an increase of 80 cents. I have various others similar.

Likewise coal; there are innumerable cases almost of all these commodities where, if a division is made, rates will have to apply for a joint movement over two independent lines which now only apply over one single controlled line, and in every one of those instances it is my opinion that unless there are some extraordinary conditions prevailing the roads could justify a higher rate for the joint movement than they can justify for the single movement.

Q. The instances you have given are merely types of illustrations of thousands of others that could be given?

1810 A. Merely illustrative. I think there are, perhaps, close to millions; they are almost innumerable, of course.

Oil, of course, is another commodity that is very important. That would, almost all of it, have to be moved over a two-line haul instead of a single as at present.

Cattle is another important industry that is similarly affected.

Q. Have you any reference to the oil rates?

Mr. McCLENNEN. Note to this question the same objection that has been made to the other questions relating to particular instances.

The WITNESS. The oil rate from Bakersfield to Merced is $2.30 per ton. Oil moved from Bakersfield to Merced would have to be moved over Southern Pacific lines from Bakersfield to Fresno, thence over the Central Pacific from Fresno to Merced, unless it was desired to move it up to the junction near Kerman, I think—I don't exactly remember the name. There is an alternative line, but you would have to have a three-line movement if you went that way. My understanding from the tariff is, and from operating conditions, that that traffic moves from Fresno to Merced. Such being the case, it would have to move Southern Pacific from Bakersfield to Fresno, thence via Central Pacific from Fresno to Merced.

1811 The rate applying at present over the Southern Pacific controlled lines is $2.30 per ton. The rate from Bakersfield to

Fresno is $1.55, and from Fresno to Merced, $1.20, making $2.75 as the sum of the locals, which is 45 cents per ton in excess of the present rate.

Likewise from Bakersfield to Oakdale we have a three-line movement: Southern Pacific line, Bakersfield to Tracy; Central Pacific from Tracy to Stockton; and Southern Pacific from Stockton to Oakdale. The sum of the locals exceeds the rate that is now in effect by $1.30 per ton. That is illustrative of the condition.

By Mr. HERRIN:

Q. Take Bakersfield to Chico; there is some considerable movement of oil between those points?

Mr. MCCLENNEN. The same objection as heretofore.

The WITNESS. Yes. Oil, of course, moves quite generally all over the State.

By Mr. HERRIN:

Q. Oil is in general use as fuel; that is, crude oil?

A. Yes.

Q. And it is moved from the fields—Bakersfield in one and Coalinga and other points—generally over the State?

1812 A. Yes; Bakersfield to Chico—the rate applying at present is $2.65. That would have to move Southern Pacific from Bakersfield to Marysville and C. P. from Marysville to Chico. The sum of the locals exceeds the rate now in application by 85 cents.

I should say that the testimony I am giving would have to be modified as to these movements after the lines were divided, if they were divided, that came into competition with another single-line movement over an independent road. For instance, if the Santa Fe had a single-line movement between two points involved, the fact that the Central Pacific and the Southern Pacific were under separate ownership—while that might justify a higher rate as a practical proposition—they would not, and there would be no danger under those circumstances.

Q. You gave some lumber rates, did you not?

A. Yes. There is another commodity that I intended to speak about, and that is ore; because of the fact that practically every bit of ore produced in the State would of necessity have to be hauled by two and almost in every case a three line movement.

Q. Do you wish to give any instances of ore?

1813 A. Well, of course, ore is well known. It is produced in the mountain counties ordinarily.

Q. What points of shipment do you get ore from?

A. Well, ore comes from up on the Sierra Railway, the mines up there, the Southern Mines they are called; and, of course, there are

various places on the Central Pacific, the main line, and from points on the Placerville branch.

Q. Shipped to what point?

A. Usually to Selby for smelting. For instance, from Ione to Selby. Ione gets ore from the mines around Jackson, one of the most important mines in the State. That rate at present is $1.00. The rate from Ione to Galt over the S. P. is $1.00, from Galt to Tracy is $1.00, and from Tracy to Selby is $1.00, making a combination of locals—which, again, I do not wish to be understood as saying I think could be justified, but which it would be the tendency of the carriers to contend for—of $3.00, as against the $1.00 at present.

Q. There are other instances of ore rates that can be given for shipments from points in the mountains?

A. Yes.

Q. But the one given is illustrative?

A. It is illustrative of the general conditions.

1814 Q. You spoke of cases where a competing line like the Atchison could furnish an alternative routing, instancing, of course, that it would not make any difference what they might justify themselves in asking to receive; in the absence of competition, competition would control in that case?

A. Yes.

Q. Does that govern many of these cases?

A. Not many of the cases I have given. It would affect many cases in the San Joaquin Valley, but north of that it would not affect many. The Western Pacific would have a small effect in portions of the Sacramento Valley. The Southern Pacific has a good deal of exclusive territory in the State of California.

Q. You have given instances of lumber rates?

A. I have.

Q. That is a very large and important volume of traffic in California?

A. Yes; the largest single item of traffic, I think, the Southern Pacific has.

Q. Moving from points to the north to points in the interior of the State and south?

A. Principally from points in the north. Some is pro-

1815 duced at points on the Sierra Railway and delivered to both Southern Pacific and Santa Fe at Oakdale, but the amount is relatively inconsiderable.

Q. What you have stated illustrates the point you make concerning rates?

A. Yes.

Q. We might go on at great length giving details; but the illustrations you have given, I take it, are sufficient to show the principle involved.

Mr. McCLENNEN. If that be a question, it is objected to.

Mr. HERRIN. No; it is not a question. I was going to add to it.

Mr. McCLENNEN. If it is not a question, it is objected to——

The WITNESS (interposing). I will answer the question over objection.

Mr. McCLENNEN. If it is now understood to be a question, it is objected to as leading, containing several statements of facts not in the record, calling for an opinion and conclusion of the witness.

The WITNESS. My answer to that question is: These have
1816 been merely illustrations of a general condition that I know prevails from studying the tariffs and knowing the lines of these two carriers; that is, the lines that would be separately controlled, were the Southern Pacific required to sell the Central Pacific.

By Mr. HERRIN:

Q. As to the service which is now given by the Southern Pacific Company, operating all these lines, and that which could be given if the two companies operated the lines separately, what would you say?

Mr. McCLENNEN. The petitioner objects to this question as calling for matter immaterial and incompetent and irrelevant; for an opinion of the witness on a matter not of importance in this case, and for a statement of opinion as to future probabilities.

The WITNESS. My opinion is that it would very seriously interfere with the convenient operation of the lines of the Southern Pacific, as now operated. I know of no alternative method of operation that would give as good service as the Southern Pacific is now giving.

By way of illustration, the Owl, a well-known train to Los Angeles, could not run through Fresno unless it went around
1817 through Porterville. No through train to Los Angeles could go through the most populous portion of the San Joaquin Valley, namely, what is known as the east side, through Modesto, Merced, Turlock, and that line there. No through train could be operated to Oregon. There are various other minor details; for instance, the Oakdale branch, so called, which begins at Stockton and serves the Southern mines through Milton to Oakdale, and there joins on to the Central Pacific again at Merced. It would be, as you might say, up in the air, the Southern Pacific line adjoining a Central Pacific line on both ends. The same might be said for the Galt and Ione branch, and the Lodi and Valley Spring branch. I do not mean to be understood as saying that joint arrangements could not

be made, but if joint arrangements are to be made it is hard for me to understand why there would be any advantage in tearing the lines apart.

Mr. McCLENNEN. The last part of the answer is objected to——

The WITNESS (interrupting). I do not mean to argue it, and I will cut it out if you desire, and will merely say that I do not mean to be understood as saying that joint arrangements could not be made.

1818 By Mr. HERRIN:

Q. In some instances joint arangements are made between different carriers, as for example, between the Southern Pacific and the Central Pacific for operating their respective trains over the Tehachapi Mountains; that is one instance?

A. Yes.

Q. But do you know any case in your experience where arrangements are made generally for the running of trains over all lines covered by a system such as there is in California, owned by two different companies, so as to throw them open to each as freely as if they were operated by one company?

A. I assume you desire to object to this.

Mr. McCLENNEN. No.

The WITNESS. I do not know of any such arrangements, and do not believe, from my knowledge of these lines, that such an arrangement could be successfully consummated to give the service that is now given.

Mr. McCLENNEN. The latter part of the answer, beginning with "and do not believe", the petitioner moves to strike out as not responsive, as an expression of opinion by the witness upon an-

1819 other subject not material to the issues in the present case.

By Mr. HERRIN:

Q. With respect to freight trains, the movement of traffic between points on the Southern Pacific, such as the line from Davisville up to Tehama, and points on the Southern Pacific lines in the San Joaquin Valley and southern California, for example; that traffic now moves freely to the Central Pacific and thence to the Southern Pacific at Goshen by direct line, but the separation of these lines would force that traffic, unless there was some joint arrangement made, to move by what line?

A. It would have to move by what is known as the Roseville line, and thence, if you are referring to the Central Pacific, to get to Goshen, thence over to Sacramento, thence over to Stockton, thence over to Lathrop, and thence over to Merced, and then from Fresno to Goshen, and stop there.

Q. That is the way the traffic is moved now, but if you had to haul traffic, say, at Willows.

A. That is on the west side?

Q. That is on the west side.

A. Well, the west side line of the Sacramento Valley is an S. P. line, and it would require all joint movement for
1820 all traffic originating between Tehama and Sacramento.

Q. Do you have in mind how the Southern Pacific could move that over its own line, say from Willows or Woodland, to Bakersfield, or any other point on the Southern Pacific lines in the San Joaquin Valley?

A. They would have to take it back to Port Costa, and thence through Tracy, Newman, and what is known as the west side, if they moved it entirely over their own line. The Southern Pacific, of course, could not carry it beyond Goshen in any event.

Mr. HERRIN. I offer in evidence Supplemental Opinion No. 478, on this contract, which appears at page 248; decided February 24, 1911. That is the same day as the main case opinion, the main opinion?

The WITNESS. Yes; they were handed down together.

Mr. MCCLENNEN. The petitioner makes the same objections to the introduction of this decision as to defendants' Exhibit 25.

(The supplemental opinion referred to was received and marked "Defendants' Exhibit (Eshleman) No. 26, March 13, 1915," and will be found in the volume of defendants' exhibits.)

1821 By Mr. HERRIN:

Q. I overlooked asking you as to the terminals of these lines of road when separated, as to the conditions that would arise and the practicability of these different companies performing public service, with respect to these terminals.

Mr. MCCLENNEN. The same objections that have been made to an expression of an opinion by the witness, as heretofore.

The WITNESS. I do not pretend to know. I do not think anyone knows just what the ownership of those terminals is. I know, however, that there is very great confusion existing. It was in evidence—and I desire to distinguish between what was in evidence and what I know of my own knowledge—but it was in evidence in the case that as to some of the Oakland terminals, for instance, the fee was owned by one company and the franchise by another, and there were various conflicts of that sort; but I have no knowledge except that. I do know, however, that in some places the Southern Pacific is dominant and in others the Central Pacific, but I do not desire to go on record as stating anything except the general knowledge that these terminals are almost inextricably confused as to ownership.

1822 By Mr. HERRIN:

Q. What would be necessary, in case of the separation of the roads? Would each road provide its own terminals or otherwise?

A. It would be necessary for each road to provide its own terminals, or secure access to the terminals of the other road on whatever terms it could. It would have to have terminals.

Q. In what way would the public be interested in that matter?

A. Well, the public would be interested in getting access to the road over which it desired to route its freight, and as to industries located on lines of the Southern Pacific, for example, the people located on those lines would not have access to the Central Pacific lines, as a general proposition. The shipper, of course, can demand the routing of his freight, but it would substitute two sets of terminals where one now exists, or require the same use of those terminals jointly as we have now. In other words, whenever one road admits another to its facilities, it does so on which are the best terms to itself that it thinks it can exact and prevent the other fellow from building terminals of his own.

1823 Q. In the case of providing separate terminals throughout, how would that interest the public?

A. It would require duplicate investments to carry out the same business, and rates could be justified, on this basis, on a higher plane than could be justified if there were less property. I do not know how much effect it would have, but unquestionably it could be used in a rate case with some effect.

Q. Mr. Eshleman, when did you cease to be a member of the California Railroad Commission?

A. January 1, 1915.

Q. What was the occasion of your leaving that office?

A. I had to go to Sacramento as lieutenant governor.

Q. You were elected lieutenant governor?

A. Yes.

Q. And are now lieutenant governor of the State?

A. Yes.

Cross-examination by Mr. MCCLENNEN:

Q. In stating the powers of the California Railroad Commission, while you did not state it in terms, you had of course in all

1824 your answers a reference only to intrastate business?

A. Intrastate business, of course.

Q. You instanced the lumber traffic as amounting to eighteen per cent. Did you mean eighteen per cent of the whole freight business of the Southern Pacific Company or of the intrastate freight business of the Southern Pacific Company?

A. My answer is taken from the last annual report of this company, and it is the total freight originating on that road of all kinds.

Q. Then the eighteen per cent of lumber traffic to which you refer in that answer includes both the intrastate and the interstate?

A. Well, now; I am not quite sure. I can find it. Of course you know answers such as that are taken from the record, and my understanding was that that covered the entire lumber traffic, both State and interstate. If I am in error, by consulting the record I can determine. By referring to the record I find that the California business is 13.86 per cent, and the 18 is State and interstate as originally stated.

1825 Q. That is, then, to put it all together; of the whole freight traffic of the Southern Pacific Company, State and interstate, the whole lumber traffic is eighteen per cent, of which thirteen is intrastate and five is interstate?

A. Yes; that is what the report states. I do not pretend in this answer to go beyond the report of the Southern Pacific, which is on file with our commission and with the Interstate Commerce Commission. I merely gave that testimony as illustrative of the fact that is known independently, that this constitutes a large portion of their freight.

Q. Is that percentage in terms of tons carried or ton miles carried, or revenue?

A. That is in percentage of tons.

Q. How much of that thirteen per cent is carried merely from Oregon to milling point and destined to interstate shipment?

A. I do not know.

Q. Are there any figures in the reports that have been made to your commission that would give that division?

A. Not that I know of.

Q. You have general knowledge of the fact that that is done to a considerable extent?

1826 A. I know that such an arrangement is in effect; that is, that lumber is treated and then shipped to other points from the point at which it is treated.

Q. Have you any knowledge as to what part of the thirteen per cent originates on Central Pacific rails and is delivered on Southern Pacific, or vice versa?

A. I have not; but from my knowledge of the geography of the State I know that by far the greater portion of the lumber originates on Central Pacific points.

Q. The great bulk of the lumber originates where?

A. Well, of the lumber originating on either of these lines, the great bulk of that originates up toward the Oregon line and on the line of the Central Pacific across the Sierra Nevada Mountains, and a considerable portion comes into the Southern Pacific—this cut-off

ine that I referred to—through the Sierra Railway of California at Oakdale. The greater proportion of lumber that is produced in California originates—now, this is my opinion; I am quite sure hat it is correct, however—originates on neither of these lines.

Q. On what lines does this greater proportion you speak of originate?

1827 A. It comes in by boat, and on the line of the Northwestern Pacific. That is my belief, from my knowledge of the geography of the State. I have been over all of these lines, and know the general locations, of course.

Q. Could you, in justice to yourself, approximate the percentage?

A. I could not. As to such traffic, however, of course, when it is turned over to one of these lines, if it required a joint movement over the two, the same arrangement I have already suggested would be necessary.

Q. That coming in by water, destined to Central Pacific points, would, in the nature of things, be delivered directly to Central Pacific rails?

A. Yes; it would go by way of Stockton, if it were going to Sacramento, instead of by way of Benicia.

Q. And that destined to Southern Pacific rails, conversely, would naturally be delivered originally——

A. When it is delivered at a point touched by both lines—of course, the only point touched by both lines is San Francisco—San Pedro, I believe, receives equally, if not a greater amount of lumber; but that is only a belief. I know it receives a great quantity of lumber, and that is only touched by the Southern Pacific.

1828 Q. It is not possible, is it, that much lumber is delivered into San Pedro destined to Central Pacific points?

A. No; I would say that it is not probable that much of that goes north of Goshen that is for intrastate consumption. However, I am of the opinion that on the Porterville line lumber would come from southern California that would require—well, that is the Southern Pacific line; that would be the Southern Pacific line; yes.

Q. Taking your knowledge of the whole situation into consideration, could you make a valuable estimate as to how much of the whole thirteen per cent passes from the Central Pacific lines to the Southern Pacific lines, or the reverse?

A. No; I could not. My only knowledge is that some of these towns I have mentioned are quite prominent and growing towns, and I know that quantities—I would not say great as compared with the whole bulk—but great quantities of lumber are used in points in the San Joaquin Valley to which I have referred.

Q. Most of the important points in that valley are touched by the Atchison rails, are they not?

A. Well, I suppose the majority of the population is reached by the Atchison rails.

1829 Q. Has the Atchison been carrying much lumber into those competitive points?

A. I have not their report here, but they, of course, carry lumber into those points.

Q. Has the divided-haul rate in those cases been the same as the Southern Pacific's rate?

A. They carry it entirely over their own lines to those points. The Atchison has a line to tidewater here and they go entirely over their own rails.

Q. Does the Atchison carry any lumber into those competitive points originating in northern California?

A. I do not think it is allowed to get much of that business; but I have very little knowledge on it. I am sure that by very far the major portion of the lumber originating on one line will be delivered by that line to its destination, because of the fact that a joint rate would have to be established, which, under the law, would have to give the Southern Pacific, from the point at which the lumber was turned over to it to the point of destination, its full local rate. The interstate law is similar. That is, if lumber originating at Weed were turned over to the Atchison at Stockton the full local

1830 rate to Stockton would have to be given the Southern Pacific, the law providing that where there is an equally advantageous rate entirely over the lines of the carrier in question it is entitled to its local rate.

Q. Has that been the division of rates between the Southern Pacific and the Atchison on freight originating in Southern Pacific territory and delivered to competitive points, intrastate and interstate?

A. By getting the tariffs it would be very easy to determine what joint rates are in effect. Between numerous points you refer to there are no joint rates, and therefore the movement would have to go, if it went by a joint line movement, on a combination of the locals, which, of course, would be much in excess. That, however, is a mere tariff matter. My general knowledge of the tariff leads me to answer that there are not many joint rates over the Southern Pacific and Atchison for lumber between the points that are entirely served by the Southern Pacific and can be served by the Southern Pacific.

Q. You spoke of the Atchison not being allowed to get much of that business—the context showing what you meant by "that." Does

that same apply to freight generally originating on Southern Pacific rails?

1831 A. If I may be allowed to explain just what led me to make that answer, I think I can make it plain.

It has been recognized by the Interstate Commerce Commission and by the various commissions that a railroad shall not be short-hauled; that is, where a railroad has built a line between two points, that it shall not be required to turn traffic over at an intermediate point to another line and lose a lot of the haul; and when it does that, the road that takes the freight pays pretty liberally for the privilege. For instance, the division of the interstate rate west of the Missouri River is forty-six per cent of the entire rate. For instance, the Western Pacific from Ogden would get forty-six per cent. If the Western Pacific at Niles had some traffic for San Jose, which is seventeen miles away, I believe, the Southern Pacific would require it to give twenty-three per cent of the west of the Missouri River proportion; that is, it would have to give half of what it got out of the rate from the Missouri River point to Niles to the Southern Pacific for carrying it seventeen miles.

Q. That is, if I follow you, the rate from Omaha, as an example of a Missouri River point, to any point in California, is di-

1832 vided fifty-four from Omaha to Ogden and forty-six from Ogden to California?

A. That is true; that is over the Western Pacific—well, I think it applies over all the roads; yes.

Q. Then, of this forty-six per cent, anything carried by the Western Pacific and delivered on Southern Pacific rails is divided twenty-three per cent——

A. No; it is divided in half.

Q. I mean the forty-six is divided in half?

A. Yes.

Q. So that the Southern Pacific gets twenty-three and the Western Pacific gets twenty-three per cent?

A. That is true.

Q. And the Union Pacific, or what not, to the east gets fifty-four?

A. Yes.

Q. And that is irrespective of the number of miles of haul of the Western Pacific?

A. Yes. The same applies to the other companies.

Q. That is, to put an extreme illustration: If the Southern Pacific hauled it one mile to Sacramento and delivered it to the Western Pacific for Ogden or Salt Lake, the Southern Pacific would

1833 get twenty-three and the Western Pacific twenty-three?

A. Unless there is some special rule covering the case. That is the general rule, and that was the explanation of my answer that it is not very often the case that much business that originates on a line that can lay it down at its destination goes off that line before it reaches its destination.

Q. That would apply in actual practice to the Atchison as to freight originating on Southern Pacific points in the same way?

A. Yes.

Q. The California commission has authority to control trackage rights to some extent between——

A. I am sure it has authority to control them to this extent, that voluntary agreements on the part of the carriers must receive the sanction of the commission. As to the forcing of the joint use of facilities, I am not quite decided as to what the courts would finally say.

Q. You mean as to whether the commission could, out of hand, compel one railroad to grant trackage rights to another?

A. As a matter of law, I am not prepared to state, it not having been litigated.

Q. It has the——

1834 A. It has the veto power, in other words. The affirmative power is conferred by the law. The law is broad enough to carry that power. In my opinion, of course, the presumption is that the power is there, although as a pure legal proposition, it has not been passed upon.

Q. It has the authority to establish joint rates and through routes?

A. Yes; but under the limitation I have already stated about the road being required to get its full local, that has an entire line over the route over which the joint rate applies.

Q. Have you any knowledge as to the comparison between the volume of the Southern Pacific Company's interstate business and its intrastate business?

A. I can not answer that question offhand. I could consult records and find out very readily. It is in the reports.

Q. In the same way, have you any knowledge of the comparison between the Central Pacific Railroad's interstate business and intrastate business, using Central Pacific Railroad to indicate those parts of the lines belonging to that company?

1835 A. I would have to give the same answer to that. I can very readily obtain the information, but I do not carry it in my memory.

Q. As a practical matter, if the division between the two companies was accomplished, it would not, in your opinion, effect an in-

crease of rates between any points where there are competitive facilities?

A. Ordinarily, no; but a rate could be justified, as I have already testified, that would be higher; and if the company that now was competing felt that it was not getting enough, there probably would be an application to raise the rates by both. There have been such cases. I do not mean to be understood as saying that I think that would ordinarily occur. I do not think it would ordinarily occur.

Q. The difficulties which you have expressed your opinion as possible to occur in the matter of rates and service on the severance of these two lines are difficulties which, in a measure, would occur in case of almost every break-up of combined railroads?

A. I could not answer that in the affirmative without some reservations. I think that the way these roads have grown up to-
1836 gether has brought about a condition that we do not find in the ordinary combination.

Q. There are a good many instances through the country of similar situations, are there not?

A. Well, I do not know of any of them that are being unmerged.

Q. The railroads through the country do not get unmerged very often according to your experience?

A. They do not, and if you desire an expression of opinion—and it may explain my attitude on this—my entire position and the position of the commission was assumed mainly on the theory that a regulated or Government-owned monopoly was better than any condition that could be brought about by competition in the case of railroads.

Q. You have anticipated what I had in my mind; that is, your opinion as to the injuries, if any, to be anticipated from the unmerging of these railroads is based upon your belief in the economic wisdom of regulated monopoly in railroads?

A. Yes. My belief is that regulation by Government authority is an alternative to regulation by competition and is only justified on the ground that competition does not do its duty.

1837 Q. And that you recognize, as a lawyer, to be addressed more to the legislative question of whether the Sherman Anti-trust Act should apply to railroads than to the judicial question when a case is presented that comes within the terms of the act?

A. It is directed to what I think ought to be perhaps; not what is.

Q. That is, what ought to be as a matter of legislative policy?

A. Yes. Take this particular case; either the public of California, in my opinion, would be inconvenienced by this severance or more money will have to be expended to enable two agencies to do that which one agency now does, with the necessary additional earnings

on the necessary additional investment. But, as you say, that goes to the policy and not what the law demands.

Q. Do you identify this record as the official record of the proceedings of the commission on this application before the commission of which you are speaking?

A. I do. I know it is a part of it. I do not know whether it is all of it.

1838 Q. Just make sure, please, that it goes through the argument. I would like to make sure that it is the whole record.

A. This, I am sure, covers the main case. As you know, there is a telegram to Attorney General McReynolds, which was subsequent, but I do not think this covers that. I know it covers the main case, however.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. The rule that you spoke of, which was enforced in favor of the company having a line to not short-haul it, was applied indiscriminately against one company or the other?

A. Yes. I think I said that.

Q. If the Southern Pacific Company should take a carload of freight from the Western Pacific at Sacramento to haul to Ogden, it would be treated just as if the movement was the other way?

A. Oh, yes. The only difference is that the company in possession of the terminals, of course, always has the advantage. That would necessitate, on the division of these lines, the company that found itself in any important place without terminals, building the

1839 terminals which, under traffic conditions, we all know could not be as advantageous to that line as the terminals that have been long located and upon which industries have grown up. But this applies among all the lines, this arrangement.

Recross-examination by Mr. McCLENNEN:

Q. This last remark of yours leads me to ask you this: You, of course, have in mind the decision that you have rendered with reference to the features of this contract between the Central, the Southern, and the Union, so far as you regarded it to come within your jurisdiction?

A. Yes.

Q. And one of the features that you dealt with, you are aware, was the fact that the Southern and Central-Union owned, were to have joint use of terminals by voluntary agreement, to which they had not yielded access to other carriers?

A. It was the exclusive use to which the commission objected.

Q. That was a program which the commission then had occasion to lay down for the first time under the powers of control which it conceived that it exercised in the State?

1840 A. That was, I know, the first important case, and I think the first case in which that question arose.

Q. Has the commission, so far as you know, ever had occasion to consider whether it would exact the same requirement as to letting other carriers into terminals jointly used by two railroads forced asunder by the law and not put asunder by voluntary agreement?

A. Of course I am not a member of the commission at the present time, and anything I might say I would want to be thoroughly understood as having no bearing upon the attitude of the commission.

Q. Let me make clear that I do not wish to exact a prediction from you of what the decision would be. I merely want to know whether any decision had been reached while you were a member of the commission, or has been reached, as far as you know, up to the present time, upon that subject; or whether that subject has been given consideration up to the present time.

A. It has been given thought. It has not been given any official consideration, to my knowledge.

In that particular case the commission was impressed with

1841 the fact that the condition you suggest did not exist. Our entire belief there was the belief that the Union Pacific, which was the offender, was much better off after the unmerging under the agreement than it was before. The Southern Pacific, which was the innocent party in that case—it has not always been innocent in everything—was the one which suffered the most.

In other words, as the commission said in those decisions—I think that was in the telegram to Attorney General McReynolds—that apparently there was a design to perpetuate the advantage of the merger, or of the control which the Supreme Court had condemned, and we could not see why there could not be real unmerging in the unmerging. My belief is that, just as I have said, those contracts were absolutely unfair to the Southern Pacific and served to perpetuate the very dominance of the Union Pacific which the Supreme Court had condemned.

I make that explanation, because in that case there was no condition of joint use of terminals between the Union Pacific and the Southern Pacific. The joint use of terminals there would be between a line which the Government, or the parties in that case, were trying to make the Southern Pacific sell to the Union Pacific; and

1842 what we said there could not be taken as an indication of what I would now say if the case were between the Central Pacific and the Southern Pacific.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

1843 Mr. McCLENNEN. The petitioner, without waiving the objections appearing in the record to the introduction of any evidence of the resolution of the San Francisco Chamber of Commerce or any of its actions, but which the petitioner still conceives to be inadmissible, but insisting on those objections, nevertheless, against the possibility of the petitioner being in error as to the relevancy of that action and for the purpose only of making clear the action of the San Francisco Chamber of Commerce in the matter of a severance between the Southern Pacific Company and the Central Pacific Railroad Company, puts in evidence the action taken by that chamber before the California Railroad Commission, as shown by the record of those proceedings, identified by the last witness, Mr. Eshleman; that is to say, the record on application No. 409, in the matter of the application of the Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad, to make a sale of a certain railroad, to make a contract for the joint use and possession of a certain railroad, to make a contract for the running or trackage rights over a certain railroad, and to make
1844 a contract for the joint use of certain railroad terminals, so much of this record as relates to the action of the San Francisco Chamber of Commerce, namely, in the proceedings of February 24, 1913, at page 404 of this record, the following:

"Mr. MANN. If the commission please, Mr. William R. Wheeler, the traffic manager of the San Francisco Chamber of Commerce, would like to be heard here, on the views of the shippers he represents, very briefly.

"Commissioner ESHLEMAN. Then we will accord that privilege. We will take a recess for about five minutes.

"(Recess.)

"(After recess.)

"Commissioner ESHLEMAN. The commission will come to order. Mr. Wheeler, you may take the stand.

"WILLIAM R. WHEELER, a witness called in behalf of San Francisco Chamber of Commerce, being duly sworn, testified as follows:

"Direct examination:

"The WITNESS. If the commission please, I wish to merely point out in connection with the attitude of the San Francisco
1845 Chamber of Commerce the strategic position which the line of the Southern Pacific Railroad between Sacramento and San Francisco via Benicia occupies. The resolution of the San Francisco Chamber of Commerce is directed against a sentence which appears

the second paragraph, page 13, of the proposed agreement, which reads: 'No additional companies shall be admitted to use the property except upon the written consent of both the Pacific Company and the Central Company.' It is the veto power of the lessee company contained in that sentence that is objected to. We do not think it is to the best interest of San Francisco that that veto power should exist in the hands of the lessee company. Now, with your permission—I will be as brief as possible—I want to point out why we take that position. Here is this line which, you might say, so far as the Southern Pacific's interests are concerned with relation to strictly transcontinental traffic, becomes a stub line after this agreement becomes effective. This route occupies the shortest most direct route between San Francisco and Sacramento that exists to-day, and for that matter in all probability that will ever exist. There are, I am informed, engineering difficulties with regard to building. The extension, even of the Sacramento Southern, across the marshes
1846 will be a very expensive proposition. And after coming through there they have to find a way along the water front or through the mountains which surround Mt. Diablo to get over to San Francisco. Now, let us look for one moment at the trend of railroad building to-day. I will overlook—say nothing of the Rock Island, with its line out to Denver; not emphasize that; nor the Burlington also, with its line to Denver and some 200 miles further east to a station called Baldwin, Colorado; that is, through the Colorado Southern. I speak of the controlling company—the Colorado Southern. The Burlington has another line that runs here to Gurnsey, Wyoming. Now, recently the Moffatt line has taken on new life, and they propose to extend this line, which is now some 200 miles westerly from Denver, on to Salt Lake. They are financing it, as I understand, with a view to tunneling through the mountains and making this line to Salt Lake. It is of particular interest at this time to San Francisco to note that the Northwestern—that is, the Chicago Northwestern—has built out some 1,250 miles westerly from Chicago to the western part of Wyoming; in fact, it is not very far from the meridian of Ogden now to a point called Landa. It is not reasonable to assume that that line, or, in fact, these other lines
1847 which are making these extensions, are going to be content to stop where they are. They will be seeking entrance to San Francisco in the near future very likely. Now, more important still to San Francisco than all of that, and because of the fact that this covers a ground not already covered, even approximately, by other roads, is a proposition which is now alive—building a road from Winnemucca northeasterly to Boise, with the intention of extending same on to Butte, Montana.

"Mr. MANN. What is the name of that road?

"A. That road is known as the Winnemucca Northern; it gives to San Francisco a direct substantially bee line in connection with the Great Northern over its Great Falls cut-off with the Northern Pacific, and with the Chicago, Milwaukee & Puget Sound, the three northern transcontinental roads; it will also give us, when completed, a direct line to the ore-bearing field and into the great wheat-bearing field. We all know California is becoming less and less of a wheat-growing country, and we have to bring our bread from abroad, or from outside the State, and it gives opportunity for reaching up into this country to bring wheat on a bee line down here. At Winnemucca it has the advantage of a connection with two roads, the Western Pacific and the Central Pacific, both of
1848 which roads converge at Winnemucca. Now, the interest San Francisco has in having this road left open here is that any of these roads may have the opportunity of using the shortest possible direct route at the will of the owning company and not at the will of the lessee company. It is not to be expected that the Union Pacific, with its Central Pacific route, would give its assent to the Northwestern, after it came through the Sierras, using this cut-off into San Francisco; it would not be reasonable they would expect to want to give up the advantages they have to a competitor. And that is the position that San Francisco takes with regard to this situation, that the veto power contained in that clause is inimical to our best interest. Dwelling upon this Winnemucca Northern road for a minute, it places San Francisco in position to compete with Portland, Seattle, and Salt Lake, and even St. Paul, for the trade of Montana and Idaho, which it is very difficult to get any business from at all to-day for San Francisco. With this direct line, the shorter and quicker the service is the better it will be for our city.

"Q. Thus you take a stand against the veto power in the Central Pacific Railroad for the use of the line Oakland to Sacramento. Is that right?

1849 "A. That is exactly right.

"Q. Now, then, with respect to the terminal situation and the use of the industrials.

"A. Inasmuch as Judge Lovett, in his testimony the other day places those in the same category in so far as the veto power is concerned, as I understood him, why, our objections apply with equal force. There is one thing more I want to say before I leave the stand and that is the advantages of additional roads with regard to competition. It is a popular fallacy, I think, that because there is not a rate war, because there is not a cutting of rates, general demoralization of rates, following the advent of a new road into a territory that, therefore, there is no competition. There is competition in the

service, and that is what we desire. There is also competition in this respect, that if we have two roads who have a voice in the rate question, you stand 100 per cent, or double, the chance of gaining tariff concessions that you do if there is only one road to deal with; if there are three roads, you stand three times the chance of getting your concessions; or if four, four times, and so on; in other words,

you do not find—are not as apt to find—three men of one mind
1850 as you are two men of one mind, and so on as the number grows. We have already had an example of that here in San Francisco. There was a proposition something more than a year ago to advance rates between San Francisco and Stockton, make a very material advance, on the part of the railroads, and the fact that it required the assent of three roads instead of two was the only thing that prevented that advance going into effect at that time; we were successful in convincing one of the roads that it was unfair to us to raise those rates and they declined to join in the advance. That is all I have to say.

"Cross-examination:

"Mr. COTTON. Mr. Wheeler, did you file a copy with the commission of your resolution adopted February 18, 1913?

"A. No; I left a copy with Judge Lovett.

"Q. I was wondering; you referred to it as if you had filed it.

"A. I would be very glad to read the resolution into the record if you like.

"Commissioner ESHLEMAN. Very well, you may.

"A. 'Resolution of the executive committee of the San Francisco Chamber of Commerce, adopted February 18, 1913.

1851 "'Resolved, That so far as we are at present advised, we approve of the terms of the proposed agreement dated February 8, 1913, between the Union Pacific Railroad Company and the Southern Pacific Company et al., relating to leases, sales, trackage rights, and joint use of terminals, which terms are to be submitted to the California Railroad Commission for consent and approval, and are referred to in subdivision 2 of section 8 on page 32 of said proposed agreement, with the exception of the clause found on page 18 of Exhibit B, which reads:

"'"No additional companies shall be admitted to use the property except by the written consent of both the Pacific Company and the Central Company * * *" and

"'Resolved, That the manager and attorney of the traffic bureau are hereby authorized to express the attitude of the chamber in this regard before the California Railroad Commission, at the hearing to be held February 19, 1913, or any adjournments thereof.

"'And be it further resolved, That a copy of this resolution be immediately transmitted to the chairman of the executive committee of the Union Pacific Railroad Company.'

"The reason for that was that we were invited into this
1852 case by a series of telegrams which I think it might be just as well to put into the record here too, with your permission Mr. Chairman.

"Commissioner ESHLEMAN. You might state the substance.

"A. Well, the substance is this: This is a telegram from one of the officials of the Union Pacific Railroad, Gerrit Fort, under date of January 6th, addressed to in my official capacity, and urging our cooperation in bringing about the ratification of this lease—this proposed contract. To that we replied under date of February 7th, 'Yours sixth. While I heartily approve of separation of Central Pacific from Southern Pacific and the establishment of Central's managerial and operating headquarters in San Francisco, you will appreciate that I will not be in position to lend intelligent assistance until after I am advised of the details concerning "Certain trackage and running rights" in this State.' To that we received this reply, 'Thanks for your message. It is intended that the Central Pacific shall acquire trackage rights over the Southern Pacific between Sacramento and Oakland via Benicia, thus preserving double track transcontinental line between San Francisco and the Mis-
1853 souri River, and that the Southern Pacific shall acquire trackage rights over the Central Pacific line north of Tehama, thus preserving the continuity of its present line between Oregon and eastern points and California.'

"Commissioner ESHLEMAN. Any further questions, Mr. Cotton?

"Mr. COTTON. You think it is not reasonable to expect that the line controlling the route from Ogden to Oakland should admit a new tenant—a competing tenant? Is that your notion?

"A. I don't think it is likely to do so.

"Q. And that would be the case, no matter who might be the owner of that line?

"A. Well, so long as the tenant has the veto power.

"Q. Well, or as long as the Southern Pacific alone had the veto power, provided it retains the line to Ogden?

"A. Yes.

"Q. And you think there might be some advantages in the separation of the Central and the Southern?

"A. If it is a genuine separation, and we have four roads instead of three.

"Mr. COTTON. That is all."

1854 Mr. HERRIN. That is offered solely to show the action of the chamber of commerce at the time mentioned, is it?

Mr. McCLENNEN. Solely for that purpose, in view of the testimony which we believe to be objectionable, which you have put in upon that subject.

Mr. HERRIN. What I mean is: You do not offer that as the testimony of Mr. Wheeler here as an expert witness, or anything of that sort?

Mr. McCLENNEN. Oh, I do not offer it as independent evidence of the things stated in it, but simply as evidence of the statement made on behalf of the chamber of commerce in those proceedings.

(Whereupon, at one o'clock p. m., an adjournment was taken until Thursday, April 15, 1915, at eleven o'clock a. m., at 165 Broadway, New York City.)

1855 TWENTY-SECOND DAY.

ROOM 2506, 165 BROADWAY,
New York City, April 15, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Edward F. McClennen, Esq.; and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., and J. P. Blair, Esq., for the Southern Pacific Company.

1856 WILLIAM MACALLISTER, Jr., was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your occupation?

A. Clerk in the Central Trust Company.

Q. You were asked to bring with you the original indenture made by the Central Pacific Railroad Company to the Central Trust Company of New York to secure a certain mortgage, generally known as the first refunding four per cent mortgage. Have you produced it?

A. Yes, sir.

Q. This indenture was duly executed and delivered?

A. Yes, sir.

Q. Were the bonds described in this indenture issued in accordance with its terms?

A. Yes, sir.

Q. Are they now outstanding?

A. Yes, sir.

Mr. BLAIR. Counsel for the defendants put in evidence a
1857 printed copy of the indenture referred to by the witness, being an indenture of the Central Pacific Railway Company to the Central Trust Company of New York, dated August 1, 1899; and it is stipulated between counsel that this copy shall be received in lieu of the original and have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Macallister) No. 27, April 15, 1915", and will be found in the volume of defendants' exhibits.)

CHARLES C. MARSHALL was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your occupation, Mr. Marshall?

A. I am a clerk in the corporation trust department of the United States Trust Company.

Q. The United States Trust Company was the trustee of a certain indenture made by the Central Pacific Railway Company to the United States Trust Company of New York to secure a certain issue of three and a half per cent mortgage bonds dated August 1, 1899?

A. It was; yes, sir.

1858 Q. You were asked to produce the original indenture. Have you done so?

A. Yes, sir.

Q. Will you hand it over for exhibition to counsel?

A. Yes. Here it is.

Q. Was this indenture duly executed and delivered?

A. Yes, sir.

Q. Were the bonds therein described issued in accordance with its terms?

A. They were.

Q. Can you tell us now how many of those bonds are at present outstanding?

A. $10,658,500, par value.

Q. How were the remainder of those bonds described in the original indenture retired?

A. Through sale of securities that were held by us as collateral under that indenture, from the sales of lands, and also through a sinking fund provision in the indenture providing for $25,000 annually.

Mr. BLAIR. Counsel for the defendants puts in evidence a
1859 copy of the indenture referred to by the witness, namely, the indenture of the Central Pacific Railway Company to the United States Trust Company of New York, dated August 1, 1899;

and it is stipulated that said copy may be offered in lieu of the original, and to have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Marshall) No. 28, April 15, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Was the United States Trust Company the trustee of an indenture made by the Central Pacific Railway Company, the Southern Pacific Company, and the United States Trust Company of New York to secure an issue of bonds dated March 1, 1911?

A. Yes, sir.

Q. Is that the issue of bonds known as the European loan?

A. Yes, sir.

Q. You were asked to produce the original of that indenture. Will you produce it for exhibition to counsel?

A. Yes, sir. Here it is.

Q. Was this indenture duly executed and delivered?

A. Yes, sir.

Q. Were the bonds described therein issued?

1860 A. Yes.

Q. And are now outstanding?

A. And are now outstanding.

Mr. BLAIR. The defendants put in evidence a copy of the indenture just referred to by the witness, namely, an indenture between the Central Pacific Railway Company, the Southern Pacific Company, and the United States Trust Company of New York as trustee, bearing date of March 1, 1911; and it is stipulated that the copy may be received in evidence in lieu of the original and to have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Marshall) No. 29, April 15, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Was the collateral referred to in this indenture delivered to the United States Trust Company?

A. Yes, sir; and is now held by it.

Mr. ORR. That is two hundred and fifty million?

Mr. BLAIR. Two hundred and fifty million francs; fifty million dollars.

1861 Cross-examination by Mr. MCCLENNEN:

Q. Are any of the bonds, the $10,658,500 that you say are outstanding under Exhibit 28, registered bonds?

A. A few of them, I think; something like fifty thousand. I think fifty-one thousand to be exact. We do not keep the ledger. We are the registrar of the bonds. The company is the transfer agent, but from our register, where we cancelled the old certificates and issued the new, as I remember it, about fifty thousand of them are fully registered certificates.

Q. That is fifty thousand dollars or fifty thousand bonds?

A. Fifty thousand dollars par value.

Q. Have you any knowledge of where or by whom that issue of bonds is held?

A. I have not the remotest idea. They are widely distributed.

Mr. McCLENNEN. That is all.

Mr. BLAIR. Counsel for the defendants puts in evidence the agreement between the United States of America, the Central Pa-
1862 cific Railroad and Messrs. Speyer & Company, of date February 1, 1899, being the agreement known as the settlement agreement between the United States and the Central Pacific Railroad Company; and it is stipulated that, in lieu of the original, the copy of said agreement, Exhibit A of the answer, or the copy found in the record of the Union Pacific merger suit, volume 8, page 3790, and following, may be copied into the exhibits, to have the same effect as if the original had been produced in evidence.

(The agreement was received and marked "Defendants' Exhibit No. 30, April 15, 1915", and will be found in the volume of defendants' exhibits.)

ANDREW K. VAN DEVENTER was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your present position?

A. Treasurer of the Southern Pacific Company.

Q. What position did you hold in 1898 and 1899?

A. I was chief clerk of the Southern Pacific Company's office at that time.

1863 Q. The treasurer's office?

A. The assistant treasurer's office.

Q. Of the Southern Pacific Company?

A. Yes.

Q. Do you know whether the issue of bonds of one hundred million dollars of the Central Pacific Railway Company, known as the company's first refunding mortgage bonds, dated August 1, 1899, was guaranteed by any company; and if so, by what company?

Mr. McCLENNEN. This question is objected to as not material and as calling for the contents of a written instrument.

The WITNESS. They were guaranteed by the Southern Pacific Company.

By Mr. BLAIR:

Q. Can you produce the form of guaranty?

A. I can.

Q. What is the document which you have produced?

A. That is the Central Pacific Railway Company's four per cent bond.

Q. Is this the form of one of the issues of bonds actually outstanding?

1864 A. It is; yes, sir.

Q. I call your attention to the form of guarantee endorsed and ask you if that is the form on the bonds outstanding.

A. It is.

Mr. BLAIR. Is there any objection to reading this into the record instead of offering the entire bond?

Mr. MCCLENNEN. I do not see any objection.

Mr. BLAIR. In lieu of offering the bond referred to it is agreed that the stipulation thereon endorsed may be read into the record, and it is as follows:

"For value received the Southern Pacific Company hereby guarantees unconditionally the punctual payment of the principal and interest of the within bond at the time and in the manner therein specified and covenants in default of payment of any part thereof by the obligor to pay the said principal and interest of the within bond as the same shall become due upon demand of the holder hereof.

"In witness whereof the said Southern Pacific Company has caused its corporate seal to be hereto affixed and this instrument to be signed by its president or one of its vice presidents this

1865 first day of August one thousand eight hundred and ninety-nine.

"SOUTHERN PACIFIC COMPANY,
"By VAUGHN M. COYNE,
"*Vice President.*"

Mr. MCCLENNEN. Note that this stipulation is made reserving the objections the petitioner makes that the guaranty referred to is not one which is called for by the provisions of the agreement with the United States, defendants' Exhibit No. 30, and is immaterial to this case.

By Mr. BLAIR:

Q. Is this bond one of the issue of bonds which were pledged to secure the notes given to the United States in settlement of the in-

debtedness of the Central Pacific Railroad Company under the settlement agreement of February 1, 1899?

A. It is.

Q. Did the bonds, when so pledged, bear this guarantee of the Southern Pacific Company?

A. They did.

Q. How do you know this?

A. Because it was my duty to examine those bonds when they were delivered by the American Bank Note Company to the
1866 assistant treasurer. They were turned over to me for examination, and to see that the bonds were signed and delivered to the Central Trust Company as trustee.

Q. And they bore this guarantee on them at the time they were so delivered?

A. They did.

Q. Did you afterward have occasion to receive these bonds pledged back from the United States Government?

A. I did.

Q. Did you then have occasion to see that the guarantee was still on them?

A. I did.

Q. Were the notes of the Central Pacific to the United States covered by this agreement of February 1, 1899, which has been offered in evidence, paid?

A. They were.

Q. By whom were the first four maturing notes paid?

A. They were paid by Speyer & Company; taken up by Speyer & Company.

Q. And by whom were the remaining sixteen notes paid?

A. They were paid by the Southern Pacific Company.

Q. Were the payments made all together in cash, or was
1867 any part made through credits or through credit for services?

A. It was made by both payments for transportation services and by cash.

Q. Have you the sixteen notes in your possession now at this hearing?

A. I have.

Q. Will you produce those sixteen notes?

A. Here they are.

Q. Where did you get those notes?

A. Those notes were delivered to me by our representative from Washington.

Q. No; I mean how did you get them at the present time?

A. These notes had been sent on here from San Francisco in 1913.

Q. In 1913?

A. Yes.

Q. So they escaped——

A. They escaped the fire. You have reference to the fire of January 8, 1912, in the Equitable Building?

Q. Yes.

Mr. McCLENNEN. You do not mean 1912, do you?

1868 The WITNESS. Yes. That was the date of the fire—January 8, 1912. That was the fire in the Equitable Building.

Mr. McCLENNEN. Was that 1912?

The WITNESS. Yes.

By Mr. BLAIR:

Q. From whom did you receive them?

A. They came to me from the assistant treasurer at San Francisco.

Q. Who was the assistant treasurer?

A. Mr. H. A. Jones.

Q. Have you the check stub books of the Southern Pacific Company covering the period over which these notes extended?

A. I have, for fourteen of them.

Q. The last fourteen?

A. The last fourteen.

Q. Will you please explain what has become of the stub book of the Southern Pacific Company covering the period of the maturity of the fifth and sixth notes?

A. When Mr. Harriman took over the Southern Pacific Company we moved from the offices at No. 23 Broad Street to No. 120 Broadway. All vouchers, papers, check stubs and so forth were sent up to our pier for storage and safekeeping. Among those papers and records were the check stubs.

1869 Q. And what happened to the check stubs which on that occasion were sent to the pier?

A. They were destroyed by a fire.

Q. So that you had a fire at the pier?

A. We had a fire at the pier.

Q. What date was that?

A. There were two of them. One was in 1907 and one in 1910.

Q. By which fire were these check stub books destroyed?

A. I can not tell you that, but by one of the two fires.

Q. By one of those two fires?

A. Yes. I can not tell you which they were destroyed in.

Q. You have the check stub books covering the maturities of the remaining fourteen notes?

A. I have; yes, sir.

Q. How did they escape the fire?

A. Because those checks were issued after we had moved to No. 120 Broadway.

Q. Where were they at the time of the fire at No. 120 Broadway?

A. They had been sent to the pier for storage and safekeeping.

1870 Q. And they were there at the time that there was not a fire?

A. At the time there was not a fire.

Q. Is that true?

A. That is true.

Q. Have you produced for exhibition to counsel the notes referred to—sixteen notes?

A. The sixteen notes; yes, sir.

Q. And have you produced and have you here the check stub books?

A. Yes, sir.

Q. How many of these check stub books have you now produced?

A. Thirteen.

Q. What did you have to do, if anything, in connection with the payment of these notes, or any of these notes? I am speaking now of the last fourteen notes.

A. The last fourteen. The checks for the amounts due at the maturity of the notes would be drawn in my office and I personally delivered them to the assistant treasurer of the United States here in New York.

Q. They were the checks of what company?

1871 A. The checks of the Southern Pacific Company.

Q. And after you had personally delivered those checks to the assistant treasurer of the United States, what was the next thing that you had to do with the transaction?

A. The next thing would be that the bonds which were held as collateral against each note, and the note itself, would be brought over to me from Washington by our representative.

Q. And it would be received by you?

A. It would be received by me.

Q. Have you certified copies from the books of account of the United States Treasury showing the accounts kept by the United States Treasurer in respect to these notes?

A. I have.

Q. Will you produce them for exhibition?

A. Yes, sir [witness producing notes].

Q. Mr. Van Deventer, have you been able to prepare, and have you prepared, from the entries on the check stubs and the endorse-

ments on the returned notes, a statement showing the dates of the payments, and how much was paid by check of the Southern Pacific Company and how much by transportation services?

1872 A. I have.

Q. Have you checked that statement that you prepared, by reference to the certified copy of the accounts of the office of the Treasurer of the United States?

A. I have; yes, sir.

Q. Is the statement which you have prepared correct?

A. It is.

Q. Will you let me see it?

A. Here it is [witness handing statement to counsel].

Q. This statement simply shows, in considerable detail, the payments which you have testified to, by the Southern Pacific Company?

A. Yes, sir.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. The notes which you have produced here are the sixteen notes which were paid to the United States and not the four which were taken up by Speyer & Company?

A. They are.

Q. Are the four notes which were taken up by Speyer & Company in existence?

1873 A. They are.

Q. The sixteen which you have produced here are subsequent, in maturity dates, to the four that were taken up by Speyer & Company?

A. They are.

Q. Did you personally deliver to the subtreasurer the sixteen checks which accomplished the payment of the balance on each of these sixteen notes?

A. I did.

Q. Those checks were made payable in what form; will you tell me, if you have the stub book here?

A. My stub books will show.

Q. What is the first date of a payment for which the stub is still in existence?

A. (After examining stub book.) July 30, 1902.

Q. With this stub and a blank check, which you now have before you, will you read into the record the original check as it was issued; that is, create this check.

A. The check would read:

NEW YORK, *July 30, 1902.* No. 596.

THE NATIONAL CITY BANK OF NEW YORK:

1874 Pay to the order of Conrad M. Jordan, assistant treasurer at New York, $918,744.93.

Nine hundred eighteen, seven hundred forty-four dollars 93/100.

SOUTHERN PACIFIC COMPANY,

(Signed) A. K. VAN DEVENTER,

Assistant Treasurer.

Countersigned:

WILLIAM MAHL, *Controller.*

Q. Was the form of the other sixteen checks the same as that of the one you have created for the record here?

A. It was; allowing for the differences when there were different treasurers. Mr. Hamilton Fish was the treasurer during the latter part of the maturity of those notes.

Q. Did you see those checks when they came back canceled from the bank?

A. No; I do not know that I did.

Q. You have no personal knowledge of the course that those checks took from the assistant treasurer's hands until they got back to your office as canceled checks?

A. Nothing more than that they came to us from the City Bank, against which the checks were drawn.

Q. Those sixteen checks you personally delivered to the
1875 assistant treasurer in New York?

A. The assistant treasurer in New York or his representative.

Q. Do you remember whether any of them were delivered to the assistant treasurer himself?

A. The greater part of them were.

Q. When you delivered the check did you at the same time receive back the notes, the balances of which were paid by that check?

A. No, sir.

Q. Did you receive the note subsequently or prior to the delivery of the check?

A. Subsequently.

Q. And how soon after the delivery of the check?

A. Usually a couple of days.

Q. The first check which you delivered was delivered on or about August 1, 1901?

A. No; you will find that those notes were paid before maturity by reference to that certified statement of account there.

Q. Referring to the certified statement, it appears from the statement from the United States Treasury that the balance of the
1876 note was paid on February 23, 1900. Is that correct?

A. That is right.

Q. Then on February 23, 1900, or thereabouts, you took a check to the assistant treasurer in New York in payment of that fifth note?

A. Of the fifth note.

Q. It being the first one which had been paid to the United States?

A. Yes.

Q. To make that perfectly clear, by "the first one paid", being the fifth note, you mean to exclude the first four maturities, being the four notes taken up by Speyer & Company?

A. I do.

Q. And when you received the note you received it from the assistant treasurer or from the assistant treasurer's office?

A. No. The note and the collateral held against the note was delivered to our representative at Washington, and he would in turn bring the bonds and the note and deliver them to me.

1877 Q. So that you have no personal knowledge of the manner in which your Washington representative acquired the note from the representative of the United States? You simply know that at some time a little subsequently to your giving the check your representative at Washington came to you in New York with the note and the collateral?

A. Yes.

Q. And when you received the note it had on the back of it this indorsement, which it now has:

"Treasury Department, office of the Secretary, February 21, 1900. Without recourse"—a name which it is difficult to decipher—and "Acting Secretary of the Treasury"?

A. Yes.

Mr. BLAIR. You are referring, now, to the note maturing at what date?

Mr. MCCLENNEN. I am referring, now, to the note maturing August 1, 1901, payable August 1, 1901.

By Mr. MCCLENNEN:

Q. The check for the sixth note, that maturing February 1, 1902, was issued in February, 1901?

A. Yes, sir.

Q. And when you received that note it bore upon the back the indorsement "Without recourse. L. J. Gage, Secretary of
1878 the Treasury"?

A. Yes, sir.

Q. Was that note also received from your Washington representative in the same way you have described for the first one?

A. Yes, sir.

Q. Did you, at the time of the delivery of the checks to the Assistant Treasurer, receive any receipts or other voucher for them?

A. I received receipts.

Q. Are any of those receipts in existence?

A. They are not.

Q. For convenience I will read into the record one of these notes, note No. 6:

"$2,940,635.78. San Francisco, Cal., February 1, 1899. On or before February 1, 1902, the Central Pacific Railroad Company will pay to the order of the United States of America two million, nine hundred and forty thousand, six hundred and thirty-five and 78/100 dollars, with interest meantime at the rate of three per cent per annum, payable semiannually. For value received.

"This is one of the series of twenty notes given by said
1879 railroad company to the United States of America, each for the same principal sum, and bearing interest at the same rate, but maturing at different dates; that is to say, on or before the expiration of each successive six months for ten years, counting from the date hereof.

"If default shall be made in any payment of either principal or interest of any of said notes, or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable.

"CENTRAL PACIFIC RAILROAD COMPANY,
"By ISAAC L. REQUA, *President.*

"Attest:
"W. M. Thompson, Secretary.

"Corporate seal Central Pacific Railroad Company."

On the reverse side: Cancelled revenue stamps and

"Interest paid to August 1, 1899, $44,109.54.
"Interest paid to February 1, 1900, $44,109.54.
"Interest paid to August 1, 1900, $44,109.54.
"Interest paid to February 1, 1901, $44,109.54."

Mr. HERRIN. Will you call attention to the fact that the note is canceled?

1880 Mr. MCCLENNEN. Cancellation punch mark appears through the paper.

Mr. HERRIN. Through the signature to the note.

Mr. MCCLENNEN. Through the signature to the note and the attestation.

What has been read from the back of the note is all in handwriting. That has been read from the face of the note is all in print, except e due date, February 1, 1902, and the words "Isaac L. Requa" and W. M. Thompson" and the corporate seal.

By Mr. McCLENNEN:

Q. The copy to which you have referred of the account received om the United States is a photographic copy of the original ccount?

A. It is.

Q. It is entitled "Central Pacific and Western Pacific Railroad ndebtedness ($58,812,713.48) under agreement of February 1, 1899." "Twenty semiannual notes of $2,940,635.78, each with interest at ree per centum."

That is correct?

A. That is correct; yes, sir.

881 Q. On this account the first four notes, with an item of accrued interest, constitute the debit side of the account?

A. They do.

Q. And the balancing credit is the item "1899, March 27, by re-emption through Speyer & Company of first four notes maturing ugust 1, 1899, to February 1, 1901, with interest, covering warrants os. 1693 and 1694"?

A. Yes, sir.

Q. Thereafter on this account a separate account is kept with ach of the sixteen notes?

A. That is right.

Q. And on the debit side for each note, is the principal of that ote and the items of interest up to the date when it was taken up?

A. That is right.

Q. On the credit side, taking, for instance, note No. 5, due August , 1901, it is in this form:

1899, July 31, by proportion (1/16) trnspn. service February 1 to July 31, 1899	$25,753.15
August 1, by cash payment	18,356.39
1900, January 31, by proportion (1/16) trnspn. service, August 1, 1899, to January 31, 1900	37,977.07
882 "February 1, by cash payment	6,132.47
"February 27, by cash payment by Central Pacific R. R. Co., February 23, 1900, the note due August 1, 1901, with accrued interest (covering warrant No. 991)	2,946,194.79
	3,034,413.87

That is correct?

A. That is correct.

Q. In each instance of the cash payments prior to the final item for the principal of the note, the amount of cash added to the proportion of transportation service credit makes up the amount of the interest to that date?

A. That is correct.

Q. For convenience: The significance of that "1/16" which appears in the item is that the transportation service for the period was attributed equally to the interest on each of the sixteen notes still outstanding?

A. It was.

Q. And as the notes were paid, the fraction varied, 1/15 and 1/14, and so on down?

A. It did.

1883 Q. The Southern Pacific Company has always kept accounts of its relation with the Central Pacific Railroad Company or the Central Pacific Railway Company?

A. It has.

Q. These checks of the Southern Pacific Company, which you have referred to as delivered to the Assistant Treasurer of the United States, were, in that accounting, charged against the Central Pacific Railroad?

A. They were.

Q. So that, in the final incidents of these payments, the payments were made by the Central Pacific Railroad Company?

A. The payments were made by the Southern Pacific Company for account of the Central Pacific Railroad Company.

Q. So that the payment was borne by the Central Pacific Railroad Company?

A. It was charged to their account.

Q. And the charge was met by the Central Pacific Railroad Company?

A. It was.

Q. In the same way, the transportation for which the United States gave credit against these notes was either performed over the road of the Central Pacific Railroad or else was charged against the

1884 Central Pacific Railroad Company by the Southern Pacific Company in accounting between the two companies?

A. I am not the accounting officer, and I can not tell you how that was done, actually.

Q. The money that was obtained from the refunding four per cent bonds, the mortgage of August 1, 1899, and from the three and a half per cent bonds, the mortgage of August 1, 1899, of the Central Pacific Railroad Company, was received, as a matter of banking, by the Southern Pacific Company, was it not?

A. It was.

Mr. BLAIR. What bonds are you referring to? Are you referring to the entire issue?

Mr. MCCLENNEN. No; the money received.

Mr. BLAIR. Are you referring to the entire issue or to those bonds that were returned by the United States Government?

Mr. MCCLENNEN. I am referring to the entire issue of the four per cent refunding bonds and three and a half per cent bonds, so far as they resulted in money and not in a mere exchange of securities.

Mr. BLAIR. I do not know whether the witness understood
1885 your question. That is the reason I asked.

The WITNESS. No; I did not. I——

Mr. MCCLENNEN. Let me make it clear, then.

Mr. BLAIR. Let him make his correction first.

The WITNESS. The bonds were received by me. They were sold from time to time, and the amount that we received for the bonds was credited to the account of the Central Pacific Railway Company.

Mr. BLAIR. And you are now referring to the bonds received from the United States Government on the payment of these notes?

The WITNESS. Yes.

Mr. BLAIR. And not to the entire issue of the bonds?

The WITNESS. No.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

1885-a AFTER RECESS.

ANDREW K. VAN DEVENTER, the witness under examination at the taking of recess, resumed the stand and testified further, as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Were all of the bonds of the Central Pacific Railroad Company which had been deposited with the United States as collateral for these sixteen notes of February 1, 1899, and which were subsequently received back when checks were given to cover those various notes, subsequently sold?

A. They were all sold; yes.

Q. And all the proceeds of sale were carried to the credit of the Central Pacific Railroad Company?

A. Yes.

Q. The Southern Pacific Company acted as the fiscal agent or banker for the Central Pacific Railroad Company in all of its money transactions, did it?

A. I do not know that I can say that it acted as banker or fiscal
1886 agent. They did just as I have said to you, they paid these notes, charged them to the Central Pacific Railway Company,

Q. That is, not being a cash transaction, it did not pass through your hands?

A. It did not pass through my hands.

Q. Only cash transactions passed through your hands?

A. Yes; the cash transactions only passed through my hands.

Q. Who would be the individual who would know to what extent that item of $1,366,442.43 was Southern Pacific Company receivable, and what portion of it was Central Pacific Railroad Company receivable, and what treatment was made of the two parts on the books of the company?

A. The controller's office.

Q. And who was the controller at that time? That would be in March, 1901.

A. William Mahl was controller at that time.

Q. Where is Mr. Mahl now?

A. His home is in the city. I do not know that he is here.

1891 Q. That is, in the city of New York?

A. Yes.

Q. Did the Central Pacific Railway Company receive the proceeds of the bonds secured by the mortgage of March 1, 1911, known as the European loan?

A. They did; yes, sir.

Q. Was that money paid directly in to the treasurer of the Central Pacific Railway Company by the brokers or syndicate, or whatever floated the loan?

A. It was paid to the Southern Pacific Company.

Q. And credited to the Central Pacific Railway Company in the accounting between the Southern Pacific Company and the Central Pacific Railway Company?

A. That is my recollection; yes.

Q. The guarantee that has been put in evidence—the guarantee of the four per cent first refunding bonds of August 1, 1899—is engraved, is it not, upon the bond itself?

A. It is.

Q. That is, it is not detachable from the bond?

A. Oh, no; it is engraved upon the bond itself.

1892 Redirect examination by Mr. BLAIR:

Q. I understand you to say that the cancelled checks of the Southern Pacific Company used in making the payments to the Government are not in existence so far as you know?

A. That is correct.

Q. Who was Mr. Chambers?

A. Mr. D. A. Chambers was our representative at Washington.

Q. By "our representative" you mean the representative of what company?

A. Of the Southern Pacific Company.

Q. How long had he been the representative of the Southern Pacific Company at Washington in 1898 and 1899? How long prior to those dates had he been the representative of the Southern Pacific Company at Washington?

A. Oh, many years, Mr. Blair. I can not state how many, but it was a good many years.

Q. What were his chief duties?

A. His duties, so far as my connection with him was concerned, were to look after the collection of the warrants and transmit them to the treasurer.

1893 Q. Warrants for what purpose?

A. For transportation services.

Q. Rendered by what company?

A. Rendered by the Southern Pacific Company.

Q. Were those warrants large in amount and frequent in number?

A. Yes; they were.

Q. Requiring him frequently to appear at the Treasury Department as representative of the Southern Pacific Company?

A. That is my understanding.

Q. You have been questioned about an endorsement appearing on the back of note No. 6, namely, "Without recourse", then a signature, and underneath the words "Acting Secretary of the Treasury", and a similar endorsement on note No. 5. Is there any such endorsement on any of the subsequently maturing fourteen notes?

A. No, sir.

Q. The endorsements on the subsequently maturing notes are of payments made on account of the note and interest?

A. On account of the notes.

Q. Let us take up the endorsements on note No. 7, which, I
1894 believe, is the note with reference to which the check that you have endeavored to fill out and state to the examiner was drawn?

A. Yes, sir; it is.

Q. Now, will you please read into the record, as an example of the character of the endorsements, the endorsement on this note No. 7?

A. "Interest paid to August 1, 1899, $44,109.54.
"Interest paid to February 1, 1900, $44,109.54.
"Interest paid to August 1, 1900, $44,109.54.
"Interest paid to February 1, 1901, $44,109.54.

"Under authority of an act of Congress approved March 3, 1901, $9,260.57 interest from February 1 to March 11, 1901, has been paid on this note by Treasury warrant No. 3431.

"Mch. 11, 1901.

"Under authority of an act of Congress approved March 3, 1901, $1,366,442.43 principal has been paid on this note by Treasury warrant No. 3431.

"March 11, 1901.

"Interest paid to August 1, 1901, $18,655.50.

"Credit on principal balance found due by settlement July 31, 1901, $432,895.93.

"Interest paid to February 1, 1902, $17,119.46.

1895 "Credit on principal, balance found due by settlement February 1, 1902, $222,552.49.

"Interest paid to date of maturity (Aug. 1, 1902), $13,781.17.

"Part payment of interest was by settlement of transportation account to Aug. 1, 1902, balance by cash, cash deposited with asst. treasurer U. S., New York, N. Y., N. Y. C. D. No. 2263.

"$918,744.93 balance of principal due Aug. 1, 1902, paid by cash deposited with asst. treasurer U. S., New York, N. Y., C. D. No. 2262."

By Mr. BLAIR:

Q. Mr. Van Deventer, I see on the note No. 7, maturity date August 1, 1902, among the endorsements the following:

"Under authority of an act of Congress approved March 3, 1901, $1,366,442.43."

Will you subtract that from the total amount of interest as stated in Exhibit C, namely, $1,496,090.41, and tell me what the difference is?

A. $129,647.98.

Q. Now, divide that sum by fourteen.

A. $9,260.57.

Q. That is, the quotient is $9,260.57?

1896 A. Yes, sir.

Q. Now, look on the photographic account sheets of the Government and see if you do not find $9,260.57 appearing as a credit on each of the fourteen notes, in succession.

A. I do.

Q. I think you have explained about the disposition of the bonds received back by the Southern Pacific Company on the payment of these notes to the Government, but let me see if I understand that. Those bonds, when they were returned to the Southern Pacific Company, were sold from time to time?

A. They were.

Q. And the proceeds credited to the Central Pacific Company?

A. Yes, sir.

Q. And any balance—that is, any difference between the proceeds and the amount paid on these notes—was charged to the Central Pacific?

A. Yes, sir.

Q. And the bonds which were sold were the bonds which bore the guarantee of the Southern Pacific Company?

A. They were.

Q. And they are now outstanding with the guarantee of
1897 the Southern Pacific Company upon them?

A. Yes, sir; they are.

Q. My attention has been called to your answer in respect to Mr. Chambers, that he was to collect for services rendered by the Southern Pacific Company. Did you say to collect from whom?

A. I intended to say from the Government.

Q. Yes. I thought you did.

Recross-examination by Mr. McCLENNEN:

Q. The guarantee to which you had reference in your last answer as to a guarantee, was this same guarantee that is engraved on the back of the bonds?

A. Yes, sir.

Q. To which you have referred in your earlier testimony?

A. Yes, sir.

Q. What was Mr. Chambers' official position?

A. We called him an agent of the Southern Pacific Company.

Q. He is now dead?

A. He is dead; yes, sir.

1898 Q. Did he have any work to do except to collect for Government transportation?

A. I do not know, sir.

Q. His services connected with the payment of these notes to the Government consisted merely of receiving from some one in Washington the note which you had previously covered by a check handed to the assistant treasurer or his representative here in New York?

A. The taking up of the note, the delivery to him of the collateral, and he, in turn, bringing it over here and delivering it to me.

Q. That is, the service he performed was purely that of a trusted messenger, so far as that was concerned?

A. So far as that was concerned, yes.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants puts in evidence the report of the United States Pacific Railway Commission of December 1,

1887, and a message of the President of the United States—Grover Cleveland—transmitting the same, January 7, 1888, 50th Congress, first session, the same being contained in volume 2, Senate Executive Documents, first session, 50th Congress, 1887–1888.

Mr. McCLENNEN. It is agreed by counsel for both parties
1899 that this report and the President's letter of transmittal may be referred to in the original printed documents without being copied into the record.

(The documents referred to were received and marked "Defendants' Exhibit No. 31, April 15, 1915.")

Mr. BLAIR. Also Senate Report No. 293, 51st Congress, first session, submitted February 17, 1890, to accompany S. 2680, being a report from the Committee on the President's Message, transmitting report of the Pacific Railway Commission; especially that part thereof beginning with page 25 of the report relating to the Central Pacific Railroad Company, being pages 25 to 78, inclusive, of said report.

I suppose the same stipulation may be understood in respect to the waiver of the necessity of copying the original printed documents into this record.

Mr. McCLENNEN. Yes. The petitioner objects to the introduction of this report as incompetent, immaterial, and irrelevant, and objects to the purported statements of facts contained in it as proof of those facts on the ground that they are hearsay.

(The documents referred to were received and marked "Defendants' Exhibit No. 32, April 15, 1915.")

1900 Mr. BLAIR. Also, Senate Report No. 830, 53rd Congress, third session, submitted January 28, 1895, from the Committee on Pacific Railroads, entitled "Partial report", especially that part thereof relating to the Central Pacific Railroad Company, pages 91 to 108, inclusive, of said report.

Mr. McCLENNEN. Petitioner makes the same stipulation and the same objection to Exhibit 33 as appears above to Exhibit 32.

(The document referred to was received and marked "Defendants' Exhibit No. 33, April 15, 1915.")

Mr. BLAIR. Counsel for the defendants puts in evidence also House of Representatives Report No. 1290, 53rd Congress, second session, submitted by Mr. Reidy, from the Committee on Pacific Railroads, July 21, 1894, to accompany H. R. 7798.

Mr. McCLENNEN. The petitioner makes the same stipulation and the same objection to this as made before, as above stated, to Exhibit No. 32.

(The document referred to was received and marked "Defendants' Exhibit No. 34, April 15, 1915.")

Mr. BLAIR. The defendants also put in evidence Senate Report No. 778, 54th Congress, first session, submitted May 1, 1896, by Mr.

Gear, from the Committee on Pacific Railroads, to accompany
1901 S. 2894, and in connection with this offer the defendants put in evidence a copy of S. 2894, referred to in said report, duly certified by James M. Baker, Secretary of the Senate of the United States, under his seal, the offer including the certificate.

(Senate Report No. 778 was received and marked "Defendants' Exhibit No. 35, April 15, 1915.")

(The copy of S. 2894 was received and marked "Defendants' Exhibit No. 36, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McClennen. The petitioner makes the same stipulation and the same objection as to Exhibit No. 35 as that made before, as stated above, to Exhibit No. 32.

Mr. Blair. The defendants put in evidence House of Representatives Report No. 1497, 54th Congress, first session, submitted April 25, 1896, by Mr. Powers, from the Committee on Pacific Railroads, to accompany H. R. 8189.

Mr. McClennen. The petitioner makes the same stipulation and the same objection as made to Exhibit No. 32.

(The report referred to was received and marked "Defend-
1902 ants' Exhibit No. 37, April 15, 1915.")

Mr. Blair. The defendants also put in evidence a certified copy of H. R. 8189, referred to in said report, with the certificate attached thereto of South Trimble, Clerk of the House of Representatives.

(The certified copy of H. R. 8189 was received and marked "Defendants' Exhibit No. 38, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. The defendants also put in evidence Senate Report No. 20, 55th Congress, first session, submitted April 1, 1897, by Mr. Gear, from the Committee on Pacific Railroads, to accompany S. 119.

Mr. McClennen. The petitioner makes the same stipulation and the same objection to this Exhibit No. 39 as heretofore made to Exhibit No. 32.

(Senate Report No. 20 was received and marked "Defendants' Exhibit No. 39, April 15, 1915.")

Mr. Blair. The defendants also put in evidence a certified copy of S. 119, together with the certificate attached of James M. Baker, Secretary of the Senate of the United States.

1903 (The certified copy of S. 119 was received and marked "Defendants' Exhibit No. 40, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. The defendants put in evidence Senate Document No. 61, 54th Congress, second session, presented by Mr. Gear, the same

being a communication from C. P. Huntington, transmitting a copy of a lease by the Central Pacific Railroad to the Southern Pacific Company and amendments thereof to date, including the amendment of 1894. The letter referred to in the preceding offer reads as follows:

"HOTEL NORMANDIE,
Washington, D. C., January 8, 1897.

"DEAR SIR: As heretofore requested by you, I send herewith a copy of the lease of the Central Pacific Railroad to the Southern Pacific Company and amendments thereto to date, viz:

"Original lease, February 17, 1885.

"Modification of lease, January 1, 1888.

"Modification of lease, December 7, 1893.

"Modification of lease, March 22, 1894.

"I remain, yours, truly,

"C. P. HUNTINGTON.

1904 "Honorable J. H. GEAR,
"*Chairman Railroad Committee,*
"*United States Senate, Washington, D. C.*"

The lease and amendments are those which are set forth as an exhibit to the petition in this case.

(The document referred to was received and marked "Defendants' Exhibit No. 41, April 15, 1915.")

Mr. BLAIR. The defendants put in evidence Senate Document No. 227, 56th Congress, second session, being a letter of May 12, 1900, from the Secretary of the Treasury, L. J. Gage, relating to the question of interest upon certain allowed claims for transportation services, and so forth, being a copy of the letter annexed to the answer of the defendants in this case as Exhibit C, and appearing at page 28 of said answer.

It is stipulated that for the contents of said letter reference may be made to said Exhibit C to the answer of the defendants in this case.

(The letter referred to was marked "Defendants' Exhibit No. 42, April 15, 1915.")

Mr. BLAIR. The defendants put in evidence also House of Representatives Document No. 660, 61st Congress, second session, the same being a letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War, submitting an estimate of deficiency appropriation for transporation of the Army and supplies, especially the portion thereof on page 2, giving as one of the causes of deficiency the payment of the Southern Pacific indebtedness and the cessation of crediting of transportation charges against that indebtedness, the letter of said Acting Secretary being dated February 4, 1910.

1905

(The document referred to was marked "Defendants' Exhibit No. 43, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McClennen. Petitioner makes the same stipulation and the same objection as to Exhibit 43 as heretofore stated to defendants' Exhibit No. 32.

Mr. Blair. The defendants also put in evidence a certified copy of Senate bill No. 3522, 54th Congress, second session, introduced in the Senate January 13, 1897, by Mr. Gear, and reported January 22, 1897, with amendments, together with certificate attached thereto signed by James M. Baker, Secretary United States Senate.

(The bill referred to was received and marked "Defend-
1906 ants' Exhibit No. 44, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. Defendants also put in evidence certified copy of House of Representatives bill No. 3750, 55th Congress, first session, introduced in the House of Representatives July 12, 1897, by Mr. Hepburn, and referred to the Committee on Pacific Railroads, together with certificate attached thereto signed by South Trimble, Clerk of the House of Representatives.

(The bill referred to was marked "Defendants' Exhibit No. 45, April 15, 1915", and will be found in the volume of defendants' exhibits.)

(Whereupon an adjournment was taken until to-morrow, Friday, April 16, 1915, at eleven o'clock a. m.)

1907 TWENTY-THIRD DAY.

Room 2506, 165 Broadway,
New York City, April 16, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

1908 Henry Ruhlander was called as a witness on behalf of the defendants, and being duly sworn, testified as follows:

Direct examination by Mr. Blair:

Q. State your residence, please, Mr. Ruhlander.

A. 15 East 48th Street, New York City.

Q. What is your occupation?

A. Banker.

Q. Are you a member of the firm of Speyer & Company?

A. I am.

Q. Is that the same firm of bankers which participated in the set
tlement in 1898 and 1899 of the indebtedness of the Central Pacifi
to the United States?

A. Yes; the same.

Q. And the same firm of bankers which participated in the read
justment of the affairs of the Central Pacific Railroad Company
about that same time?

A. Yes.

Q. Those were large transactions, even for such a house as Speye
& Company, were they not?

A. Yes.

1909. Q. You were connected with the firm at that time?

A. I was.

Q. In connection with the readjustment of the affairs of the Centra
Pacific, did Speyer & Company have occasion to prepare a plan o
readjustment?

A. They did.

Q. You were asked to bring with you the original plan of readjust
ment. Have you done so?

A. I have.

Q. Will you please produce it and exhibit it to counsel?

A. Here it is.

Mr. McCLENNEN. Is this the same text as the one set out in th
answer?

Mr. BLAIR. Yes.

By Mr. BLAIR:

Q. This plan of readjustment was actually carried out, Mr. Ruhlan
der, in accordance with its terms?

A. Yes.

Q. Resulting in the organization of what we call the new company
the Central Pacific Railway Company?

A. That is correct.

1910 Q. And the issuance of its four per cent refunding bonds an
its three and a half per cent mortgage bonds?

A. Yes.

Q. And the acquisition of the common stock of the old Centra
Pacific Railroad Company by the Southern Pacific Company in ex
change for its stock and twenty-five per cent in bonds?

A. Yes.

Q. And the other conditions of the plan were carried out?

A. Yes; the plan was carried out.

Q. Was this plan of readjustment preceded by negotiations and conferences?

A. Yes, sir.

Q. With what interests?

A. There were very many interests. There was the Government, in the first instance; there were the bondholders for various issues, the five per cent bondholders; there were the stockholders who were represented by two different interests, the so-called American company and the so-called London committee, of which Mr. Banbury, a member of Parliament, was the chairman.

Q. This plan of readjustment was preceded by negotia-
1911 tions and conferences with representatives of the Southern Pacific Company?

A. It was.

Q. Were these negotiations of an extended character—that is, did they cover a considerable period of time?

A. They did. Certainly a matter of such large volume as that would take considerable time to whittle into shape.

Q. Would it be safe to say that it extended over a period of many months?

A. Yes.

Q. Before the plan was completed?

A. Before the plan was finally agreed upon.

Q. Or before the plan was drawn up in the form in which it appears as of date, February 8, 1899?

A. Yes; that is correct.

Q. Before that period?

A. Yes.

Q. What was the occasion of this plan of readjustment? What was the necessity of the readjustment of the affairs of the Central Pacific Railroad Company?

Mr. McCLENNEN. The petitioner objects to the question as call-
ing for a statement of opinion and a statement of facts as
1912 to part of which the witness, in the nature of things, can not have personal knowledge.

By Mr. BLAIR:

Q. You may answer.

A. Primarily the settlement with the United States of the indebtedness of the company.

Q. Did Speyer & Company have any negotiations or conferences with representatives of the United States Government prior to what is known as the settlement agreement, the agreement made with the United States?

A. Yes.

Q. Were they of an extended character?

A. It took quite some time. I can not just tell how much you mean by an extended time, but probably a month or so, a month or two months.

Q. Were these two sets of conferences and negotiations going on concurrently?

A. Yes.

Q. With reference to each other?

A. Yes; absolutely. It seems to me, in the necessity of the case, they would have to go on together.

Q. And each had what common object in view?

1913 Mr. McCLENNEN. Petitioner objects to the question as calling for an opinion and for a matter which is immaterial.

The WITNESS. The adjustment of the indebtedness to the Government and the rearrangement of the debt of the Central Pacific Railroad Company, and partly an exchange of the security with the Southern Pacific Company's securities.

Mr. BLAIR. Counsel for the defendants puts in evidence a copy of the plan and agreement of readjustment, which is Exhibit B in the answer.

Mr. McCLENNEN. The petitioner, reserving the right to object to this agreement, stipulates that the copy of it contained in Exhibit B of the answer shall have the same force and effect as the original plan of readjustment, in evidence.

(The copy of the plan of readjustment was received and marked "Defendants' Exhibit (Ruhlander) No. 45–a, April 15, 1915.")

Mr. BLAIR. The witness is yours.

1914 Cross-examination by Mr. McCLENNEN:

Q. Mr. Ruhlander, what you have before you is one of the original executed instruments?

A. Correct.

Q. At the front of the original instrument there is a printed circular dated February 20, 1899?

A. Yes.

Q. Was that circular bound up with the original before execution?

A. Yes.

Q. Following that circular of one page is what is styled "Central Pacific Railroad Company. Plan of readjustment", which by comparison appears to be in the language of Exhibit B of the defendants' answer in this case, and in the original that extends through page 13?

A. Yes.

Q. Following that on the original before you is a blank page, 14. Then on page 15 begins what is entitled "Central Pacific Railroad Company. Readjustment agreement"?

A. Yes, sir.

Q. And that extends to the end, on page 26?

1915 A. Yes.

Q. And the only signatures in execution of this are those at the end of the whole instrument, on page 26?

A. Yes.

Q. Will you read into the record the names of the parties who executed the instrument?

A. Do you want me to do that?

Q. Yes; just read them right from that copy.

A. They are as follows: Speyer & Company; Speyer Brothers; Laz, Speyer Ellissen; Deutsche Bank; Teixeira de Mattos Brothers; Speyer & Co., depositary.

Q. The circular which constitutes page 1 of this original instrument is dated February 20, 1899?

A. Yes.

Q. On what date, as nearly as you can fix it, were the signatures affixed to this instrument?

A. On what date?

Q. Yes.

A. I should say during the month of February; I can not make a positive statement, but I should say approximately.

Q. And undoubtedly, I take it, subsequent to the seventh day of February, the document being dated February 8th?

1916 A. I should say that was so.

Q. Did you personally have to do with the negotiations which led up to the making of this readjustment agreement dated February 8th?

A. I was consulted at the time by my chief, but I did not take part in the negotiations with the interests.

Q. Who were the individuals of Speyer & Company or Speyer & Company's offices, or who was the individual who dealt with the other parties in interest?

A. Mr. James Speyer.

Q. Is he living?

A. Yes.

Q. Where is he now?

A. He is a resident of New York City.

Q. Did you meet any representative of the United States Government in these negotiations?

A. I met them and shook hands with them once, and that is about all I had to do with it.

Q. Were you personally at any negotiations between any representative of the Government and others in interest?

A. No.

Q. You have no personal knowledge—using the word
1917 "knowledge" in its precise sense—have you, that this plan
of readjustment was seen by any representative of the United
States Government?

A. I am sure it was.

Mr. McCLENNEN. I should like to ask to have that stricken out as
not responsive.

By Mr. McCLENNEN:

Q. Did you ever mail this plan of readjustment to any representa-
tive of the United States Government?

A. Did I personally ever mail it?

Q. Yes.

A. I would not be able to remember that, whether I did or did not.

Q. Did you ever see it handed to any representative of the United
States Government?

A. No; I can not say that I did; no.

Q. Then, disregarding what your beliefs may be on the subject, is
it not a fact that you have no direct personal knowledge that any rep-
resentative of the United States Government saw the plan of read-
justment—using "knowledge" to exclude what may have been told
you?

1918 A. I am absolutely sure they did, because the representatives
of the Government was frequently at our office when we were
discussing the plan.

Mr. McCLENNEN. Petitioner moves to strike that answer out as not
responsive.

By Mr. McCLENNEN:

Q. You appreciate, do you not, the distinction between firm convic-
tions and absolute knowledge from your own eyesight?

A. I certainly do.

Q. Using "knowledge" in the strict sense, is it not true that you
have no knowledge that any representative of the United States
Government saw the plan of readjustment?

A. Yes; I am positive that they did see it. That is all I can tell
you. When you ask me whether I saw them hand it to them, I
did not.

Mr. McCLENNEN. The petitioner moves to strike out the answer as
not responsive.

By Mr. McCLENNEN:

Q. Do you know what individuals purporting to represent the
United States Government conducted or participated in the negotia-
tions with Speyer & Company or the representatives of the Central
Pacific Railroad Company?

1919 A. My recollection is—it is a long while ago—that the first conference took place at Washington. I was not present, so that I do not know who represented the Government.

Q. In any later negotiations do you know who represented the Government?

A. I know Mr. Root had something to say about it as counsel for the Government.

Q. That is, Mr. Elihu Root?

A. Yes.

Q. Do you know of any one else who had anything to do with it as representing the United States?

A. Why, I think the records will show that it was in the hands of a commission at the time, representing the United States Government; and while I will not be positive, my opinion is that Mr. Bliss, Mr. Lyman J. Gage, and some third party—I can not recall them for the moment—represented them.

Mr. BLAIR. The Attorney General?

The WITNESS. Attorney General Griggs.

By Mr. MCCLENNEN:

Q. Did you see Mr. Root when in negotiation on this subject?

1920 A. I saw him in our office, but I took no part in the negotiation.

Q. Did you see Mr. Bliss, Mr. Gage, or Mr. Griggs?

A. No.

Q. You never saw a copy of this plan of readjustment in the hands of Mr. Root?

A. No.

Q. When, as nearly as you can fix it, did the negotiations which led to the execution of the agreement between the United States and the Central Pacific Railroad and Speyer & Company, dated February 1, 1899, copy of which constitutes Exhibit A of the answer, begin?

A. I should say, in a general way, several months before that time. When you pin me down to how long, I can not give you any definite answer.

Q. You mean something more than one and less than six, perhaps?

A. That is about it.

Q. And the negotiations in which Mr. Root was engaged when you saw him at the office of Speyer & Company were the negotiations which resulted in the execution of that agreement of February 1?

1921 A. I understood that Mr. Root was acting as counsel for the commission, and I do not know whether he had anything to do with the working of the plan itself, the mapping out of it, or whether

he merely looked after the details from the legal point of view, a
the principles of the plan had been agreed upon.

Q. I see. That is, he may have been merely——

A. He may have been merely counsel.

Q. And put into definite legal shape——

A. And put into definite legal shape what had been agreed u
with the United States Government.

Q. Who were the counsel for Speyer & Company in the matter
this same agreement of February 1, 1899?

A. May I look at the agreement?

Q. Certainly.

A. The firm names have since been changed. At that time it w
Stewart, Guthrie & Steele, which is no longer in existence, and Evar
Choate & Beaman, no longer in existence.

Q. Do you know who, of those respective firms, had to do with th
matter?

A. Yes.

Q. Who?

1922 A. Messrs. Beaman and Steele.

Q. That is, Mr. Beaman, of Evarts, Choate & Beaman, a
Mr. Steele, of Stewart, Guthrie & Steele?

A. Yes.

Q. Mr. Beaman is no longer living?

A. He is dead.

Q. And Mr. Steele?

A. He is a partner of J. P. Morgan & Company now.

Q. Who were the counsel for the Central Pacific Railroad Com
pany or the Southern Pacific Company in those negotiations?

A. I should say that Mr. Charles H. Tweed was the general counse
and he looked after matters. I do not know whether they had em
ployed any special counsel in this connection, but he was their ge
eral counsel.

Q. Who were the individuals connected with those two companies
other than counsel, who were the negotiators in these transactions?

A. I should say on behalf of the company the leading spirit was th
late C. P. Huntington.

Q. When was the text of this plan of readjustment, dated Febru
ary 8, 1899, got into final shape?

A. I could not give you the exact date, but approximately at that
time.

1923 Q. In the course of the negotiations there were many differ
ent methods discussed of arriving at the results sought, were
there not?

A. Yes, sir.

Redirect examination by Mr. BLAIR:

Q. Mr. Ruhlander, this plan of readjustment about which you ve been testifying and which we have offered in evidence as pro- ced by you is annexed as a part of a readjustment agreement, is not?

A. Yes.

Q. And that readjustment agreement is signed and executed by at are called in the plan the syndicate managers, or something like it, is it not?

A. The readjustment managers.

Q. The readjustment managers. And the readjustment agreement what you might call the agreement between the underwriters of the an, is it not?

A. No; that is an agreement between the security holders who de- sited their securities to enable the readjustment managers to carry out the plan.

924 Q. It is not part of the plan of readjustment itself except to the extent to which you have stated?

A. That is right.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants put in evidence the articles f association of the Central Pacific Railway Company dated July , 1899, an amendment of April 2, 1900, and amendment of Feb- ary 24, 1912.

It is stipulated that the printed copy may be put in evidence in eu of the original.

(The pamphlet referred to was received and marked "Defendants' Exhibit No. 46, April 16, 1915", and will be found in the volume of efendants' exhibits.)

Mr. BLAIR. Counsel for defendants put in evidence the deed of onveyance of July 29, 1899, from the Central Pacific Railroad Com- any to the Central Pacific Railway Company. It is agreed that in eu of the original there may be copied into the exhibits the copy of ich deed of conveyance found in the Union Pacific merger record, olume 8, page 3834.

(The copy of the deed of conveyance referred to was received and arked "Defendants' Exhibit No. 47, April 16, 1915", and will be found in the volume of defendants' exhibits.)

925 Mr. BLAIR. Counsel for defendants put in evidence in- denture dated August 1, 1899, of the Southern Pacific Com- any to the Central Trust Company of New York, subordinating the outhern Pacific Company's lease of the Central Pacific Railroad ompany's property to the lien of the first refunding mortgage of he Central Pacific Railway Company.

It is agreed that in lieu of the original there may be copied into the record the copy of this indenture to be found in the Union Pacific merger record, volume 8, page 3852.

(The indenture referred to was received in evidence and marked "Defendants' Exhibit No. 48, April 16, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. Counsel for defendants put in evidence a similar indenture dated August 1, 1899, of the Southern Pacific Company to the Central Trust Company of New York, subordinating its lease of the Central Pacific Railroad Company's property to the lien of the mortgage of the Central Pacific Railway Company securing its issue of three and a half per cent bonds.

It is likewise stipulated that, in lieu of the original, there may be copied into the exhibits the copy of said indenture to be found
1926 in the Union Pacific merger record, volume 8, page 3855.

(The indenture referred to was received in evidence and marked "Defendants' Exhibit No. 49, April 16, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. In support of its pleas of res adjudicata and estoppel of record contained in the answer, and also as conclusive evidence of the existence at the time of the Union Pacific merger in 1901 of actual and vigorous competition between the so-called Ogden route and the Sunset line or the Sunset-Gulf route, and of the absence of motive or power in the Southern Pacific Company to prevent such competition, counsel for the defendants now put in evidence the record in the suit of the United States versus the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and various other defendants whose names will appear from the document offered in evidence, said suit being numbered 993 in equity in the Circuit Court of the United States for the District of Utah, viz:

Original petition of the United States of America.

Answer of the defendants Edward H. Harriman, Southern Pacific Company, joint and several answer of the defendants
Union Pacific Railroad Company, Oregon Short Line Rail-
1927 road Company, and Oregon Railroad & Navigation Company; joint and several answer of the defendants William A. Clark and of the San Pedro, Los Angeles & Salt Lake Railroad Company; separate answer of the defendants the Farmers Loan & Trust Company, Henry C. Frick, the Atchison, Topeka & Santa Fe Railway Company, Henry H. Rogers, James Stillman; and the joint and several answer of Jacob H. Schiff and Otto H. Kahn, and the replications of the United States to the several answers, being all the answers filed in the case.

The opinion and decree of the United States Circuit Court for the District of Utah in said cause, of date June 24, 1911, and reported in the 188th Federal Reporter, page 102, and following.

The opinion and decree of the United States Supreme Court on appeal of the said case, rendered December 2, 1912, reported in volume 226 of the United States Reports at page 61 and following.

The supplemental opinion and decree of the United States Supreme Court rendered January 6, 1913, upon the motion as to form of mandate in said cause, reported in 226 U. S. Reports, page 470 and following.

The decree entered in the District Court of the United
1928 States for the District of Utah in said cause, dated February 12, 1913.

The final decree entered in the District Court of the United States for the District of Utah in this case, dated June 30, 1913.

The brief of facts filed in the United States Supreme Court on behalf of the United States of America, by George W. Wickersham, Attorney General, Frank B. Kellogg and C. A. Severance, special assistants to the Attorney General; and the brief of law of the same party by the same counsel.

Mr. McCLENNEN. The petitioner objects to the evidence offered, on the ground that it is immaterial.

Mr. BLAIR. It is stipulated, subject to this objection, that the pleadings in said cause offered need not be produced in the form of copies certified by the clerk of the court, but may be copied into this record from the printed record in the Union Pacific merger suit.

It is further stipulated that the opinion and decree of the United States Circuit Court of June 24, 1911, need not be copied into the transcript, but may be referred to as reported in the 188th Federal Reporter, page 102 and following; and, further, that the
1929 opinions and decrees of the United States Supreme Court included in the offer of the record need not be copied into the record, but may be referred to in the officially printed volume of the reports of said court.

The production of a certified copy of the decree of the District Court of the United States for the District of Utah of February 12, 1913, and the final decree of June 30, 1913, is waived, and the printed copies produced may be received in lieu of such certified copies.

It is mutually agreed that either party may supply any omissions in the pleadings or decrees or orders in said court which may not have been included in the foregoing offer.

It is stipulated further that the briefs offered in evidence need not be copied among the exhibits in this case, and that in event of appeal to the Supreme Court of the United States the briefs forming part

of the record of said court may be referred to, and that the copies of these briefs need not be copied into the transcript of appeal.

(The documents offered in evidence, as above stated, were marked collectively, "Defendants' Exhibit No. 50, April 16, 1915", and with the exception of those not to be copied, according to the terms of the above stipulations, will be found in the volume of defendants' exhibits.)

1930 HUGH NEILL was recalled as a witness on behalf of the defendants, and having been previously sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Mr. Neill, what is your connection with the Pacific Mail Steamship Company?

A. I am secretary of that company.

Q. Did you hold that office in May, 1914?

A. I did.

Q. Were there any resolutions adopted by the directors of the Pacific Mail Steamship Company about that time, in respect to a change in the business of that company after the opening of the Panama Canal?

A. There was a resolution.

Q. What was the date of the meeting at which the resolution was passed?

A. At a meeting of the board of directors held May 7, 1914, such a resolution was passed.

Q. Was there more than one resolution? Was there a resolution in regard to sending out a letter?

A. There was a second resolution adopted with reference

1931 to a letter to be sent out to the stockholders.

Q. Have you produced a certified copy of the second resolution to which you have referred, about the distribution of a letter?

A. I have prepared a certified copy of that resolution.

Q. Have you annexed to it as an exhibit a copy of the letter referred to in the resolution?

A. I annexed to the resolution, marked "Exhibit A," a printed copy of the letter referred to in the resolution itself.

Q. The resolution refers to a meeting of the stockholders. Have you annexed as an exhibit a true copy of the notice of the meeting of the stockholders which was sent out?

A. I annexed to the resolution, marked "Exhibit B", a copy of the printed notice of the meeting that was forwarded by United States mail to each stockholder of the company prior to the meeting.

Q. Have you annexed also a copy of the blank form of proxy ich was sent out to each stockholder?

A. I have annexed, marked "Exhibit C", a copy of the form of proxy that was sent out to each stockholder.

32 Q. Were the letter to which you refer, the notice of the stockholders' meeting, and the proxy, all enclosed at the same ne to the stockholders?

A. They were all enclosed in the same envelope.

Q. Did the envelope also contain the printed copy of the set of solutions of May 7th?

A. It did.

Q. Have you also produced a certified copy of the minutes of the eeting of the stockholders held pursuant to the notice?

A. Yes, sir; I have produced a certified copy of the minutes of e stockholders' meeting held May 27, 1914, it being a meeting that as held pursuant to the notice.

Q. Were you present at that meeting?

A. Yes; I was.

Q. And you acted as secretary?

A. I acted as secretary of the meeting.

Q. And you were present at the meeting of the directors and rved as secretary to that meeting?

A. I was present and served as secretary.

Q. And these papers which you have produced and certified to e true and correct copies of the originals?

A. They are.

33 Mr. BLAIR. Counsel for the defendants put in evidence the documents just identified by the witness, namely, the certified pies of the two resolutions adopted by the board of directors of the acific Mail Steamship Company May 7, 1914, together with the hibits attached thereto, including the circular letter dated New ork, May 7, 1914, signed "Julius Kruttschnitt, President", the no-ce of meeting, the blank form of proxy, and the certified copy of ie resolution of the stockholders of May 27, 1914.

(The documents above referred to were received in evidence and arked "Defendants' Exhibit (Neill) No. 51, April 16, 1915", and ill be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Mr. Neill, can you tell us the amount of stock at such meeting f stockholders which was held by the Southern Pacific Company?

A. The Southern Pacific Company was represented at that meet-ng by 110,755 shares, which were voted by its proxy.

Q. Will you please state the amount of stock other than that wned by the Southern Pacific Company which was represented

1934 at that meeting, whether by proxy or otherwise; or, if yo
have got it separately, put the two together.

A. At the commencement of the meeting there were 30,820 share
of stock represented in person or by proxy, those shares being owne
by stockholders other than the Southern Pacific Company.

Q. By what vote was the resolution of the stockholders approv
ing the recommendation of the board of directors adopted?

A. The resolution about the readjustment of the business wa
adopted by a favorable vote of 135,250 shares.

Q. What was the number of shares voting against it?

A. The number of shares voting against it was 6,340. There wa
present one stockholder owning 150 shares who preferred not to ca
a vote.

Q. How much stock not owned by the Southern Pacific Compan
voted for the resolution?

A. 24,495 shares.

Q. How much stock not owned by the Southern Pacific Compan
voted against the resolution?

A. 6,340 shares.

Cross-examination by Mr. McCLENNEN:

1935 Q. Of those 24,495 shares, were there any shares in whi
the Southern Pacific Company or any of its officers had an
interest?

A. Some of those shares were owned by directors of the Pacif
Mail Steamship Company. Some of them were owned by person
who had not connection with the Southern Pacific Company. That
is as far as I can answer your question.

Q. If you exclude those classes that you have just mentioned, d
you know how many shares there would be left of that 24,495?

A. I have made no compilation of that. It would require som
time to do it.

Q. Do you know enough of the matter to know whether it woul
be a large or a small part?

A. A comparatively small number of shares. The holdings of th
directors were not large.

Q. I am afraid we have spoken at cross purposes. What I asked yo
was whether, excepting that held by the directors or those connecte
with the Southern Pacific Company in some way, the remainin
number would be large or small.

A. The remaining number would be large.

Q. I was afraid you misunderstood me. To put it again, t
1936 make it perfectly clear: The more substantial part of the 24,49
shares is entirely disconnected with the Pacific Mail Steamsh

Company or the Southern Pacific Company, or persons interested in either as officers or employees?

A. That is entirely correct.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants put in evidence certified copies of the application of the Southern Pacific Company to the Interstate Commerce Commission, under the provisions of section 5 of the act to regulate commerce, as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone", approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, filed with said Interstate Commerce Commission February 18, 1914, under its docket number, 6605, and an amendment of said application filed December 7, 1914, and a further amendment of said application filed May 21, 1914, and a third amendment to said application filed April 2, 1915.

Counsel for the defendants also put in evidence the report of the Interstate Commerce Commission upon said application.

1937 It is stipulated and agreed that the reports of the commission just put in evidence need not be put into the record as exhibits, but may be referred to in the officially printed and bound volumes of reports of the Interstate Commerce Commission, with the same effect as if the same had been incorporated in the record.

(All of the above documents referred to were received and marked "Defendants' Exhibit No. 52, April 16, 1915".)

(Whereupon, an adjournment was taken until Monday, April 19, 1915, at eleven o'clock a. m.)

1938 TWENTY-FOURTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Monday, April 19, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

1939 EDWARD CHAMBERS was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. Chicago.

Q. What is your occupation?

A. I am vice president of the Atchison, Topeka & Santa Fe Rai way Company—the Santa Fe Railway system—and in charge of i traffic.

Q. How long have you been with that company?

A. Thirty-six years.

Q. Did you have any railroad experience before you entered t employ of the Santa Fe?

A. No, sir.

Q. What has been, generally, your duty and responsibility duri your employment, beginning from the first and coming down, in general way?

A. I began with the Santa Fe at Pueblo, Colorado, in the stati service, in 1879, and remained there until 1885. I served in all t positions at the station except agent.

1940 From 1885 to 1887 I was local agent for the Santa Fe at S Diego, California, and had charge of its depot business, u yards, and the commercial business in the city.

From 1887 to 1894 I was local agent at Los Angeles, in charge the depot business and the yards and the commercial business the city.

From 1894 to 1896 I was assistant general freight agent of t Santa Fe lines in southern California.

Q. Covering what lines?

A. Covering the lines south of Barstow, California; approximate 500 miles of rails.

From 1896 to 1905 I was general freight agent for the lines co trolled by the Santa Fe system west of Albuquerque, New Mexi which included their California lines.

At first my jurisdiction covered lines in California only. Afte wards there were added the lines between Albuquerque, New Mexi and Mojave, California, and afterwards there were added to m jurisdiction the lines in northern California known as the San Fra cisco and San Joaquin Valley lines.

Q. That brings you down to 1905.

1941 A. From 1905 until 1913, with headquarters in San Francis I was assistant freight traffic manager of the Santa Fe sy tem. I had charge of the local business of the lines west of Alb querque, New Mexico, and the through business between points the lines west of Albuquerque, and other points on the Santa F system lines and beyond.

From 1913 up to date I have been vice president of the Santa F system, in charge of all its traffic.

Q. Both passenger and freight?

A. Yes, sir.

Q. Outside of your supervision of traffic, have you any duties as to general policy, the construction of lines, or anything like that?

A. I am usually consulted before new lines are constructed or acquired.

Q. How long have you been in position where your views were taken, and you engaged in the conferences which were considering the construction of new lines?

A. As to the western end of the Santa Fe, since 1896; and as to all points on the Santa Fe system, since I become vice president in 1913.

Q. Are you familiar with the lines of railway operated by the Southern Pacific Company?

1942 A. Yes, sir.

Q. You know, generally, that those lines consist of what main lines? You may give them.

A. The line from San Francisco via Sacramento to Ogden and from San Francisco through the San Joaquin Valley via the Coast Line, through Los Angeles to El Paso, and the line from El Paso to Galveston and running to New York; the Texas lines—lines within Texas.

Q. Any lines north of San Francisco?

A. And the line from San Francisco to Portland.

Q. To Portland, Oregon?

A. Yes, sir.

Q. You are familiar with the country served by those lines, are you?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. You have frequently been over these lines, have you?

A. Yes, sir.

Q. After the building of the Central Pacific main line connecting from San Francisco to Ogden, what would naturally be the

1943 next step in railroad development or construction to be taken concerning that line?

A. Building feeders for that line through the valleys of northern California.

Q. What, if any, lines southerly from the Central Pacific main line would you regard as feeders?

A. The line south through the San Joaquin Valley, through to Los Angeles, connecting northern and southern California.

Q. How far north would you go for these lines as feeders?

A. The line that is south into the Salinas Valley and north of Sacramento into the Sacramento Valley.

Q. How far north would the line be constructed as a feeder, nat
rally, from Sacramento?

A. As a feeder, up to the Oregon line.

Q. You will remember, as a matter of railroad history, if you
not know personally, that when the Central Pacific main line w
opened in 1869 there was no other transcontinental rail line and th
the first transcontinental line other than the Central Pacific w
formed by the junction of the Santa Fe at Deming, New Mexi
with the Southern Pacific in 1881.

1944 What would you say as to the construction of the line sou
erly from Los Angeles to Deming, which was constructed,
to whether that would be a natural, congruous development of ra
road building as a part of this system of which the Central Paci
main line was a nucleus in the beginning?

A. I think that would be the natural and businesslike move
make, to extend the line from southern California eastward throu
Arizona.

Q. The Texas Pacific line—you know the location of that, do yo

A. Yes.

Q. Extending from Sierra Blanca on the Southern Pacific li
eastward to what point?

A. To Texarkana, Arkansas.

Q. Now, I will remind you, as a historical fact, that the junctio
of the Texas Pacific was made with the Southern Pacific line
Sierra Blanca in 1882. What would you say as to the extension
the Southern Pacific line eastwardly from Sierra Blanca upon th
route it was built upon to Houston, forming connection with th
lines built between Houston and New Orleans?

1945 A. I would say that at that time the natural thing to do a
the business thing for the Southern Pacific to do was to ge
through line between California and New York, and the extension
their line eastward was the desirable thing to do.

Q. Eastward to what point?

A. Well, to New Orleans. New Orleans is where they first e
tended it to.

Q. To some point on the Gulf of Mexico?

A. Yes.

Q. Did the business needs of that country which is served by th
line—which, of course, includes California, the local territory, an
whatever traffic might be gained on that line—did those busine
needs justify the construction of that line at that time?

A. They did. At that time, and for some years afterwards, the At
lantic seaboard territory supplied the manufactured merchandise fo
the entire Pacific coast and took all the Pacific coast products,
great bulk of them, perhaps seventy-five to eighty per cent of the

Q. Was there any other line that could have been built at that time, first, after the construction of the Central Pacific, which would have been more practicable or a better line for railroad pur-
1946 poses or for the service of the public than the Southern Pacific line from Goshen to New Orleans?

A. I think that was the best line that the Southern Pacific could build to serve all their purposes; of course, any through line would have been beneficial.

Q. You spoke of the purposes of the Southern Pacific. My question called for your consideration of the service to the public also. Do you include that?

A. That would include the service to the public.

Q. Do you remember when the Southern Pacific line was opened for operation in 1883?

A. Yes, sir.

Q. Do you remember, generally, what amount of traffic that line obtained, transcontinental traffic, between the Atlantic seaboard and the Pacific coast, as compared with the like traffic served by the Central and Union Pacific and connecting lines?

A. Well, I am not so familiar with what they obtained in 1883, because I was not acquainted with the California business to any great extent at that time, although I was acquainted with the business down over the Southern Pacific lines via Deming and via Mojave, in connection with the Santa Fe.

1947 Q. Do you know whether or not the Sunset line, as we call it, got any considerable amount of transcontinental traffic between the Atlantic coast and the Pacific coast?

A. It did.

Q. It did at first?

A. I think it did at first. In 1885 and afterwards, when I first became acquainted with the California business so as to judge of that, they were getting a very large share of the business between California points and the Atlantic seaboard territory.

Q. You say it had a large share. What other lines took the rest of it in 1885?

A. When I say a large share of that business, I include, of course, the Sunset Route and the route via Ogden to the Atlantic seaboard. The only other route into California in 1885 was the Santa Fe, and they got a small share of the Atlantic seaboard business.

Q. In 1885 the Santa Fe only touched southern California?

A. That is all.

Q. And it entered northern California at what date?

A. It entered northern California by connection over the Southern Pacific rails in 1884.

1948 Q. But with its own line?

A. With its own line in 1899.

Q. So, even before the Santa Fe had its own rails in northern California, it was doing business in northern California by traffic connection with the Southern Pacific?

A. It was.

Q. And it did some considerable business that way, did it not, before it had its own rails?

A. It did.

Q. When you say the Sunset Route had a large share of the business, do you mean as much as half or more of this transcontinental business?

A. You mean of the Atlantic seaboard business?

Q. Of the Atlantic seaboard business with San Francisco and the Pacific coast.

A. Of the westbound Atlantic seaboard business they had considerably more than one-half; probably as high as eighty or ninety per cent of it.

Q. How do you account for their securing eighty or ninety per cent of that business as against the all-rail lines that connected via the Union Pacific at Omaha?

1949 A. The service was very much better via the Sunset Route than via any of the other routes to California.

Q. Can you explain how it was better?

A. It was under a single management between New York and California and had through billing and gave the traffic continuous movement in both directions.

Q. And was it more expeditious as to time?

A. It was more expeditious and more regular.

Q. As a general proposition, I suppose service controls traffic, does it not?

A. Service is the most important factor in the routing of traffic.

Q. It is the controlling factor?

A. Yes, sir.

Q. After this Southern Pacific Sunset-Gulf route obtained the eighty to ninety per cent of this transcontinental traffic, was there a change in that division as between that line and the all-rail lines? If so, how was that brought about?

A. As the service of the all-rail lines via Chicago and St. Louis improved, the traffic was attracted from the Sunset Route to the all-rail lines until finally the all-rail lines got what I would consider a reasonable share of the traffic in their competition with

1950 the Sunset Route.

Q. Did you have anything to do personally with improving the service by the all-rail lines to compete with the Sunset-Gulf line?

A. Yes, sir.

Q. State what that was.

A. It was during my service as local agent at Los Angeles. We made an arrangement with the Erie Railroad to waybill through from New York to the Pacific coast points, and to run through cars wherever it could be done, based on the volume of business received. That gave us just one interchange or one connection, which was at Chicago. The Santa Fe lines at that time extended from Kansas City to Chicago. This arrangement gave us a service that enabled us to start in and compete with the Sunset Route, and gradually work it up to such a point where we could about equal their service.

Q. As to time?

A. As to time, and as to the other things that go to make up service.

Q. About what date was that?

A. That was about 1888. It was 1889 or 1890.

1951 Q. You speak of through billing; that you had an arrangement by which the Santa Fe, which extended from California to Chicago, there connecting with the Erie, which connected New York and Chicago, through-billed the freight. Was that done generally by these all-rail carriers at that time—through billing?

A. No. I think the Erie-Santa Fe arrangement was the first through billing in connection with the all-rail lines.

Q. What was the practice before that by other carriers?

A. The practice before that was for each line to make its own waybill and collect its proportion of the joint rate from the connecting carrier, so that when the freight arrived at its destination you had, except the proportion of the rate for the delivering line, the balance of the charges as advance charges; so that if any overcharge existed in these advance charges, you had to go back to the railroad that caused the overcharge in order to get an adjustment. In the through billing the total rate was used and the total charges extended, and the delivering agent could correct the charges from the destination back to the point of origin.

Q. This local billing was a very cumbersome method apparently?

1952 A. It was a very cumbersome and very unsatisfactory method, because it caused a great delay in the settlement of overcharges.

Q. And that is one subject upon which much friction may arise, if it is not taken care of properly, is it not—the settlement of claims of the shippers?

A. Yes, sir. That was one strong point in favor of the Sunset Route. The delivering agent, whether it was at Los Angeles or an[illegible] point anywhere on the Southern Pacific lines in California,

could adjust any error that was made in the billing with respect to the charges, right back to the point of origin.

Q. How soon, if you remember, did the all-rail lines generally between the Atlantic and Pacific coasts, adopt this practice of through billing such as you put in force on the Erie and the Santa Fe?

A. I think generally about 1900 and afterwards.

Q. Or was it 1890? Was it as late as that—about 1900?

A. I mean, to get them all in. It took quite a long time for all the roads to get adjusted. They came in one after another. I think after the Santa Fe came the route via Ogden and Omaha.

1953 Q. That resulted in an improvement of the all-rail service, of course?

A. Yes, sir.

Q. And did it also result in the diminishing of the proportion of this traffic which was obtained by the Sunset-Gulf route and the taking of a considerable portion of that traffic for the all-rail lines?

A. It did.

Q. What is practically the field of competition now open between carriers where each may serve the same traffic?

A. Do you mean the field that is open to them——

Q. I mean, how can these carriers compete—include everything by which they can compete; any means by which they can compete with each other.

A. The most important feature in the competition between the carriers is the service. That is probably looked after closer to-day than ever before, and the whole country, both east and west bound, as to its competitive traffic, is covered with joint rates that are open to practically all carriers.

Q. The joint rates filed under the law practically cover all possible routes, do they not?

A. Yes, sir.

1954 Q. You said practically all the means was by way of the service or to improve the service. What would you say as to rates? Is that now a possible means of competition—the reduction of rates generally?

A. Generally it is not possible nowadays for one carrier to get any advantage over the other in the making of the rates, because it requires forty to fifty days of publicity before the rates can become effective; that is, where you make a change.

Q. How about the possibility, financially or economically, of reducing these rates generally that are now in force?

A. I would say the rates were down to a level where they can not stand any further reduction without a serious financial embarrassment to the carriers generally.

Q. Is it or is it not a fact that the present level of the transcontinental rates has been in effect for the last decade—ten or more years—without substantial change or material change?

A. Yes.

Q. So the present level has been maintained for that period?

1955 A. The present level of transcontinental rates has been; yes, sir.

Q. The carriers have made some applications to the Interstate Commerce Commission for leave to reduce transcontinental rates as to certain classes of traffic without affecting the intermediate rates, as far as possible. Now, that is an application to reduce rates, is it not, to some extent?

A. The application is practically asking the commission for permission to meet the rates of the water carriers at the terminals without disturbing the reasonable rates at the intermediate points.

Q. But it is a reduction of the through rate, is it not?

A. It is a reduction of the through rate.

Q. And what I wanted to call your attention to was the consideration of that fact in connection with your statement that you could not generally reduce these rates without disturbing the finances of these roads or tending towards their bankruptcy.

A. This is a new condition that confronts us now; with the opening of the Panama Canal the rates of the water carriers have gone lower than they were before, and the level that we had set to

1956 meet the competition before the canal opened has got to be changed; it has got to be lowered in order to meet the existing competition of the water carriers.

Q. But that only affects a small part of the whole traffic of the roads?

A. A small portion; yes, sir.

Q. And it does not amount to a general lowering of all of these rates?

A. No, sir; just the lowering of the rates on traffic that the water carriers carry in large volume.

Q. It is a condition which forces these carriers to either make that reduction or else go out of the business as to these classes of traffic?

A. Yes, sir; that is correct.

Q. You have said that service is the controlling factor as to the routing of traffic. I would like to have you state what service consists of. What was in your mind when you spoke of service?

A. The time en route is the most important point.

Q. Expedition as to time is important?

A. Yes.

Q. Is there anything else going with service, that is a part of it, material to be considered?

1957 A. The receiving and delivering facilities of the carriers a
quite important as factors in the service.

Q. Is there anything else? You spoke of the settlement of clai
of shippers. Has that anything to do with it?

A. That is, I should say, part of the service.

Q. Do you consider that——

A. In fact, the general dealings with the shipper are all includ
in the service.

Q. The service, then, includes the dealings with the shipper co
cerning his shipments?

A. Yes.

Q. That would include the prompt and fair settlement of clai
for damage, and so forth?

A. It includes everything that means money to the shipper.

Q. It means everything in which he is interested?

A. Yes.

Q. How much of a factor is solicitation, in and of itself? Is th
a controlling factor?

A. Solicitation has some bearing on the securing of business, ever
thing else being equal; but it must be backed up by equal
1958 good service as that given by the competitor; otherwise solic
tation has but little effect.

Q. Solicitation without being backed up with an equivalent servi
to that of the competing line would not amount to much?

A. It has no material effect.

Q. I will ask you whether solicitation may or may not be define
as advertising, or bringing to the knowledge of the shipper th
service you are able to give him?

A. Yes; and the other things that a salesman usually passes out t
a customer.

Q. It is advertising your goods?

A. Yes, sir.

Q. Have you considered the effects or result of a separation of th
Central Pacific lines from the other lines operated by the Southe
Pacific Company?

A. In a general way; yes, sir.

Q. What would be the effect of that separation? By "separation"
I mean putting the ownership and management of the Centra
Pacific in separate and independent hands. What would be the effe
of that separation as to rates?

Mr. McCLENNEN. The petitioner objects to the question a
1959 incompetent, immaterial, and irrelevant, calling upon the wi
ness for an opinion which, by his previous answer, it does no
appear that he is qualified to express, and for an opinion based upo

facts not sufficiently certainly incorporated in the question, so that it may be known to the court upon what facts he bases the opinion.

(By request the reporter repeated the pending question, as above recorded.)

The WITNESS. It would have a tendency to increase the rates. It necessarily would increase some of the rates.

By Mr. HERRIN:

Q. Do you speak of local rates as contradistinguished from transcontinental rates?

A. Local rates; that is, the rates that now exist as between the Southern Pacific and the Central Pacific stations in California and other places.

Q. Or in the local territory?

A. Or in the local territory.

Q. Why would that separation have a tendency to increase rates?

A. It would make in many cases a two-line haul where a single-line haul now exists under the present system.

1960 Q. And does that, generally, a double service, justify a higher rate for the same distance than is justified by a single service?

A. That is the general rule.

Q. What effect would this separation have as to service to the public?

Mr. MCCLENNEN. The petitioner objects to the question as incompetent, immaterial, and irrelevant; calling upon the witness for an opinion which, by his previous answer, it does not appear that he is qualified to express, and for an opinion based upon facts not sufficiently certainly incorporated into the question so that it may be known to the court upon what facts he bases the opinion.

The WITNESS. It would impair both the freight and the passenger service, I would say.

By Mr. HERRIN:

Q. Will you explain more fully how it would impair that service?

A. It would require transfers where none now exist, and it would require the separate service of the Central Pacific and the Southern Pacific to perform a haul which the single line now performs; and it would disarrange the train service generally. I do not see

1961 how any other result could come, where the lines are separated, especially in the California territory.

Q. Is it possible or practicable to do away with these disadvantages you have mentioned by traffic arrangements between the two companies, operating on the one hand the Southern Pacific lines and on the other hand the Central Pacific lines?

A. You might do away with a few, but it is not practicable to away with all.

Q. What would be the result or necessity as to terminals, wh one company now owns the terminal and the other company has terminal at that point, and vice versa, or where lines are absolut disconnected by this separation of these properties? I refer to t branch lines owned by the Southern Pacific Railroad Compa which connect only with the lines of the Central Pacific, and not all with the other lines of the Southern Pacific Railroad Compa What must result from the separation of those lines with respect those terminals and those disconnected lines?

A. I would say, at the common points where the terminals owned by the one company, that it would either require a separ terminal constructed by the other company or the arrangeme
1962 for the joint use of the existing terminal. In either case would say it would mean an increase in the cost of doing t same business.

As to the short lines, in some cases they might, by joint operati connect up the rails of the Southern Pacific that were separate but I think in many of these cases it would require the building additional track to make the connection.

Q. If you have a terminal, say, at any connecting point, whi is entirely ample and sufficient to do the business when it is operat by one company, such as the Southern Pacific Company; now, i you separate these lines, would it not be necessary to incr se t terminal facilities for the operation of two companies at a poi like that, where the present terminal might be sufficient for sing operation?

Mr. McCLENNEN. I object to the question as leading, also as incom petent, immaterial, and irrelevant; calling upon the witness for a opinion which, by his previous answers, it does not appear that h is qualified to express; and for an opinion based upon facts not suf ciently certainly incorporated in the question so that it may be know to the court upon what facts he bases the opinion.

1963 The WITNESS. It might be necessary to increase the terminal At any rate, it would increase the expense of doing the busi ness, because a single company can operate the terminal, certainly at a less cost than that of the joint operation.

By Mr. HERRIN:

Q. And with less terminal facilities, really? If you have two com panies operating a terminal, do you not have to have a larger ter minal than where one company is doing the business?

A. That would be the tendency. I would not say as to the exte of the extension.

Q. You have considered mainly the effect of this separation upon the local traffic. Now, I will ask you what would be the result, what would be the effect, if any, on the interstate commerce served by those lines?

Mr. McCLENNEN. The petitioner objects to the question as leading, also as incompetent, immaterial, and irrelevant; calling upon the witness for an opinion which, by his previous answers, it does not appear that he is qualified to express; and for an opinion based upon facts not sufficiently certainly incorporated in the question so that it may be known to the court upon what facts he bases the opinion.

1964 By Mr. HERRIN:

Q. The first point I want to get at is—and I might as well ask it now—whether or not it would increase the competition as to interstate traffic or transcontinental traffic?

A. I do not think it would increase the competition to any great extent.

Q. Why do you say that?

A. Because the service really controls the securing of business, and it would be necessary to continue, really, the service that the lines are giving to-day in order to compete with the other lines in California. It might increase the solicitors somewhat, but it is a question whether it would be necessary to have any more solicitors in the field than there are now.

Q. You, of course, bear in mind that at the present time there is competition for this interstate traffic not only by the Ogden route, but the Sunset Route, the Atchison, the Salt Lake road, the Western Pacific and the Gould system, and the Panama Canal and other water carriers; that competition generally between those carriers now exists. Would or would not the entry of the Central

1965 Pacific lines into the field by a separate management change that situation to any appreciable extent?

A. I think it would not. The strongest competition that the Santa Fe have to-day in northern California is the route via Ogden. Next comes the route via El Paso, including the Sunset Route, and next comes the Western Pacific.

Q. Your first competitor is the Central Pacific line?

A. Taking the business as a whole.

Q. You find it a formidable competitor with the Santa Fe?

A. I certainly do.

Q. Do you think that it could be made any more formidable by putting it into the hands of somebody else than the Southern Pacific?

A. I think not. I do not see how it is possible.

Q. It is suggested in the petition—I will only attempt to give the substance of the allegation—that the Southern Pacific Company,

for the purpose of forcing traffic via the Sunset Route, via the S
set line, allows the service to deteriorate upon the Central Pacific
and refuses to make arrangements with the Union Pacific for
moving of the traffic by that line; that those things are done
favor traffic via the Sunset line—the Sunset-Gulf Route. T
1966 particular point I wish to call your attention to is the a
gation that they allow the service on the Central Pacific lin
deteriorate. Would the allowing of that deterioration, the allow
of that Central Pacific service to deteriorate, be to the interest of
Southern Pacific Company or against its interest?

Mr. McCLENNEN. The petitioner objects to the question as leadi

The WITNESS. It would not be to its interest.

By Mr. HERRIN:

Q. Would it be against its interest?

A. It certainly would be.

Q. Will you explain why that would be so?

A. The Santa Fe is the principal competitor of the Southern P
cific route to the Middle West territory, and for the business th
passes through the Chicago gateway to the points east of Chica
The Southern Pacific could not afford to let the Central Pacific ro
run down. They are necessarily bound to keep that service eq
to that of the Santa Fe, otherwise the Santa Fe would not only ha
the advantage in the business which is delivered directly to the poi
it reaches with its own rails, by Kansas City and Chicago, b
it would have the advantage in the business which goes to
1967 comes from the lines east of Chicago.

Q. Would any of this business get over to the Sunset Ro
in that way?

A. Yes.

Q. How?

A. It would. It always has done it.

Q. What I mean is: Would the impairment of the service on t
Central Pacific help to give business to the Sunset Route, or would
not merely help the Santa Fe and other competitors of the Centr
Pacific?

Mr. McCLENNEN. The petitioner objects to the question as leadi
and as leading away from the opinion just expressed by the witn

The WITNESS. The business is moved as a whole; and giving serv
to the Chicago business necessarily means giving service to the bu
ness also going east of Chicago; so that it all goes in together.

By Mr. HERRIN:

Q. Yes.

A. It could not separate the business going to the territory th
the Sunset Route serves, the seaboard territory, from the busi

1968 to the Middle West territory; so that on the whole it is absolutely necessary for the Central Pacific to keep the Southern Pacific in condition to perform just as good service as the Santa Fe. Otherwise they would lose business; they would lose business that goes to the western points as well as to the points east of Chicago.

Q. They would lose it to whom—to what company?

A. They would lose it to the Santa Fe, some of it, and the Western Pacific.

Q. I will get at that in another way: There is a large volume of business that moves eastbound and also westbound that goes to and comes from all of the territory that the Sunset is not a competitor of the Santa Fe for at all. The Southern Pacific is its only competitor, and the Western Pacific now. That business perhaps is greater, considerably, than the business in the Seaboard territory that the Sunset is a competitor for. Is not the volume of business that passes over the Central Pacific and connections many times larger than the business that may be competed for by the Sunset line with that line?

A. It is.

Mr. McCLENNEN. Petitioner objects to the question as leading and as calling for facts of which the witness, in the nature of things, can not have knowledge, and which would be better shown by witnesses who have knowledge of the facts and are in the employ of the defendant company.

1969

By Mr. HERRIN:

Q. I will ask you: Do you know whether or not the business which may be competed for by the Sunset line is at all equal to the other business that is noncompetitive which is served by the Southern Pacific line and connections?

Mr. McCLENNEN. Petitioner objects to the question as leading and as calling for facts of which the witness, in the nature of things, can not have knowledge, and which would be better shown by witnesses who have knowledge of the facts and are in the employ of the defendant company.

By Mr. HERRIN:

Q. I will ask you if you know.

A. I do; yes, sir.

Q. What do you say as to that?

A. I would say as to the noncompetitive business between the Central Pacific and the Southern Pacific and that between the Central Pacific and the Sunset Route the much greater volume is on the Central Pacific.

1970 Q. Then, to get the volume of noncompetitive busines
new business possible to be competed for by the Sunset,
Central Pacific line should be kept up to a high standard?

A. Yes; what I mean by "noncompetitive business" is bus
that originates on the Central Pacific line and terminates on
line; and then the business, such as perishable traffic that will
stand transfer en route and the bulk freight in both directions.

Q. And does that fact, of the volume of business, noncompeti
served by the Central Pacific line, being much larger than the
petitive traffic with the Sunset, make it to the interest of the Sout
Pacific Company to keep the Central Pacific line up to a high
of efficiency?

A. I would say that it does.

Mr. McCLENNEN. The petitioner objects to the question as lea

By Mr. HERRIN:

Q. In your evidence you have generally considered, as I u
stand it, freight business. Now, what observations have you to
as to passenger business, which is different from freight, and
competition? Is the Sunset Route a practicable compe
1971 with the Central Pacific route and connections as to passe
business?

A. The preferred route is the Central Pacific on the passe
business and has always been the Central Pacific and Union P
lines.

Q. Preferred by the company or by the public?

A. Preferred by the company and by the public.

Q. And by the public?

A. I would say so.

Q. The Sunset line is not a competitor to such an extent,
passenger business, as it is to freight, as I understand you?

A. No, sir.

Q. What are the advantages as to the Sunset line as to passe
business, if you could mention them, as compared with the Ce
Pacific line?

A. Compared with the territory you would go through if
would reach New York by New Orleans and the length of ti
will take you.

Q. The distance is much longer, is it not?

A. The distance is much longer.

Q. And how about the temperature in the summer season?

A. It is very hot, to say the least.

1972 Q. It is a little more comfortable on the Central line?

A. Much more.

Q. Are there any classes of shipments for which the Sunset-Gulf route could not compete and do not compete?

A. I think I mentioned before that the Sunset Route can not handle perishable traffic; that is, traffic that is shipped under ventilation or refrigeration, in either direction, and that it can not handle the bulk traffic, and that it can not handle traffic that there is any serious damage to by transfer, such as agricultural implements and vehicles and automobiles, and things of that character.

Q. As to perishable traffic or freight, you include within that what particular shipments?

A. I would include all of the fresh fruit out of California.

Q. Citrus fruit?

A. Citrus fruit; yes, sir; and all the vegetables. I would include anything that moves under refrigeration, like fish or meat.

Q. Oysters?

A. Oysters; and then the packing-house products and the dairy products.

1973 Q. The bulk traffic you refer to is coal and coke and grain?

A. Coal and coke and liquids.

Q. How about live stock?

A. Live stock is another class of traffic that the Sunset can not handle.

Q. That you can not handle on the Sunset-Gulf line?

A. Yes; that you can not handle.

Q. How about immigrants' movables?

A. That would be included in live stock, because they usually have some live stock with them.

Q. What would you say as to sash, doors, and blinds?

A. All of the forest products are excluded from the Sunset movement.

Q. How about locomotives?

A. They could not be handled by the Sunset Route.

Q. And passenger and freight cars?

A. Passenger and freight cars do not move by the Sunset Route.

Q. Do they carry high explosives?

A. They do not.

Q. Or silk or tea?

1974 A. Silk and tea, that movement usually makes passenger-train time.

Q. And for that reason it takes the central or northern route?

A. It takes the all-rail route.

Q. And furniture?

A. Furniture is also excluded from the Sunset line.

Q. I believe you mentioned automobiles and other vehicles?

A. Yes.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. When you first went to California the only railroads to Ca fornia north of Tehachapi Pass were the Central Pacific and t Southern Pacific?

A. Yes, sir.

Q. It has appeared in the record that the Santa Fe got into S Francisco May 10, 1899. Would that accord, about, with your sta ment of the date?

A. The lines were connected up July 1, 1899.

Q. July 1, 1899?

1975 A. Yes, sir. The San Francisco and San Joaquin route w connected by the general arrangement with the lines eas Mojave.

Q. There is some seventy miles through the Tehachapi that y run over the tracks of the Southern Pacific Company?

A. Yes, sir.

Q. And the thing which completed the Atchison service from t East to San Francisco was the making of the arrangement for the of those tracks to connect the Atchison with lines which you had quired north of that stretch?

Mr. BLAIR. You mean the service on its own rails?

Mr. McCLENNEN. Yes; I suppose that is better.

The WITNESS. Yes.

By Mr. McCLENNEN:

Q. Up to the completion of that arrangement the Atchison, for points north of Tehachapi, was dependent upon the forwarding b the Southern Pacific Company?

A. Yes; it was operated under a traffic contract with the South Pacific Company?

Q. Up to July 1, 1899, the Southern Pacific and the Central Pa cific, together, held an absolute monopoly of the California tra continental rails?

1976 A. North of Mojave.

Q. North of Mojave?

A. Practically so; yes, sir.

Q. What have you in mind when you use the term "practically"

A. The Santa Fe acquired the San Joaquin Valley road bef that time; probably had it about a year, and operated it as a lo They did not take any through business in there, because they h not any connection with it. That is, that applies as to the rail. T Santa Fe were in northern California to do business—to secure bu ness there and to deliver business there—under a contract wit

outhern Pacific Company which gave them certain rights on the outhern Pacific rails in northern California. They began in 1884 ith the joint traffic arrangement.

Q. Was that a contract for the use of the rails of the Southern acific, or the Central Pacific, or was it some contract with reference the divisions on business that was handled over the joint rails?

A. It carried the right to do business. It carried the right for the Santa Fe to operate with its own engines over the tracks, as I 977 understand it; or they could do their business through the Southern Pacific, by paying the Southern Pacific a certain roportion of the joint rate; and it gave the right to the Santa Fe carry a supply of its cars at different points in northern California, o that they would be convenient for distribution to any shippers hat might want them on the Southern Pacific tracks.

Q. Did the Atchison engines use to travel north of Bakersfield?

A. They did not. We never exercised the right to run our own rains. We did the business always through the Southern Pacific, nd allowed them the proportion of their joint rate for the haul to r from Mojave, as the case might be.

Q. Was the operation from 1884 to 1899 under a single contract, r was it changed in its terms from time to time?

A. Under a single contract.

Q. And did that fix the proportions of the joint rates from all outhern Pacific points to Atchison points in the East?

A. The proportion of the rate that the Southern Pacific was to eceive?

Q. Yes.

978 A. It did.

Q. That is, take it as——

A. As a fixed division of the joint rate for the Southern Pacific.

Q. To make it specific, was the arrangement such that the Atchison ould solicit and take and bill a shipment from Redding, California, ver the Atchison to Cincinnati, and have the proportion of the rate etermined by the contract between the two companies?

A. The proportion was fixed, I think, on Sacramento for the points orth of Sacramento. I think Sacramento was the point where we arried the supply of cars, and I think Sacramento was at that time, nd is yet, known as a terminal point, and I think the division of the ate was based on the haul from the terminal. I do not recollect all f the details.

Q. Did the Atchison under that arrangement use to issue through ills for eastbound freight from exclusive Central Pacific points in orthern California to competitive points in the East?

A. The Atchison issued its own bills of lading for the shipments ere routed by its line from points on the Central Pacific

1979 and the Southern Pacific which were included in the arra
ment. The way bill was made by the Central Pacific ag
and it was made through to the destination.

Q. Was it a Southern Pacific way bill or an Atchison way bill

A. It was a joint way bill. The routing east of the junction poi
that is, Mojave—with the Southern Pacific was directed by
Atchison Company.

Q. Do you mean joint in the sense that it called for a service o
two lines to reach destination? It was not issued as a joint obli
tion, was it, by the agent?

A. Yes; it was issued—the Central Pacific and the Santa Fe w
parties to the rate, to the rate as published. The Southern Pac
agent made the way bill, routing it Southern Pacific to Mojave
Santa Fe on from Mojave. That was a joint way bill, and it
made largely under the direction of the Santa Fe. Now, the So
ern Pacific, for performing the service at the station—that is, m
ing the way bill and doing the other things that are necessary in
ceiving the freight and billing that freight at Mojave—were allo
a certain proportion out of the joint through rate. That proport
was fixed in the contract.

Q. And the solicitors of the Atchison were at work
1980 northern California during the period from 1884 to 1899?

A. Yes, sir. We had an office in each of the larger cities
California, a separate office.

Q. What determined the question when a shipper at one of th
northern California places was going to send goods to Pittsbur
whether he should send it in part over the Atchison or not?

A. The shipper's directions determined. The directions that
shipper gave to the receiving agent of the Southern Pacific at t
terminal as to how the goods should move determined.

Q. And the effort of the solicitors among the shippers was to g
them to route via the Atchison?

A. The solicitors in California and whatever influence there w
in getting the consignee, the purchaser of the goods, to direct t
shipper how to route. It is my recollection, and in fact I know th
the business of the Santa Fe from points on the Southern Pac
rails was largely secured through the influence of the receiver; th
is, the consignee.

Q. That is, the receiver who was in——

A. In the East.

1981 Q. In Atchison territory, practically?

A. Whatever coöperation we could get from the line, pe
haps, that the consignee was located upon in the eastern territory.

Q. To what extent, from 1885 to 1899, did you carry over
Atchison freight which originated in Central Pacific or So

Pacific territory and was destined to eastern points that were not served peculiarly by the Santa Fe or its particular connections, like the Erie? I mean points where, so far as terminus was concerned, the field was equally open to the Southern and the Atchison.

A. On the eastbound traffic my recollection is that right from the beginning the California products largely divided on the basis of the population. That is, there was a time when seventy-five per cent or seventy per cent of the population was in the territory east of Chicago, and many times, in going over, our traffic moved out of California; to see just where it was going to it would always come close in its distribution to the distribution of the population. In other words, there would be seventy per cent of what we would haul, then, out of the Southern Pacific territory north of Tehachapi which
1982 would go to destinations east of Chicago or the Mississippi River and thirty per cent would remain in the western territory. We were stronger, of course, in the western territory than we were in the eastern territory.

Q. And you are using "western territory" to define Chicago and points west?

A. Yes; that is the way I speak of western and eastern territory.

Q. If I understand your answer, then, it is that of the freight you got which originated north of Tehachapi, about seventy-five per cent, was it, that you said?

A. Seventy to seventy-five per cent.

Q. Seventy to seventy-five per cent was destined to Chicago or points east?

A. Destined east of Chicago.

Q. Was destined east of Chicago?

A. Was destined east of Chicago.

Q. And from twenty-five to thirty per cent was destined to Chicago or west thereof?

A. Yes.

1983 Q. Do you know how the proportion of the total amount which you got north of Tehachapi compared with the total amount traveling from the territory north of Tehachapi?

A. No; I do not. We did not get any great bulk of it; I know that. There never was much.

Q. It was pretty small, was it not?

A. No; it was considerable. There was a large volume of it there. We had a large volume of business from points on the Southern Pacific rails.

Q. And what you did get was largely that which was influenced through the strength of your position in your own central western and eastern territory?

A. Our service and the help that we got from our connection which was not any small matter, and the solicitation of our men California. Of course, we got some business from the shippers California.

Q. But the chief effort, so far as eastbound business was concerned was through the consignees?

A. I think that is correct as to our traffic from points on t Southern Pacific rails.

(Whereupon a recess was taken until two o'clock p. m.)

1984 AFTER RECESS.

EDWARD CHAMBERS, the witness under examination at the taking recess, resumed the stand and testified further, as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. When was it, Mr. Chambers, that you made the arrangeme which provided for the through shipment of freight from New Yo to California? You referred to some arrangement with the Er Railroad, I think, before the recess.

A. It was after 1887; probably in 1888 or 1889, or somewhe along there.

Q. That was the first time that there had been, from the shipper standpoint, a through line from New York to California?

A. That was the first time there was any effective competition fro the Atlantic seaboard against the Sunset Route.

Q. And that was made by the fact that these lines, the Erie an the Atchison, had entered into this arrangement for through servic

A. Yes, sir. It took some years to work it up to a 1985 considerable volume of business. It was rather a slow proces because the Atchison line at that time was not in very goo physical condition, and as it improved the service improved and th volume of business increased.

Q. The great improvement in the Atchison came after the reor ganization, did it not?

A. After 1895.

Q. Prior to this through arrangement which you made with th Erie it had been customary to send carload lots through in the ori inal car, had it not?

A. Yes.

Q. This arrangement that you speak of provided for package car as well, did it not?

A. It did; yes; to a certain extent. Of course, all of the traffic di not move in through cars, but we had arrangements so that the Eri switched the car directly to the Santa Fe station at Chicago; that i

made a special effort to get it to the Santa Fe station and take the California freight and put it in with freight that had originated at Chicago and was being loaded out the same day.

Q. Did the Erie have any similar arrangement with any of the other roads reaching California?

1986 A. They did not at that time.

Q. What is the first time at which any similar through arrangement was made for any other rail lines from coast to coast?

A. At that time the Santa Fe was the only line into southern California outside of the Southern Pacific, and they were the only ones, really, that could compete with the Southern Pacific, and this competition with the Sunset Route in the beginning was just for the southern California business. We did not reach it to any extent in northern California.

Q. As you use the term "northern California" as distinguished from "southern California" you divide practically at the Tehachapi Range?

A. At the Tehachapi Range; yes, sir.

Q. What was the first of there being through billing arrangements from coast to coast through Ogden?

A. I could not say as to that, but it followed along after that time. The Santa Fe did not make very much of an effort to compete with the Sunset Route from New York on the northern California business until after it got its own rails into northern California; that is, after 1900, really.

1987 Q. It was not up to that time in a position to compete effectively, was it?

A. It was not on that class of traffic.

Q. In the nature of things the terminal lines, either initial or final, are in very much better position to compete than any intermediate carrier, are they not?

A. That is, they are in a better position to secure the routing of the traffic?

Q. Yes.

A. I would say they were; yes. The line upon which the industry is located usually has the preference, everything being equal. That is rather natural.

Q. Up to July 1, 1899, did any freight move in or out of California from or to east of the Missouri river except over the Central Pacific or over the Sunset line or by the Panama routes or around the Horn?

A. And via the Santa Fe from Mojave.

Q. And via the Santa Fe from Mojave. Those were the only routes?

A. Those were the routes; yes.

Q. Did the Canadian Pacific, the Great Northern, or the Northern Pacific have any effect on California?

1988 A. The Canadian Pacific did, to a certain extent, but they were not a serious competitor. They came in via Vancouver with the water service from Vancouver to San Francisco, and I think that perhaps the Great Northern, via Seattle, engaged in the California business—that is, the steamer line from Seattle down—but in the service the time was so much longer than the other routes that they were never very serious competitors.

Q. How about the route over the Union Pacific and the Oregon Short Line through Portland and down by boat to California?

A. That was not a serious competitor with the lines running directly to California.

Q. Do you know whether any freight moved that way?

A. I could not say. It is likely some freight did move that way but not any great volume of freight.

Q. Except for the gradual improvement in service over the Atchison, there was no change in the competitive condition, so far as California was concerned, between 1885 and the Atchison's getting into San Francisco in 1899, was there?

A. No; except in so far as the service by water was concerned.

1989 That always was a changeable quantity. Sometimes there would be a number of ships in the service, and then, again, there would only be a few.

Q. That is, via Panama or around the Horn?

A. Yes.

Q. The next change in the situation, after the Atchison's getting into San Francisco, was the opening of the San Pedro route, in 1901, connecting the Union Pacific with Los Angeles?

A. Yes, sir.

Q. And the next change was the opening of the Western Pacific from Salt Lake to San Francisco Bay in 1910?

A. Yes, sir.

Q. The Western Pacific has never become much of a factor in the competition, has it?

A. It has not. That is, it has not up to this time carried any large volume of tonnage.

Q. The influence of the San Pedro route on California is confined to the portion of California south of Bakersfield?

A. Yes, sir.

Q. Is any business done over that route and by water from San Pedro to San Francisco, in the carriage of transcontinental freight?

1990 A. No freight business.

Q. When you were at Pueblo, from 1879 to 1885, did you have more or less of a general knowledge of freight conditions in California, or was that beyond your range?

A. I had a general knowledge of the freight conditions in California, in so far as the traffic moved through Pueblo. I handled the waybills and revised the billing on California traffic that moved through Pueblo from along about 1883 until 1885.

Q. That was traffic which came over the Atchison from Deming?

A. It was the California traffic that moved via Deming; yes; and the Atchison into Colorado, and the westbound traffic that moved over the Atchison from Kansas City and was delivered to the Denver & Rio Grande at Pueblo and moved on through Ogden to a connection with the Central Pacific at Ogden and thence on to California.

Q. How far north, in your opinion, would it be reasonable to extend feeders in California for the Central Pacific Railroad north of its main line?

A. I would say up to the Siskiyou Mountains; up to the Oregon line.

1991 Q. That would be about the limit from which it could reasonably expect to draw?

A. I would think so.

Q. Now, in a southerly direction, how far?

A. For the Central Pacific?

Q. For the Central Pacific.

A. Under the present conditions, I would say the Tehachapi Mountains. Originally the Central Pacific drew a very considerable business in and out of southern California via Sacramento and Ogden in competition with the Santa Fe.

Q. How late did that competition keep up?

A. Well, it kept up in more or less degree until after the entrance of the San Pedro line into southern California, and after that time it was shut out entirely, or practically entirely.

Q. You mean because the San Pedro was in so much better position to handle that better?

A. To handle that traffic. But they handled the traffic that really, necessarily, had to move via the Ogden route. You see, there was considerable traffic in southern California, especially citrus fruits, that it was very desirable to put on the Union Pacific or Cen-

1992 tral Pacific-Union Pacific line to reach the market, say, at Omaha, and to the points north, where they could easily be diverted. That business moved, before the entrance of the San Pedro line into southern California, north over the Southern Pacific via Sacramento, Central Pacific and Union Pacific; and with that traffic they carried some traffic—a very considerable amount of [illegible]—going to Chicago and points east of Chicago.

Q. You have spoken of it being the natural businesslike thing t the Southern Pacific to extend its line through Arizona, New Mexi and Texas to New Orleans. I take it that you meant that was t natural businesslike thing to do for the creation of a transcontinent line across that part of the country?

A. Yes; and to secure the traffic that was moving between t seaboard territory and California at that time.

Q. That is, the Atlantic seaboard territory?

A. Yes.

Q. That was a development which would bear no relation to t line between San Francisco and Ogden? By that I mean a railro having a line down in southern California would just as natural seek to extend it to New Orleans and connect for the Atlan

1993 coast, whether it did or did not own another line runni from San Francisco to Ogden?

A. I would not say that at that time it would be a very attracti thing for a line that just served southern California to extend i line over into Arizona. I would not say that, because the gre volume of business in California, when those lines were first bui was in northern California. The California products, the popul tion, the business of California, was really, in 1883, I think, ve largely north of the Tehachapi. The citrus business was very lig at that time; just starting in.

Q. That southern development was for through business, and n as a feeder to the Central Pacific throughout?

A. Well, of course, as a local line—as a local business to be s cured—perhaps that was the most desirable line to build throug Arizona. I think if I was going to build a line through Arizo from southern California I would have taken about the same cour that the Southern Pacific did. That is through the most productiv part of Arizona, the most profitable part of Arizona, at that time.

Q. Any extension of that line would not be undertaken as th extension of a feeder to the Central Pacific line in any sens would it?

1994 A. No; it would not.

Q. You think there was a time when the Sunset line wa carrying from eighty to ninety per cent of the total California trans continental business?

A. Yes. That is, not of the total; I did not say the total Califor nia transcontinental business in both directions. I say they wer carrying that proportion of the business to the Atlantic seaboard territory.

Q. I see.

A. Of the business that could be moved via the Sunset Route, tha it was possible to move that way.

Q. That is, you mean eighty to ninety per cent of the competitive business; not eighty to ninety per cent of the total business?

A. I mean eighty to ninety per cent of the California Atlantic seaboard traffic; that is, traffic that was right on the Atlantic seaboard, or close to the Atlantic seaboard; in what is known as Atlantic seaboard territory; that could be moved conveniently via the Sunset Route; in other words, freight that would stand transfer, package freight and dried fruits and canned goods; and the wines—
the principal commodities eastbound, and miscellaneous articles
1995 which were at that time almost exclusively manufactured in the Atlantic seaboard territory.

Q. And that has reference to all parts of California?

A. Yes.

Q. How long did the large proportion that you have mentioned, the large percentage that you have mentioned, continue?

A. It began to diminish as the Santa Fe built up its trade; after 1888 I should say. The Santa Fe reached Chicago in 1888, and then it began to actively solicit and go after the California seaboard business, and as the service improved, as we got into the business, the Sunset's proportion decreased. Of course the other lines through the Omaha gateway went after the business in the same way, but they could not, in the beginning—their competition was not as effective as ours because we had only the one transfer, if a transfer had to be made, and that was at Chicago, while via the Omaha gateway there was one at Chicago and another one at Omaha.

Q. Since you have blazed the way with the Atchison, the other lines have found it possible to do somewhat the same thing through Ogden, have they not?

1996 A. They have; but I think that to-day the Atchison is the principal competitor of the Sunset Route, especially for the westbound business from the Atlantic seaboard territory to California. Next to that, I guess, their's is the largest volume.

Q. You have found it possible, as a practical matter in railroading, to overcome virtually all difficulty incident to the use of a connection to make your through line to the Atlantic?

A. Yes. That is nearly correct, I will say that, for almost all of the traffic to California at the present time. That is one of the great obstacles in competing against the Sunset Route, whether under a single management or if these interchanges are necessary between the different parts of the through route, between California and New York.

Q. Up to the time that the competition of the Atchison made it necessary, do you know what, if any, efforts the Southern Pacific made to make its service through Ogden equal to or preferable to that [illegible] Sunset Line?

A. I do not.

Q. Did you ever hear of their making any?

A. I do not know that I did. I do not recollect.

1997 Q. Do you know whether one of the things which led to the large proportion going over the Sunset Route was that if any of the agents on that line chanced to misread the tariffs he did not have to explain his error to any connecting road?

A. No; I did not know of anything of that kind. We always tried to keep the rates via the Santa Fe route the same as via the Sunset Route.

Q. Has the Interstate Commerce Commission, as far as you know, ever taken any part in the reduction or fixing of the transcontinental rates, ordinarily, of the railroads, excepting, of course, this pending matter of permission to make a lower rate for the long haul and for some of the shorter hauls in order to meet the water competition?

A. They have fixed the rates on various commodities. They fixed the class rates practically. Of course, the rates to the terminal points that were compelled, by the water competition, to be recognized as being below reasonable rates, they never dealt with at all, excepting so far as to prescribe under the fourth section of the act the long and short haul clause.

Q. With the exception you have just mentioned, the railroads themselves, and the competitive influences, have deter-

1998 mined the rates, rather than any Government authority?

A. Westbound rates to the terminal points.

Q. That is true?

A. Yes; but then there is a large volume of traffic that moves under rates that are reasonable rates in and of themselves, where the traffic is really not subject to competition of the water carriers, and as to a lot of that the commission did fix the rates.

Q. What influence did the Southern Pacific Company have on the California rate situation up to the time that the Atchison got into San Francisco? Did it have practical control of that?

A. In northern California the Southern Pacific, being either the delivering line or the originating line, no rates could be made without their concurrence—no through rates, joint rates.

Q. They were practically masters of the situation as to freight rates?

A. On all the rates which were known as joint rates, less than the combination of the local rates.

Q. In the development of years it has been the effort of the

1999 railroad men to keep the rates uniform over the different roads for the same service, has it not?

A. Yes.

Q. And, barring particular occasions, they do not in that sense compete as to rates?

A. That is true.

Q. The presence of one or more railroads, or of more than one railroad, capable of performing a given service, does have the effect of lowering the rates over a long period of time, does it not?

A. Yes; it may have that effect to a considerable extent, I would say. Generally they aid to keep the rates uniform, and the conditions as to the necessity for the rates are usually pretty well known to all of the carriers that are competing for the traffic.

Q. Service is very much influenced by competition, is it not?

A. It is.

Q. If you have four railroads in position to do the same business, the chances are that you will get better service over them than if you have two?

A. That is all there is in competition to-day, under the conditions to-day—competition in service.

2000 Q. You have spoken of certain kinds of business that would not move over the Sunset Route, but which would move over the Atchison or would move through Ogden. Is there any converse to that? Is there anything moving between California and points east of the Missouri River and, say, north of St. Louis and including St. Louis, which does move over the Sunset Route, which could not move as readily or more readily through Ogden or over the Atchison?

A. Just name that territory again, will you?

(The question was repeated by the reporter as above recorded.)

The WITNESS. I do not know of any volume of traffic, or, in fact, of any traffic that moves via the Sunset Route into the territory you have mentioned; that is, moving via the Southern Pacific lines through Texas, up to St. Louis. There may be some business moving back there.

By Mr. MCCLENNEN:

Q. That is as to all the traffic between the territories which I mentioned, all that the Sunset Route carries can be carried equally well by the Atchison through Ogden?

A. Into that territory?

Q. Yes.

2001 A. Yes; I should say it could, except from southern California up there. Of course the Ogden route, the Central Pacific route, is practically out of the traffic now going up from southern California into that territory. Under the Southern Pacific tariff they move eastbound via El Paso or their connection with the Rock

Island, or with their other connections; say, from northern Califor-
nia my answer would go.

Q. Would this be correct, then: That all the freight between south-
western Oregon and California north of Bakersfield on the one hand
and north of St. Louis and including St. Louis and east of the Mis-
souri on the other hand, is naturally competitive as between the
Ogden route and the Sunset Route, except those particular kinds of
freight which you have mentioned, which, from their nature, can not
be moved by a split rail and water movement?

A. What you intend to cover is what is known as the Middle West
territory—the territory practically west of Chicago and east of the
Rocky Mountains, except the southern territory?

Q. No; I mean east of the Missouri River.

A. Or east of the Missouri River.

Q. East of the Missouri River to the Atlantic Ocean?

2002 A. The Sunset Route is not a desirable route for that traffic
from northern California. The competition for that traffic
out of northern California is between the Atchison, the Western
Pacific, and the Central Pacific. I have never heard of any consid-
erable volume of business moving out of northern California down
through Los Angeles and via El Paso to that territory or through
the Texas points.

Q. By "that territory" you mean what you call the Middle West
territory?

A. What you described—north of St. Louis and east of the Mis-
souri River, which would take in, as I understand it, Chicago, Wis-
consin, and so on.

Q. I think I perhaps did not make myself fully clear. When I
said "east of the Missouri River" I meant east all the way to the
Atlantic Ocean.

A. Oh!

Q. That would change your answer, would it?

A. Yes; that would change it. It would change it in so far as the
seaboard territory is concerned.

Q. To see that I clearly understand you, let me put it in this way:
Take the territory which you have last defined, the so-called
2003 Atlantic seaboard territory as the eastern territory, and take
California north of the Tehachapi Mountains and southwest-
ern Oregon; are the route through Ogden and the Sunset Route, so
called, naturally competitive as to all commodities except those which
you have mentioned which can not take a split rail and water haul?

A. I would say for that traffic, from northern California through
to the Atlantic seaboard, the competition is between the Sunset Route
and the Central Pacific and its connections and the Atchison and the
Western Pacific, and the service is practically on a parity to-day

at is, perhaps the Western Pacific service is not so good as the hers, but the Atchison and the Central and Union Pacific, the orth Western and its connections beyond Chicago, are equal to the nset Route.

Q. Between those territories and in those classes of freight you are ware of the fact that the effort of the Southern Pacific Company to get freight as far as possible via the Sunset Route, are you not?

A. That has always been its position, as I understand it, where they uld handle the business through the Sunset.

Q. And its chief competitor in that effort to-day is the Atchison?

004 A. The Atchison and the Central and Union Pacific routes.

Q. The Central——

A. Let me explain that to you. The Central Pacific line via gden has always been a competitor with the Sunset Route for the aboard business.

The Union Pacific have their solicitors in the field working the siness for that route and always have had. So has every con- ection of the Southern Pacific, in turn, east from Ogden, until you t clear through to the Atlantic seaboard.

Take, for example, the New York Central or the Pennsylvania; the longer haul is via the Chicago gateway and the industry, the ceiver of the freight, is located on their rails in the interior, along eir rails somewhere, say, removed from the Atlantic seaboard, all e influence they have will be to work that business through the hicago gateway. They would either work it over the Central acific-Union Pacific route or over the Atchison. That extends ear along through. The closer you get to the Atlantic seaboard, e more active the eastern lines which are after the business via the Chicago gateway, because the longer their haul. The main

005 support the Atchison gets in that territory is from the delivering lines in that territory, on the eastbound business.

Q. That is to say, is it not, that between these territories, the outhern Pacific tries to get the freight to go by the Sunset line; e Atchison tries to get it to go by its line; the Western Pacific and s Gould line connections, so called, try to get it by their lines; the ailroads such as the New York Central and the Pennsylvania try get it to go either by the Atchison or by the Ogden line; the Iowa nes, such as the Chicago & North Western, try to get it to go via the gden line; the Union Pacific tries to get it to go via the Ogden line. s that correct?

A. Yes, sir.

Q. And that is practically, in the rough, a complete statement of hat the competitive efforts are, is it not?

A. Yes. The Sunset works the seaboard business alone. They have no supporters at all; they are alone; they are against all the others in working that business. Against them are the Atchison with its solicitors out there in the field, and all the influence that the Atchison can get from its connections beyond Chicago; the

2006 same way with the route via Ogden, the Central Pacific Union Pacific route; the Union Pacific are after that business and they, of course, bring to bear all the influence they can get from their connections.

So, for the seaboard business out of California—and that is true as to the Western Pacific, what I say about the Central Pacific-Union Pacific—but for the seaboard business out of California the three routes—the Atchison, the Central Pacific-Union Pacific route, and the Western Pacific route and its connections—are against, or opposed to, or in competition with, the Sunset Route.

Q. The situation during the period of the Union Pacific merger, so called, was the same, was it not?

A. Practically the same.

Q. During that period the Southern Pacific, even when the Union Pacific controlled it, tried to get the seaboard business via the Sunset line?

A. They did.

Q. The Union Pacific during that period tried to get all that it could over the Union Pacific?

A. Yes, sir.

Q. The Central Pacific would be in a much more powerful

2007 position to affect the routing of freight between California and the Atlantic seaboard than the Union Pacific or the Chicago & North Western are, would it not?

A. It would, so far as the traffic originated or had destination on its lines—whatever influence goes with serving the shipper at the point of origin or at the point of destination.

Q. If it were not controlled by the same interest that the Sunset line is controlled by, it would undoubtedly put forth that effort to get as much to go as possible via the all-rail line through Ogden, would it not?

A. It likely would; but I do not think the Central Pacific by itself with just its present rails, would hardly get as much traffic, if it were separated by itself, as it could in with the Southern Pacific as one line.

Q. Where do you think the traffic originating on the Southern Pacific rails which now moves through Ogden would go, in case of the separation?

A. I would say this for that traffic, so far as going over the Central Pacific to the territory Chicago and west is concerned: That

outhern Pacific work that business now all over the Central Pacific from northern California. They are compelled to do that,
008 really, for no other purpose than to meet the competition of the Atchison out in northern California.

Q. Do you know what the explanation is of the amount of tonnage hich does, in fact, according to their figures, travel from northern alifornia through El Paso on its way to Atlantic seaboard ter-itory?

A. The volume?

Q. Yes.

A. I do not know, except in a general way.

Q. You know that it is a very substantial volume?

A. It always has been; yes, sir.

Q. That volume would be rather apt to go through Ogden, would t not, if the Central Pacific was seeking it?

A. I would not say so. I do not know that there would be any aterial change in that. As I say, the service, of course, is the ain factor, and so long as your service is equal the business would ivide up, likely. Of course it might be that the Central Pacific ould have a little more influence in securing the routing with usiness that originated on the Central Pacific rails and was going into that territory.

009 Q. At the present time your railroad has in California one life-size competitor, has it not, and that is about all?

A. The Southern Pacific?

Q. The Southern Pacific.

A. We have the two routes—the Ogden route and the Sunset oute—and the San Pedro line.

Q. That is, the San Pedro line you have in southern California?

A. Yes.

Q. Only?

A. That is all.

Q. North of the Tehachapi you have the Southern Pacific only?

A. Yes, sir; and the Western Pacific, of course, is a competitor or the western business with us, and does a considerable business rom San Francisco and Stockton; those two points are where they ompete with us.

Q. It is pretty small, as compared with——

A. It is not a very large volume; as compared with the business f the Atchison and the Southern Pacific it is small. Still they are fter the business all the time. They can not handle very much; their plant is not in shape to handle any very large amount of it.

010 Q. Disregarding the Western Pacific, but, of course, keeping in mind the amount that you attribute to it; if the Southern

Pacific and the Central Pacific were divided, your road would have two vigorous competitors in the territory north of the Tehachapi Mountains?

A. I think we have two now. I do not see how there could be any more competition than what there is right to-day. We are in the same position——

Q. You are admitting that you would have two, then?

A. We are in the same position with respect to the business at Chicago. For example, that the Sunset Route is on business to the Atlantic seaboard. The field is against us on the Chicago business. We have not any support. We have no support from the lines running west of Chicago on the California traffic; none whatever. We go it alone on that.

Q. Again disregarding, for the moment, the Western Pacific, the "field" as you term it, north of the Tehachapi Mountains, is the Southern Pacific Company—one company—is it not?

A. They are the company that has the rails in that territory.

2011 Q. If the two roads were divided, there would be two companies in that field competing with you, would there not?

A. There would be, yes.

Q. There is now one general traffic manager in that territory competing with your general traffic manager, is there not?

A. It is not the one traffic manager that makes the trouble in competition, whatever trouble the shipper makes; it is the fellow who solicits from the man that is right at his station; and those station agents would be just the same; there would be no change in them. The influence on the shipper would be just the same, just as much as under the one as under the two. You could not change that.

Q. That is, you mean, in the natural course of things, some arrangement would be made by which those terminals would be jointly operated?

A. No; I mean if you should separate the Central and the Southern Pacific, the agent would remain at the station just the same, whether it was called the Southern Pacific or the Central Pacific. He would be there; the solicitor would be there, and the industry would be located on the same tracks, and whatever influence you could bring to bear on the shipper, what naturally goes where

2012 the shipper is located on your rails, would be still there against the Atchison, and would not be worked any harder, I believe, than it is to-day.

Q. I am a little afraid I have got unhitched from my moorings. Let us take one place—Sacramento: If these two roads were divided, there would be an agent there, would there not?

A. There would be separate agents.

Q. Would there be two agents there?

A. It would depend altogether on how they arranged that matter when they separated. There would be two soliciting agents, undoubtedly, there, if the lines were operated separately.

Q. And they would be competing with each other, naturally, would they not?

A. Yes.

Q. And the Atchison would have a soliciting agent in Sacramento, would it not?

A. Yes.

Q. And that man would be kept busy trying to counteract the work of two men, where now he is trying to counteract the work of one man, would he not?

2013 A. It would altogether depend upon the force. Naturally, if the business were divided—that is, if the lines were separated—the Southern Pacific would not need as large a force of solicitors as they have to-day. They probably would reduce the number; their business would not be so large; it would be just a question of whether you would have more soliciting against us under the single ownership than there would be under the joint ownership. There might be some more; I naturally would expect there would be some more, but not anything to make any more competition for us in a serious way than what we have now.

Q. You would rather expect that there would be some more at all those points where both rails reach, would you not—both the Southern and the Central rails?

A. Well, taking the larger points, I think I would prefer to have the Atchison compete against two—divide the thing up and divide the facilities up—than against the one, because the influence then would be more nearly equalized.

Q. That is, if you consulted your own wishes, you would have the Central and the Southern divided into two railroads, would you?

A. From the Atchison standpoint I think that it would be better for the Atchison to have them divided.

2014 Q. To have them divided?

A. I think that we would have a better chance to compete with the two than we would with the one; that is, our influence would be nearer equal to theirs.

Q. You mean, taking it, for instance, in San Francisco, that you think the Atchison would get more business out of San Francisco if the Central independently was trying to get it, and the Southern independently was trying to get it, than it gets now when the Southern alone is trying to get it, do you?

A. Here is what I have in mind—it is not the man who goes and solicits the freight; that is not the way the bulk of the freight is

secured. Of course you have got to have the solicitor, and he h
to go around and see your patrons, and has to find out all t
troubles; but there is something else: If an industry is located
your rails, and you are serving all of California with your trac
that industry can ship anywhere in California over your rails;
does not have to switch the car to some other line, and you hav
very considerable influence on that industry. If there are any n
industries to be located, they are likely to choose the line w
2015 the greatest mileage. It is better for them to be located
the line that has the greatest mileage, that serves the m
points. That is what we ran up against in California, and it w
a very difficult thing for us to overcome, especially in the San J
quin Valley, in trying to get industries located upon our tra
there, because the Southern Pacific Company serves all of Califor
while we only serve part of it.

Q. Would you generalize to the point of saying that gener
you would prefer to have two solicitors competing against your
for the business, rather than having one competing against your o

A. I would not say that generally. It depends altogether on j
the traffic involved, and just the influence of the man. If the tra
was free, where it could go to one just as conveniently and jus
cheaply to the other, the solicitor would probably have some in
ence in securing the routing; and maybe if you had two, getti
around more frequently than one could, it might secure additio
business in that way; but the great big, large business of the car
is from the manufacturing institutions that are located on th
rails.

2016 Q. If the Central Pacific were separate from the South
it would greatly increase its disposition to throw out
rails to reach new business, would it not?

A. It might; yes.

Q. You would expect that it would, would you not?

A. I should think so; yes.

Q. That would tend to increase competition by that much?

A. Well, it might.

Q. Don't you think it would?

A. It perhaps would, to a certain extent; but not in any seri
way, so long as the lines that are there to-day are actively compet
and have a capacity to carry all the business and carry it satisfa
torily; then, I do not think the building of any additional lin
going to increase competition to any extent, where the shipper
going to be benefited or where the public is going to be benefited.
do not see how anything would come out of that.

Q. The presence of the Atchison in San Francisco has not only in what it has given itself but in the effect upon competition tremendously increased the service to the public of the railroads in California, has it not?

A. It has helped.

2017 Q. In all probability it not only has given the better service that it has given itself, but also has been influential in causing the Southern Pacific to give equally better service?

A. Well, that may be. The Southern Pacific always gave very good service over their Central Pacific line. Their passenger service I judge them by more than anything else. That is my recollection.

Here is what I have in my mind, however, about the competition: That the Atchison can furnish good service, and has furnished first-class service, and the Southern Pacific have got to furnish equally as good service to compete successfully against them.

Now, both of them together have not got, neither one of them has got, all the business they can handle. They could handle considerably more and give just as good service on it. I say putting another line in, or adding new feeders, new rails to reach these same points, where the volume of business from those points is not sufficient to supply up to a reasonable capacity, the rails that are already there, would not get any new industries. The industries are pretty well developed in there, until the State grows a little more in production.

2018 Q. The Atchison has practically no feeders or branches north of Bakersfield, has it?

A. Yes; it has a line from Crocker around through Tulare and Visalia.

Q. Has it any other?

A. Its rails reach the very best part of the San Joaquin Valley. I do not know of anywhere else in the valley that I would recommend the Atchison to go to-day with its rails.

Q. Don't you see you have not quite answered my question, Mr. Chambers? I simply asked—not whether it was wise for it to have any new feeders, or many of the other questions that might arise, but the simple question whether, with that one exception, it has any branches.

A. Yes; it has one out from Reedley, which leads up to Piedra. It has a branch line from Cutler down through Exeter, and is building from Exeter to Lindsay now.

Q. Has it any others?

A. That is all; except its joint ownership of the Sunset Route running from Bakersfield west.

Q. You do not mean "joint ownership", do you? You mean joint operating arrangement, do you not?

2019 A. No; joint ownership of the Sunset Route—joint own
ship with the Southern Pacific of the line that runs out i
the oil fields from Bakersfield.

Q. Oh, I beg your pardon.

A. There is another one leading out from Laton to Lanare. It
only a short line.

Q. With the exception of the branch lines that you have m
tioned, and those points which are reached by the Atchison's o
rails, the Atchison does not get much transcontinental freight
cept that which it can influence from the east through the consign
there, does it?

A. You mean off the Southern Pacific rails?

Q. Yes.

A. Well, we get a considerable amount of business from poi
exclusively on the Southern Pacific line right along, to various de
nations; some to western points, some to the eastern points.

As I said before, that business we get principally through
consignees. We get some through the consignors, but the princi
part of it, the majority of that business, we work through the c
signees and through our connections.

Q. With the exception of those places in Califor
2020 which you touch, and what you can influence through the e
ern consignees, everything north of the Tehachapi which
going to the eastern part of the country is going to go over eit
the Sunset Route or over the Ogden route, is it not?

A. Yes. We have connections independent of the Southern Pac
in northern California. We have the Central California Tracti
Company, running from Stockton to Sacramento; we have the O
land & Antioch Electric line, running from Oakland to Sacrame
crossing the river near Bay Point; we have the Northern Elect
Railroad, running north from Sacramento, that connects with
Central California Traction Company at Sacramento.

Q. How far up does that go?

A. It runs up to Chico, the Marysville territory, and runs over
Hamilton. Of course we have the half ownership in the Northwe
ern Pacific, which runs from San Francisco up to Eureka.

Q. This competition of the Atchison has been present since Ju
1899?

A. Yes, sir.

Q. When the Union Pacific acquired control of the South
2021 Pacific, the presence of the Atchison competition just as m
necessitated the keeping up of good service over the Cent
and Union Pacific as it does now?

A. It did; yes.

Q. So that all you have said about the effect of the Southern controlling the Central, or of a division between them, was equally applicable to the so-called merger between the Union and the Southern?

A. In so far as keeping up the service to compete with the Atchison was concerned; yes, that is true. In fact, it is necessary for the line clear through from California to Chicago. The different lines that form the through route all keep their service up to the standard so as to make as good time as the Atchison does.

Q. That is, so far as the effect upon the benefits to the community, so far as the effect upon the competition is concerned, you would make no distinction between the joint control of the Union and the Sunset and the joint control of the Central and the Sunset?

A. No; I would make no distinction.

Q. Except that, of course, the Central is in a more powerful position than the Union to influence California business?

2022 A. Yes, sir; it is.

Q. Going back to the ancient contract that the Atchison had with the Southern for division of rates north of Mojave before 1899, just what did you mean by the expression that you thought Sacramento was the terminal or was a terminal under that arrangement?

A. Well, originally the joint rates applied from certain specified points in California. They were known as terminals. As to the business that originated beyond the terminal the rate was made by adding the local rate, say to the terminal point, and then the joint rate from the terminal point on. I think that is what is referred to in the contract as the rate from the terminal point.

Q. That is what you had reference to?

A. Yes.

Q. You spoke of sending your cars up as far Sacramento. Did you mean that that was a distributing center for the cars that were going to be filled on the Southern Pacific lines and delivered to you?

A. The contract provided that the Southern Pacific should keep a supply of Atchison cars at Sacramento, San Jose, Fresno, and
2023 several other important loading points, San Francisco, so they might be furnished to shippers desiring to use the Atchison route conveniently and within a short time.

Q. The haulage was all done above Mojave by the Southern Pacific?

A. By the Southern Pacific. They either made up that supply of cars from what Atchison cars were on their own tracks or the Atchison delivered the empty cars to the Southern Pacific at Mojave and they moved them up north; sent them to these different stations.

Q. What was the name of the line north of Bakersfield which the Atchison obtained in 1898?

A. The San Francisco & San Joaquin Valley Railway.

Q. On obtaining that line the Atchison undertook at once a
sideration of building a line to connect its own line at Mojave
that line?

A. It did.

Q. And it was the fact that it was going to put through a li
its own which led to the making of the arrangement with the S
ern Pacific for the joint use of tracks instead?

A. I think, as well as I can recollect, that arrangement
2024 out of a suggestion of Mr. Ripley, president of the Sant
road, to Mr. H. E. Huntington, I think. We had survey
line over the mountain from Mojave, via what is known as the T
Pass, and the estimated cost was something like five million do
There was no traffic on it whatever, and none to be secured. It
right through the rocks, the mountains, and there was very
traffic on the Southern Pacific line between Mojave and Bakers

Mr. Ripley made the suggestion that that line could serve us
that it was practically a bridge, anyhow, and that by strengthe
it, and by building some more side tracks, it could be put in sha
handle the business satisfactorily of both companies, and we w
save the investment, or more than half of the investment, at
that would be necessary to build our own line through there.

Q. And Mr. Ripley called that contemplated surveyed line to
attention of the Southern Pacific?

A. I think they knew about it; yes. The surveyors were in
field there for quite a long time, so they knew it. That is my r
lection of how it came about.

Q. The company was incorporated for the construction of that

A. It was; yes.

2025 Q. If the Central Pacific and the Southern Pacific were o
ated separately, the natural, business-like thing to do woul
for them to arrange for some joint use of the terminals at com
points and for the use of those pieces of track essential to t
through routings, would it not?

A. It would; yes.

Q. It is the kind of thing that is done more or less by railroads
arately owned, is it not?

A. That would be a little bit different, perhaps, from any of
arrangements with which I am familiar. It is usual for qui
length, where joint operations are put into effect.

Q. You mean for quite a length of track?

A. Yes. Of course, in the terminals it is frequently done; that
terminals are operated by two companies, or more, that are o
peting under a joint management.

Q. If these present terminals were jointly operated, would they be adequate for the business to be expected over the two roads as they now are?

A. I think practically they would be. There perhaps would be some additional cost to provide things that might be necessary
2026 where two competing lines are together in a terminal.

Q. The difficulty, so far as intrastate business is concerned, of a split haul, would be the same difficulty that is experienced to-day when a shipper is shipping from a point on the Central Pacific in California to a point on the Atchison in California, or vice versa?

A. That is correct.

Q. In those places that the Atchison touches it is not possible that a division between the Central and the Southern Pacific would have the effect of increasing the rate at present prevailing, is it?

A. That might be perhaps true as to traffic that the Atchison would serve both the point of origin and the point of destination; in other words, have the through rate published.

Q. And the same would be true of those points where the Western Pacific serves both?

A. Yes.

Q. Or where the Atchison and the Western Pacific together serve both?

A. That is true. There is no general system of joint rates
2027 between the Atchison and the Southern Pacific in California. There is to some points where there is a long haul for one or the other; but you take the general local business and it is largely governed by the combinations—that is, the rate of each carrier.

Q. You mean a combination of the locals?

A. A combination of the local rates. I can not see how a different rule could be applied to the Central and Southern Pacific than is applied now to the Atchison and Southern Pacific on similar business; where we haul a short distance the rate per ton per mile is very much greater than it is for the longer distance. You add two short hauls together, of two separate carriers, and the total rate is very much greater than the same mileage on a single line.

Q. If the Atchison and the Southern Pacific should enter into joint operation, it would have the effect, I take it, then, to materially reduce the local rates in California, would it not, between points at least that require the two services?

A. No; the rates in California, in northern California especially, particularly in the San Joaquin Valley, have all been fixed by the California State commission, and they fix a basis for a two-
2028 line haul and for a single-line haul. We are entitled to receive those rates, whether the publication is a joint rate or whether

it is just on the combination of the local rates over the junc point.

Q. Perhaps I did not make quite clear what I had in mind. I supposing that the Atchison and the Southern Pacific should am gamate, so that all the Atchison and Southern Pacific lines were erated by one company; then, according to the system which suggest, the California commission would fix the rate in accorda with the single-line haul scheme, and that, if your theory was ried out, would greatly reduce the local rates in California betw points on the Atchison and points on the Southern Pacific?

A. It would reduce the rate wherever that consolidation mad continuous haul over the single line, where to-day it is a combinati over the junction point of the two lines.

Q. And that same principle applied to transcontinental ra would result that if all railroads in the country were operated one concern it would correspondingly reduce the rates?

A. No. The long-haul rates are all made on a different ba They are much lower than the combination of the local ra
2029 or the combination of the rates of any single carrier in t through line.

Q. You do not think it would make to such economy of operati as to lead to the reduction of rates if all railroads were one?

A. I think perhaps consolidation to a certain extent would redu the cost. The question is how far you should go for efficiency.

Q. That is, there comes a point in the making or permitting combinations where there are some other elements that come into t equation that counteract the economies in rates and expenses of th combination?

A. I think so.

Q. Were you familiar with the condition of the Central Paci Railroad prior to the merger with the Union Pacific in 1901?

A. I was in a general way.

Q. After that merger the condition of the Central Pacific was ve much improved, was it not?

A. The physical condition of the Central Pacific has been improv ing right along for years. I do not know whether it was more or le after that time.

Q. Do you remember any marked improvement betwe
2030 1890 and 1901 in the physical condition of the Central Paci Railroad?

A. I know it was improved considerably, but I could not say just t what extent.

Q. What do you recall by way of improvement during that period

A. I would say the condition of the track. That is what we judg it by—the condition of the roadbed and the rails.

Q. How about the equipment during that period?

A. I do not know as I could say as to that. They have been getting new equipment right along. I know the Central Pacific-Union Pacific route has been improving right along up to to-day.

Q. Was not your attention drawn to some rather marked improvements that were made after 1901?

A. Well, perhaps the work on the line was more extensive than it had been before. I think that is correct.

Q. Prior to 1901, or prior to 1899 anyway, the great energies of the Southern Pacific Company had been directed towards the development of the Sunset line, had they not?

031 A. I would not say that their roadbed east of Los Angeles via El Paso was ever in better condition than around by Ogden and Sacramento. My observation and recollection is that it was just about the same. If anything, I should say the Central Pacific was a little better. It had, perhaps, more need of a better roadbed than any other line, on account of the large passenger business it did.

Q. Did you know of the special equipment which was furnished for use over the Sunset line exclusively in the matter of rolling stock?

A. No.

Q. You never had that called to your attention?

A. No.

Q. You did know that the freight service over that line was very much better than over any other?

A. The freight service over which line?

Q. The Sunset line.

A. To New York it was better than any other.

Q. And that continued up to a period after 1901?

A. Yes. It continued until the all-rail lines had arranged their service so as to make it equal with the Sunset Route service.

032 Q. Do you know which of the all-rail lines initiated the effort to bring the Ogden route up to the level of the Sunset route in service?

A. Well, I think all of the lines; that is, the principal lines between the Atlantic seaboard and Chicago engaged in that business and improved their service. In fact, they had a very good service to Chicago. Their service was always very much better for the distance hauled, as long as I can recollect it, to Chicago than it was west of Chicago, and it is to-day.

Q. Was Mr. Stubbs one of the instigators of that improvement after 1901?

A. I do not know as he was.

Q. Can you think of any particular individuals in the railroad business that took a prominent part in that effort to make that

through all-rail service as good as the Southern Pacific had made it Sunset service?

A. As I said, the lines leading from here to Chicago, the Pennsylvania, the New York Central particularly, and the Erie, have an expedited merchandise service, a fast service; they have had that for years. They had that in at the time that we first began to make an effort to get seaboard business. They did not have to improve their service very much. The improvement had to be west of Chicago. They had made no great effort to secure the California traffic as against the Sunset Route, because the service could not be equalled under the arrangements they had with the western lines; but in the beginning, of course, it was not any very effective competition, because the western lines were not in condition to equal the service of the Sunset Route; but they gradually got better and improved their roadbed and improved their plant generally, and got into a position to render good service; and with that was the improvement in billing, the making of the through way bills and the prompt settlement of claims and avoiding transfers.

2033

Q. In what sort of shape are the Iowa lines?

A. The Iowa lines—most of the Iowa lines—are in very good shape; the trunk lines crossing Iowa, the North Western, the Milwaukee & St. Paul, and the Burlington.

Q. How long has that been so?

A. The North Western for a great many years and the Burlington has always been up in pretty good shape. The Milwaukee & St. Paul came on later.

Q. You mean a matter of twenty years or twenty-five years?

A. I should say that the North Western has been up in fairly good shape, comparatively, for twenty-five years. Of course it is in much better condition to-day than it was twenty-five years ago, compared with the condition of lines generally during the time.

2034

Q. The difficulties in bringing up the all-rail service into shape equal to the Sunset service were with the lines west of Omaha particularly?

A. West of Chicago. Well, west of Chicago, I would say.

Q. And that made it largely west of Omaha, did it not?

A. Yes; west of Omaha and west of the Colorado junctions; some of the lines connected through Colorado with the Denver & Rio Grande.

Q. How long has the Union Pacific been in good condition?

A. I could not say as to that. As long as I remember.

Q. Was the Union Pacific a first-rate road in 1887?

A. It was in very much better condition than the Atchison—that is what I judge it by—and the Atchison really had to be built up to the Union Pacific standard, and the Central Pacific.

Q. Take it from 1887 on, the Union Pacific, for its time, has always been a first-class road, has it not?

A. It has. The Ogden route has always given very good service. That has been my experience.

Q. Have you any idea what proportion of the Sunset freight between California and the Atlantic seaboard originates or is destined north of Tehachapi?

A. I have not; except, from my general knowledge, I would say the greater volume is north of Tehachapi.

Q. The reason that locomotives and freight cars and passenger cars can not move over the Sunset Route is because they require an all-rail route. Is that correct?

A. Locomotives usually move on their own wheels. It would be rather an odd matter to swing a locomotive onto the boat and then from the boat onto the rails again.

Q. And the same is true of the cars?

A. The cars are not readily transferred. There is great danger of damage if you transfer them. I should say that to bring them onto the boat and take them off again would be to go to much risk. They are bulky, besides, and I doubt whether the boats could handle them, on that account.

Q. And all the different classes of freight which you have mentioned as classes that can not be moved by the Sunset Route are those which it is either dangerous or impracticable to tranship from rail to boat or vice versa?

A. That is correct.

Q. And that is the only thing, barring perhaps some things that can not stand the heat of the South, that stands in the way of moving through freight over the Sunset Route?

A. That is correct.

Q. Do you happen to know whether there is any very heavy movement of explosives from the Pacific coast to the Atlantic?

A. There is not.

Q. How about the other way?

A. There is not a very heavy movement in either direction.

Redirect examination by Mr. HERRIN:

Q. Mr. Chambers, you were asked in cross-examination concerning the arrangement between the Atchison and the Southern Pacific by which there was joint use of the Southern Pacific track between Bakersfield and Mojave; and it was suggested that similar arrangements might be made between the Central Pacific and the Southern Pacific in case of separation of those lines. Do you think the joint arrangement of the track between Mojave and Bakers-

field presents any such case as would be presented by the separa
of the Central Pacific from the Southern?

A. No; it does not. There is practically no traffic on that line b
tween Bakersfield and Mojave; that is, there is none that origina
there to speak of except at Tehachapi, where there is some line.

Q. You used the illustration that it was practically a bridge acr
the mountain?

A. Yes.

Q. With but little, if any, local traffic between the two poi
Bakersfield and Mojave?

A. Yes; I had that in mind; that for a distance of 40 or 50 mi
if there is anything of that kind in there, the two lines might use it.

Q. Is that anything like the condition that would be met in t
case of the separation of the Central Pacific from the Southern a
making joint arrangements?

A. No, sir; it is not.

Q. In all your experience do you know of any case similar to t
separation proposed, of the Central Pacific from the South
2038 which has been accommodated by joint traffic arrangem
between the two companies?

A. No; I do not.

Q. You know that there are through passenger and freight tra
operated over these lines that pass from the Southern Pacific to t
Central, and from the Central to the Southern, both between S
Francisco and Portland and between San Francisco and Los Ange
do you not?

A. Yes.

Q. You also know there are a number of Southern Pacific bra
lines that are not connected with any line except the Central Pac
line?

A. Yes.

Q. Do you think it is practicable to make a joint arrangement f
the operation of those lines under separate ownership by the two co
panies which would maintain anything like the present service, wh
is effected by the Southern Pacific Company operating the li
itself?

A. As a whole, I would say it is not.

Q. It is not practicable?

A. No, sir.

Q. These joint arrangements are generally made concerni
2039 a single piece of track, are they not? Or do they combine
main line with all the branches, such as we have here?

A. They are usually made with a single piece of track, and for
considerable distance—enough distance to justify it on the basis o
saving in capital account.

Q. You said the Ogden route had always given good service. By hat you included the Central Pacific as a part of the Ogden route?

A. Yes, sir.

Q. As a matter of fact, as far as you know, has not the Central acific been maintained pari passu with the Union Pacific, and subantially in the same condition, as to efficiency, from the beginning?

A. That is my understanding, and that is my experience. I never eard of any difference between them.

Q. Has not generally the traffic over the Central Pacific and Union acific been of greater volume than the traffic over the Sunset line?

A. Yes, sir.

Q. Always, has it not?

A. Yes, sir.

040 Q. And has not the Central Pacific and Union Pacific track been maintained at a higher standard, as a rule, than the racks of the Sunset Route—heavier rail and otherwise better adapted or good service?

A. I would say yes; that is my general understanding, although I ave never heard much objection to either one.

Q. But, other things being equal, the care of maintenance is in proortion to the amount of traffic you have to handle over a line?

Mr. McClennen. The petitioner objects to that as leading and calling for an opinion and a multitude of figures that the witness can ot possibly have knowledge of, and which had better be shown from he accounts of the defendant.

(By request, the pending question was repeated by the reporter as bove recorded.)

The Witness. Yes, sir.

By Mr. Herrin:

Q. That is, your main lines are always maintained, or usually naintained, at a higher standard than the branch lines?

A. Yes, sir. The needs of a passenger service largely control in the building up of the roadbed and tracks; that is, the business 041 that is sensitive to the condition of the roadbed and the tracks. That is what I judge the Central and Union Pacific route by. That has always been the principal passenger route of the Southern Pacific Company.

Q. And it always has been the principal passenger route transcontinentally, really, leaving out, of course, the Atchison as a very formidable competitor?

A. Not very effective yet as to northern California.

Q. There is no doubt of the position and prestige of the Central-Union Pacific line as a passenger line—transcontinental?

A. No.

Q. You spoke of using the Northern Electric and the Califo Transportation Company and the Oakland, Antioch & Eastern connections. I suppose you mean you have traffic arrangements w those lines for the interchange of freight?

A. Yes; we have joint rates in effect.

Q. You have joint rates in effect which gives you those lines purposes of securing freight from the points reached by them?

A. From the points reached by them and in competition with Southern Pacific.

Q. In competition with the Southern Pacific?

2042 A. Yes; as to points reached by the Southern Pacific and electric lines.

Q. The Sunset line has always had, from its beginning, a consi able local business, has it not?

A. Yes.

Q. I mean a business reaching to the mines of Arizona, New M ico, and other local business originating in that territory, and also Texas?

A. Yes, sir.

Q. So that the projectors of that line probably had in view th local business as a part of the inducement to their building a li and did not confine themselves entirely to securing a line to re transcontinental business?

Mr. McCLENNEN. The petitioner objects to the question as leadi and as calling for the opinion of this witness as to the attitude the projectors of this road.

The WITNESS. I do not know what they had in mind, but it is fact that the line does have that business, and it is increasing.

By Mr. HERRIN:

Q. You know that at the time they built this line into Ar

2043 zona, Arizona was quite an active mining territory; there w exploration, and a good many mines were being operated that territory?

A. Yes. Southern Arizona was quite a mining territory. The was a good deal of mining in the territory.

Q. And therefore it furnished a market, naturally, for the pro ucts, the machinery, and other supplies, which could be supplie from California?

A. Lumber was the principal thing that came from there—mini timbers.

Q. It was a very important outlet then, giving a market for Ca fornia for these supplies that were being used largely in Arizona?

A. It helped California in that respect. What Arizona produc at that time—and afterwards, very largely, the bullion—went to th Atlantic seaboard to market.

Q. Yes.

A. And that has kept up until to-day.

Q. A large tonnage of that sort?

A. And an increasing tonnage.

Q. When the Atchison joined the Southern at Deming their business moved freely between those lines; there was an interchange of business, was there not, from the beginning?

2044 A. Yes.

Q. Did the Southern Pacific facilitate that interchange, so far as you know?

A. So far as I know they did; yes, sir.

Q. And before you had your rails in northern California you secured arrangements with the Southern Pacific Company which enabled you to reach the northern California points through traffic arrangements?

A. Yes.

Mr. HERRIN. I think that is all.

Recross-examination by Mr. MCCLENNEN:

Q. Mr. Chambers, one of the chief lines of the Southern Pacific Railroad which would be of importance for use in connection with the Central Pacific Railroad as an independent railroad is the Benicia cut-off, is it not [indicating on map]?

A. Yes, sir.

Q. One of the most important lines of the Central Pacific Railroad for the use of the Southern Pacific is the line to Tehama, north to the State line?

2045 A. I would say so; yes, sir.

Q. Those lines are both of them longer in extent than the section of the Southern Pacific line over which the Atchison now operates under the trackage arrangement you have?

A. One of them, I think; I have no doubt. The distance from Sacramento to San Francisco I think is perhaps about the same.

Q. Is it not about ninety miles from Sacramento to San Francisco by the Benicia cut-off?

A. Yes; I think it is. Ninety miles is considered the distance between San Francisco and Sacramento.

Q. What occur to you as the chief difficulties in the way of having the Central Pacific operate over the Benicia cut-off under a trackage agreement with the Southern Pacific?

A. Having just the right to run its trains over the track?

Q. Just the right to run its trains over the track, and not participate in the business?

A. Just the right to run its trains over the track?

Q. And not participate in the local business.

A. There is no serious difficulty in doing that, if they can arra
about the terminals.

2046 Q. Would there be any difficulty in making the arra
ment with the Central to use the line north from Tehama
its through business from Oregon to San Francisco?

A. I could not say whether there would be any serious diffic
in making the arrangements. So far as running their trains over
track is concerned, there would be no difficulty.

Q. Apart from these two lines I have mentioned, the Benicia
off and the line north from Tehama, what important piece of tr
is there that either road would need belonging to the other to
duct through operations with reasonable facility?

A. You mean through operations to certain points?

Q. Well, take, for instance, from San Francisco to all Or
points, the line from Tehama to the north boundary of the St
is the only line of the Central Pacific that the Southern Pacific wo
need?

A. That is all they would need, under the conditions that
say.

Q. Now, take it from San Francisco to Los Angeles, either d
the coast line or down the valley line. The Southern Pac

2047 would need no rails of the Central Pacific, would it?

A. No; they could reach over there through Los Angeles.

Q. There are certain branches belonging to the Southern Pac
off-shooting from the Central Pacific in the San Joaquin Val
You see them noted here on the map in red. The Central Pacific
shown by the darker lines. Those branches are all of them relati
short branches, are they not?

A. Yes.

Q. In the natural order of things, it would be a reasonable busi
arrangement to have those branches either transferred to the Cent
Pacific or operated directly by the Central Pacific under some app
priate arrangement, would it not?

A. I do not know whether I just get what you are after. T
difficulty of separating those two and the objection that I se
separating them in the San Joaquin Valley is that you would
arrange their train service. Whereas it is now through service fr
Bakersfield; you would go around on what you might call bra
lines, going around through Portersville and up to Fresno, wh
you now perform the local service with through trains. T

2048 trains are routed so as to run the farthest distance a
include just as many stations as is reasonably possible, s
when you disarrange that service it is pretty hard to figure out j
what you have got to do to give service from one part of the va

o the other. I could not tell without going in and analyzing. They have service between San Francisco and Fresno that comes down he east side line; and then they have service from Fresno and Bakersfield, that goes down the west side line or the east side line; nd they have a complete service, through route and complete serv-ce. You see that serves all these branch lines up through here [indicating on map]. Starting down at Bakersfield, they can run a train that will serve the east and west side lines there between Fresno and San Francisco.

Q. The train you have described coming around the west side, around through Bakersfield, travels all the way over Southern Pa-cific rails, does it not?

A. Yes. It would help out on this service here from Fresno to San Francisco. It gives you another train from Fresno to San Francisco.

Q. But it is all on Southern Pacific track?

A. Yes; it would be that way. But to-day the most impor-2049 tant service, I think, between northern and southern California is operated over the Central Pacific track.

Mr. HERRIN. That is right.

By Mr. MCCLENNEN:

Q. From what point to what point?

A. From Lathrop down to Goshen Junction.

Q. So far as through service is concerned, the Southern Pacific has another line all the way from Goshen Junction into San Fran-cisco, has it not; and the only thing that would not be served by that would be local service to the Central Pacific track between Lathrop and Goshen Junction?

A. Well, the Southern Pacific's service between Bakersville and Stockton would be, I think, impaired. They could not make the same time around by this line that they get over this through line.

Q. Between Bakersfield and Stockton?

A. Yes; or between Bakersfield and San Francisco the service would be impaired.

Q. Could they not make the same time between Bakersfield and San Francisco?

A. I think not, because they would have to go around this way [indicating on map].

Q. They could go around——

2050 A. They would have to go around here. Their important trains do not run around that way—their fast trains.

Q. The only part that they would be excluded from would be from Goshen Junction, from Fresno, Merced, and Lathrop; is not that true?

A. That is their best time in the valley north of Bakersfield.

Q. And they are natural Central Pacific points as the trac laid?

A. Yes; and then these others are built out from there; feed really, to that line, or connecting these east and west side lines those principal towns in the valley.

Q. The line from Tulare to Visalia, to Fresno, and up the side of the valley is a complete line in itself?

A. That is a complete line, but that is not the important line, the Southern Pacific to-day is moving through the San Joa Valley.

Q. That is, you mean that the Central Pacific line enjoys the c shipping points in that valley?

A. So far as it goes, yes; north of Bakersfield.

Q. In making your answer about what was practicable on separation of these roads were you aware of the contr

2051 that was made between the Union Pacific and the Cen Pacific and the Southern Pacific in February, 1913?

A. In a general way I was aware of that.

Q. Did you know what provision was made in that agreement the joint use of the terminals?

A. In a general way; yes.

Q. And for the use of the indispensable lines for through servi

A. As to that, in a general way, I did; yes, sir.

Q. Did you know of anything from a railroad standpoint th was impracticable about such an agreement?

A. Well, I understand there was a great portion of it that to be worked out, that was not complete; all the details had been agreed to.

Q. In the part that was complete, did you know of there be anything that was not practicable as a railroad matter, in the p that they had reached?

A. As to the terminals?

Q. Yes.

A. And the use of lines from Sacramento to San Francisco Benicia?

Q. Yes.

A. It seemed to me that would work out all right.

2052 By Mr. HERRIN:

Q. There is one important matter that differentiates th case from the Tehachapi main line, which is that there is local tra on all these lines of the Central Pacific and Southern Pacific, there not?

A. Yes.

Mr. McCLENNEN. The petitioner objects to the question as leading.

By Mr. HERRIN:

Q. And one of the things that facilitated your agreement over the Tehachapi was that there was substantially no local traffic?

A. Yes. When I answered as to the line between Sacramento and San Francisco I understood the Central Pacific would simply have running rights for their trains over that line, and that they were not to participate in the traffic that originated on that line.

Q. But if they were to make an agreement to run the trains between California and Oregon over the Central Pacific from, say, Tehama to the Oregon line, you have rather important communities and towns intervening those two points which require railroad service?

2053 A. Yes.

Q. And if you deny them the use of these through trains which pass over that line, you have lessened very much the service that you can give them on the local lines?

A. That is what I say as to the whole proposition.

Q. Yes.

A. That you can not separate those two that have been built up as one, without interrupting the service very seriously, and without increasing the cost of doing the business and without increasing the rates.

Q. Another very important feature of the trains between Los Angeles and San Francisco: The Southern Pacific at present gives a local service to the important points in the San Joaquin Valley, such as Madera and Fresno, by these through trains, does it not?

A. Yes.

Q. If you took the through trains off of that line, you would practically sidetrack those important points and put them on a local line?

A. You would have substituted local service for the through service.

2054 Mr. McCLENNEN. The petitioner objects to the question as leading and as overlooking the fact that the sidetrack might be the Atchison.

By Mr. HERRIN:

Q. What was the answer?

A. The local service would have to be substituted on these branch lines or those parallel lines on the east and west of the San Joaquin Valley for the through service that had served them locally.

Q. And that would put those towns on practically a local service, an inferior service to what they get now?

A. Some of them.

Q. As compared with what they get now with the through serv
A. Yes.
Q. Then, again, the freight that is moved from the South
Pacific line south to Tehama down to Davis, to points in the S
Joaquin Valley, the Southern Pacific lines in the San Joaquin Val
now readily moves, as you understand, via the Central Pacific int
vening lines, but after the separation how could that move with
sending it down to Port Costa, ferrying it there and sending it do
the Southern Pacific line?
2055 A. It could not.
Mr. McCLENNEN. The petitioner objects to the question
the ground that it is leading.
The WITNESS. That is the only way it could be moved, over
Southern Pacific rails.

By Mr. HERRIN:

Q. What would you say about that service as to its being as g
as that now given by the use of the Central Pacific lines between th
points?
A. I assume that it is a longer route, from my own knowledge,
that it would take a little longer time to move the traffic.
Q. If it was longer, would not that be objectionable?
A. Yes; it would.
Mr. HERRIN. That is all.

By Mr. McCLENNEN:

Q. Do I understand you to say that these through trains to L
Angeles do all the local business in the valley?
A. Not all. They do a good share of the local business. You c
take a train at Los Angeles and go through to almost any point in t
San Joaquin Valley on the Southern Pacific lines to-day. Th
2056 is, you can go via Porterville, take out of Bakersfield—that i
on the east side line—and go to Fresno and go up the w
side line from Fresno or by the other line via Goshen up to Fres
and up to Lathrop.
Q. That is to say, one of the local trains now runs from Porterv
down to Fresno and up the west side line [indicating on map]?
A. I think that goes up the west side line. That is my recolle
tion. I know it does run through Porterville and up to Exeter a
up to Fresno.
Q. Anybody wishing to go from Los Angeles to a point on th
Central Pacific Railroad would have to leave that train at Fresno
some other common point and take the Central Pacific train to th
station on the Central Pacific?
A. Yes. The Southern Pacific aims to serve those parallel lines
the San Joaquin Valley largely with a through service between L

Angeles and San Francisco, and between Bakersfield and San Francisco; so that they operate the trains, some of them over the west side line and then through Fresno, and they switch onto the east side line and go down to Bakersfield.

Q. Then they run some up the coast line, do they not?

2057 A. Some up the coast line via Santa Barbara to Los Angeles.

Q. Yes.

A. Yes.

Q. And you say they use these through trains for the local service?

A. They use them largely. They have a number of local trains, in addition, as there is a heavy traffic between Los Angeles and lower points in the San Joaquin Valley, up to and including Fresno in both directions.

Q. Is there much traffic from Los Angeles to the points in the San Joaquin Valley above Fresno?

A. No.

Mr. McClennen. That is all.

(Witness excused.)

(Whereupon, an adjournment was taken until to-morrow, Tuesday, April 20, 1915, at eleven o'clock a. m.)

2058 TWENTY-FIFTH DAY.

Room 2506, 165 Broadway,
New York City, Tuesday, April 20, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2059 John W. Griggs was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. Herrin:

Q. General Griggs, you were Attorney General of the United States in the year 1899, were you?

A. Yes.

Q. When did you take that office?

A. The latter part of January, 1898. I think my commission is dated January 31, 1898.

Q. Who preceded you?

A. Joseph McKenna, now Justice of the Supreme Court of the United States.

Q. How long did you hold the office of Attorney General?

A. Until April 1, 1901, having been reappointed on March 4, 1901.

Q. And President McKinley was President during your incumbency as Attorney General?

A. Yes.

Q. Do you recall having anything to do with the settlement of the indebtedness of the Central Pacific Railroad Company to the United States of America during your term of office?

2060

A. Yes.

Q. Do you recall signing the agreement that was made of date February 1, 1899, between the United States of America, acting by the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, of the first part, and the Central Pacific Railroad Company, of the second part, and Messrs. Speyer & Company, bankers, of New York, of the third part?

A. I remember that.

Q. Did you sign that agreement as Attorney General?

A. Yes.

Q. Do you recall the negotiations, if any, which led up to that agreement?

A. Yes; I recall, I think, the main facts connected with the negotiations. Probably a great many of the minor details have escaped my memory.

Q. About how long were those negotiations in progress, as far as you can recall?

A. I should say from a period in 1898, probably the middle of the year, until the agreement of February 1, 1899, was consummated and executed.

2061

Q. You will recall that the provision of law which authorized the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General to act as a commission was in the appropriation bill approved July 7, 1898?

A. Yes.

Q. These negotiations, therefore, began after that time?

A. I am not quite sure about that. I am not quite certain but what there were negotiations before that; because the subject of the enforcement of the Government liens against the Pacific railroads generally, including the Union Pacific, had been in the mind and in the hands of the Department of Justice for a considerable period, even before I came there; and I have some recollection that my first interview with Mr. Speyer antedated the date of that act of July 7, 1898; but that is vague.

Q. With whom did these negotiations occur, so far as you remember? What parties participated in them?

A. Mostly, so far as I took personal part in them, with James Speyer, of Speyer & Company, of New York; and I recall now one occasion when the matter was discussed by Mr. Huntington,
2062 who, I think, was then president of the Southern Pacific Railroad; I think it was Collis P. Huntington.

Q. Yes.

A. At the Cabinet Room, in the presence of Mr. McKinley and myself.

Q. That is President McKinley?

A. President McKinley. But the greater part of the negotiations that I remember were conducted through James Speyer.

Q. Were there many of those interviews?

A. Oh, I can not recall definitely, but the matter extended over a considerable time, and just how many times I conferred with Mr. Speyer or conferred with my associates, the Secretary of the Treasury, or with the President I do not know; I can not say. The matter was one that was deemed of great importance to the Government at that time, and when I first went into the department the President directed me to give immediate attention to the Pacific Railroad debts and to take every means that I thought necessary and spend as much money as I needed and do whatever was necessary to enforce the Government liens.

Q. I call your attention to the fact, which is in evidence in
2063 the case, that in the committee reports of both Houses of Congress, bearing date in the year 1896, these committees had recommended extensions for the payment of this indebtedness on the following terms——

Mr. McCLENNEN. Which one are you reading from, Mr. Herrin?

Mr. HERRIN. I am reading, really, from the answer, which is a correct summary of the reports which were put in evidence, and much briefer than the reports.

Mr. BLAIR. That is the report of 1896.

Mr. HERRIN. That the company (the Central Pacific Railroad) was to pay "$365,000 per annum on account of principal for ten years from 1898 to 1908; $550,000 per annum for ten years from 1908 to 1918; and $750,000 per annum each year thereafter until the entire debt should be extinguished."

Besides those payments they were, of course, to pay interest at two per cent per annum on deferred payments.

In your duties as Attorney General I suppose you were familiar with the reports or had some knowledge of them?

The WITNESS. I remember when the matters were especially put in my personal charge at the department, getting all the reports,

2064 acts of Congress, and other public matters relating to the s
ject, both of the Union Pacific and of the Central Pacific a
Western Pacific and familiarizing myself with them. I can not t
you now what I ascertained, because I have forgotten.

By Mr. HERRIN:

Q. This act of Congress which authorized this commission
which you were one member to settle this debt provided that y
should not allow longer than ten years for the payment of t
debt. That you recall?

A. Oh, yes.

Q. And that you were also required to collect the full amount
the debt without any abatement?

A. Yes.

Q. And that you should exact at least three per cent per ann
interest?

A. Yes.

Q. Do you recall that this act also provided that you were
take such security as "to said commission may seem expedient"?

A. Yes.

Q. These negotiations which you have mentioned resulted
2065 the agreement of February 1st, to which I have called your
tention?

A. It did. I think I ought to say, Mr. Herrin, referring to th
act of July 7, 1898, that I have a strong impression that that s
or the provision of the appropriation act, was drawn and passed
fit a tentative agreement which was the result of negotiation that h
already been had.

Q. Very likely.

A. I have a strong impression to that effect, but I can not be qu
sure of it.

Q. Do you know whether or not that agreement was carried out?

A. It was.

Q. Were the bonds of the Central Pacific Railroad Company
its successor deposited in the amount required by the agreement wi
the Secretary of the Treasury?

A. You mean the four per cent refunding bonds?

Q. Yes.

A. I was informed so by the Secretary of the Treasury at th
time, he being the custodian. They were not deposited with me.

Q. Did you thereafter make a report to Congress, as you reca
which referred to this subject?

2066 A. I think I did in my annual report, and possibly a spec
report, but I do not recall.

Q. Have you a copy of that report with you?

A. No; I have not.

Mr. McCLENNEN. I have a copy of that report here, I think.

Mr. HERRIN. I have the report. I have it before me.

By Mr. HERRIN:

Q. I call your attention to the report of the Attorney General dated "Department of Justice, Washington, D. C., November 30, 1899," which is signed by John W. Griggs, Attorney General, in the printed volume issued by the Government, and I refer especially to that part of the report which is upon the subject of "Pacific Railroad matters," at page 30, and extending down to the top of page 33.

A. (After examining document.) Yes; I have read it.

Q. That is the report, is it?

A. Yes, sir.

Mr. HERRIN. I wish to offer in evidence that part of the report of the Attorney General which is under the head of "Pacific Railroad matters", on page 30, down to the heading "Judicial salaries",
2067 on page 33. I am willing to exclude the part of it that refers to the Union Pacific, but it does not make much difference; it is not very long, and it had just as well all go in, I think; but there is a clause at the end which refers to both.

Mr. McCLENNEN (after examination of report). I think it would be just as convenient to put the whole of it in.

Mr. HERRIN. The reporter may copy the extract from the report, and it may be marked as Exhibit No. 53. The extract to be copied begins on page 30, with the heading "Pacific Railroad matters", and runs down to page 33, ending just above the heading "Judicial salaries". Mr. McClennen, is that the report you have?

Mr. McCLENNEN. No; the one I have is earlier.

The WITNESS. Did I make a special report, or was it the Secretary of the Treasury?

Mr. McCLENNEN. You made a report as commissioner to your authorizing body; not as Attorney General.

The WITNESS. I had forgotten it.

(The extract referred to was marked "Defendants' Exhibit (Griggs) No. 53, April 20, 1915", and will be found in the volume of defendants' exhibits.)

2068 By Mr. HERRIN:

Q. In this report which we have just introduced in evidence it is stated that on October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. That, I suppose, fixes the date when these bonds were received by the Treasury Department?

A. I suppose that is correct.

Q. I call your attention to the form of the bonds that were d
posited, and particularly to the guarantee of the Southern Pac
Company printed upon those bonds, and ask you if you know an
thing about that guarantee.

A. (After examining bond.) That is the form of the guaran
that was approved by the commission—I assume approved by the
At any rate, the bonds were accepted with that guaranty.

Q. And you had to do in your negotiations with the form
guaranty that should be given to the Southern Pacific Company?

A. I do not remember. I have no doubt I had to approve
2069 but I do not remember. I will say with respect to that th
the agreement that we made provided that the bonds deposi
as security should be such bonds as were described in the plan
readjustment or settlement put out by Speyer & Company, and th
plan described those bonds as guaranteed by the Southern Pac
Railroad, as I recollect.

Q. You saw that plan of readjustment, did you?

A. Oh, I have no doubt I did.

Q. The agreement of February 1st recites that contracts wh
had been made with stockholders and bondholders prior to th
time had been furnished to the Government of the United States?

A. Yes.

Q. And thereafter, as those contracts were completed and of la
date, were you not furnished with similar contracts?

A. I have no doubt I was, but I can not recall that.

Q. In this negotiation, was it conducted in part or at all b
written correspondence?

A. I do not think so.

Q. Generally by personal interviews?

A. By personal interviews.

2070 Q. But if there was any correspondence up that subject
where would that correspondence be?

A. If it were from my department, it would be in the Departme
of Justice in Washington.

Q. You did not take away with you any of the official corr
spondence?

A. Oh, no.

Q. You left your files intact?

A. Yes.

Q. When you left the office?

A. Yes.

Q. In your office in Washington?

A. Yes.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Your recollection places your meeting Mr. Huntington on this matter as on one occasion only?

A. That is all I recall.

Q. Have you any recollection of what took place at that interview?

A. No, except I have a recollection that it related to the sub-
2071 ject of the settlement of this Southern Pacific and Western Pacific debt.

Q. You are using "Western Pacific" to describe the old Western Pacific railroad corporation which was one of the bond-aided roads in California?

A. My recollection is that the Central Pacific and the Western Pacific were in some way jointly involved in this; just how I do not recall. You will see that the agreement we made relates to the Central Pacific and Western Pacific.

Q. Could you place at all at what stage of the negotiations your interview with Mr. Huntington took place?

A. No.

Q. In the main, your dealings were with James Speyer exclusively?

A. Yes.

Q. Were they conducted by you alone, or by all the commissioners together?

A. I think mostly by myself, and my recollection is that I, after discussing with him the details, reported them to Mr. Gage. I do not recall that Mr. Bliss, the other commissioner, took any part in
it except to agree to what Mr. Gage and myself and the Presi-
2072 dent, who took a somewhat active interest in the matter, did.

Q. Did the President, within your knowledge, meet the other parties except on the one occasion that you speak of?

A. I think I saw the President with Mr. Speyer. I have quite a distinct recollection of seeing the President with Mr. Speyer.

Q. Was there anything to indicate that the President ever took any part in the negotiations out of your presence?

A. Only what he said.

Q. Well, if it is not going too far, did he say anything indicating that he had conducted any negotiations?

A. Yes; he spoke of having conferred with Mr. Huntington and having seen him about the matter.

Q. At some time other than the one occasion you saw him?

A. At some time other than the one occasion when I saw him.

Q. Did he inform you as to what had passed between him and Mr. Huntington on that occasion?

A. I do not recall.

Q. Mr. Elihu Root had something to do with this matter?

A. Yes; Mr. Root was employed by me under authority
2073 I had from the President to employ special counsel, to prep
a bill of complaint to be filed, to foreclose the Governm
lien, and he did prepare such a bill, my recollection is, and submi
it to me; but it was never filed, because the settlement interve
before we got to that point.

I may also say, if it is of any interest to you, that the commi
represented by Speyer & Company refunded to the Government
fee that they had paid him as a part of the settlement, which is
mentioned in the papers. I got that out of them.

Q. Was the drafting of that foreclosure bill before the passing
the act of July 7, 1898?

A. I should think that Mr. Root had been employed before t
but whether the bill was actually drafted prior to that, I can
tell.

Q. Did Mr. Root take any part in the negotiations or the set
ment?

A. No; I do not think he did.

Q. Did he take any part in committing those negotiations to l
form?

A. I do not think he did.

Q. By whom was the agreement of February 1, 1899, draft
2074 A. That I do not remember; but I think it was drafted
somebody acting for Speyer & Company, and submitted to
for approval or emendation.

Q. And did you personally consider the draft?

A. I can only say I must have done so; but I have no recollecti

Q. Can you say that it embodied all the agreements that had b
made relative to the settlement?

A. I think it did.

Q. When you stated your recollection of what the agreement ca
for with reference to the character of bond to be delivered, you w
merely stating your recollection of that written instrument?

A. Yes.

Q. Not intending to state any agreement dehors that instrume

A. That instrument was the embodiment of agreements arrived
previously.

Q. And embodied all of them?

A. As far as I know; yes. That is to say, we undoubtedly thou
that it carried out the object of the Government in collecting its d
or securing its payment, as we had arranged to have it secur
2075 Q. I call your attention to House of Representatives Do
ment 238, 55th Congress, third session, entitled "Indebted
of the Central Pacific and Western Pacific Railroads. Report of

commissioners appointed to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific Railroads, February 20, 1899. Referred to Committee on Pacific Railroads," and being a report dated February 15, 1899.

Before questioning you on it, I will put it in evidence as petitioner's exhibit No. 77.

(The document referred to was marked "Petitioner's Exhibit (Griggs) No. 77, April 20, 1915", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It is stipulated that in copying this exhibit the agreement contained in it need not be recopied, it being a copy of defendants' Exhibit A of the answer.

Following the agreement, however, there should be copied the acknowledgment clause, which is not copied in the answer.

By Mr. McCLENNEN:

Q. The particular thing at this moment to which I wished
2076 to call your attention was that this report and the agreement itself contains no reference to the Southern Pacific Company or to any guaranty to be made by the Southern Pacific Company.

Having that called to your attention, is it not the fact that the guaranty of the Southern Pacific Company was not a matter which the Government exacted?

A. I would have to answer that no. I will explain that. My recollection is that the guaranty of the Southern Pacific on those bonds was one of the agreed parts of the negotiation, the Government relying upon that as an additional security or guaranty to see that their debt would be paid, either by the new corporation that was to be formed and to issue these bonds, or by the guarantor, the Southern Pacific Company.

Q. If your recollection were not at fault in that respect, how is it possible that you should have passed, as the final agreement, one which did not, by reference or otherwise, call for any such guaranty, but merely called for first mortgage bonds?

A. I do not think we did. The agreement, as I recall, of February , 1899, provided that we were to receive as collateral security such
2077 bonds as were described in the Speyer prospectus; and in that prospectus, as I understand the agreement, whatever it was, the Southern Pacific had agreed to guarantee those refunding fours.

Q. Will you not look through the agreement itself, seeing that your recollection has played you false with reference to that particular matter, and that the agreement does not contain that provision, but merely provides that the bonds that you shall receive as security

shall be first-lien bonds, part of an issue not exceeding one hund million dollars par value?

Mr. HERRIN. I call your attention, Mr. Griggs, to the third fourth paragraphs of the agreement; the fourth especially.

The WITNESS. Yes. The third paragraph of the agreement vides that the payment of the principal and interest of the notes s be secured by the pledge of first refunding mortgage four per gold bonds, issued by the Central Pacific Railroad Company o successor company having title to the aforesaid railroads, such b to be part of an issue hereinafter described, not exceeding one h dred million dollars in all.

Then, on the next page, it describes said bonds are to run
2078 at least forty-five years, to bear interest at the rate of per cent per annum, payable semiannually, and to be pay in gold coin, and are to be of an issue not exceeding one hundred lion dollars, secured by mortgage upon all the railroads, equipm and terminals now owned by the Central Pacific Railroad, and s be a first lien, and so forth.

Now, my understanding of that was, Speyer & Company bein party to this agreement, the deposit of the various underlying b and stocks and so forth being recited, the agreement of reorgan tion or scheme or prospectus being in our possession, showing t these bonds were to be guaranteed by the Southern Pacific, th were the bonds that we meant when we described the four per refunding bonds.

I should say our assumption was that the description there rel to the bonds that were described in that agreement, and it was part of the one scheme, which we knew at the time from negotiati with Mr. Huntington and from familiarity with that document, w actually being put through by the efforts and on the responsibi of the Southern Pacific.

By Mr. MCCLENNEN:

Q. Perhaps I have not made clear to you the distinct
2079 which I have in my mind. It is this, not that you not have known the probability that the Southern Pacific C pany was going to guarantee the bonds which Speyer & Comp were going to put out as part of the reorganization scheme, but t the insistence of the Government upon such a guaranty was n prerequisite to the acceptance by the Government of the bonds.

A. Well, speaking of the matter as it appears in the contract am not prepared to argue whether we would have been entitled reject bonds that were offered as security without the guaranty the Southern Pacific; but, as a matter of fact, that was in the templation of the parties when the agreement was signed; I sho say that nothing short of that would be acceptable.

Q. Having in mind the infirmities of human recollection in the best of us, and the probability that you would see that the contract, before you signed it, contained all the essential agreements that had been made, is it not probable that if the guaranty of the Southern Pacific Company was a part of the Government's or the commission's exactions that you, when seeing that the contract provided for the character of bonds that they should be first-lien bonds, that they
2080 should not exceed one hundred million dollars, that they should have such times and rate of interest, would also have seen that the contract provided that they should be guaranteed bonds if you then had deemed that that guaranty was a part of that upon which you commissioners were insisting?

A. That might be argued from the face of the papers, but as against that I have the very clear recollection that the bonds were to be guaranteed by the Southern Pacific, and that we thought the agreement was efficient to secure that. Whether it would have turned out, on a law suit, to be efficient or not is another matter, but that we thought it was efficient there is no doubt.

Q. I call your attention to the provisions of the fourth paragraph of the instrument, describing the character of bonds, where it says: "The said refunding bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time after this settlement becomes binding for obtaining the deposit of securities, the assent of security owners and the carrying out of such plan of reorganization or readjustment as may be necessary to enable
2081 the Central Pacific Railroad Company or its successor company to issue such refunding bonds and make the mortgage to secure the same a valid lien upon the railroads aforesaid in accordance with the requirements herein expressed."

In view of that provision of the agreement, do you not recall that it was the understanding that the plan of readjustment was, and was to remain, so elastic that it could be changed in any respect which did not put it at variance with the essential provisions of this agreement as to the bonds, namely, that they should be a first lien and should not exceed one hundred million dollars in amount?

A. My idea of the object of that clause which you read is that it was to cover that which it should be found necessary to do afterwards in order to put the title of the property into some new company that could make the bonds. That had not been done when the agreement was signed. I think that was specially intended to cover the process by which that condition would be brought about.

If your question is intended to ask me whether I infer that the guaranty of the Southern Pacific might have been taken out of the arrangement, I should say decidedly not. My recollection is

2082 that that was an essential part of the agreement. The a
rangement was put through, it was enabled to be put throug
by reason of the intervention of Mr. Huntington for the South
Pacific Company. We all recognized that at the time, and we
understood that we were getting the endorsement of his company
these bonds.

Now, whether we put it in the agreement or not may be a matt
of difference of legal opinion just now; but that we were to have
and that we did get it, is a matter of positive recollection on my pa

Q. Did you understand that Mr. Huntington had any interest
this time in the Central Pacific Railroad Company?

A. I do not remember whether I did or not; but my impressi
would be that he did have or that his company had. I am not s
about that.

Q. Is it reasonably conceivable, considering your well-known c
of legal matters, that you, as Attorney General of the United Stat
would have entered into an agreement which did not distinctly c
for a guaranty by the Southern Pacific Company on bonds whi
were to be deposited as collateral, if you had then been of the unde
standing that the bonds must have that characteristic?

A. Well, that calls for a little philosophizing, I sup
2083 pose, and in that line I would say that the Attorney Gener
of the United States is a very busy man, no matter who he i
He has a great many matters to deal with, and the possibility of h
overlooking a point in an agreement, the possibility of his assumin
that it covered something which it did not specifically cover is ver
great, and I do not claim any particular immunity from that kin
of defect. I should say in this case, however, that inasmuch as th
contract may be assumed to have embodied the purpose of the par
ties, any difference as to what it actually covered was settled by th
interpretation the parties put upon it afterwards by conforming to i
I can not conceive that, if it was not a part of the agreement, tha
we should get bonds guaranteed by the Southern Pacific; that w
should really have gotten them; because I do not believe that Mr
Huntington would have volunteered, except as a part of his con
tract, to give us his guaranty, if he did not understand he was bound
to do so.

Q. You can well see how a corporation interested in the succes
of a reorganization scheme should put its guaranty upon bonds, if
thereby a point or two would be added to their market value, eve
if that company was not under contract to make any such
2084 guaranty, so far as its relations with the United States Gov
ernment were concerned, can you not?

A. Yes.

Q. Is it not, perhaps, the fact that what the United States Government was interested in was that they should get the fresh obligations and direct obligations of the Central Pacific Railroad Company, secured by a first mortgage for fifty-eight odd million dollars out of a total first mortgage of one hundred million dollars, in place of the, so to speak, second mortgage lien which they then held upon a part of the road; and that if they could get such first mortgage bonds they were willing to accept them, and if the persons who were furnishing those bonds were minded, as a part of the reorganization, to put a guaranty of the Southern Pacific Company upon them so as to increase their market price that the Government did not object, but that, if the reorganizers had found some other way to put through the reorganization, it was not to be rejected, so far as the Government was concerned if it did have the essential features, namely, a new obligation and a first mortgage lien for fifty-eight million dollars out of a total mortgage of not exceeding one hundred million dollars over the entire road of the Central Pacific
2085 Railroad in place of a second lien upon only a part of that railroad?

A. I think your question leaves out of view the fact that the Government's bargain with these people was that it should have its fifty-eight millions of dollars paid through notes that came due spaced every six months, payments which might be defaulted, in view of the conditions that had existed with reference to the Central Pacific; and in case of default, then we would have to look to the bonds that were put up as collateral, and if those bonds did not have the guaranty of the Southern Pacific, both in the market sense and in every other sense, they would not be the kind of security that the other holders of those bonds were getting, and would not have enabled us to come down on the Southern Pacific for the payment of our money. We were not looking to the collection of the money on those bonds. They were not given as a direct payment. They were only collateral to notes that had to be paid much sooner than the bonds; and if they were not paid, then we had the right to sell those bonds, and the marketability of the bonds, therefore, became important.

Q. If I followed the distinction which you made in the lat-
2086 ter part of your answer, you were indicating that it was important to the Government to get as good bonds as the general public was getting in that issue?

A. Yes.

Q. If the bonds issued to the general public in the reorganization, as a part of that issue, were not guaranteed bonds, it follows, of course, that the Government would be getting just as good bonds if it did not get guaranteed bonds?

A. But by the agreement they were to be guaranteed—I mean t reorganization agreement—they were to be guaranteed by the Sou ern Pacific. That was the description of them in the reorganizati agreement; there they were called by the same name—first refundi fours.

Q. Do you recall that at the date of the execution of this agr ment of February 1, 1899, the time of the actual execution of it, reorganization agreement had been signed by any of the reorganizer

A. I do not recall whether it had been signed or not; but this pr pective agreement, or prospectus agreement, the plan put out Speyer, was extant.

Q. Do you recall now that at the time the agreement was sign the plan of reorganization, even in circular form, had not b promulgated?

2087 A. I do not know whether it was promulgated to the pub or not, but it undoubtedly had been furnished to us, the co mission.

Q. In what form, physically, had that been furnished to you?

A. I can not tell you.

Q. Do you bear in mind seeing anything in print of that descri tion before this agreement of February, 1899, was signed?

A. I do not remember now.

Q. Do you recall seeing, in typewriting, any such plan?

A. I do not. I might say I do not recall seeing this agreeme which I signed, as a matter of memory.

Q. Of course, you understand that in the questions I am putti to you, I am suggesting these matters of argument merely to see h they may effect your testimony on the matter.

A. I understand that, certainly. You are trying to see how mu is memory and how much is inference.

Q. Precisely. It appears from the exhibits put in this case that t plan of reorganization is dated February 8, 1899; that t

2088 promulgating circular is dated February 20, 1899, that yo report on the consummation of the agreement is dated Febr ary 15, 1899, and that the agreement bears an acknowledgment February 6, 1899, by the president of the Central Pacific Railro Company at San Francisco. With those dates before you, can yo assist at all in saying on what date the agreement of February 1899, was actually executed?

A. No; I can not.

Q. It was certainly executed by the 15th of February, was it no

A. It must have been, because we reported it then as a thing don

Mr. McENERNEY. There is a statement in the report, as you wi recall, that the president approved it on the 15th of February.

Mr. HERRIN. On the 15th; yes.

Mr. McCLENNEN. Do you want to have this go on the record?

Mr. McENERNEY. Yes.

The WITNESS. It states in the report that the settlement was made as of the first day of February, 1899. It might easily be, as you all know, that an agreement which was dated the first of February
2089 might be delivered and executed subsequent to that day; but whether this was so or not, of course I do not remember. But it was approved by the president on the 15th day of February, according to this.

By Mr. McCLENNEN:

Q. Was the approval by the president the last act in the process of execution?

A. I assume so.

Q. That is, it is altogether probable that it had been executed by the company and by the commissioners before it was approved by the president?

A. No doubt of it.

Q. But how many days before, you have no present recollection?

A. No, sir.

Q. Do you remember whether, prior to the execution of the agreement, you had had left with you at any time the text of the reorganization plan of Speyer & Company?

A. As a matter of recollection, I do not.

Q. You recall, as one of the essential features of the agreement, that the existing second lien on the part of the road which was the existing security—the immediate security—of the United
2090 States, was not to be impaired until you got the actual delivery of securities described in the agreement of February 1, 1899?

A. I recall a provision on that subject. Exactly what it is I do not now remember.

Q. You recall that the notes were all to become due on default in one?

A. Yes.

Q. You recall that the only thing that the United States was giving up by the agreement was the right immediately to foreclose its second lien on part of the railroad?

A. Why, I think that would be so, except that there might be some doubt whether, after the company had been sold out under the prior lien and reorganized, the agreement to retain the old lien would be very valid.

Q. That sale was not a possibility if the new securities were delivered as provided by the agreement of February 1, 1899, was it? That is, the new securities were to be refunding securities?

A. Yes.

Q. You knew at the time you negotiated this agreement tha
there was a default in any one of these notes of the Central
2091 cific Railroad Company you could proceed, by receivership
otherwise, to get the entire railroad of the Central Pa
Railroad Company, subject only to the new refunding first-mortg
bonds?

A. Well, I do not know whether I can say that or not, now. I
not think I can say it.

Q. You knew that if any reorganization prevailed it would
doubtedly leave some one interested in the junior securities, or s
of the new company, dependent for their value upon the extingu
ment of the new first lien refunding bonds?

A. Yes.

Q. You realized that if the Government did get the obligatio
the Central Pacific Railroad Company plus substantially fifty-e
one-hundredths of a first mortgage upon the entire property, it
getting a great deal more than it gave up in yielding its second
upon a part of the railroad?

A. I am not sure whether those first refunding mortgage bond
whether the first refunding mortgage was really a first lien on
property or not.

Mr. McCLENNEN. There will be no dispute between us that
were to be. The agreement is perfectly clear on that.

2092 Mr. HERRIN. Yes; it was contemplated by the agreem
that they should be a first lien.

The WITNESS. Then, what you said would be true.

By Mr. McCLENNEN:

Q. As a matter of reasoning, then, apart from recollection, i
apparent, is it not, that the Government's position was being bett
if it got those bonds, even if they did not bear the guaranty of
Southern Pacific Company, provided they were bonds that w
equal in character to the other forty-two per cent of the
mortgage?

A. I think I can say that that would be so; but I would add t
the act of Congress required us to make a settlement that provi
for the payment of it within a limited period, shorter than the d
of the bonds. It did not authorize us to take bonds to get a p
ment of the money.

Q. The act of Congress was broad enough in your opinion at
time, was it not, to permit you to take the notes of the compa
secured by a first lien?

A. Yes; to take the notes of the company secured by bonds as
lateral, but the notes to be paid within a period of ten years.

2093 Q. Yes. The act of Congress did not require that the securities which you should take should necessarily be payable within the ten years?

A. No. The act of Congress allowed us discretion as to taking security for the payment of the notes.

Q. Yes. That is, to put it another way, if the act of Congress had not been broad enough to permit you to take as security—as your only security—the refunding bonds running for a long time without the guarantee of the Southern Pacific Company, it would hardly have been broad enough to permit you to take such bonds with the guarantee?

A. Well, I suppose that is so; but that is arguing as to a condition that did not exist.

Q. Yes. I used that merely to meet your last suggestion as to the scope of the act.

A. Yes.

Q. Now, if it is not unseemly insistent, I am going to ask you, in view of your statement just made, if you will consider again, and bearing in mind, if you will kindly, that I want to draw a distinction between reasoning and recollection, if the fact is not that when you executed this agreement of February 1, 1899, you supposed that

2094 Speyer & Company were going to put through this reorganization in the way that seemed to them the most likely to make it acceptable to the company to be reorganized, and that you supposed that that contemplated, as then under consideration, an issue of bonds which would bear the guaranty of the Southern Pacific Company; but that if the bonds conformed to the requirements of the agreement of February 1, 1899, as written and executed, they would be acceptable to you, however much Speyer & Company or the Central Pacific Railroad Company might change its prospective plan of reorganization?

A. No; I am sure from what I recall of the transaction that the pledge of fifty-eight millions of those first refunding fours substantially issued as they were issued and as set out in the prospectus and guaranteed by the Southern Pacific was an essential part of the agreement, and by inference—almost necessary inference—it was contemplated by the agreement signed by the commissioners.

Q. Why did you make no reference in the agreement itself or in your commissioners' report of February 15, 1899, to the Southern Pacific Company or to any guaranty by it?

A. I can not tell you that.

Q. Is it not probable that if, when the matter was fresh in

2095 your mind, the guaranty had assumed the importance that it does at this length of time, you would have mentioned it either in your report of February 15th or in the agreement?

A. That might be argued, if I had no recollection about the participation of the Southern Pacific—it might very well be argued but I have positive recollection about that.

Q. You have observed that when you made your later report Attorney General and the bonds had been delivered and appeared to have the guaranty of the Southern Pacific, you then mentioned that fact in your report?

A. Let me see the report. [After examining report.] Yes; I did

Q. Does the fact that you did not mention it in the report concerning the agreement and the fact that you did mention it in the report which described the securities which you had actually received, lead you at all to any less certainty as to whether or not your recollection is correct?

A. No.

Q. Did Mr. Root pass at all upon the form or the language of the agreement of February 1st?

A. I do not recall that he had anything to do with it, yet I would not say that he did not.

2096 Q. Did any lawyer representing the United States, other than yourself, pass upon it?

A. Not that I remember.

Q. When, first after 1899, did you have occasion, if at all, before this morning to go over the details of these matters that we have been discussing here?

A. The first that I recall was in January, 1913, when I received a letter from Attorney General Wickersham asking me what my recollection was, or something to that effect, about the matter. I only went over some of it and I answered his letter, and I have here a copy of my answer if you want it.

Q. May I see it?

A. Certainly [handing letter to Mr. McClennen]. The original is undoubtedly in the Department of Justice.

Q. It would be your recollection that the legality of the transaction, so far as it might be affected by the Sherman Antitrust Act, was never considered or discussed with the commission or with the representatives of the Southern Pacific Railroad?

A. Unquestionably that is true. It never was.

Mr. McClennen. That is all.

2097 Redirect examination by Mr. Herrin:

Q. I will detain you but a moment to ask you if President McKinley did not take an active part in this matter, so that he was quite in touch with the progress being made in the settlement of the agreement?

A. He did take an active part in this, so that he kept in touch with the progress of the negotiation.

Q. He probably was about as well advised as any of the commis-
on as to how the matter stood in negotiation?
A. I think he was. I have already stated he regarded it as a very
portant subject and had expressed great interest.
Q. You will notice that in your special report made the 15th of
ebruary you stated on that day as follows:
"The said agreement was submitted in writing to the President
d approved by him on the 15th day of February, and the said
romissory notes have been duly delivered to the Treasurer of the
nited States."
That fixes the date when the President signed the agreement or
approved it. Is it not likely that the signatures of the com-
098 missioners were affixed to the agreement about that date, or
not very long prior thereto?
A. Oh, that is not improbable; but I really can not say.
Q. You have no recollection on that subject?
A. No recollection. As lawyers, we all know how those things run
er the date of the instrument.
Q. As an act of Congress it had no validity until the approval of
e President?
A. No.
Mr. HERRIN. That is all.
(Whereupon, at 12.45 o'clock p. m., a recess was taken until 2
clock p. m.)

099 AFTER RECESS.

LYMAN J. GAGE was called as a witness on behalf of the defendants,
nd having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Gage, you were Secretary of the United States Treasury
uring what time?
A. From March, 1897, to February 1, 1902.
Q. Before that time what had been your business?
A. I had been in the banking business all my life previously.
Q. About how many years?
A. About forty years.
Q. At what point or places?
A. At Chicago for about thirty years. I started in an interior
own in New York State.
Q. You were in responsible positions in banks, president and——
A. I went up through the ranks. I was president of the
100 First National Bank after being its practical manager for a
number of years. I was president for four or five years.

Q. That was the First National Bank of Chicago?

A. The First National Bank of Chicago.

Q. That is one of the leading banks there?

A. Yes; it was the largest bank there for many years.

Q. You were a member of the commission appointed by Congress to settle the indebtedness of the Central Pacific Railroad Company to the United States Government?

A. Yes, sir.

Q. Did you have anything to do with the negotiations that led to the agreement made by that commission?

A. Very little to do with the negotiations; scarcely anything directly. I was, I think, familiar with what was going on, but I was not up against the parties.

Q. Did you at any time have a conference with President McKinley concerning the matter?

A. Yes; several times.

Q. Was he active in the matter?

A. Yes; I should say he was active. In fact, the first I knew of the negotiation was from his statement of a visit he had from a certain party in connection with it.

2101 Q. From whom?

A. Mr. Huntington.

Q. And did you at any time have any conference with the other members of the commission?

A. With the Attorney General quite frequently.

Q. You quite frequently had conferences with him?

A. When we came in contact with each other, which we did two or a week, the subject was frequently raised as to the progress made.

Q. About how long a period of time did those negotiations cover as you recall?

A. It is hard to remember. I think a number of months.

Q. Do you remember the signing of the agreement by the commissioners—the agreement of February 1, 1899?

A. I do not remember it as an act. I know I did.

Q. But you did sign it?

A. Yes.

Q. Under the act appointing the commission it was the duty of the commission to obtain such security as was expedient in their opinion to accomplish the payment of these deferred payments, was it?

A. Yes, sir.

2102 Q. Do you remember in a general way or particularly what security was to be given by the Central Pacific Railroad Company or its successor to secure the notes that were taken?

Mr. McCLENNEN. The petitioner objects to the question on the ground that the agreement of February 1, 1899, speaks for itself in that respect and that this would be calling upon the witness to state the contents of a written instrument.

The WITNESS. I remember what I understood to be the security, the result of conferences and remarks back and forth between the President and the Attorney General and myself.

By Mr. HERRIN:

Q. What security was that to be? The agreement itself did not provide fully about the security, or did it?

Mr. McCLENNEN. Petitioner objects to the question on the ground that it calls upon the witness to state the contents of a written instrument which is already in evidence and speaks for itself.

The WITNESS. The agreement to which you refer does not seem to be a full description of the securities that were taken.

1103 By Mr. HERRIN:

Q. What securities were actually taken in executing the agreement?

A. They were part of an issue of one hundred millions of dollars of bonds by the reorganized Central Pacific Railroad, running during certain time in the future—I forget the time—guaranteed by the Southern Pacific Company.

Q. Was the security actually given in accordance with the understanding as you had it in your mind?

Mr. McCLENNEN. The petitioner objects to the question on the ground that it calls upon the witness to draw a conclusion on a question of fact and upon a question of law; and further, that it is leading and that it is immaterial and incompetent.

The WITNESS. The securities, as delivered; that is to say, the bonds that served as collateral to the series of notes given in settlement of the claims of the Government, were in conformity to what I understood was to be the nature of the security.

By Mr. HERRIN:

Q. It was your duty, as Secretary of the Treasury, to 1104 receive and hold those notes and the collateral security?

A. That was my main duty and the main thought I had in mind.

Q. Would you have accepted the bonds without the guaranty of the Southern Pacific Railroad Company?

Mr. McCLENNEN. The petitioner objects to this question as immaterial and incompetent and irrelevant.

The WITNESS. I am unable to answer that yes or no, because that proposition never came before me.

By Mr. HERRIN:

Q. But you do say that the bonds, with the guaranty indorse were in accordance with your understanding?

Mr. MCCLENNEN. The petitioner objects to the question as leadi and as immaterial, incompetent, and irrelevant, and as calling up the witness to draw a conclusion as to a question of fact and as t question of law.

The WITNESS. Yes; that is correct.

Mr. HERRIN. Take the witness.

Mr. MCCLENNEN. No cross-examination.

(Witness excused.)

(Whereupon an adjournment was taken until to-morrow, Wedn day, April 21, 1915, at 10.30 o'clock a. m.)

2105 TWENTY-SIXTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Wednesday, April 21, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'cl a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., E ward F. McClennen, Esq., and Edward E. Gann, Esq., special assi ants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pac Company.

2106 LEWIS J. SPENCE was called as a witness on behalf of t defendants, and having been duly sworn, testified as follow

Direct examination by Mr. BLAIR:

Q. Mr. Spence, will you give your railroad biography?

A. My service began with the Southern Pacific Company Octo 7, 1885, as stenographer in the office of the general eastern age whose title was subsequently changed to assistant general tra manager with headquarters at New York.

I was consecutively his secretary, chief clerk, and eastern freig agent until March 1, 1902, when I was appointed general east freight agent, and in addition to the duties of that position, w appointed general freight agent of the Atlantic steamship lines the company on February 15, 1906.

After more than twenty-five years of continuous service with t Southern Pacific Company I was appointed assistant director traffic of the Southern Pacific and Union Pacific systems, effec January 1, 1911, with headquarters at Chicago, and became direc of traffic of both systems on January 1, 1912.

1107 Upon the dissolution of the so-called Union Pacific merger my service with the Union Pacific system was severed on January 31, 1913, since which date I have been director of traffic of the Southern Pacific Company with general supervision and control of the traffic affairs of the system.

Q. What was the nature of your duties as chief clerk and eastern freight agent and secretary to the assistant general traffic manager?

A. I handled and was familiar with all of the affairs of his office.

Q. What were they?

A. The solicitation of traffic, consultation with respect to traffic arrangements, and everything pertaining thereto.

Q. What kind of traffic?

A. Freight and passenger traffic.

Q. Passing between what points?

A. As general eastern agent, the jurisdiction of the office was confined to traffic between the Atlantic seaboard territory and the far West and the South and Southwest. As assistant general
1108 traffic manager, the jurisdiction of the office included all territory east of the Mississippi River.

Q. And that related to traffic passing from California to the Atlantic seaboard territory?

A. Yes.

Q. Transcontinental traffic generally?

A. Transcontinental traffic.

Q. And your jurisdiction and duties were equally extensive when you were the general freight agent?

A. Yes; general eastern freight agent and general freight agent of the steamship lines.

Q. And your jurisdiction and duties were still more extensive as traffic director of the two systems?

A. Yes; that covered the entire system.

Q. Are you generally familiar with the history of transcontinental traffic in this country?

A. I am.

Q. How did you acquire such information?

A. From books of reference, such as Poor's Manual, Official Railway Guides, annual reports of railroads, maps, profiles, reports of the Interstate Commerce Commission and of State commissions.

Q. That might be called the historical study?

1109 A. Yes; and from personal observation and experience during a continuous service of nearly thirty years with lines engaged in transcontinental traffic.

Q. Is such knowledge a necessary part of your stock in trade?

A. It is an essential qualification for my position.

Q. Have you prepared a large map on which are conspicuou shown the lines now embraced in the Southern Pacific system?

A. An official map of Rand, McNally & Company has been pr pared and is on the wall, which shows conspicuously all of the li embraced in the Southern Pacific system. Its scale is thirty-five mi to an inch.

Q. Now, will you please explain the meaning of the different c ors? What line is represented by the blue, what line is represe by the orange, and what is represented by the brown?

A. The brown covers the bond-aided Central Pacific lines. T orange covers the Central Pacific lines that were not bond aid The blue covers all of the remaining lines of the Southern Pa system, the solid blue being rail and the broken line being st ship.

2110 Q. Is that map a correct representation of the lines of t Southern Pacific system?

A. It is.

Mr. BLAIR. Defendants offer in evidence the map referred to by t witness.

(The map referred to was thereupon marked "Defendants' E hibit (Spence) No. 54, April 21, 1915".)

By Mr. BLAIR:

Q. Have you prepared, Mr. Spence, a small scale reproductio that map for convenient use?

A. I have. This is a Rand-McNally production. It reprodu on a small scale, the large wall map, the difference being only in t fact that it does not show as much detail as the large map.

Q. Has the map to which you now refer different colors, to sh the Central Pacific bond-aided lines, the Central Pacific lines ot than those bond-aided, and then the other lines of the Southern P cific system?

A. The lines are distinguished by the same colors as are shown the wall map.

Q. The only distinction, as I understand, by reason of t

2111 difference in scale, is that it can not show some of the v small cities and some of the very small branches or feeder

A. Yes.

Q. Is that a correct representation of the lines of the system?

A. It is.

Mr. BLAIR. Counsel for defendants put in evidence the small s reproduction of the large map just referred to by the witness.

(The small map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 55, April 21, 1915".)

The WITNESS. The scale of that map is 160 miles to an inch.

By Mr. BLAIR:

Q. Now, Mr. Spence, will you describe, in a general way, the Sunset-Gulf route, or the Sunset Route, as it is called in the petition, of the Southern Pacific system?

A. The Sunset Route extends from Portland, Oregon, southward to Roseville and Davis, and from Roseville, Sacramento, Davis, Oakland, and San Francisco to the southeastern boundary of the State of California, defined by the Colorado River; then through the
1112 southern part of Arizona, New Mexico, Texas, and Louisiana to the ports of Galveston and New Orleans; thence by steamship lines from those ports to New York.

Q. Do the lines standing in the name of the Central Pacific Railway Company form a part of this route?

A. They do.

Q. What part in this route is played by the Central Pacific lines from the Oregon-California line to Tehama?

A. That part of the line is 191.5 miles, and forms an essential part of the Sunset Route.

Q. Without that line, would the part of the Sunset Route north of the Oregon-California line have any connection with the other part of the system?

A. It would not.

Q. What part in the Sunset-Gulf route does the line of the Central Pacific from Tehama to Roseville, Brighton, Stockton, and Lathrop play?

A. That line forms the shortest line of the Sunset Route between Oregon and northern California and points south and east, and its use has the effect of putting such points as Roseville, Sacra-
1113 mento, and Stockton on the Sunset Route, where they otherwise would not be.

Q. Does it afford also an alternative route for through service?

A. It does.

Q. And what effect has that upon the service, at times?

A. It has the effect of increasing the efficiency of the service and avoiding congestion by the use of alternative routes.

Q. What part in the Sunset-Gulf route does the line of the Central Pacific from Lathrop to Goshen play?

A. That part of the line forms an alternative route from all points north of Lathrop, as well as from Oakland and San Francisco, to all points south and east.

Q. Is it extensively used as a part of the Sunset-Gulf route f
transcontinental traffic?

A. Very extensively.

Q. What effect has such use, and the possession of that line, up
the service to be afforded by the Sunset-Gulf route?

A. It affords an alternative route which facilitates transportati
and avoids congestion. For example, that route was u
2114 almost entirely during the period of the destruction of a t
nel on the coast line, a period of about four months, last ye

Q. Has that also the effect of putting certain towns upon
Sunset-Gulf route which would not otherwise enjoy that advanta

A. Yes.

Q. What towns?

A. Such towns as Merced, that being the most important point
that line.

Q. The most important part of that use of the line, of that pa
of the line, is as an alternative route, and it is extensively u
having the effect of preventing congestion and improving the servi

A. Yes.

Q. Will you describe the lines standing in the name of the Cen
Pacific, in a brief way, generally, so that we may have on the rec
just what lines are in the name of the Central Pacific?

A. The lines of the Central Pacific begin on the west at Oakl
Redwood, and San Jose, and extend eastward via Lathrop, Stockt
Brighton, and Sacramento to Umbria Junction, Utah, a
2115 from there one line runs via Promontory around the north e
of the Salt Lake and the Lucin cut-off, across the lake
Ogden; and runs from Roseville northward to the Oregon-Ca
fornia boundary, with a small branch from Weed, California,
Kirk, Oregon.

A line from Sacramento or Brighton southward—we will
from Lathrop southward—to Goshen Junction, California.

A branch line from Wadsworth, or Fernley, which is the point
which it really leaves the main line, into Susanville and Westwo
which are lumber camps.

A line from Hazen, Nevada, to Mojave, that part of which
tween Tonopah Junction and Owenyo, 134 miles, is narrow gauge.

There is a small branch to Mound House—from Churchill
Mound House—and a small branch from Hazen to Fallon.

There is a small branch line from Natron, Oregon, to Oakri
Oregon, a distance of about 34 miles.

Q. Of these lines which you have described, which of them
the bond-aided lines, the lines that were constructed by the aid

onds given by the United States Government under the terms of he Pacific Railroad act?

A. That part of the line from San Jose via Lathrop and Stockton o Brighton.

Q. Would you say via Niles as well?

116 A. Via Niles, Tracy, Lathrop, and Stockton to Brighton, and from Sacramento eastward to Umbria Junction, and round the north end of Great Salt Lake via Promontory to Ogden.

Q. What is the distance from Brighton to Sacramento?

A. Four miles.

Q. What is the distance on the Central Pacific line from Oakland o Ogden via Promontory?

A. 868 miles.

Q. What do you mean, or what do I mean, by "via Promontory"?

A. Via the line that runs around the north end of the Great Salt ake.

Q. Where is the Lucin cut-off?

A. The Lucin cut-off leaves the old line at Umbria Junction and xtends across Salt Lake to Ogden.

Q. What was the purpose of its construction?

A. To secure a more efficient line and improve the service.

Q. That, of course, is not bond aided?

A. That is not bond aided.

Q. What is the distance from Oakland to Ogden via the Lucin cut-off?

117 A. Entirely by the Central Pacific, 825 miles.

Q. What is the distance from Oakland via Benicia to Sacramento, which is the Southern Pacific line, I believe—is that so?

A. Yes.

Q. (Continuing.) And the Central Pacific line thence to Ogden ia the Lucin cut-off?

A. 779 miles.

Q. Is the old line of the Central Pacific, all the way from Oakland o Ogden via Pomontory, in use?

A. It is not in use for any through service.

Q. Why not?

A. It runs up to a summit of between 600 and 700 feet and it has maximum grade of 1.7 per cent. It is 44 miles longer than the ucin cut-off.

Q. What point of the Sunset Route is the same distance from Oakand as Ogden is?

A. Piedra.

Q. What is the distance between Ogden and that point?

A. 540 miles by an air line.

Q. What is the distance from Ogden to New York by line?

2118 A. About 2,000 miles.

Q. And by the shortest railroad connection?

A. By the Union Pacific, Chicago & North Western, and P sylvania lines, which is the short line, it is about 2,397 miles.

Q. What is the distance from Ogden to New Orleans by air

A. 1,395 miles.

Q. And by the shortest railroad line?

A. It is 1,870 miles by the shortest line, which is the Denver Grande, Colorado & Southern, Fort Worth & Denver City, Texas & Pacific.

Q. What part of the Atlantic seaboard territory is directly re by the Sunset Route or the Sunset-Gulf Route?

A. New York Harbor only.

Q. Any other portion of Atlantic seaboard territory re service via connecting lines?

A. Requires service via connecting lines.

Q. Can you give us a general statement of what roads were for transcontinental traffic in 1885? We have had it b

2119 but I want it brought out consecutively in the order testimony.

A. Sailing vessels between New York and San Francisco via Horn, which had been in operation many years.

The Panama route between New York and San Francisco vi Isthmus of Panama, which had been in operation since 1855.

The Union Pacific-Central Pacific route via Ogden, which been in operation since 1869.

The Santa Fe-Southern Pacific route via Deming, which opened in 1881.

The Texas & Pacific-Southern Pacific route via Sierra Blanc El Paso, which was opened in 1882.

The Sunset-Gulf route between New York and California, had been opened February 1, 1883.

The Denver & Rio Grande-Rio Grande Western-Southern P route via Ogden, which was opened in May, 1883.

The Northern Pacific, which formed a junction with the O Railroad & Navigation Company at Wallula, Washington, in tember, 1883; thereby making a through transcontinental li Portland which, in connection with the steamship line of the O Railroad & Navigation Company, reached San Francisco

2120 The Santa Fe route via Needles and Mojave, which completed in October, 1883.

The Union Pacific-Oregon Short Line-Oregon Railroad & N tion Company, which was completed to Portland in 1884, a

onnection with the Oregon Railroad & Navigation Company's teamship line, afforded a through route to San Francisco.

Q. Were all these lines capable of carrying transcontinental traffic rom California to the Atlantic seaboard territory?

A. Yes, sir.

Q. What were the railroads east of the Missouri River which the bove-mentioned rail routes formed connection with, first to Chicago nd to the Mississippi River, and from the Mississippi River to the tlantic coast, in 1885? If you have a list of them you may read rom the list rather than trust to your memory, unless you can give em from memory.

A. The Chicago & North Western between St. Paul and Chicago, nd Council Bluffs and Chicago.

The Chicago, Milwaukee & St. Paul between St. Paul and Chicago, and Council Bluffs and Chicago.

21 The Chicago, Rock Island & Pacific between Council Bluffs and Chicago.

The Chicago, Burlington & Quincy between Council Bluffs and hicago, and between Kansas City and Chicago, and St. Louis.

The Wabash between Council Bluffs and Kansas City on the west, nd St. Louis and Chicago on the east.

The Chicago & Alton between Kansas City and Chicago and St. ouis.

The Missouri Pacific between Kansas City and St. Louis.

What is now the Frisco lines, which ran east to Memphis; the Cotn Belt Route extended east to Cairo.

Q. Now, state the lines east of Chicago and the Mississippi River.

A. Between Chicago and Buffalo——

Q. Well, just mention a few of them, and state whether they are w or numerous.

A. The Grand Trunk Railway; the Michigan Central Railway; e Nickel Plate line; the Lake Shore & Michigan Southern; the g Four Route; the New York Central; the West Shore; the Delare, Lackawanna & Western; the Pennsylvania lines; the Erie; the Baltimore & Ohio.

22 Over into New England, the Boston & Albany; the New York, New Haven & Hartford.

Farther south, the Norfolk & Western.

Q. That will be sufficient. Then there were others?

A. And others.

Q. Will you state, in a general way, the additions to or improvents in the through routes capable of carrying this traffic, which ok place between 1885 and 1901?

A. The Santa Fe reached San Diego in 1885 and Los Angeles rtly thereafter.

The Santa Fe reached Galveston in 1886 and formed connec
with the Mallory Steamship Line between Galveston and New
The Santa Fe line between Kansas City and Chicago was op
in 1888.

The Santa Fe's through line to San Francisco, by acquisitio
the San Francisco & San Joaquin Valley Railway, was opene
July, 1899.

The Canadian Pacific line to Vancouver was completed in
and formed a connection with the Pacific Coast Steamship Com
operating between Vancouver and San Francisco.

The Soo Line was completed to Portal, North Dakot
2123 1894.

Q. From what place?

A. From St. Paul, and formed a connection at Portal with
Canadian Pacific.

Q. The Soo Line formed, at St. Paul, a connection with
line?

A. The Chicago & North Western and the Chicago, Milwauk
St. Paul, at first, and subsequently with the Wisconsin Central, w
the Canadian Pacific acquired.

Q. Now, the Northern Pacific?

A. The Northern Pacific completed its own line to Tacom
1887 and to Seattle in 1899 and formed connection with the P
Coast Steamship Company between Puget Sound ports and
Francisco.

Q. Did it not have a line at that time to Portland?

A. Yes; it had its own line to Portland.

Q. And that line from Portland connected with the——

A. It connected with the Oregon Railroad & Navigation C
pany's steamship line between Portland and San Francisco.

The Missouri Pacific completed its line west of the Missouri R
to Pueblo, Colorado, in 1887, and in 1888 the Colorado
2124 land completed to a connection with the Denver &
Grande and Rio Grande Western, which connected with
Southern Pacific at Ogden.

Q. At Pueblo the Missouri Pacific connected with what comp
coming west?

A. At first with the Santa Fe, and in 1888 what is now the R
Island was completed.

Q. Did it not also connect with the Denver & Rio Grande
Pueblo?

A. Westward?

Q. Westward.

A. Yes. I misunderstood your question. It connected with
Denver & Rio Grande westward, and it connected with the S

eastward, and with the Chicago, Kansas & Nebraska Railway, which is now the Rock Island, at Colorado Springs in 1888.

The Great Northern completed its own line to Seattle in 1890 and formed connection with the Pacific Coast Steamship Company between Seattle and San Francisco.

The Chicago, Burlington & Quincy completed its line to a point near Billings, Montana, in 1894, connecting with the Northern Pacific, thence to Seattle, Tacoma, and Portland; and the Pacific
2125 Coast Steamship Company between those ports and San Francisco.

Q. How about the Great Northern?

A. The Great Northern was completed to Seattle in 1890, forming connection with the Pacific Coast Steamship Company between Seattle and San Francisco.

Q. Were all those lines you have mentioned in actual operation, say, on December 31, 1900?

A. They were.

Q. Engaged in transcontinental traffic from coast to coast?

A. They were.

Q. And capable of carrying traffic from California to the Atlantic seaboard territory?

A. Yes.

Q. Would that be true if you put the date back a year or two, say to 1899 or 1898?

A. Every one of the railroad lines enumerated was engaged in the transcontinental business in 1898. The American-Hawaiian Steamship Line did not begin to operate through the Straits of Magellan until October 15, 1900.

Q. Have you a list of their connections east of the Mississippi River and east of Chicago?

2126 A. I have prepared such a list.

Q. How many are on the list of railroads?

A. There are sixteen railroads between the Missouri River and Chicago and the Mississippi River.

Mr. McCLENNEN. This is of what date?

The WITNESS. December 31, 1900.

By Mr. BLAIR:

Q. Are they practically the same railroads that you mentioned as forming the eastern connections of these lines in 1885?

A. With a few additions. I did not mention the eastern lines, the lines between Chicago, the Mississippi River, and the East, which number twenty-six. They are shown on the same list.

Q. Have you prepared a map showing graphically the competitive routes which you have mentioned as in existence December 31, 1900?

A. I have.

Q. Will you please produce it?

A. Here it is.

Q. As I understand, this map correctly shows the compe-

2127 tive routes which you have orally described as in existe-
December 31, 1900?

A. It does.

Q. I notice two colors are used, green and red. What does the r
represent?

A. The red line represents the lines embraced in the Southern P
cific system.

Q. And the green lines represent all the others?

A. All other lines.

Q. I understand also from your statement that this map wo
correctly represent existing conditions if you shoved back the d
two years, with the exception of the American-Hawaiian Line wh
is shown on the map?

A. Every railroad on that map was engaged in transcontinen
business two years previously.

The American-Hawaiian Line, which is shown here as operati
via the Straits of Magellan, did not inaugurate its service u
October 15, 1900.

Mr. BLAIR. Counsel for defendants put in evidence the map r
ferred to and described by the witness.

(The map referred to was thereupon marked "Defendants' Exhi
No. 56 (Spence), April 21, 1915.")

2128 By Mr. BLAIR:

Q. I see you have here, as from Galveston, the Mall
Steamship Company.

A. Yes.

Q. With what line was it affiliated in business?

A. With the Santa Fe, between California and Galveston.

Q. And formed a mixed rail and water line through from poi
on the Pacific coast reached by the Santa Fe——

A. And New York.

Mr. ORR. Is this map the same scale as the other small map?

The WITNESS. It is the same map, with these things graphica
shown.

By Mr. BLAIR:

Q. Now, Mr. Spence, will you go over and describe the additio
transcontinental routes which have arisen since December 31, 19
and are capable of carrying traffic from coast to coast and from Ca
fornia to the Middle West and to the Atlantic seaboard territory?

A. The Rock Island line from Chicago through Kansas City was completed to Santa Rosa, New Mexico, in 1902, and connected with the El Paso & Southwestern between Santa Rosa and El Paso.

2129 Q. The El Paso & Southwestern is a part of the Rock Island system?

A. It is an affiliated line, yes, connecting at El Paso with the Southern Pacific.

The Rock Island also completed a line from Memphis to Tucumcari, New Mexico, in 1910, forming connection at that junction with the El Paso & Southwestern to El Paso and thence Southern Pacific.

Q. Have you close connections and business arrangements with the Rock Island via El Paso?

A. We have very cordial relations, through rates, and prorating arrangements.

Q. What is the nature and extent of the transcontinental business done by the Rock Island?

A. It is a very substantial business, a large business; a very large business being done by that route, especially to southern California.

Q. Does it do a considerable business from California north of the Tehachapi, both east and west?

A. Yes.

2130 Q. Would it range, say, next to the Santa Fe, among the all-rail lines? I mean next to the Santa Fe, ranking the Santa Fe, in my mind, as next to the Ogden route.

A. Yes.

Q. Now, go on with your description.

A. The San Pedro, Los Angeles & Salt Lake Railroad was completed between Salt Lake City and Los Angeles in 1905.

Q. Does it do a large business?

A. It does.

Q. From what part of California?

A. Especially southern California. The Santa Fe completed its Belen cut-off in 1908, and it not only shortened its own line, but thereby formed connection at Vaughn, New Mexico, with the Rock Island through the El Paso & Southwestern.

Q. What reduction in mileage from California to Galveston was effected in that way?

A. That line did not reduce the mileage. The Coleman cut-off, which was completed later, reduced the Galveston mileage. That line also formed a connection with the St. Louis & San Francisco at Waynoka, Oklahoma, giving them a through transcontinental route.

2131 The Santa Fe's Coleman cut-off was completed in 1914. That shortened the Santa Fe line 367 miles and made the Santa Fe-Mallory Line the shorter of the two Gulf routes between New York and California.

Q. By the other Gulf route you mean the Sunset-Gulf route?

A. The Sunset-Gulf route. The Chicago, Milwaukee & St. P completed its line from Chicago to Seattle in 1909.

The Spokane, Portland & Seattle Railway, jointly owned by t Northern Pacific and the Great Northern, was completed betwe Spokane and Portland in 1908, and formed connection original with the Oregon Railroad & Navigation Company's steamships, a now forms connection at Astoria with the steamship line, under t joint ownership of the Northern Pacific and Great Northern, betwe Astoria and San Francisco.

Q. And those steamship lines are in operation in connection wi the rail lines?

A. They are.

Q. When did the Kansas City, Mexico & Orient Railroad come i

A. The Kansas City, Mexico & Orient Railway from Wichit Kansas, was completed to a connection with the Texas & Pacific Sweet Water, Texas, in 1908, and to a connection with the Ga veston, Harrisburg & San Antonio at Alpine, Texas, in 190

2132 Q. Is that in the transcontinental business, actively, fro California?

A. It is; and I should add that north of Wichita it has entran into Chicago by the Rock Island and the Santa Fe, and into S Louis by the Missouri Pacific and the St. Louis & San Francis Railway.

The Western Pacific Railway was first opened for freight busine between Salt Lake City and San Francisco about the close of 190 It was finally opened for passenger business in August, 1910.

Q. And it forms a through route?

A. It forms a through route, connecting with the Denver & Ri Grande at Salt Lake City and the Missouri Pacific system to th Mississippi River and all lines east.

Q. The Missouri Pacific Railway and the Denver & Rio Grand and the Western Pacific are known as what system of lines?

A. The Gould system of lines.

Q. Closely affiliated?

A. Yes; by stocks and bonds.

Q. I suppose it is true that the new roads which you hav

2133 mentioned have practically the same connections at the Mi souri River and at Chicago as you enumerated as existing o December 31, 1900?

A. All of the connections enumerated as in operation December 3 1900, are still in existence as connecting lines and as competitors fo transcontinental business.

I should like to add that the electric lines were opened in Calif nia, the Central California Traction Company between Stockton a

Sacramento, the Northern Electric between Sacramento and Marysville and Chico, and the Oakland, Antioch & Eastern between Sacramento and Oakland; and the American-Hawaiian Steamship Line, on January 1, 1907, inaugurated through service between New York and California points via the Tehuantepec Route; that is, the Isthmus of Tehuantepec in connection with the Tehuantepec Railroad.

Mr. McCLENNEN. I do not think that made quite clear when those electric lines were opened.

Mr. BLAIR. I am going to ask about that.

By Mr. BLAIR:

Q. What was the effect of the opening of those electric lines?

A. The electric lines have been made parties to joint through
2134 rates and divisions with the transcontinental lines. They supplemented the Santa Fe and the Western Pacific as connections reaching a number of points.

Q. They reach a number of points which, before their construction, were exclusively on the Southern Pacific lines?

A. Yes. The Santa Fe extended as far north as Stockton, and by use of the electric lines north thereof, they were given an independent entrance into Sacramento and Marysville and all points north of Stockton.

Q. Mr. Spence, what has been the policy of the Southern Pacific Company in respect of each transcontinental line which has made a junction with it from time to time?

A. The Southern Pacific has consistently opened each gateway as it has been reached by a transcontinental connection, and joined in the establishment of through rates and divisions.

Q. And have the through rates and divisions which it established been effective to enable the new transcontinental lines thus formed to engage actively in transcontinental business?

A. They have permitted them to engage in all business to and from points reached by the Southern Pacific.

2135 Q. Was this policy adopted and enforced prior to the time when, by amendment to the interstate commerce act, the Interstate Commerce Commission acquired authority to enforce the making of joint rates and fair divisions?

A. The policy was consistently pursued many years prior to the Interstate Commerce Commission having been empowered to establish through routes and joint rates.

Q. At what time was the Panama Canal opened for business?

A. August 15, 1914.

Q. What lines of steamships have been opened through the Panama Canal since that date?

A. The American-Hawaiian Steamship Line.

The Luckenbach Steamship Line.
The Grace Line, operated by W. R. Grace & Company.
The Emery Steamship Company.
A line operated by Swayne & Hoyt.
And a line operated by Sudden & Christiensen.

Q. Those lines are engaged in and compete for what kind of tra continental business generally?

A. They engage in and compete for all transcontinental busin which is of a character that can be handled by any steamsh line.

2136 Q. Yes; but I mean territorially.

A. They actively compete for, and successfully compete f business between all points in Atlantic seaboard territory and points in California.

Q. Have you prepared a map which shows graphically the co petitive routes in existence, say, at the time the map was prepare What date does it bear?

A. October 1, 1914.

Q. And shows the competitive routes for transcontinental tra generally and for transcontinental traffic between California and t Atlantic seaboard territory in particular?

A. It does.

Q. Will you produce it for exhibition to counsel?

A. Here it is.

Q. What do the lines colored red represent?

A. The lines colored red are the lines embraced in the Southe Pacific system.

Q. I see a few lines around about Stockton and Sacramento c ored yellow.

A. Those are the electric lines between Stockton and Sacramen between Sacramento, Marysville, and Chico, and b

2137 tween Sacramento and Oakland.

Q. It appears from this map that there are two steamsh lines in operation from Seattle to San Francisco?

A. Yes.

Q. Are they in actual operation?

A. Yes; Pacific Coast Steamship Company, which I have pr viously described, and the Alaska Pacific Steamship Company.

Q. And two steamship lines from Portland to San Francisco?

A. Yes.

Q. Are they in active operation?

A. Yes; the San Francisco & Portland Steamship Company a the North Pacific Steamship Company.

Q. Are they in operation with these other rail lines engaged i transcontinental traffic?

A. They are.

Q. Between San Francisco and Los Angeles there are how many steamship lines?

A. Nine, I think.

Q. How many steamship lines are engaged in this competitive striving for transcontinental traffic through the Panama Canal?

2138 A. There are six steamship lines between Atlantic ports and California ports.

Q. As of the date of this map, how many steamers were in that trade as part of the American-Hawaiian Line?

A. Twenty-six.

Q. Large steamers?

A. Of an average capacity of about 10,000 tons.

Q. How does that compare with the service they had previously over the Tehuantepec route?

A. They built a number of new ships in anticipation of the opening of the canal, and the service via the Tehuantepec route consumed a time of about twenty-six to thirty days, the route involved a transfer from ship to car on the Atlantic side of the isthmus and from car to ship on the Pacific side, while the service through the Panama Canal involves no transfer between the Atlantic and Pacific ports and the average time is about twenty-two days between New York and San Francisco. They advertise about eighteen days to Los Angeles.

Q. How many boats or steamers has the Luckenbach Steamship Company?

A. Eight.

2139 Q. What kind of steamers are they?

A. They have an average capacity of five or six thousand tons.

Q. Are they successfully engaged in this strife for transcontinental traffic, especially to the Atlantic seaboard territory?

A. They are taking a great deal more than I would like to have them do.

Q. From northern and central California?

A. Yes.

Q. By northern and central California you mean all of California north of what point?

A. North of the Tehachapi Mountains. We usually define it by Mojave and Santa Barbara.

Q. And these other steamship lines which you have mentioned have their boats actively engaged in this traffic and striving for the business?

A. Yes. The aggregate number of steamers in operation by the lines shown on the map, on the date of the map, numbered forty-nine.

Mr. BLAIR. Counsel for the defendants put in evidence
2140 map just referred to by the witness, being headed "Map
Competitive Routes, October 1, 1914."

(The map referred to was thereupon marked "Defendants' Exhi
(Spence) No. 57, April 21, 1915.")

By Mr. BLAIR:

Q. What is the extent or degree of competition now existing
traffic between the Pacific and the Atlantic coasts?

A. It is very active and acute.

Q. What is the extent and degree of competition now existing
to traffic between northern and central California and the Atla
seaboard territory?

A. It is even more acute and intense.

Q. Is that true both as to the number of competitors and
fierceness of the competition?

A. Yes.

Q. What degree of success, Mr. Spence, had the Sunset-G
route attained, say about 1890, in the securing of transcontine
traffic, especially from coast to coast?

A. In 1890 the Sunset-Gulf route had secured the major part,
larger percentage of the westbound traffic between the Atlantic
board and California, of a character in which it could engr
2141 Q. What factors, in your opinion, account for this suc
of the Sunset-Gulf route in securing a major portion of
traffic from California to the Atlantic seaboard territory?

A. The Sunset-Gulf route operated through an undeveloped
ritory. There was a very small volume of local traffic to interf
with the despatch of the through traffic between New Orleans
California, and no local traffic to interfere with its transportat
between New Orleans and New York. The line was operated un
one management, which enabled it to afford service infinitely supe
to any that had previously been given on transcontinental traffic.

Q. What do you include by "service"?

A. The time in transit, the method of keeping consignees infor
of the whereabouts of freight, and the date upon which its arri
might be regularly expected; and the adjustment of claims——

Q. That is sufficient for illustration. Why was there not, ab
that time and prior thereto, as good service and as prompt handl
of claims over the all-rail routes?

A. The eastern lines at that time were busily engaged in
development of their own traffic within their own
2142 ritory. They manifested comparatively little interest in
transcontinental traffic, and it had never been possible to br
about that coordination of effort between the several lines form

the through routes all-rail that was necessary to meet the service and facilities established by the Sunset-Gulf route.

Q. What was the effect of this indifference of the all-rail lines, or a part of them, upon the time taken to affect the movement of freight from San Francisco to Atlantic seaboard territory?

A. The time of the all-rail lines in those days was at least a week or ten days, if not more, longer than the time of the Sunset-Gulf route.

Q. How long was this ascendency of the Sunset-Gulf route over the all-rail lines maintained? I do not mean the exact number of months or years, but about what time?

A. It would be difficult to fix an exact time. The change was a gradual process. The all-rail lines gradually improved their service and coordinated their efforts. The number of them engaged in the transcontinental business had been gradually increasing; the army of soliciting forces correspondingly increased, and they had
2143 caught up with the Sunset Route in modern methods of handling and adjusting claims by a better coordination between them than had previously existed.

Q. And about what year would you give as the date when they caught up with the proportion of traffic handled by the Sunset-Gulf route?

A. The Sunset-Gulf route handled the major part of the traffic until about 1895, and by 1897 the all-rail lines were securing the preponderance of the business.

Q. What was the Sunset-Gulf route doing all that time?

A. The Sunset-Gulf route was struggling to maintain its prestige by an improvement of its service, construction of additional steamers, and everything that it could do to keep up with the procession.

Q. Would it be true to say, in your opinion, that the Sunset-Gulf route applied a continuous competitive spur to the all-rail lines?

A. There is no doubt about the service and methods of the Sunset-Gulf route having stimulated the all-rail lines to an improvement in their service.

Q. And that competition in service and effort to get the business still continues, does it?

2144 A. Very actively.

Q. It has been said here in some part of the Government's testimony that the Santa Fe was not a factor in the transcontinental business, and especially from and to central California, prior to its entrance into San Francisco on its own lines in 1899. What have you to say as to that?

A. The Santa Fe was a factor in two ways—it had its own line into southern California——

Q. From about what date?

A. 1885. The transcontinental rates to southern California w inseparably associated with the transcontinental rates to cen California or to San Francisco.

Q. Just explain what you mean by that.

A. The best way to explain it would be to say that we could have lived with the people in San Francisco if we had underta to maintain a higher rate than the Santa Fe made to Los Angele

Q. That is one way. What is the other way which you had mind?

A. In 1884 the Santa Fe had worked under arrangements w the Southern Pacific whereby it had through rates and d
2145 sions on a pro rate via Mojave and whereby it had acces every point reached by the Southern Pacific system in C fornia and was in a position to actively compete at all points, m tained its own soliciting organizations, and it had the privileg issuing its own through tickets, its own through bills of lading, making its own through way bills.

Q. Were there joint rates and divisions?

A. There were joint rates and divisions.

Q. Do you know anything about the transcontinental ton taken by the Santa Fe in those early days from central Californi

Mr. McCLENNEN. This is between 1884 and 1899 that you speaking of?

Mr. BLAIR. Yes.

The WITNESS. Petitioner's Exhibit No. 22 shows that.

By Mr. BLAIR:

Q. What is petitioner's Exhibit No. 22?

A. It is taken from the reports of the committee to Con under the Pacific Railway acts.

Q. If you do not mind, I will ask you about that after I looked at petitioner's Exhibit No. 22. I have not got it here. will pass that for the moment.

Do you know, of your own knowledge, as to whether
2146 Santa Fe was an active competitor for business north of jave prior to 1899?

A. I do. I know of their competition every day—very a competition.

Q. And successful competition?

A. And successful competition.

Q. Has the San Pedro been an active and successful compe with the Southern Pacific lines?

A. It has.

Q. And the Western Pacific?

A. The Western Pacific has been an active competitor.

Q. You have mentioned the electric lines between Sacramento and Oakland.

A. The electric lines.

Q. And what effect did the transfer of the American-Hawaiian service from the Straits of Magellan to the Tehuantepec route, in 1907, have?

A. The effect was to very substantially increase the competition of the steamship lines.

Q. And lessen the takings——

A. And to reduce the takings of the transcontinental carriers.

147 Q. Including the Sunset Route?

A. Including the Sunset Route.

Q. Was it a large sufferer?

A. The Sunset Route was the chief sufferer, because the steamship lines were in a position to compete for the peculiar class of traffic, all of the traffic that the Sunset Route was in a position to physically handle.

Q. And that competition of the water carriers, as I understand, has been considerably increased since the opening of the Panama Canal?

A. Yes. In addition to the lines shown on the map that has been introduced, the Red Star Line have established a regular service, the steamers Finland and Kroonland, between New York and California.

Q. What time will they now make?

A. They take sixteen days between New York and San Francisco.

Q. It may be a melancholy question to ask you, Mr. Spence, but what has become of the ascendancy of the Sunset-Gulf route that has been suggested here?

A. It has entirely disappeared.

148 Q. What is its influence now as compared with its influence in 1910?

A. Its influence has been very substantially lessened by the opening of the Panama Canal.

Q. And what was its influence in 1910 as compared with its influence in 1900 in transcontinental business?

A. Its influence in 1910 had been very materially reduced by the opening of the Tehuantepec route and by the insistent improvement of the service of the other lines.

Q. What was its influence in 1900 as compared with its influence in 1885?

A. In 1900 it had begun to decline—it had declined. It having i previous years taken the major part of the Atlantic seaboard traf by 1900 it was taking the minor part.

Q. Is that progress in the wrong direction of the Sunset-Gulf rou not only with reference to its influence, but with reference to i takings of transcontinental traffic?

A. Its takings of transcontinental traffic have decreased in pr portion to the decrease of its influence.

Q. Are there any general rules or principles in force on the Sout ern Pacific system as to the preferential solicitation or preferenti routing of traffic?

2149 A. Yes.

Q. Are those in writing?

A. No.

Q. How are they made known to your agents?

A. Our traffic forces and field forces are periodically assembl and informed of the general solicitation policy of the company.

Q. What is the reason for making these generally known to yo agents?

A. To coordinate the efforts of the organization. A car of freig may be ordered by a man in San Francisco from a man in Chic for shipment by a man in New York. It is essential to have c ordinated effort between our representatives in San Francisco, Ch cago, and in New York to secure that shipment.

Q. To prevent your agents contemporaneously pulling in di ferent directions?

A. Pulling in different directions.

Q. State what is the policy of the Southern Pacific Compa with reference to preferential solicitation of traffic and the reas therefor.

2150 A. The general policy is to solicit traffic by the long ha or by the best revenue haul, in so far as that practice enab the Southern Pacific to offer service and facilities that will satis its patrons, and not only secure but retain their confidence and th business. It would not be business like or profitable to press t solicitation of business for the long haul in order to secure sporad shipments, if the effect of your inability to give satisfactory serv would be, as it of course would be, to divert the future business that shipper to a competitive line, whereby no haul would be deriv

Q. When the service by your shorter haul would be superior better meet the requirements of the shipper, would it be consist with your policy to seek to route that traffic by the longer haul?

A. No.

Q. And your agents, in obedience to that policy, would not seek o so route it?

A. They would not. The service must be such as to satisfy the hipper and retain his business.

Q. Now, let us apply this policy to the movements to and from Middle West territory, say, and points north of Mojave and
151 Santa Barbara. First, what do you mean by "Middle West territory"?

A. Middle West territory, as we define it here, embraces all points est of the Atlantic seaboard territory, a line drawn from Buffalo hrough Pittsburgh and Wheeling to Bristol, Tennessee; all points orth of the Ohio River and the northern boundaries of Arkansas nd Oklahoma, and on east of the line of the Rock Island Railway xtending northeastwardly to St. Paul.

Q. In explanation of my taking points north of Mojave and Santa arbara, I will ask you: Does the Central Pacific line figure in traffic outh of those points, or in what we have been calling southern alifornia?

A. With the exception of some shipments of citrus fruits from outhern California, which are sent north by the shippers via Sacraento and Ogden for climatic or commercial reasons, the Central acific is not a factor in southern California business.

Q. Why not?

A. It is 400 miles longer than the short line from Chicago.

Q. Would it figure in such traffic if it was separated from the Southern Pacific?

152 A. It would not.

Q. Its inability to figure in traffic from southern California not due in any way, then, to its connection with the Southern acific?

A. No.

Q. The lines which do figure in traffic to and from southern Calirnia, say, and the Middle West territory, are what?

A. The San Pedro, Los Angeles & Salt Lake Railway, in connecon with the Union Pacific and the Denver & Rio Grande; the anta Fe system; the Southern Pacific line via El Paso in connection ith the Rock Island, and Texas & Pacific.

Q. Now, coming back; apply the policy of preferential solicitation routing to traffic between northern and central California and e Middle West territory, and what will be the result?

A. The result is to have a coordinated solicitation of the Southern acific organization of all traffic between Middle West territory, as escribed, and northern and central California, via the Ogden route.

Q. Please state, briefly, the reasons why you solicit that way stead of by your El Paso route.

2153 A. That policy is adopted to enable us to afford the shippe and consignees a service that will fully meet the service direct competitors and secure and retain their traffic.

Q. Does that mean that the Southern Pacific closes these oth routes via El Paso?

A. The Southern Pacific does not close any gateway or rou Its route via El Paso is open, and its connections east of El Pa actively solicit this traffic via the El Paso route.

Q. Will you mention your principal connection via El Paso?

A. The Rock Island.

Q. What is the character and extent of the business which t Rock Island succeeds in moving from northern and central Calif nia to Middle West territory, and the reverse?

A. The Rock Island secures a substantial business between Mid West territory and northern and central California.

Q. And what are your relations with the Rock Island p ple?

2154 A. They are very cordial. We afford them all the facili that could be afforded them to secure and handle this tra satisfactorily.

Q. What difference is there in the solicitation of Middle W territory traffic, if any, from that which existed prior to 1901, the reasons therefor?

A. Prior to 1901, from a small section of what we have descri here as Middle West territory—that is to say, from the section of of a line drawn from Toledo through Indianapolis and Terra Ha to East St. Louis—effort was made to secure business via New leans on the southern route, that territory embracing points t could be routed via Ohio River crossings.

Q. Was that successful to any extent; and if so, what were reasons for the success?

A. It was reasonably successful in that territory, first, bec the service of the direct lines, especially in the earlier nineties, not as efficient as it is to-day; the lines between Cincinnati and Orleans and between Louisville and New Orleans were very hun for traffic and made a specialty of service between Cincinnati New Orleans which connected with the fast service of the South Pacific from New Orleans to California, which was nat

2155 Gulf traffic, and there was not the same stability of rates exists to-day.

Q. Stability of rates is a rather elastic term. May I interpr as including not as strict an observance of tariff rates as now ex

A. I would subscribe to that.

Q. And that was one of the factors in securing business by this roundabout route?

A. Yes.

Q. Or, rather, by a longer route?

A. Yes.

Q. I want to call your attention to an exhibit, petitioner's Exhibit No. 68, which I now show you, in which Mr. Connor gives a list or statement of the carload shipments from Middle West territory. Have you looked over that statement sufficiently to state the number of cars shown by that statement for any one year?

A. (After examining Exhibit No. 68.) The largest year was 5,073 cars, and the average of the years shown was 3,572 cars.

Q. What is an average carload in tons?

A. The average carload of manufactured products on our lines is about eighteen tons.

2156 Q. Is that the kind of business that was moving from that territory?

A. Yes.

Q. Is that of the present time or of that date?

A. Of that date I should say it would have been less than eighteen tons. Of course, the carload loading has been increased from year to year as a matter of efficiency.

Q. Suppose we take it as high as twenty tons; what would be the greatest movement shown in tons, taking 5,073 as the greatest number of cars shown for any year?

A. 101,460 tons.

Q. Now, let us resume our consideration of your rules as to preferential solicitation and routing and apply them to Atlantic seaboard territory. You might define Atlantic seaboard territory so as to have the whole thing at one time.

A. Atlantic seaboard territory embraces all points east of a line drawn from Toronto through Buffalo, Pittsburgh, and Wheeling to Bristol, Tennessee, and north of the line of the Norfolk & Western Railway from Bristol to the Atlantic Ocean.

2157 Q. Do the Central Pacific lines cut any figure in traffic to and from Atlantic seaboard territory from and to southern California?

A. With the exception of the limited amount of citrus fruit which, I have stated, shippers from southern California send by Sacramento and Ogden, for climatic or commercial reasons, some of which reaches Atlantic seaboard territory.

Q. The Central Pacific does not cut any figure in shipments between southern California and Atlantic seaboard territory, for the same reasons as govern its shipments between southern California and Middle West territory?

A. Yes.

Q. Do the Central Pacific lines reach Oregon?

A. They do not, with the exception of a small branch from Weed that just extends over the Oregon boundary to Kirk.

Q. Then we will confine our question to the territory which the Central Pacific lines reach in northern and central California, on the one side, and Atlantic seaboard territory on the other, and apply your policy of solicitation and routing of traffic moving between those two territories, and state what the result is.

A. For such character of traffic as the Sunset-Gulf route is
2158 physically able to handle, the preferential solicitation is in favor of the Sunset-Gulf route, modified only by the necessity of giving the shipper the best service satisfying him and retaining his traffic.

Q. The preference is given to the Sunset-Gulf route, as you describe, over what route?

A. Over all routes; over the Ogden route.

Q. I believe you have already stated what part of the Atlantic seaboard territory is directly reached by the Sunset-Gulf route.

A. New York Harbor only.

Q. Is there any Atlantic seaboard territory business which the Sunset-Gulf route is physically unable or unfit to move?

A. A very large volume of the traffic is of a character that the Sunset-Gulf route is physically unable to handle.

Q. Will you describe what that traffic is?

A. The Sunset-Gulf route is unable to handle any of the perishable freight, citrus fruit, deciduous fruit, or vegetables; anything that moves either under refrigeration or ventilation.

Q. Is the traffic of the character which you describe large in volume?

2159 A. It is large in volume.

Q. Is it important as a revenue producer?

A. It is.

Q. Describe such other traffic as the Sunset-Gulf route can not carry?

A. It is unable to carry such freight as fresh oysters, earthenware and crockery that is shipped in cars packed in straw, pianos which are shipped in cars—what we call "harnessed" in cars, coal and coke, automobiles and other vehicles, furniture. It is unable and unfit to handle any traffic that is not packed for shipment by sea and that does not permit of rehandling en route.

Q. What is the amount of that class of traffic?

A. It is very considerable.

Q. Are you able to give me the number of tons represented by this perishable traffic—vegetables, fruit, and so forth—eastbound, for the year ending June 30, 1914?

Mr. McCLENNEN. Is this the total traffic of the country—of the region?

The WITNESS. This answer will cover the fresh fruit and vegetables from California to Atlantic seaboard territory.

Mr. ORR. All of it?

2160 The WITNESS. No; this is our own traffic. The fresh fruit and vegetables from Atlantic seaboard territory handled by Southern Pacific lines during the fiscal year ending June 30, 1914, aggregated 122,481 tons, which represented 55.8 per cent of the Southern Pacific's total eastbound traffic.

By Mr. BLAIR:

Q. What about Asiatic traffic?

A. The Asiatic traffic to and from Atlantic seaboard territory, with origin and destination in Atlantic seaboard territory, is and has been for many years handled by the Suez steamship lines, and will hereafter be handled through the Suez Canal and the Panama Canal. The exception to that is raw silk, which is imported through Pacific ports and is handled by passenger-train service across the continent.

Q. Why is that?

A. On account of the enormous value of the silk. All transcontinental lines handle the business in that way. It is said to be worth about $50,000 a car.

Q. And the passenger service represents about what time across the continent?

A. The short line?

Q. The line by which this Asiatic traffic moves.

2161 A. About five days.

Q. It would be utterly impossible for the Sunset-Gulf route to compete with that time?

A. Utterly impracticable.

Q. Would it be possible for the railway lines to have all their freight move in passenger service?

A. No.

Q. Prior to 1901 did the control or ownership of the Central Pacific lines by the Southern Pacific Company, the preferential solicitation and routing which was described, prevent competition between the Ogden route and the Sunset line or Sunset-Gulf route?

A. It did not.

Q. What was the nature of this competition, potential or active, mild or vigorous?

A. It was very active and vigorous.

Q. Desultory or continuous?

A. Continuous.

Q. What about the competition since the merger?

A. The competition since the merger has been active and vigorous between all of the rail lines, and has been very much aggravated by the opening of the Panama Canal.

2162 Q. I am speaking particularly of the competition between the Ogden route and the Sunset-Gulf route.

A. That has been active and vigorous.

Q. And has the competition for traffic existing between those two routes been confined to those routes, or has the same traffic been actively competed for by the other lines? You have mentioned both the rail lines and water carriers.

A. It has been actively competed for, and a large volume has been secured by other transcontinental lines than that of the Sunset Route or of the Ogden route.

Q. Assuming that a correct definition of "competition" is "the striving by two or more carriers for traffic which each desires to secure for its own lines", state whether there is any such striving for the traffic in question between the Ogden route and the Sunset-Gulf route, and how it is carried on. By "the traffic in question" I mean the traffic between northern and central California, we will say, and Atlantic seaboard territory.

A. The Southern Pacific maintains its own soliciting organizations and ticket offices, and actively strives to secure that traffic via the Sunset-Gulf route in so far as it is physically able to handle it.

2163 It plays a lone hand. It must secure that traffic by the efforts of its own organizations. The all-rail lines, including those operating by Ogden——

Q. Deal especially with those of the Ogden route.

A. The lines actively engaged in the business via the Ogden route maintain their own organizations, both in Atlantic seaboard territory and in California, and have a combined army of solicitors engaged in the effort to secure the traffic via the Ogden route as against the Sunset Route.

Q. In your opinion, would one more solicitor in the field with "C. P." on his cap affect the situation appreciably?

A. No.

Q. Either in respect to competition or any benefit to the public?

A. He would have nothing else to offer to the public.

Q. If the Central Pacific Railway lines were separated from the Southern Pacific system, could solicitors offer any greater inducements to the public to patronize the Ogden route than they now offer?

A. No

Q. Could they offer equal inducements?

2164 A. No; they could not offer equal inducements, because the Ogden route affords the best service, and to some extent its only service, by the use of the Southern Pacific rails.

Q. You mean, then, if the solicitors for the patronage of the public by the Ogden route could not offer to the public that part of the service which is contributed to that route by the lines of the Southern Pacific system other than those owned by the Central Pacific they could not offer as efficient service as they now offer?

A. That is my meaning.

Q. Will you state some of the lines of the Southern Pacific, other than those standing in the name of the Central Pacific, which participate in the Ogden route and contribute to its efficiency?

A. The Benicia line between Sacramento and Oakland.

The Southern Pacific line between Redwood and San Francisco and the entire Southern Pacific terminal facilities in San Francisco, railroad tracks and everything else.

Q. What is the particular advantage and importance of that line from Redwood to San Francisco?

A. It is the only direct entrance by railroad track into San Francisco.

2165 Q. So that without it the Ogden route would not have a rail line into San Francisco, would it?

A. It would not.

Q. And it would depend upon ferry service entirely?

A. It would be dependent upon ferry service.

Q. Is ferry service ever confused, congested, or blocked by any natural causes?

A. Yes; it is naturally limited.

Q. What is that?

A. It is naturally limited.

Q. How about the effects of fog on it?

A. The San Francisco fogs have a reputation. They would certainly affect the service.

Q. How many railroad companies maintain soliciting organizations in California which are striving to route Atlantic seaboard traffic otherwise than over the Sunset-Gulf route?

A. Forty-six.

Q. Have you a list of them?

A. Yes; I have.

Q. Will you please produce it?

A. Here it is [producing paper].

2166 Mr. McCLENNEN. This is a list of those maintaining a soliciting organization in San Francisco?

The WITNESS. In California.

By Mr. BLAIR:

Q. By maintaining soliciting agents in California, do you ma at one point or generally throughout California?

A. They cover the entire State.

Q. And there are forty-six of them?

A. Forty-six.

Q. How many maintain soliciting organizations for the same pu pose in Atlantic seaboard territory?

A. Fifty-nine.

Q. Have you a list of them?

A. I have.

Q. And this is in addition to the soliciting organizations that t Panama Canal carries?

A. Yes, sir.

Q. And the Sunset-Gulf route fights this whole field?

A. Yes, sir.

Mr. BLAIR. Counsel puts in evidence, first, the list of lines ma taining soliciting organizations in California.

(The list referred to was thereupon marked "Defendan
2167 Exhibit (Spence) No. 58, April 21, 1915", and will be fou in the volume of defendants' exhibits.)

Mr. BLAIR. Counsel for the defendants puts in evidence also t list of lines maintaining soliciting organizations in Atlantic seabo territory.

(The list referred to was thereupon marked "Defendants' Exhi (Spence) No. 59, April 21, 1915", and will be found in the volu of defendants' exhibits.)

(Whereupon, at 12.30 o'clock p. m., a recess was taken until o'clock p. m.)

AFTER RECESS.

(The testimony of James Speyer, taken during the afterno session, will be found at the conclusion of the testimony of Lewis Spence.)

(Whereupon, at 4 o'clock p. m., an adjournment was taken un to-morrow, Thursday, April 22, 1915, at 10.30 o'clock a. m.)

2168 TWENTY-SEVENTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Thursday, April 22, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clo a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Ed ward F. McClennen, Esq., and Edward E. Gann, Esq., special ass ants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. air, Esq., and Garret McEnerney, Esq., for the Southern Pacific mpany.

69 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified fur-er, as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Spence, when you were last on the stand you were talking out the number of soliciting organizations out in California; I ould ask you whether in your opinion this multiplicity of solicitors nfers any very appreciable benefit upon the shipping public?

A. No; because the same rates, facilities, and service are available the shipper whether he is solicited or not.

Q. Wherein does the competition between routes which you have ferred to benefit the public?

A. Chiefly in service. Every route finds it necessary to keep the rvice up to its highest efficiency in order to secure its share of the affic.

Q. It is upon service, then, that successful competition depends?

A. Yes.

Q. You have stated that at first the Sunset-Gulf route got 170 ahead of all the all-rail lines and secured the greater part of the traffic, especially the westbound traffic to and from Atlan-c seaboard territory and California; how did the all-rail lines catch p with the Sunset-Gulf route?

A. By gradual coordination of their efforts and improvements of eir service, and an improvement of their facilities, handling claims nd everything else that pertained to the public welfare and con-enience.

Q. That could be embraced in one term, could it not—by an im-rovement in their service?

A. Yes; by an improvement in their service.

Q. Was the service on the Sunset-Gulf route improved itself, mean-me?

A. It was improved very materially.

Q. Will you please give a brief statement indicating the progres-ve improvement in service on the Sunset-Gulf route?

A. As the line was improved the time was shortened on the rail line. ew and faster and larger steamers were added to the fleet. Exten-ve terminals were acquired at Galveston, whereby the through traf-c was handled at Galveston instead of by New Orleans, and a rail haul of 300 miles saved; all of which contributed to shorten 171 the time and improve the through service.

Q. That rail haul was between what points?

A. Between New Orleans and Houston.

Q. Was there any increase in the number of sailings?

A. There was no increase in the frequency of the sailings, b there was an increase in the fleet and in the capacity of the steam so that there was an increase in the available facilities.

Q. And you had sailings from both New Orleans and Galvest

A. From both New Orleans and Galveston.

Q. Is there much difference now between the time occupied transporting freight by the all-rail lines and by the Sunset-G route?

A. No; the average time between New York and San Franci to-day is about equal.

Q. Was the change from New Orleans to Galveston one of t causes of the shortening of the through time?

A. Yes.

Q. What were some of the improvements on the all-rail line, a of the Ogden route, during this period?

Mr. McCLENNEN. What defines "this period"?

2172 By Mr. BLAIR:

Q. By "this period" I mean the whole time when the a rail lines were catching up with and going past the Sunset-G route.

A. Through billing was being established by the several all-r lines, through cars without transfer were being established, t physical condition of the railroads was being improved, and t through passenger service was being correspondingly improved.

Q. Have you in operation on the Ogden route any merchandi cars?

A. Yes. We join the Union Pacific in operating five package c daily from Chicago to San Francisco, five from Chicago to Sac mento daily, three package cars weekly from St. Louis to San Fra cisco, three package cars weekly from St. Louis to Sacramento, a three package cars weekly from Kansas City to Sacramento.

Q. What do you mean by "package cars"?

A. These cars assemble the less-than-carload merchandise traf from all points east of the junctions specified as well as the traf originating at those points. They run through from those points t San Francisco and Sacramento.

2173 Q. What system have you inaugurated, or what system h been inaugurated, for insuring expedited service in oth ways?

A. We have a manifest system in effect, the same by the Ogd route and by the Sunset Route.

Q. Explain that.

A. Whereby each car is manifested, given a manifest number, and pies of that manifest are transmitted to each important division int on our own line and on the Union Pacific, via Ogden, and the ovement of each car is telegraphed by each of those junction points each of the others, so that the movement is constantly watched om point of shipment, and the whereabouts of the car is always own, and the time of its arrival at destination is also known.

Q. Which expedites the traffic and also enables the owner to escer- in the whereabouts of his car?

A. Of his car.

Q. And to ascertain when it may be expected to arrive?

A. Yes.

Q. How about the handling and adjustment of claims?

A. The handling and adjustment of claims, in which the Sunset Route was originally the pioneer, is now uniform on
1174 the Sunset Route and on the Ogden route. In fact, it is uniform, I think, upon all routes in the country, because there is ow in existence an association, of which all important lines are embers. That association is the medium through which adjustents or arrangements for adjustments are made between all the nes of the country, whereby they are facilitated; and the methods f that association have had the informal approval of the Interstate ommerce Commission.

Furthermore, the law has been amended whereby the initial carier, the maker of the bill of lading, is responsible to the shipper for oss or damage en route, no matter whether it occurs on the initial ine or some other part of the line, and he is required to promptly ay the claim and look to his connections for settlements in the vent of their liability.

Q. Will you give us a statement as to the improvement and hanges in the passenger service along both routes? If you have it n the form of a statement, you may produce it and explain the tatement briefly.

A. (Producing statement.) First, by the Sunset Route in Decemer, 1885, one through daily train was in operation between New Orleans and San Francisco. The time from New Orleans to
1175 San Francisco was four days, seventeen hours, and ten minutes.

In December, 1900, one through daily train was in operation beween New Orleans and San Francisco, and the time from New Oreans to San Francisco was four days, one hour, and thirty minutes.

In December, 1914, two through daily trains were in operation beween New Orleans and San Francisco, and the time from New Orleans to San Francisco was, by the Sunset Route, three days six

hours and thirty minutes. The eastbound time was correspondingly improved, as shown in the memorandum.

Q. Have you likewise prepared a statement in detail showing the progress and improvement in the service of the Sunset Route?

A. I have.

Mr. BLAIR. Counsel for the defendants puts in evidence the statement referred to by the witness, a part of which has been embraced in his testimony.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 60, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared a similar statement with reference
2176 to the passenger service via the Ogden route?

A. I have.

Q. Give a few of the salient features of that progress in the service and then we will offer in evidence your statement.

A. In December, 1885, there was no through train in operation between Chicago and San Francisco. Direct connections were made daily at Omaha and Ogden.

Q. There was always a through train, so far as the Central Pacific——

A. By Omaha.

Q. (Continuing.) And the Union Pacific was concerned?

A. Yes.

Mr. MCCLENNEN. I do not get that. Does that mean that it was through from Omaha to San Francisco?

The WITNESS. Yes; it was through from Omaha to San Francisco.

By Mr. BLAIR:

Q. Proceed.

A. The time from Chicago to San Francisco was four days fifteen hours and ten minutes.

2177 In December, 1900, there were two through trains daily in operation westbound from Chicago to San Francisco and three daily trains eastbound between San Francisco and Chicago. The time from Chicago to San Francisco was three days, two hours and fifteen minutes.

In December, 1914, there were three through daily trains in operation, westbound, and four daily trains eastbound, between Chicago and San Francisco. The time from Chicago to San Francisco by the Overland Limited, was two days, seventeen hours and ten minutes.

A corresponding improvement is shown in the eastbound time.

Q. Have you prepared an exhibit showing, in greater detail, the progress of passenger service improvement over the Ogden route?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement just referred to by the witness.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 61, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

2178 Q. We will interrupt the line of your testimony a moment here, Mr. Spence. In your testimony of yesterday you referred to a certain exhibit of the Government, No. 22, as showing the amount of transcontinental traffic which the Santa Fe secured in the early days, prior to 1899. You referred to Exhibit No. 22, I believe. I did not have it at the time. I now have it, and hand it to you. Will you point out on Exhibit No. 22 what you had reference to?

A. Petitioner's Exhibit No. 22 shows that during a period of fifteen months from October 1, 1884, to December 31, 1885, the Santa Fe handled, by its Mojave route, 20.34 per cent of the through transcontinental business.

Q. That is what you had reference to?

A. Yes.

Q. The exhibit speaks of that route as "Via Southern Pacific and Atlantic & Pacific." Is the Atlantic & Pacific the same as the Santa Fe?

A. Yes; it forms the Santa Fe route via Mojave.

Q. When you testified yesterday in regard to electric lines being opened in California, the Central California Traction Company between Stockton and Sacramento, the Northern Electric between Sacramento and Marysville and Chico, and the Oakland, Antioch

2179 & Eastern between Sacramento and Oakland, Mr. McClennen suggested that you had not stated when these electric lines were opened. I intended to ask you, but neglected to do so. Can you give us about what time those lines were opened for service?

A. I am unable to give from memory the dates of the opening of those lines, but my recollection is that they all have been opened for service within the last five years.

Q. If that is as near as you can come it will be sufficient.

Going back, now, to the regular order of your testimony, what are the relations between the Union Pacific and the Southern Pacific in respect to the through route via Ogden?

A. There are but few connecting lines whose relations are as close and coöperative. There are no connecting lines whose relations are closer and more coöperative than the relations between the Union

Pacific and the Southern Pacific. The lines are operated as o
connected, continuous line.

Q. What about the personal relations between the officers of th
lines in respect to mutual satisfaction as to the nature and extent
the coöperation?

A. They are exceedingly cordial and cooperative. I do n
2180 know of a complaint on either side, and I know of no ca
for complaint on either side.

Q. What arrangements have you, for instance, with them in reg
to advertising the Ogden through route?

A. We joined the Union Pacific in advertising the through tr
service between Chicago and San Francisco by the annual creation
a joint advertising fund, to which the lines contribute on a pro ra
basis. Very much the largest share of that fund is spent in we
bound advertising, and is placed in the hands of the Union Paci
for that purpose.

Q. They spend the fund to which you contribute as they see fit?

A. Yes.

Q. Can you give us the approximate amount annually which
expended for this westbound advertising?

A. The amount spent, between Chicago and San Francisco, durin
the current year will be about $140,000.

Q. What have been the results of this coöperative effort to affo
the pubilc a through line via Ogden? What kind of a line is th
through line thus created?

A. Briefly stated, the results of this coöperation have be
2181 to establish the best through transcontinental line, takin
passenger and freight service together, across the country.

Q. Of all the all-rail lines that you have mentioned, in your opi
ion, the Ogden route is the best?

A. Yes.

Q. Mr. Spence, state whether or not the Union Pacific is more o
less at the mercy of the Southern Pacific now than it was just befo
the merger in 1901 in respect to securing good service, reasonabl
terms and facilities, and so forth, for engaging in transcontinenta
business via the Ogden route, and give the facts upon which you
answer is based.

A. Prior to 1901 the Union Pacific had, beside the Southern Pa
cific west of Ogden as a connecting line, its rail route to Portlan
and its steamship line thence to San Francisco as its only alternativ
route. Since that time the Western Pacific and the San Pedro, Lo
Angeles & Salt Lake Railways have been constructed, affording th
Union Pacific various routes; the interstate commerce law wa
amended in 1906, delegating authority to the Interstate Commerc
Commission to establish through routes and joint rates, whic

gives the Union Pacific an absolute guaranty of the continua-
182 tion of through routes and joint rates; in 1910 the commission was given authority to suspend advanced rates, and by the me amendment to the law the shipper was given authority to route is freight, and the carriers were required to respect his routing.

Q. What kind of service is maintained by the Southern Pacific er its end of the Ogden route; that is, between Ogden and San rancisco? I mean in respect to the maintenance of the road as ell as in respect to the equipment and all the elements that go into rvice.

A. The service on the line west of Ogden is not excelled anywhere, nder like conditions.

Q. What do you mean by "under like conditions"?

A. The character of the country, the density of the traffic, and the opulation.

Q. State any facts that you may know tending to show whether ie Southern Pacific Company has any interest or motive to impair is service over the Ogden route.

A. In the first place, the Southern Pacific Company has a very rge investment in the Central Pacific, upon which it is anxious to rn a return. In the second place——

Q. Just give the general character of that investment
183 without going much into detail.

A. It owns the stock, and is the guarantor of the bonds. In the second place, the Southern Pacific is dependent upon the entral Pacific, west of Ogden, as the only route by which it can ccessfully compete for the traffic to and from the Middle West rritory, and also dependent upon that route to successfully com-ete for a large share of the traffic to and from the Atlantic sea-oard territory for which the Sunset-Gulf route is physically unable compete. These conditions not only afford no motive for impair-g the service, but they afford every incentive for keeping the serv-e up to its maximum efficiency.

Q. Could you impair the service on your part of the Ogden route ith a view to benefiting the Sunset-Gulf route in respect to the mited traffic for which those two routes offer alternative routes ithout at the same time impairing the service and injuring the gden route in respect to this traffic as to which the two lines do not ffer alternative routes?

A. No.

184 Q. Have you prepared a statement showing the total tonnage from and to all territories moving via the Ogden route s compared with the movement to and from Atlantic seaboard ter-itory?

A. I have.

Q. Was this statement prepared under your direction?

A. It was.

Q. Is it correct, to the best of your knowledge, information, a belief?

A. It is.

Q. Was it prepared from the statistics which were secured in or to furnish the petitioner with the traffic exhibits put in by it?

A. From the same statistics.

Q. Of course, throughout this testimony, by "Ogden route" mean over the Central Pacific to Ogden and the Union Pacific a its connections.

A. I am testifying with that understanding.

Q. This statement deals with tonnage moving over the Ogd route?

A. Yes.

2185 Q. How much of the transcontinental freight handled v the Ogden route during the fiscal year ending June 30, 19 had origin or destination in Atlantic seaboard territory?

A. 223,145 tons.

Q. How many tons had origin or destination in other territory?

A. 1,141,597 tons.

Q. What percentage of the total tonnage passing over the Ogd route is represented by Atlantic seaboard territory tonnage?

A. 16.3 per cent.

Q. In this Atlantic seaboard territory is included the traffic whi you mentioned yesterday in your testimony as traffic which t Sunset-Gulf route was physically unable to carry?

A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the sta ment just referred to by the witness.

(The statement referred to was thereupon marked "Defendan Exhibit (Spence) No. 62, April 22, 1915", and will be found in th volume of defendants' exhibits.)

By Mr. BLAIR:

2186 Q. Are you familiar, Mr. Spence, with the petitioner exhibits, which have been numbered here 43 to 58, containi certain traffic statistics?

A. Yes.

Q. Under whose directions were they prepared?

A. They were prepared under my direction.

Q. How was the material therefor obtained?

A. It was collected by the employment of seventy-six extra clerk

Q. What period is covered by these statistics?

A. The fiscal year beginning July 1, 1913, and ending June 30, 914.

Q. The Atlantic seaboard territory referred to in these statistics, suppose, embraces the same territory as the Atlantic seaboard terri- ory referred to in your previous testimony?

A. It does.

Q. And the same is true of the Middle West territory appearing n the statistics?

A. Yes.

Q. When you speak of traffic on those statistics as via El Paso, that does not necessarily mean traffic via the Sunset-Gulf route?

187 A. No, sir; it means the traffic passing through El Paso.

Q. Whether it goes further on by means of connections at l Paso or between El Paso and New Orleans or whether it goes by he Sunset-Gulf route?

A. It includes all traffic interchanged with connections at El Paso.

Q. The revenue referred to in the petitioner's exhibits and referred o in the additional exhibits which will be offered in connection with our testimony upon tonnage routed via Ogden is revenue accruing o the Southern Pacific Company, including the Central Pacific west f Ogden. Is that true?

A. Yes.

Q. And the revenue in the exhibits upon tonnage routed via El aso is that accruing to the Southern Pacific, including the Central acific, west of New York or New Orleans or El Paso or other Texas ateway through which the traffic moved?

A. All of the revenue accuring to the Southern Pacific system; yes.

188 Q. In the movement via the Ogden route what was the aver- age length of haul upon which the Southern Pacific earned its evenue?

A. The average haul was from 800 to 900 miles.

Q. When the movement was via El Paso what was the average ngth of haul upon which the Southern Pacific earned its revenue?

A. From about 1,000 miles to about 4,000 miles.

Q. In these statistical statements what does traffic to and from ints in Oregon include?

A. It includes all traffic from and to points in Oregon and any affic going to points north of Portland or originating at points rth of Portland, the only exception to that statement being what- er small amount of traffic there may be on the little branch that ns from Weed across the border into Kirk, Oregon.

Q. And in what have you included the revenue from that little anch?

A. That is included in California tonnage and revenue wherever California tonnage and revenue is introduced.

Q. Why was that?

A. Because the traffic is carried off from the main line of
2189 the Central Pacific by a branch line of the Central Pacific and is subject to the same general conditions as all northern California movements.

Q. Referring to petitioner's Exhibit 43–4, covering all tonnage routed via Ogden to and from Atlantic seaboard territory, and to petitioner's Exhibit 45–6, covering all tonnage routed via Ogden to and from Middle West territory, do they embrace all points west of Ogden that can be routed by the Ogden route?

A. They do.

Q. Now, referring to petitioner's Exhibit 47–8, covering all tonnage routed via El Paso to and from Atlantic seaboard territory, and to petitioner's Exhibit 49–50, covering all tonnage routed via El Paso to and from Middle West territory, what territory on the west has been included under the designation of "West of Ogden" and "West of El Paso"?

A. All points west of El Paso, including New Mexico and Arizona; all of California, Oregon, and Nevada.

Q. The boundaries west of Ogden and west of El Paso were boundaries designated by the petitioner in his request for the statistics?

A. Petitioner asked for the statistics covering the traffic routed via El Paso to and from all points west of Ogden; and
2190 we, therefore, included in the statistics all points west of El Paso for that reason.

Q. What is the eastern or southeastern boundary of Pacific coast territory to and from which through rates are applicable via the Ogden route?

A. They apply to points as far southeast in California, to and from points, as Banning, a point about eighty-six miles east of Los Angeles.

Q. So that in the Government's statistics of freight passing via El Paso there is necessarily included, from your description of the boundaries, a great deal of traffic which in no sense would be competitive to the Ogden route; is that true?

A. That is correct.

Q. Have you prepared statistics of the tonnage via El Paso which includes all tonnage to and from points west or northwest of Banning, California?

A. I have.

Q. In other words, they would exclude from the Government's statistics what was not in any way or in any sense open to the Ogden route?

A. Yes; the statement is made to make the statistics properly comparable.

2191 Q. Will you produce that statement?

A. Here it is.

Q. The statement which you produce is one of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including the relatively small amount of traffic interchanged with the Santa Fe at Deming) between all points west of Ogden, Utah, open to traffic via Ogden gateway in the sense in which you have explained, and Atlantic seaboard territory. Is that the statement you have produced?

A. That is correct.

Q. Have you prepared a statement embracing all traffic to and from the Pacific coast territory that is covered by petitioner's Exhibit 45–46, showing traffic routed via El Paso to middle west territory?

A. I have.

Q. Will you produce it?

A. That is the statement I have just handed to you.

Q. That is a statement that covers freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including the relatively small amount of traffic interchanged

2192 with the Santa Fe at Deming) between all points west of Ogden, Utah, open to traffic via the Ogden gateway to middle west territory as defined. Are both these statements correct?

A. They are both correct.

Q. They were prepared under your supevision?

A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the two statements referred to by the witness, one of which is headed S–1 and the other of which is headed S–2.

(The statements referred to were thereupon marked, respectively, "Defendants' Exhibit (Spence) No. 63, April 22, 1915", and "Defendants' Exhibit (Spence) No. 64, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared another statement making a comparison of commerciel freight tonnage and revenue of the Southern Pacific Company on traffic moved by the El Paso gateway with that moved by the Ogden gateway?

A. Yes.

Q. Under whose supervision and direction were those statistics prepared?

2193 A. Under my supervision.

Q. Are they correct?

A. Yes.

Q. Were they compiled from the same material and data from which the petitioner's exhibits were prepared?

A. Yes, sir.

Q. This is revenue, as shown here, via El Paso and via Ogden. Will you state any reasons why the revenue part is not fairly comparable?

A. The revenue on traffic via Ogden represents an average service of from 800 to 900 miles. The revenue upon tonnage via El Paso embraces all of the revenue, whether from El Paso, Alpine, Texas, New Orleans, or New York. That is to say, it embraces all of the revenue accruing to the Southern Pacific lines, which ranges from 1,000 to 4,000 miles.

Mr. BLAIR. Counsel for defendants puts in evidence the statement just referred to by the witness, it being a comparison of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway with that moved via Ogden gateway, between all points west of Ogden, Utah, open to traffic

2194 via Ogden on the one hand and Atlantic seaboard territory and Middle West territory on the other hand, it being headed S-4.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 65, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. When you say "open to traffic via Ogden" you mean that the rates are the same?

A. The tonnage via El Paso embraces all of the tonnage to and from western territory that is open to the Ogden route; that is, by which the rates apply.

Q. It includes traffic in southern California, though?

A. And Oregon.

Q. I want to call your attention to petitioner's Exhibit 51-32, covering traffic which originated or was delivered at points reached by the Central Pacific, whether it moved over the Central Pacific line or not, this exhibit being confined to traffic routed via El Paso. Did you include in this exhibit San Francisco traffic as well as Oakland and San Jose traffic?

A. Yes.

2195 Q. Although the Central Pacific really has not a line into San Francisco?

A. Yes; and may not have hauled Oakland and San Jose traffic. e included Oakland and San Jose because the request included that ffic.

Q. Whether that traffic was touched or handled by the Central cific or not?

A. Yes.

Q. Have you prepared a similar statement covering the traffic uted via Ogden?

A. I have.

Q. This statement is a statement of commercial tonnage and rev- ue of Southern Pacific Company on traffic which originated, assed over, or was delivered on Central Pacific Railroad moving via gden gateway to and from Atlantic seaboard territory?

A. That is correct.

Mr. BLAIR. Counsel for defendants puts in evidence the statement ferred to by the witness, which is headed S–4.

(The statement referred to was thereupon marked "Defendants' xhibit (Spence) No. 66, April 22, 1915", and will be found in the volume of defendants' exhibits.)

1096 By Mr. BLAIR:

Q. This offers the other side of the picture to petitioner's xhibits, does it not?

A. It does.

Q. Have you prepared a similar statement referring to Middle Vest territory?

A. I have.

Q. This is a statement of commercial tonnage and revenue of outhern Pacific Company on traffic which originated, passed over, r was delivered on Central Pacific Railroad, moving via Ogden ateway, to and from Middle West territory?

A. Yes.

Mr. BLAIR. Counsel for defendants puts in evidence this statement, hich is headed S–5.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 67, April 22, 1915", and will be found in the olume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared a statement making a comparison of this affic routed via Ogden with that routed via El Paso?

A. I have. Here it is.

1097 Q. All these statements you have introduced and are introducing are correct and are prepared in the same way?

A. They are.

Mr. BLAIR. Counsel for defendants introduces in evidence the statement referred to, which is a comparison of commercial tonnage and revenue of Southern Pacific Company on traffic via El Paso and via Ogden which originated, passed over, or was delivered on Central Pacific Railroad to and from Atlantic seaboard territory and Middle West territory. This statement is headed S–6.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 68, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Coming now to petitioner's Exhibits 53 and 54, which cover traffic moved via El Paso between all points in Nevada and Atlantic seaboard territory and Middle West territory, respectively, have you prepared like exhibits covering the traffic moved via Ogden?

A. Yes.

Q. And a statement making a comparison of that routed via Ogden with that moved via El Paso?

A. I have.

2198 Q. I have now called for three statements, which you have produced?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the three statements, the first headed S–7, it being a statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway between all points in Nevada and Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 68½, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The second statement is headed S–8, and is a statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway between all points in Nevada and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 69, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The third statement is headed S–9, and is a comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso and Ogden gateways, between

2199 points in Nevada and Atlantic seaboard territory and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 70, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. I call your attention now to petitioner's Exhibit No. 55, showg traffic moved via El Paso between all points in Oregon and bend and in California north of Roseville, Davis, Elmira, Suisun, d South Vallejo and Atlantic seaboard territory; and also to petiner's Exhibit No. 56, showing movements between the same Pacific ast territory and Middle West territory.

A. Yes.

Q. Those statistics, I understand, include all traffic originating rth of the Southern Pacific's main line, Roseville to San Franisco included?

A. They do.

Q. Have you prepared exhibits showing the like traffic routed via gden and an exhibit showing the comparison of the traffic routed ia Ogden with that routed via El Paso?

A. I have.

Q. My call brings from you three statements?

2200 A. Yes.

Mr. BLAIR. Counsel for defendants puts in evidence the three statements, the first being headed S–10, it being a statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 71, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The next statement is headed S–11, and is a statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 72, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The third statement is headed S–12 and is a com-

2201 parison of tonnage and revenue of Southern Pacific Company via El Paso as shown in petitioner's Exhibits Nos. 55 and 56 with that via Ogden on traffic moved between Atlantic seaboard territory and Middle West territory, on the one hand, and points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 73, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Are there any reasons why the comparison between the mo
ment via the Ogden route and the movement via El Paso for t
period covered by these statements is not a fair comparison?

A. Yes. The tonnage via the Ogden route is not normal, becau
the route was not opened to traffic to and from Oregon until Ju
15, 1914; so that the major part of the Oregon traffic moved v
Portland. About eighty per cent of the traffic was moved via Po
land.

Q. That was due to the closing of the Roseville gateway, to whi
you have referred?

A. Because the Roseville gateway was closed; yes.

Q. The Roseville gateway was closed during the regi
2202 of the Union Pacific?

A. Yes.

Q. And did you begin to take steps immediately after the merg
to reopen that gateway?

A. We took steps at once and we encountered some long and sh
haul difficulties that delayed the opening of it, but finally opened it
June, 1914, the year covered by the statements.

Q. The tonnage which would have moved via Ogden, if it had b
open, was routed via what points?

A. Chiefly via Portland.

Q. Do these statements, both the petitioner's exhibits and ou
include traffic having origin and destination on the Northweste
Pacific and on the Southern Pacific line north of Vallejo, Suis
Elmira, and Davis?

A. They do.

Q. Are those points also on the Central Pacific?

A. None of them, except Marysville and Tehama.

Q. How would you explain the large excess of eastbound tra
shown in petitioner's Exhibit No. 55?

A. The excess of eastbound over westbound?

A. Yes.

2203 A. The eastbound tonnage originates at the interior poi
The westbound tonnage goes to——

Q. I am speaking of petitioner's Exhibit No. 55, which is o
which deals with traffic north of these points, Roseville, Sacramen
and other points.

A. Do you mean why does the eastbound so largely exceed t
westbound?

Q. Yes.

A. The westbound tonnage does not go directly to the destinatio
It goes to Oakland and Sacramento and is jobbed.

Q. And your statement, by its definition, excludes those jobbing
ints?
A. Yes; it does not include those jobbing points.
Mr. McCLENNEN. By "jobbing" you mean the jobbing of the
mmercial houses?
The WITNESS. Yes.
Mr. McCLENNEN. And not the jobbing of the railroad?
The WITNESS. No.

By Mr. BLAIR:

Q. Coming now to petitioner's Exhibit No. 57, covering traffic via El Paso gateway between San Francisco and Oakland
04 and Atlantic seaboard territory, and petitioner's Exhibit No. 58, covering traffic moved via El Paso between San Francisco
d Oakland, California, and Middle West territory, have you pre-
red exhibits showing similar traffic routed via Ogden?
A. I have.
Q. And a comparison of the statements?
A. Yes.
Mr. BLAIR. Counsel for defendants puts in evidence the three
tements just produced by the witness, one headed S–13, being a
tement of commercial tonnage and revenue of Southern Pacific
mpany on traffic moved by Ogden gateway between San Francisco
d Oakland, California, and Atlantic seaboard territory.
(The statement referred to was thereupon marked "Defendants'
hibit (Spence) No. 74, April 22, 1915", and will be found in the
lume of defendants' exhibits.)
Mr. BLAIR. The second statement is headed S–14, and is a state-
nt of commercial tonnage and revenue of the Southern Pacific
mpany on traffic moved via Ogden gateway between San Francisco and Oakland, California, and the Middle West territory.
05 (The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 75, April 22, 1915", and will
found in the volume of defendants' exhibits.)
Mr. BLAIR. The third statement is headed S–15, and is a compari-
n of commercial tonnage and revenue of the Southern Pacific Com-
ny on traffice moved via El Paso gateway and via Ogden gateway,
tween San Francisco and Oakland, California and Atlantic sea-
ard territory and Middle West territory.
(The statement referred to was thereupon marked "Defendants'
hibit (Spence) No. 76, April 22, 1915", and will be found in the
lume of defendants' exhibits.)

By Mr. BLAIR:

Q. How would you explain the excess of westbound over east-
und traffic in the statements just offered in evidence?

A. These are statements of westbound traffic of Oakland and San Francisco, which, as I have previously stated, are not only large consuming points, but are the points at which the traffic is jobbed by the jobbers to all the surrounding country.

Q. How would you explain the movement of as much as 40,000 tons via El Paso from Middle West territory, as contained, say, in petitioner's Exhibit No. 58?

2206

A. That traffic is, in the main, delivered to us at El Paso by the Rock Island. They have their own organization in California and throughout the country actively soliciting the traffic for their long haul, which is at El Paso.

Q. You have an arrangement for handling that business?

A. We have an arrangement.

Q. Can you say whether the amount of traffic which simultaneously was secured over the Santa Fe for the same territory was as large as that over the Rock Island or larger?

A. I should say that it was larger.

Q. I believe you have testified, yesterday, that the Central Pacific lines do not cut any figure in transcontinental traffic having its origin or destination in southern California.

A. Yes.

Q. And that they are not initial lines in Oregon?

A. Yes.

Q. Have you prepared a statement showing the tonnage moved via El Paso and via Ogden between points in southern California as defined—and by "as defined" I mean south of Tehachapi or south of a line between Santa Barbara and Mojave—and points in Oregon on the one hand and points in Atlantic seaboard territory on the other?

2207

A. I have.

Mr. BLAIR. Counsel for the defendants put in evidence the statement just referred to, it being headed S–17, and being a statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on the one hand and points in Atlantic seaboard territory on the other.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 77, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. In other words, the statement which I have just referred to affords the basis of cutting out from the previous statements in reference to Atlantic seaboard territory so much thereof as has origin or destination in Oregon or in southern California?

A. Both by El Paso and by Ogden.

Q. Have you a similar statement which will serve the same purpose in respect to traffic to and from Middle West
2208 territory?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement st referred to, it being headed S–16, and being a statement of commercial tonnage moved via El Paso and Ogden between points in alifornia, Banning to Mojave and Santa Barbara, inclusive, and oints in Oregon on the one hand and points in Middle West territory on the other.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 78, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared statements which eliminate the Oregon and outhern California tonnage from the traffic statistics offered as exhibits by petitioner, and which show the movement of traffic between points south of the Oregon-California line and north of Mojave and Santa Barbara on one hand, and points in Middle West territory and Atlantic seaboard territory, respectively, on the other hand?

A. I have.

Q. Moving either way?

A. Yes.

2209 Mr. MCCLENNEN. Does that include both territories?

The WITNESS. Yes.

Mr. MCCLENNEN. And both gateways—both Ogden and El Paso?

Mr. BLAIR. It includes both gateways.

Counsel for defendants puts in evidence the statements just produced by the witness, the first of which is headed S–18, and is a statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line, and north of Mojave and Santa Barbara on the one hand and Middle West territory on the other hand.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 79, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The other statement is offered by counsel for the defendants, and is headed S–26, it being a statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north of Mojave and Santa Barbara on the one hand and Atlantic seaboard territory on the other hand.

(The statement referred to was thereupon marked Defendants' Exhibit (Spence) No. 80, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. We have the different routes on these tables described in s way; via Ogden is our old friend the Ogden route?

A. Yes.

Q. Via Sunset-Gulf route we all know?

A. Yes.

Q. What is meant by "via New Orleans"?

A. It covers traffic that moves from that territory all-rail via N Orleans.

Q. Through El Paso?

A. Through El Paso.

Q. And then went all-rail to destination?

A. Yes.

Q. What is meant by the term "via El Paso and other gatew east thereof except New Orleans"?

A. That covers traffic received from connecting lines at El Pa and at any gateway east thereof to, but exclusive of, New Orleans

Q. I see here on these statements, Mr. Spence, a little traf
2211 carried by the Sunset-Gulf route to middle west territor How did that happen?

A. That is probably reconsigned traffic—traffic that was started b the shipper to one market and reconsigned en route to another.

Q. Explain that a little bit more fully.

A. They may start fruit consigned to New Orleans and reconsig it to Pittsburgh or Cincinnati or to some point in the Middle We territory after it is en route.

Q. That is the only kind of traffic that moves in that way?

A. Except an occasional car that a connecting line may secur through the consignee by their solicitation.

Q. How would you explain the movement of any traffic via Ne Orleans to Middle West territory, especially eastbound traffic?

A. That is explained in substantially the same way, the eastboun traffic; the business may be solicited by the Queen & Crescent or th Louisville & Nashville or connecting line through the consignee a Cincinnati or some point in the vicinity, and by his instructions b routed via New Orleans.

Q. By what railroad, mainly, was the traffic secured
2212 which appears on statement S–18 as moving via El Paso?

A. Chiefly by the Rock Island.

Q. Of course, this is not all the traffic, but only includes traffi which passed either by the Ogden route or the El Paso route?

A. Yes.

Q. And it includes the Asiatic traffic, I suppose—fast-freight traffic?

A. Yes.

Q. And the perishable traffic?

A. Yes.

Q. How would you explain the large percentage of the eastbound traffic via Ogden and the small percentage via the Sunset-Gulf route, as contrasted with the respective percentages of westbound traffic?

A. The eastbound traffic embraces the very large volume of business of a character for which the Sunset-Gulf route is physically unable to compete.

Q. Is there any of this traffic which is traffic to industrial companies, oil companies, or things of that kind owned by the Southern Pacific Company?

2213 A. A very considerable volume of traffic is tonnage consigned to affiliated companies owned by the Southern Pacific Company.

Q. A very considerable part of what particular routing?

A. Westbound traffic.

Q. Which passes over what route? In other words, how would the Southern Pacific Company route its own traffic that it absolutely controlled, the freight for which came out of its pocket?

A. It would route it via the nearest gateway, in order to minimize the amount of freight charges paid to foreign carriers.

Q. It would route it by the nearest gateway by which it could reach its own lines?

A. Yes. Therefore the Middle West traffic via New Orleans; the westbound consists largely of material consigned to affiliated companies.

Q. That is what I was getting at—that comparatively large movement via New Orleans is explained in that way, is it?

A. Yes.

Q. Mr. Spence, what are the chief routes in competition for Asiatic traffic?

2214 A. The Canadian Pacific via Vancouver in connection with its own steamship line across the Pacific.

The Great Northern, Northern Pacific & Chicago, Milwaukee & St. Paul, each a separate route, to Puget Sound ports, Seattle, and Tacoma, in connection with Japanese steamships operating across the Pacific, the Nippon Yusen Kaisha, and the Osaka Yusen Kaisha.

There were other steamship lines operating to and from Puget Sound ports which have less frequent sailings than these.

The Union Pacific system through Portland has the same steamship service available, making a through route via Puget Sound ports.

The Western Pacific and its connections east of Salt Lake City, the Southern Pacific-Union Pacific and its connections east, and the Santa Fe and the Southern Pacific southern route operate to San

Francisco in connection with three steamship lines across the Pacific namely the Pacific Mail Steamship Line, the Toyo Kisen Kaisha, and the Dollar Line.

There may be some others, but those are the principal ones.

2215 The San Pedro, Los Angeles & Salt Lake Railway, in connection with the Union Pacific and lines east, operate through San Pedro in connection with steamers of the Dollar Line across the Pacific.

The Atlantic-seaboard business follows the Suez routes, of which there are four steamship lines in regular operation between New York and Asiatic ports.

Q. What does the outbound Asiatic business handled through the Pacific coast consist of?

A. It consists chiefly of products originating in the Middle West such as condensed milk, machinery, canned meats, and of cotton from Oklahoma, Texas, and the Imperial Valley.

Q. What does the inbound traffic consist of?

A. The inbound traffic consists chiefly of raw silk, matting, and tea.

Q. You have explained how that moved—at least, the raw silk. How does the tea move?

A. The tea and matting are consigned, usually, to Missouri River points under storage and transfer arrangement, which exist at Kansas City, Omaha, St. Joseph, St. Paul, under which the matting and tea originally are consigned to those points and stored, and

2216 eventually distributed to points east under the through rate.

Q. Can the Sunset-Gulf route get any of this Asiatic traffic?

A. No.

Q. Would it be in a different position if the Central Pacific were not a part of its system?

A. Its position would be just the same.

Q. It is out of that, hopelessly?

A. Yes.

Q. Have you an exhibit or statement showing the eastbound tonnage delivered at Ogden to the Union Pacific as compared with the westbound tonnage received at Ogden from the Union Pacific during the two years ending June 30, 1913, and June 30, 1914?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement headed S–37, statement of commercial freight interchanged between Southern Pacific Company and Union Pacific Railroad Company at Ogden, Utah, for the fiscal years ending June 30, 1913 and 1914.

The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 81, April 22, 1915", and will be 7 found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. The eastboard shipments represent tonnage you deliver to the ion Pacific and the westbound shipments tonnage you receive from Union Pacific?

A. Yes.

Q. It appears from your statement of 1913 that you delivered, in nd numbers, 606,000 tons and received 547,000 tons?

A. Yes; that is correct.

Q. And that in 1914 you delivered 598,000 tons and received from e Union Pacific 469,000 tons?

A. That is correct.

Q. Will you explain the difference between the figures contained this statement produced by you and those covering the two fiscal ars included in petitioner's Exhibit No. 73, produced by Mr. unroe?

A. The difference is due, first, to a difference in the method of counting, of keeping the statistics. The Union Pacific takes into count during a specific period all traffic passing the junction within that period. The Southern Pacific takes the business into 18 account under what we call interline accounts, after it is delivered to destination and the earnings reported back by e delivering line.

The second difference is that our statement does not include, in e westbound, material and supplies for our own company.

Q. You do not include, in the eastbound, material and supplies r the Union Pacific?

A. No.

Q. Mr. Spence, have you prepared a statement making a compari-n of tonnage to and from Middle West territory moved via El aso which had origin or destination on the Central Pacific bond-ded line, with tonnage moved via Ogden which had origin or estination on the Southern Pacific or Central Pacific nonbond-aided ine?

A. I have.

Q. Will you produce the statement?

A. Here it is.

Q. Is that correct?

A. That is correct.

Mr. BLAIR. Counsel for defendants puts in evidence the statem just referred to and produced by the witness, headed S-22.

2219 (The statement referred to was thereupon marked "Defe ants' Exhibit (Spence) No. 82, April 22, 1915", and will found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. The statement just referred to embraced Middle West territo Have you a similar statement in regard to Atlantic seaboard ter tory?

A. I have.

Mr. BLAIR. Counsel for the defendants puts in evidence the sta ment just produced, headed S-30, being a similar comparison of sim lar tonnage upon Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendan Exhibit (Spence) No. 83, April 22, 1915", and will be found in t volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Mr. Spence, is there much unrouted traffic nowadays? I me is there any considerable quantity of traffic which a carrier recei without routing directions from the shipper?

A. There is no appreciable amount of such traffic now. T

2220 shipper nearly always exercises his prerogative to designate routing.

Q. Take the westbound traffic from the Atlantic seaboard whi the Sunset-Gulf receives, of course, at New York. How much of th is unrouted?

A. There can not be said to be any of it that is unrouted, becau the delivery of the freight by the shipper to the steamship line p of the Southern Pacific Company makes his intention obvious.

Q. You could not carry it but one way when it is delivered to yo

A. No.

Q. What about the eastbound traffic which the Sunset Route g for transportation to the Atlantic seaboard territory?

A. There is very little of it that is not routed by the shipper.

Q. Do other lines have access to points exclusively on the South Pacific lines in California?

A. Yes; all transcontinental lines have access to the business to a from all Southern Pacific territory.

Q. Does the Southern Pacific control the routing of traffic ori nating at such places exclusively on its line?

2221 A. It does not.

(Whereupon, at 12.30 o'clock p. m., a recess was taken un 2 o'clock p. m.)

222 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of ecess, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Spence, referring again to the steamships operated through he Panama Canal, and to this map offered in evidence showing those operation October 1, 1914, do you remember how many in number hese steamships were?

A. There were forty-nine, on the date of the map.

Q. What was their approximate capacity?

A. Approximately 400,000 tons.

Q. Have any additions been made to the service since that map was repared? I think you stated them yesterday?

A. Yes; the Red Star Line has put on a regular service with the teamers Finland and Kroonland.

Q. What does this make the steamship facilities available through he Panama Canal amount to, in tons per annum, in each direction?

223 A. Considerably more than 1,000,000 tons per annum in each direction.

Q. Do you know the number of tons of transcontinental traffic arried through the Panama Canal by steamships between eastern oints in the United States and California in the months of September, October, November, and December, 1914?

A. 369,199 tons.

Q. That is, between Atlantic seaboard territory and California?

A. And California ports.

Mr. MCCLENNEN. In what period?

The WITNESS. During the last four months of 1914.

By Mr. BLAIR:

Q. How did sailings and service in the Panama Canal compare ith those of the Tehuantepec route when that was in operation?

A. The sailings of the American-Hawaiian Line of the Tehuantepec route were from five to seven days apart. The time in transit as from twenty-six to thirty days, and the service involved two ransfers, one on each side of the Isthmus. The average sailings between New York and California via the canal at the present time are about every other day. The average time is about twenty-

224 two days, and the freight is handled through without transfer.

Q. And all these water lines compete directly and successfully for traffic in New Orleans and central California?

A. They do.

Q. And in what part of Atlantic seaboard territory?

A. The entire Atlantic seaboard territory.

Q. How was the Sunset-Gulf route affected by the inaugura of the service through the isthmus of Tehuantepec?

A. When the service was inaugurated by the Tehuantepec ro it reduced the time which had previously been by the Americ Hawaiian Line through the Straits of Magellan from sixty to twe six or thirty days and drew a very considerable volume of tra from the Sunset Route.

Q. Was the business of all-rail lines as much affected as was t business of the Sunset Route?

A. No; they were not as much affected, because the Tehuantepec capable of handling the peculiar character of traffic that the Sun Route is capable of handling.

Q. Has it competed with the Sunset-Gulf route at its strong point, the port of New York. Is that right?

A. That is right; yes, the port of New York.

2225 Q. Is the effect of numerous steamship lines through t Panama Canal confined to the port of New York? I beli I have asked you that before.

A. Yes, sir. The rates are so low to and from New York C that by the addition of the full local from or to any point in Atla seaboard territory the aggregate cost of transportation is less th by the transcontinental line.

Q. Are the steamships through the Panama Canal physically a to carry all the kinds of traffic that the Sunset-Gulf route is capa of carrying?

A. Everything.

Q. And the kind of traffic which the Sunset-Gulf route is not phy ically capable of carrying I suppose the steamships are not phy cally capable of carrying?

A. No; they have made an effort to carry a little perish freight, but have not been successful so far.

Q. Please state what are the future prospects in respect to t traffic between California and Atlantic seaboard territory wh both the Sunset-Gulf route and the steamships through the Pan Canal are able to carry.

A. The steamship lines through the Panama Canal have alre established very low rates; rates so low that the all-rail lines finding it impossible to meet them.

2226 Q. Why?

A. Because the eastern lines will not join in the nece through rate.

Q. By "eastern lines" you mean what lines?

A. East of Chicago and the Mississippi River, especially. Sunset Route (the Southern Pacific Company) has made appli

o the Interstate Commerce Commission for authority to make east-ound rates, which application was granted this week between the California ports and New York, to approximately meet the competi-ion through the canal.

Q. And the all-rail lines, as you have said——

A. The all-rail lines have not participated in the application and re unable to do so for the reasons stated.

Q. Are the western parts of the all-rail lines willing and the east-rn parts not willing?

A. Yes; the western lines would be glad to handle the traffic.

Q. How about the Santa Fe, with its mixed rail and water lines?

A. The Santa Fe, in connection with the Mallory Line, expects to establish the same rates as the Sunset Route.

2227 Q. So that, then, as to all the traffic of the Sunset-Gulf route which it is physically able to carry between California and the Atlantic seaboard territory it is in competition with the Pacific Mail steamships?

A. The steamships through the Panama Canal.

Q. Yes; I mean the steamships through the Panama Canal; and the prospects are that it will be alone in the fight in respect to that traffic with the water carriers on that side?

A. That the Sunset-Gulf route and the Mallory route will be in the contest with the steamships through the Panama Canal and for the major part of the traffic the all-rail lines will not be able to com-pete.

Q. Then the all-rail lines, including the Ogden route, will be in the business to the extent of striving for that traffic which you have described, which mixed rail and water lines can not engage in?

A. Yes; competition for that traffic will be between the several all-rail lines, the Ogden route, and the Santa Fe and others.

Q. And the competition for this transcontinental traffic which the Sunset-Gulf route is capable of carrying, that competition will be between the Sunset-Gulf route, the Santa Fe-Mallory Line,

2228 and the water carriers through the Panama Canal?

A. That is right.

Q. What effect in respect to the rate upon that traffic has the coming into existence of the water carriers through the Panama Canal had?

A. It has radically reduced it.

Q. Which lines are the dominant rate-making factors in respect to all that traffic which the Sunset-Gulf route is capable of carrying?

A. The steamship lines through the Panama Canal.

Q. And those carriers now dominate the rate situation in respect to such traffic between California and the Atlantic seaboard terri-

A. Yes.

Q. What effect, in your opinion, upon the rates would result fr the separation of the Central Pacific lines from the Southern P cific system; first, as to transcontinental rates in general, and t I will ask you about rates between California and Atlantic seabo territory especially?

A. Owing to the petitions which the carriers filed with the Int state Commerce Commission after the amendment of the law
2229 1910 for the privilege of protecting and continuing thro rates to California terminals, lower than rates to intermedi points, the transcontinental rates have been under the active a continuous review of the Interstate Commerce Commission for s eral years. They have not been found higher than reasonable. fact, the major part of them have been found to be subnormal ra less than reasonable, to such an extent that the commission has thorized a waiver of the long and short haul clause and the maint nance of higher rates for less service to intermediate points.

Q. That answer would apply as to the prospect of any fut reduction of transcontinental rates?

A. Yes.

Q. What I am asking is: What, in your opinion, would be t effect of the separation of the Central Pacific lines from the South Pacific system in general upon transcontinental rates?

A. My answer is that the same competitive forces that have c ated those rates would be still operative, and the effect would neither to advance nor to reduce them.

Q. What about rates between California and Atlantic seaboard t ritory? Into what two classes would you divide that tra
2230 with reference to the ability of the Sunset-Gulf route to t part in it?

A. First, that class of traffic which neither the Sunset-Gulf ro nor the Mallory Line nor the canal steamship lines are physic able to take.

Q. That, I understand, is the perishable freight?

A. The fruit and bulk freight; all kinds of delicate freight freight which is insufficiently packed to bear handling.

Q. As to such traffic, what effect upon rates would the separa of the Central Pacific lines from the Southern Pacific have?

A. I do not think it would have any.

Q. The Sunset-Gulf route and the Central Pacific do not com for that traffic, do they?

A. No, sir.

Q. As to the remainder of the traffic; that is, such traffic as Sunset-Gulf route and the Santa Fe-Mallory Line and the w carriers through the Panama Canal can compete for, what e

ould the separation of the Central Pacific from the Southern Pacific have upon rates for that traffic?

A. It would have no effect whatever, for the reason
231 that the contest for that traffic will be between the canal steamship lines and the Sunset-Gulf line and the Mallory Line-Santa Fe route.

Q. As I understand it, the water carriers through the Panama Canal have already reduced rates on that traffic, so that the all-rail lines are prospectively out of that business?

A. On the major part of it the rates have already been reduced.

Q. What will be the effect, in your opinion, of the separation of the Central Pacific from the Southern Pacific system upon rates on the Pacific coast, say from Oregon and north thereof, to El Paso on the south and Ogden on the east? That is, comparatively speaking, the local rates.

A. The separation would have a tendency to increase those rates.

Q. Why?

A. By creating a two-line haul or a three-line haul where a one-line haul has previously existed.

Q. What would be the effect, in your opinion, upon the service of the separation of the Central Pacific lines from the Southern
232 Pacific system? First, consider the lines via Ogden and via El Paso.

A. The effect would be to impair the service by both routes, because of the interchangeable way in which the lines are used.

Q. That is, both the lines standing in the name of the Central Pacific and the other lines of the system participate in both of those through routes and add to their efficiency?

A. They do.

Q. Do you know of any compensating advantages to the public likely to result from the separation?

A. I am not able to conceive of any compensating advantages to the public.

Q. Has the inclusion of the Central Pacific lines in the Southern Pacific system closed any alternative or competitive routes to the public?

A. No.

Q. I believe you have already stated that the ownership of the Central Pacific by the Southern Pacific has not prevented the existence of competition between the Ogden route and the El Paso route.

A. It has not.

Q. You said that yesterday?

233 A. Yes, sir.

Q. Has such ownership created the power to prevent such competition?

A. No; it has not.

Q. Has such ownership created an interest or inducement on t part of the Southern Pacific to impair the service on the Cen Pacific part of the Ogden route?

A. It has not.

Q. Have you anything to add to the reasons you gave for y answer yesterday or to-day?

A. No; I think I gave the reasons in full.

Q. What is the value to the Southern Pacific Company of t inclusion in its system of the Central Pacific lines?

A. The lines standing in the name of the Central Pacific ar necessary complement to the other lines embraced in the South Pacific system. The two sets of lines developed as one system, a their separation would impair the efficiency of both.

The joint operation of the two lines enables the Southern Paci to participate in a very substantial volume of traffic which it wou not be able to successfully secure by any other route. It en
2234 bles it to participate in a large traffic for which the Sunse Gulf route is physically unable to complete.

Q. Is it usual or unusual for a railroad system of this country include within its system lines which form part of alternate a competing routes of traffic?

A. It is quite usual.

Q. Let us take, for example, the different systems of railroad whi participate in the transportation of traffic across this continent—th very transcontinental traffic we have been talking about; do any o these systems include within themselves different lines which for parts of alternate competing routes for transcontinental traffic?

A. Quite a number of them.

Q. Will you give some illustrative examples?

A. The Chicago, Milwaukee & St. Paul Railway operates its ow line from Chicago via St. Paul to Seattle.

Its line from Chicago to Omaha, in connection with the Unio Pacific system between Omaha and Seattle, makes an alternate com peting route.

Q. Of those two competing routes, the Chicago, Milwaukee & S Paul owns all of one and what proportion of the other?

A. Nearly 500 miles.

2235 Q. Out of approximately a total of how much?

A. 2,300 miles.

Q. Have you prepared a map which graphically shows what you have just stated in regard to the Chicago, Milwaukee & St. Paul?

A. I have.

Q. Will you produce it?

A. Here it is.

Q. Is that map correct?

A. It is.

Mr. BLAIR. Counsel for defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 84, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed, Mr. Spence.

A. The Union Pacific has its own system of lines from Omaha and from Kansas City on the east to Portland, Oregon, and its own steamship line from Portland to San Francisco. It also has a line from Omaha and one from Kansas City via Salt Lake in connection with the San Pedro, Los Angeles & Salt Lake Railroad, of
2236 which it owns a half interest, and its own steamship line between Los Angeles and San Francisco.

Its lines from Omaha and from Kansas City on the east to Ogden in connection with the Southern Pacific line from Ogden to Sacramento, Oakland, and San Francisco form an alternate competing route.

On the east these Union Pacific lines join, at Council Bluffs, with the Chicago & North Western, among other lines, between Council Bluffs and Chicago; and the Pennsylvania lines, among other lines, between Chicago and the Atlantic seaboard.

The Kansas City line of the Union Pacific connects at Kansas City with the Chicago & Alton to St. Louis, and thence via the Baltimore & Ohio system to Atlantic seaboard, among others.

The Council Bluffs line connects with the Wabash from Council Bluffs to St. Louis, and the Baltimore & Ohio east thereof.

The Kansas City line connects with the Rock Island from Kansas City to Chicago, and thence via Pennsylvania lines to the Atlantic seaboard territory.

Mr. BLAIR. Counsel for defendants put in evidence the map just referred to by the witness.

2237 (The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 85, April 22, 1915.")

By Mr. BLAIR:

Q. In all these maps you have not attempted to put in branches and feeders and other parts of this system of lines to which the map refers that do not figure in the alternate routes?

A. I have not.

Q. Now, proceed.

A. The Missouri Pacific system, consisting of the Missouri Pacific, Denver & Rio Grande, and Western Pacific, operates a line from St. [illegible] to Sacramento, Stockton, Oakland, and San Francisco; a sepa-

rate line from St. Louis to Texarkana, joining with an affiliated line the Texas & Pacific, between Texarkana and El Paso, connecting with the Southern Pacific west of El Paso, forms an alternative competitive through route.

Q. Of this southern line, what proportion do they own or have a part of their system?

A. The affiliated lines represent fully one-half of it.

Q. In all these maps you represent the system which you are referring to in green color, and the connecting lines in

2238 yellow?

A. Yes.

Mr. BLAIR. Counsel for defendants put in evidence the map referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 86, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed.

A. The Santa Fe System operates its own line between Chicago and Stockton, Oakland, and San Francisco, California. Its line from Chicago, via Kansas City, to Pueblo, Colorado, in connection with the Denver & Rio Grande, thence to Salt Lake City, and Western Pacific thence to San Francisco, forms an alternate competitive through route.

The Santa Fe system, besides its line from San Francisco to Chicago, operates a line via Texaco to Galveston, Texas, which, in connection with the Mallory Steamship Line, forms an alternative route between California and Atlantic seaboard territory, the line between San Francisco and Chicago joining with the Erie Railroad between Chicago and New York.

Q. Are these alternate routes which you refer to, say, of the

2239 Santa Fe, mere paper routes, or does a substantial volume of traffic pass over both of the alternative routes?

A. They are in active competition and carry a substantial volume of the traffic.

Q. Is that true of the Missouri Pacific system that you refer to?

A. Yes.

Q. And what was the first one you referred to?

A. The Chicago, Milwaukee & St. Paul and the Union Pacific.

Q. And is it true of them?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map last referred to by the witness, of the Sante Fe system.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 87, April 22, 1915.")

By Mr. BLAIR:

Q. The Mallory Line, as I understand, is closely affiliated with the Santa Fe and operates with it?

A. Preferentially.

Q. And does a large business?

A. And does a considerable transcontinental business.

2240 Q. Proceed.

A. The Great Northern Railway operates a line from Seattle to Superior, Wisconsin, and the Twin Cities, Minneapolis and St. Paul, connecting at Superior with the New York Central lake and rail lines to New York, and connecting at St. Paul with the Burlington route and the Pennsylvania lines to New York.

The Great Northern, jointly with the Northern Pacific, owns the Spokane, Portland & Seattle Railway, between Astoria, Portland, and Spokane, which, in connection with its Great Northern lines from Spokane eastward, forms a through route from Portland to the Atlantic seaboard by the connections that have been enumerated.

The Great Northern, by the routes described from Seattle and Astoria and Portland, operates a line to Billings, Montana, where it connects with the Burlington route, running via Omaha to Chicago, and via Kansas City to St. Louis, connecting at Chicago with the Pennsylvania lines to the Atlantic seaboard and at St. Louis with the Baltimore & Ohio system to the Atlantic seaboard.

Q. Those, also, are actual routes, over both of which, or over all of which, a substantial volume of traffic moves?

2241 A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 88, April 22, 1915.")

By Mr. BLAIR:

Q. Suppose you give us some examples from the Western Trunk Line group.

A. The Chicago & North Western operates a line from Chicago to Ashland, Wisconsin, which joins with the Northern Pacific in one through route between Chicago and Portland, Tacoma, and Seattle.

The Chicago & North Western operates a separate line between Chicago and St. Paul, which, in connection with the Great Northern Railway, forms an alternate competing route between Chicago and Puget Sound.

The Chicago & North Western operates a third line, between Chicago and Council Bluffs, in connection with the Union Pacific system, forming an alternate competing through route between Chicago and Puget Sound.

Q. You have likewise prepared a map of the system which y
have just described?

2242 A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the m
just referred to by the witness.

(The map referred to was thereupon marked "Defendants' E
hibit (Spence) No. 89, April 22, 1915.")

By Mr. BLAIR:

Q. All three of these alternate routes carry a considerable vol
of traffic?

A. They do.

Q. In competition with each other?

A. Yes.

Q. Proceed.

A. The Rock Island lines extend from Chicago to Council Bl
and in connection with the Union Pacific and Southern Pacific li
form one route between Chicago and California.

A line from Chicago via Kansas City to Pueblo, Colorado, c
nects with the Denver & Rio Grande, which connects with the We
ern Pacific and forms an alternative route.

A line from Chicago via Kansas City to Santa Rosa, New Mexi
in connection with an affiliated line, the El Paso & Southweste
between Santa Rosa and El Paso, and the Southern Pac

2243 west thereof, forms an alternate competing line.

A line from St. Louis via——

Q. When you say "a line from St. Louis" and "a line from Ch
cago" you mean a Chicago, Rock Island & Pacific line?

A. Yes; a Rock Island line from St. Louis to Denver, in conn
tion with the Union Pacific and Southern Pacific to Pueblo, in c
nection with the Denver & Rio Grande and Western Pacific, and
Santa Rosa, New Mexico, in connection with the El Paso & Sou
western and Southern Pacific, form also competing routes betw
St. Louis and California.

A Rock Island line from Memphis to Santa Rosa, in connect
with the El Paso & Southwestern to El Paso and the Santa Fe
yond forms an alternate route in transcontinental business, b
joined on the east by the Southern Railway, the Baltimore & O
Philadelphia & Reading, and New Jersey Central to New York.

A line at St. Louis connecting with the Pennsylvania lines betw
Chicago and the Atlantic seaboard.

A line at Chicago connecting with the New York Central lines
tween Chicago and the Atlantic seaboard.

Q. These lines to which you refer have been delineated on
map—the map which you now produce?

244 A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 90, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed.

A. The Chicago, Burlington & Quincy Railway, known as the Burlington Route, operates a line between Chicago and St. Paul in connection with the Great Northern Railway to Portland, Tacoma, and Seattle.

The Burlington Route operates another line from Chicago to Billings, Montana, in connection with the Northern Pacific Railway; thence to Puget Sound, which forms an alternate competing route.

The Burlington operates a line from St. Louis to Denver in connection with the Union Pacific and Southern Pacific to California, and the Burlington operates a separate line from St. Louis to Kansas City in connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific, forming an alternate competing route between St. Louis and California.

Q. And all those routes carry a substantial volume of

245 traffic?

A. They do.

Q. In competition with each other?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 91, April 22, 1915.")

By Mr. BLAIR:

Q. Give us some samples, Mr. Spence, from the lines in Trunk Line territory, the eastern territory.

A. The Pennsylvania Lines operate from New York to Chicago and there form connection with the Santa Fe system between Chicago and San Francisco.

The Pennsylvania Lines operate between New York and St. Louis, and there form connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific to San Francisco, forming alternate competing lines.

Mr. BLAIR. Counsel for the defendants put in evidence the map showing the lines just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 92, April 22, 1915.")

2246 By Mr. BLAIR:

Q. By the way, Mr. Spence, if you were to take the Pennsylvania lines from New York, say, to Chicago, and the Sunset-Gulf route from New York to San Francisco, would you not have an exact reproduction on the east of the Central Pacific and the Sunset Gulf route on the west?

A. Yes; especially from Pittsburgh westward; business from Pittsburgh.

Q. Except that the line from Chicago to New York is longer than the line from San Francisco to Ogden?

A. Yes.

Q. Have you any other examples?

A. The Baltimore & Ohio system operates from the Atlantic seaboard to Chicago, joining with the Illinois Central between Chicago and Council Bluffs, and the Union Pacific and Southern Pacific west thereof via Ogden in one through route between the Atlantic seaboard and San Francisco.

The Baltimore & Ohio system operates a line from the Atlantic seaboard to St. Louis, which, in connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific to San Fran-

2247 cisco, forms an alternate route in the business between the Atlantic seaboard and California.

Mr. BLAIR. Counsel for the defendants put in evidence the map showing the lines just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 93, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed, Mr. Spence.

A. The New York Central operates a line from New York to Chicago, which, in connection with the Chicago & North Western, Union Pacific, and San Pedro, Los Angeles & Salt Lake Railroad, forms a through route between New York and Los Angeles.

The New York Central operates another line from New York to St. Louis, which, in connection with the Rock Island, El Paso & Southwestern, and Southern Pacific, forms an alternate competitive route between New York and Los Angeles.

Q. And it is true of the last system of lines, as it was true of the others, that they are not paper lines, but actually handle the business?

A. They actively engage in the business.

Mr. BLAIR. Counsel for the defendants put in evidence the large map referred to by the witness.

2248 (The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 94, April 22, 1915.")

By Mr. BLAIR:

Q. Is this inclusion in one system of alternate or competing routes eculiar to the lines engaged in transcontinental business?

A. It is not. It is quite common to the large systems of the ountry.

Q. You have stated that you wanted to make one correction in your stimony this morning, Mr. Spence.

A. In connection with my statement with reference to passenger ain service in 1885, 1900, and 1914, in response to a question of ounsel, I stated that in 1885 there was through train service from maha to San Francisco, although not from Chicago to San Fran- sco. I should have stated that there was no through train service ither from Chicago to San Francisco or from Omaha to San Fran- sco.

Q. In what year?

A. In 1885; December, 1885. Close connections were made both t Omaha and at Ogden, and every one of the schedules adjusted to make close connection.

249 Q. Was it customary at that stage of railroad development for through trains to be run through junction points?

A. It was not common to operate through equipment, as it is -day.

Q. That kind of through service was up to the standard of through rvice as it generally existed?

A. Yes.

Q. That route has kept up with the procession, has it not, as the rough traffic developed?

A. Yes, sir. As I have shown, two through daily trains in De- mber, 1900, and three through daily trains in December, 1914, were n.

Q. Do you recall the exact date when through service in the way of nbroken trains first passed through?

A. I do not.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Mr. Spence, you recall the request which was made last July y petitioner's counsel for certain statistics from the railroad?

A. Yes.

250 Q. I refer to the request which eventually resulted in your furnishing petitioner's Exhibits 43 to 58, and you so under- and me?

A. Yes.

Q. Do you recall that that request defined the eastern territories in o sections: One, the Atlantic seaboard territory, and the other the

territory west of the Atlantic seaboard territory and east of the Mi
souri River, and north of a line?

A. Yes.

Q. Was the question of getting up the statistics from your reco
with reference to those territories taken up with you?

A. Yes.

Q. Were you the author of the suggestion that instead of that li
territory which I have last defined, there should be substituted wi
you have called the Middle West territory?

A. Yes.

Q. At the time the requests were made, were your statistics alre
compiled for that Middle West territory?

A. No.

2251 Q. In order to get the various statistics for that territory
became necessary to refer to your original details of shipme
from and to that territory?

A. Yes.

Q. What was the reason which influenced you to suggest the Mid
West territory, as you have defined it on the exhibits, for the terri
defined in the request?

A. I had two reasons. The first reason was because it was my c
ception, as the result of some experience, of what I thought the p
tioner's counsel desired. In view of the extent to which the requ
were confined to traffic via El Paso, it seemed to me that the R
Island, operating directly through El Paso, ought to be included
the traffic, and that petitioner's counsel wanted to include it, in a
ing "via El Paso."

The second reason was that it conformed to my proposed prepa
tion of statistics to show exactly what petitioner's counsel appare
was seeking, the relation of traffic via El Paso to that via Ogden.

Q. Do these statistics which have been produced with reference
that Middle West territory include or exclude traffic taken
2252 or laid down by the Rock Island route between the north
boundary of Oklahoma, the point selected [indicating on m
and Omaha?

A. They include that.

Q. They include that. The territory selected by you as Mid
West territory included the traffic taken up or laid down in the wh
of Nebraska and Wyoming and a large part of Kansas?

A. No; it included all traffic taken up or laid down on the R
Island line between the southern boundary of Kansas and St. P

Q. That is, it included in the El Paso tonnage that which
have just mentioned?

A. Yes.

Q. By the selection of this Middle West territory there was included in the Ogden figures the traffic taken up or laid down in Wyoming and Nebraska and the northwestern part of Kansas?

A. The Ogden figures include exactly the same territory as the El Paso figures in traffic.

Q. Do you mean by that that they include that territory?

253 A. They include all traffic picked up or laid down by the Rock Island between the southern boundary of Kansas and St. Paul and east thereof.

Mr. BLAIR. Nothing west of it?

The WITNESS. No. The statistics of traffic via Ogden include the same originating and destinating territory as the traffic via El Paso.

By Mr. MCCLENNEN:

Q. Just what traffic west of the Missouri River is included in the Ogden figures as part of the Middle West territory, giving it not by comparison with El Paso, but absolutely?

A. As far west as the Rock Island line, from the southern boundary of Kansas to St. Paul, inclusive.

Q. That is, it includes, then, nothing in Nebraska?

A. I will have to look at the Rock Island lines. [After examining memoranda.] The exhibits define in greater detail the points on the Rock Island through which the line is drawn. It embraces all points in and east of the line of the Chicago, Rock Island & Pacific, extending from the Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minnesota.

254 Q. Then is it correct to say that in Middle West territory, referring now to Ogden figures, is included nothing west of the Missouri River except that freight which is picked up and laid down on the Rock Island line?

A. Yes; between that and the Missouri River.

Q. Or east thereof?

A. Yes.

Q. That territory which you selected and defined as Middle West territory was, to your mind, the competitive territory as between the Ogden and El Paso gateways, so far as the eastern end was concerned, and not considering Atlantic seaboard territory now?

A. It embraced the territory from and to which traffic could be reached by Ogden or by El Paso.

Q. And in that sense, competitive territory?

A. Yes.

Q. The Atlantic seaboard territory, as an eastern origin, was obviously a competitive territory as between the Ogden and the El Paso routes?

A. The Atlantic seaboard territory was competitive between the Ogden and the Sunset routes.

Q. And it was also competitive between the Ogden route and the El Paso route by the Sunset line?

2255 A. An alternate route existed via El Paso by connection with eastern lines.

Q. And in that way that territory was a competitive territory as between the two gateways?

A. If that is the result of that statement.

Q. It is the result of that statement, is it not?

A. The result of that statement is that neither the line west of El Paso nor the line west of Ogden can alone compete for that traffic. The line west of Ogden, in connection with the several lines east of Ogden, compete for that traffic, and the line west of El Paso, in connection with the several lines east thereof, also compete for that traffic.

Q. Take, for example, the line made up of the Central Pacific, Union Pacific, the Chicago & North Western and the New York Central, and the lines made up of the Southern Pacific to El Paso, the Rock Island—using that to include the Rock Island and El Paso & Southwestern to Chicago, and the New York Central to New York—those are competitive routes for the entire Atlantic seaboard territory?

A. They are. They are engaging in the traffic.

Q. And are competitive in that sense?

2256 A. Well, it depends on what you call a real competitor.

Q. They are two practicable, and not merely theoretical routes between those two territories?

A. Yes.

Q. And in that sense—in the actual operation—are competitive?

A. They may be said to be competitors in a degree; that is, distinguishing between successful and unsuccessful competitors. One is a long route and the other is a short one.

Q. Would you call the competition between those two routes active?

A. Yes.

Q. And substantial?

A. Yes.

Q. And to some extent successful, so far as the Rock Island is concerned?

A. Successful in a degree, as the statistics show.

Q. And it is a substantial degree?

A. Well, by percentages it is substantial, but small.

Q. The El Paso route, made up of the Southern Pacific and the Rock Island, is a substantial and large competitor for Middle West business with California against the Ogden route?

2257

A. It has a substantial and large business between the Middle West and southern California.

Q. Do you mean by that to say that it is not large for central and northern California?

A. Judged by percentages, as shown by the statistics, it is not large.

Q. On Exhibit No. 62 you have compared the Ogden tonnage for Atlantic seaboard with all other territory, showing eastbound, for Atlantic seaboard 20.6 per cent, and for other territory 79.4 per cent. The 100 per cent, according to my understanding, includes all Southern Pacific movements, wherever originating, which pass through Ogden?

A. Yes.

Q. What is comprised in "other territories"?

A. All territories except Atlantic seaboard territory.

Q. That includes all that you have stated as Middle West territory, and some besides?

A. Yes.

Q. The figure against "Other territories" is 592,588 tons. Of that, am I right that 368,975 tons go to Middle West territory?

A. That is correct.

2258 Q. Have you any statistical information as to where the remaining 223,000, approximately, tons goes.

A. I have no statistical information, but I can tell you where it goes.

Q. What is the general distribution?

A. All over the territory west of the Rock Island, to and from all points on the Southern Pacific along the line of Texas and Louisiana; everything south of the northern boundary of Arkansas and south of the Ohio River.

Q. Is the 97th meridian of longitude the recognized line in defining what is and what is not transcontinental freight?

A. The Colorado gateway is Denver, Pueblo, Colorado Springs, and Trinidad. Then it runs down to El Paso and crosses the Santa Fe at Albuquerque.

Q. That is more nearly the 105th meridian, is it not?

A. I do not know. That is the boundary.

Q. That 223,000 tons has such a delivery that it is not, in a practical sense, competitive through El Paso. Am I right?

A. No; it is not, in a practical sense. It is possible to make

2259 routes by which through rates apply; for example, into this territory west of the Rock Island, business can be handled via Deming and El Paso over the Santa Fe or by the Rock Island and Fort Worth & Denver City to Denver.

Q. Does a substantial amount move that way?

A. The southern California movement moves quite a little the way; not a great deal from San Francisco.

Q. That is, roughly speaking, is it not thirty per cent of the total eastbound Southern Pacific traffic?

A. Via Ogden?

Q. Via Ogden; yes.

A. Approximately.

Q. Assuming, for the time being, that that thirty per cent should be said not to go into territory which, practically speaking, is competitive, then the total Southern Pacific tonnage going through Ogden is, to the extent of seventy per cent of it, tonnage which goes into territory as to which the El Paso gateway is a competitive gateway?

A. That share of the business routed via Ogden goes to points that it is practicable to reach by El Paso.

Q. And in that sense seventy per cent of the Southern Pacific eastbound Ogden tonnage goes into territory as to which the El Paso gateway is competitive?

2260 A. The gateway is open and is in position to take the traffic.

Q. And in that sense it is competitive?

A. It is competitive to the extent of its ability.

Q. And for all of that territory where that seventy per cent of freight goes there are joint through rates published?

A. Yes.

Q. Both ways?

A. Yes.

Q. Referring to the same exhibit, No. 62 of the defendants, and the westbound tonnage, your figure for "other territories" is 549,009 tons. Is it true that 259,648 of those tons are from what you have defined as "Middle West territory"?

A. 259,648 tons?

Q. Yes.

A. Yes.

Q. This leaves 289,361 tons moved through Ogden westward to be accounted for from territory other than Atlantic seaboard or Middle West territory?

A. 289,361 tons.

2261 Q. And that is approximately forty-seven per cent of the Southern Pacific's total westbound Ogden tonnage?

A. No.

Q. Is not that right?

A. This, other than Middle West, is 289,361 tons?

Q. Yes.

A. With a total of 549,009?

Q. No; the total was 617,925.

A. Oh, yes. It is somewhat less than forty-seven per cent.

Q. To make it perfectly clear, right at this point in the record, the tal of all westbound Ogden Southern Pacific tonnage is 617,925?

A. Yes.

Q. And it is that figure upon which you just based that forty-six lus per cent?

A. Yes.

Q. And the remaining fifty-three per cent of all the Southern Pacific Ogden westbound tonnage is from territories as to which the El Paso gateway is competitive with the Ogden gateway?

A. The El Paso gateway—the El Paso route—is engaged in competition as to all that territory.

Q. It appears from the figures which you have had prepared that e eastbound tonnage through El Paso from all points west of Ogden nd El Paso moved by the Southern Pacific is, to the Atlantic seaoard, 163,180 tons; to the Middle West territory, 271,897 tons. low much tonnage additional to those two figures is moved by the outhern Pacific eastward through El Paso?

A. I believe that is all the tonnage moved eastward through l Paso to those territories.

Q. I said to all territories.

A. You combined two statements; one to the Atlantic seaboard, d the other to the Middle West.

Q. What I mean to ask you, if I did not do so, is, What eastbound nnage is moved via the Southern Pacific through El Paso, in addion to these two items? Of course you understand that in all these estions I am referring to your year ending June 30, 1914.

A. Whatever eastbound tonnage had destination in territory her than Middle West, as described in one statement, or Atlantic aboard, as described in the other.

Q. Have you that figure?

A. I have not.

Q. Has it been made up, that you know of?

A. I think not.

Q. The two figures stated amount, you will observe, to 435,077 tons. n you, from your stock of general information, tell me anything out the number of tons moved by the Southern Pacific eastward rough El Paso during that period, additional to these figures?

A. I can not.

Q. Have you not any idea of your total annual eastbound El Paso vement?

A. No. I do not know of any such statistics that are kept.

Q. But have you not your total Southern Pacific annual eastbound vement through all gateways?

A. I do not think we have. I do not know of any such statistics.

Q. And have you no idea whatever of what the gross figure is?

A. No.

Q. As a practical matter, what are the territories, other th
2264 Atlantic seaboard and Middle West, through which the Sou
ern Pacific moves freight in essential quantities thro
El Paso eastward?

A. From northern and central California to the territory wh
I have described once before, I think, south of the northern bou
ary of Oklahoma and Arkansas.

Q. Is that a heavy tonnage?

A. Yes; there is a good deal of dried fruit, canned goods, a
wine. One of the largest wine destinations in the country is N
Orleans; all the consumption of California products down in th
country.

Q. The eastbound tonnage through El Paso moved by the So
ern Pacific in a year to territories other than the Middle West ter
tory, as defined, and the Atlantic seaboard territory, would undou
edly exceed 100,000 tons, would it not?

A. I really could not say. I have no idea.

Q. Could you say that it did not exceed 200,000 tons?

A. No.

Q. Is not this the kind of a matter that you have to deal with
the ordinary course of planning your business and method
2265 A. Yes; but not necessarily with the segregation of desti
tion territories that you are endeavoring to ascertain.

Q. The 435,077 tons eastbound through El Paso to Atlantic s
board territory and Middle West territory all go to the territory
to which the Ogden gateway is competitive?

A. Both routes are open to engage in that traffic.

Q. And in that sense the Ogden gateway is competitive for it?

A. If you please.

Q. Well, regardless of my pleasure, but simply as a fact.

A. As I said before, it is competitive in the degree that a w
line, a long line, can be competitive with a short line.

Q. To what do you refer as the weak long line?

A. Any line operating through a gateway of the southern lines

Q. From the schedules which you have produced it appears
the Southern Pacific El Paso westbound movement includes 10
tons from the Atlantic seaboard and 269,970 tons from the Mi
West territory, or a total of 375,778 tons. All of that El P
2266 Southern Pacific westbound movement is from territory
which the Ogden gateway is competitive, is it not?

A. No; it includes New Mexico and Arizona and points ea
Banning, California.

Q. I will ask to have the question read.

(The reporter read the question as above recorded.)

The WITNESS. I say no.

By Mr. McCLENNEN:

Q. The Atlantic seaboard territory, as a place of origin, is a territory as to which the Ogden gateway is reasonably and practically competitive for all California, Nevada, and southwestern Oregon destinations, is it not?

A. Nevada, California north of Mojave and Santa Barbara, and southwestern Oregon destinations.

Q. Prior to the opening of the San Pedro route, in 1905, did westbound traffic, to any extent, from Atlantic seaboard territory move through Ogden into southern California?

A. I think not.

Q. The opening of the San Pedro route has had no effect upon the comparative movement, then, into southern California as between Ogden and El Paso; is that right?

2267 A. Prior to the opening of the San Pedro route, of course the Union Pacific had no other route by which to send any southern California traffic that it might secure, nor had the Denver & Rio Grande, except the route via Ogden to Sacramento. Since the opening of the San Pedro route their entire strength has been thrown to the San Pedro line.

Q. Was the movement of the Union Pacific or the Denver & Rio Grande or other lines through Ogden to southern California before the opening of the San Pedro route substantial?

A. It was not large, because of the long haul; but to whatever extent the Union Pacific's influence could be exerted, either on the shipper or the consignee, or the Denver & Rio Grande's influence, or other connections, the business was influenced that way.

For example, take citrus fruit from southern California. Whatever they wished to start to markets up in Utah or Colorado, with possible reconsignment eventually, they sent up via Sacramento and Ogden. To-day they can send that traffic via the Salt Lake route. The building of the line changed those conditions.

Q. Would you call the movement through Ogden, influenced by the Union Pacific or the Missouri and allied lines, or otherwise,

2268 from Atlantic seaboard territory to southern California, before the opening of the San Pedro route, substantial or negligible?

A. I would not be able to deal with it in figures I do not think I ever saw any. At that time I probably would not see any.

Q. I do not mean to commit you at all to anything like exact figures, but was it worth talking about or was it trifling? Was it substantial or was it negligible?

A. The main part of the traffic to southern California moved by the Santa Fe and via the southern route. What share the Ogden route secured I really do not know.

Q. It was more or less negligible, was it not?

A. I could not say without the figures.

Q. What you have just said with reference to the Atlantic seaboard freight moving into southern California through Ogden would apply equally well, would it, to the Middle West freight moving into southern California through Ogden, or is there a distinction to be made?

A. No; I think the same general conditions prevail.

Q. I call your attention to defendants' Exhibit No. 77: The figures in the schedule against southern California mean that portion
2269 of southern California lying northwest of a line drawn across the State at Banning and southeast of a line drawn across the State from Santa Barbara through Mojave?

A. Yes; southern California as shown in the statement is as you have described it.

Q. The intention of those figures was to bring out, was it not, the portion of the El Paso and Ogden tonnage which originated or was destined in the portion of southern California which is within the range of the joint rates through Ogden, but beyond what, in your judgment, would move through Ogden. Is that correct?

A. Yes. They cover the territory that could only be reached by the Central Pacific through the use of the Southern Pacific rails.

Q. Well, was that the occasion for making that division?

A. The occasion for making the division was to lay the foundation for the elimination from the statistics of southern California and Oregon business, for which the Central Pacific is, under existing conditions, not a natural route.

Q. In choosing Mojave as the northern boundary of that territory rather than Goshen, you must have had in mind something
2270 other than the necessity of using the Central Pacific rails, did you not?

A. We had in mind the territory through which the connections of the Central Pacific east of Ogden solicit the traffic and route the traffic through Ogden and the Central Pacific.

Q. That was not, primarily, on account of the need of Southern Pacific rails to complete the haul, was it?

A. It was a combination of the two circumstances. We probably included the Central California business routed by the Southern Pacific very liberally. Part of that must be reached by Southern Pacific rails.

Q. Was not the existence of the Tehachapi Pass one of the things that play a part in selecting Mojave as the northern boundary for this particular compilation, rather than selecting Goshen?

A. No. The line was drawn just as I have told you the solicitation line was drawn, that the Southern Pacific solicitors of traffic from and to territory north of Mojave and Santa Barbara, picked up or laid down in the Middle West via the Ogden route, and the Union Pacific and Denver & Rio Grande, Chicago & North Western, Chicago, Milwaukee & St. Paul and other connections likewise
2271 solicit that traffic via that route. They solicit the traffic south of the Tehachapi Mountains via the Salt Lake route.

Q. That policy had no relation to the fact that Southern Pacific rails were needed particularly to reach below Mojave, did it?

A. No; because the policy of solicitation treats the Southern Pacific and Central Pacific rails as one system.

Q. The San Pedro route does not affect the situation appreciably north of Mojave, does it?

A. Not freight traffic.

Q. What was the occasion, on defendants' Exhibit No. 77, for setting out the Oregon east and west bound tonnage through the two gateways?

A. Substantially the same reasons as for eliminating southern California.

The Union Pacific and its connections solicit all of the Oregon traffic via Portland, and the Central Pacific has no connection east of Ogden with which to make it an effective route.

Q. Is this item on defendants' Exhibit No. 77 of Oregon 7,533 tons in part El Paso tonnage and in part Ogden tonange?

A. Yes.

2272 Q. So far as it is Ogden tonnage, does it pass through Roseville?

A. Yes.

Q. Do you know what portion of that 7,533 tons goes El Paso and what part Ogden?

A. No; because, as I stated, the Ogden tonnage is not representative, because the line was not open for a good part of the year.

Q. Then, for all practical purposes, the 7,533 is El Paso tonnage?

A. Except what moved through Ogden during the time it was open.

Q. A matter of fifteen days, was it?

A. Fifteen days.

Q. And the same is true of the 1,743 westbound?

A. Yes.

Q. That is substantially all El Paso tonnage?

A. Yes.

Q. Those two figures come from territory that, so far as physical conditions are concerned, is territory for which the Ogden gateway is competitive?

2273 A. The Ogden route is open to and from both of these territories, but is not effectively competitive.

Q. The Roseville gateway and the Ogden gateway are now open on all southwestern Oregon freight, are they not?

A. Yes.

Q. Why is Ogden, with that gateway open, not competitive with El Paso, either on an equal plane or a superior one, for all that southwestern Oregon tonnage?

A. Not competitive with El Paso?

Q. Yes.

A. What I intended to convey was that neither of them was effectively competitive. Eighty per cent of the Oregon traffic is moved by Portland.

Q. No part of the eighty per cent moved by Portland is in these figures on defendants' Exhibit No. 77?

A. No.

Q. On this Exhibit 77 these two figures, east and west bound from Ogden, did in fact move down through California over Southern Pacific and Central Pacific lines to El Paso?

A. Yes.

Q. With the Ogden gateway open, by the filing of the joint rates, the Roseville gateway open by the filing of the joint rates, the

2274 Ogden gateway was competitive for every pound of those two items, was it not?

A. It was, in so far as those items were competitive freight. The westbound item includes material and supplies for affiliated railroads of the Southern Pacific in Oregon, which was routed via El Paso or some gateway east thereof, to minimize the cost of transportation paid to foreign lines.

Q. Territorially, the gateway was competitive?

A. Yes.

Q. For all of those items?

A. Yes; the rates are now in effect. The Southern Pacific is responsible for having restored that competition. The gateway was closed.

Q. Did the Southern Pacific Company participate in the closing of that gateway?

A. The Southern Pacific Company did not have any power to resist it. It responded to "its master's voice."

Q. Do you recall that the only time heretofore in this record that expression "responded to its master's voice" was used was when Mr. Herrin used it?

A. I had not seen that in the record. It must be a good expression if Mr. Herrin used it.

2275 Q. That is, there was a coordination of thought between you two on that subject?

A. Naturally.

Q. It was the officers of the Southern Pacific Company, as officers of the Southern Pacific Company, that participated in closing that gateway?

A. By direction of a joint officer of the Union Pacific and Southern Pacific.

Q. That joint officer being then the president of the Southern Pacific Company?

A. Or the director of traffic.

Q. And the subordinates in the employ of the Southern Pacific Company obeyed the direction, because they recognized it as the direction of the superior Southern Pacific officer?

A. No; as the direction of the joint officer of the Union Pacific and Southern Pacific.

Q. Returning now from the little excursion on which you are responsible for inviting me: With the Roseville gateway open and the Ogden gateway open, on whomever may rest the praise or the blame for doing it, all of those items against Oregon on defendants' Exhibit No. 77 are items for which the Ogden gateway is competitive territorially?

A. Yes.

2276 Q. And in that respect they differ from the items against southern California on the same schedule?

A. No.

Q. Are those items on the same schedule against southern California items for which the Ogden gateway is competitive?

A. The Ogden gateway is open to this southern California business as it is open to the Oregon business.

Q. And practically competitive?

A. But not effectively.

Q. Practically but not effectively?

A. Yes.

Q. The exhibit of which we have just been speaking, defendants' Exhibit No. 77, had reference to Atlantic seaboard freight, you notice, either east or west. Exhibit No. 78 has reference to Middle West territory freight east or west, but is in other respects the same as Exhibit No. 77. That is correct, is it not?

A. Yes.

Q. And all that you have just said with reference to the Ogden gateway, as applied to Exhibit No. 77, applies likewise to the

2277 items of southern California and Oregon on Exhibit No. 79, does it not?

A. Yes; including my statement that the westbound includes a substantial amount of material for the company.

Q. Have any figures been collected of the affiliated companies' freight?

A. No.

Q. That explanation which you have made with reference to affiliated companies has practically no bearing on eastbound freight, has it?

A. No.

Q. How large an item is the westbound freight for affiliated companies?

A. I should say that that item consisted largely of that character of freight, the westbound item.

Q. That is, that Oregon freight?

A. Yes. We had the Portland, Eugene & Eastern Railroad under construction and electrification, and the Ogden route being closed sent it via El Paso.

Q. Did that railroad construction, in your estimate, probably include substantially all of the 10,716 westbound Oregon tons, practically all through El Paso and from the Middle West, and sub-

2278 substantially all of the 1,743 westbound tons, Oregon westbound tons, from the Atlantic seaboard?

A. It included substantially all the westbound tonnage from the Middle West, because it would be difficult to induce the shipper to send commercial freight via El Paso to Oregon from Chicago.

Q. All of that freight had to travel, in part, over the rails of the Central Pacific Railroad?

A. Yes.

Q. On defendants' Exhibit No. 79 you have, as moving from what amounts to Nevada and all of California north of the Mojave-Santa Barbara line to Middle West territory 331,218 tons, you observe?

A. Yes.

Q. On your schedule furnished the petitioner of the total movement from west of Ogden and El Paso to the Middle West, eastbound, through Ogden you have 368,975 tons, you observe?

A. Yes.

Q. Perhaps I was a little inaccurate in not calling your attention to this: Am I correct that that item of 331,218 does include any oriental freight that passed through California, through that gateway?

2279 A. Yes.

Q. Returning, then, to the question: What was the origin of the 37,757 tons which moved through Ogden to the Middle West,

ut did not come from northern and central California and Nevada nd east thereof to Ogden, or through that territory?

A. Oregon and southern California.

Q. None of it came from Oregon except such as moved in the ifteen days after the opening of the Roseville gateway, did it?

A. No.

Q. Substantially all of it originated in southern California south f the Mojave-Santa Barbara line?

A. Yes.

Q. And that amount is a little more than ten per cent of the total astbound movement to the Middle West through Ogden, as given in Exhibit No. 45–46?

A. The eastbound is a little more than ten per cent?

Q. No; the southern California-Oregon is a little more than ten per cent of the total northern and central and southern California nd Nevada origin?

A. 37,757 tons.

2980 Q. And that is ten per cent of the movement through Ogden—a little over ten per cent?

A. Yes.

Q. That ten per cent from southern California, through Ogden to the Middle West, was tonnage as to which the El Paso gateway was competitive?

A. Yes; but the reasons for its routing via Ogden, as I have stated, were climatic and commercial on the part of the shipper.

Q. With the climatic and commercial conditions, as they were, the Ogden gateway was competitive and successfully competitive as to that ten per cent with the El Paso gateway, was it not?

A. Yes. It owed its success to the difference in climate and commercial conditions.

Q. Those climatic and commercial conditions were those which would have led the traffic over the San Pedro road, preferably to the El Paso gateway, were they not?

A. Yes.

Q. What was the character of that ten per cent of the total going through Ogden which originated in southern California that led to its going by Ogden?

2981 A. Citrus fruit.

Q. As to citrus fruit in southern California, is the Ogden gateway competitive with the El Paso gateway for the Middle West territory and the Atlantic seaboard territory?

A. At a certain season of the year it is to a limited extent.

Q. During what season of the year?

A. The spring.

Q. Spring only?

A. Yes; it is in the spring that they send this fruit north for climatic reasons.

Q. How many months of the spring?

A. It is practically between seasons. When they reach the point where they have to ice it for shipment by either route, it does not cost them any more to ship it via El Paso than it does by Ogden. In the season when they can ship it under ventilation between the cold and the hot weather, they ship it via Ogden, owing to climatic conditions.

Q. In terms of months what would that be, having regard to the usual weather conditions?

A. April or May, I should think.

Q. A couple of months?

2282 A. Yes.

Q. If the citrus fruit traffic moving through Ogden to the Middle West during two months of the year was ten per cent of the total Ogden movement to the Middle West for the whole year, would that mean approximately that during those two months sixty per cent of the Ogden movement to the Middle West from the Southern Pacific was from southern California?

A. Oh, no.

Q. What would be the counteracting feature? If ten per cent for the whole year moved in two months through Ogden from southern California, why was it that it was not sixty per cent of the movement during those months?

A. Because of the absence of the movement during the remaining ten months.

Q. I do not quite follow you. Why would not the absence of the movement during the remaining ten months, the ten per cent moved during the year, rather suggest that sixty per cent of the movement during the two months was from southern California, to make up for the other ten months during which none moved?

A. Now I do not follow you.

2283 Q. What?

A. I do not follow you. You are some mathematician.

Q. Then I will have to start afresh, and see where we divide. It appears that of this class the total movement through Ogden was 368,975 tons. Would that come anywhere near moving equally over the different months?

A. No. That moves chiefly within a couple of months.

Q. Do you quite mean that? Observing the figure that I have called attention to, is not this southern California movement, the Ogden Middle West movement for the whole year, eastbound?

A. Well, that is a seasonal movement. Not only the southern California, but the northern California, the deciduous fruit, moves within short period.

Q. Taking 368,975 as the movement for the year of this kind through Ogden, what is a reasonable estimate of the total movement of this kind through Ogden in April and May, one-sixth of the year?

A. I could not tell you.

Q. Should you think that it would much exceed 40,000 tons?

A. Well, no.

Q. Should you think it would be as much as 100,000 tons?

A. I do not know.

Q. Mr. Spence, do you mean to say that you could not be of any assistance, from your general knowledge of the movement of traffic, as to whether upwards of a quarter of the annual movement through Ogden of this kind was in two months or not?

A. No; because the different kinds of traffic move at different times. Deciduous fruit dies not move in April and May at all.

Q. Do you think it at all probable that this total, ten per cent of this total Ogden movement to the Middle West, which came from southern California, moved in the two months, or in two months?

A. I think it moved within a short period. There are two reasons for sending the things by that route, and one is climatic and the other commercial. One is to send business up through certain markets at which the fruit may be stopped or may be permitted to go on to markets farther east.

Q. Apart from the southern California citrus fruit movement, strongest in April and May, what else, eastbound from California, is conspicuously heavy in April and May?

A. Nothing.

Q. Nothing? Is there much, if any, citrus fruit movement eastbound from California north of Tehachapi?

A. Oh, yes; several thousand cars a year.

Q. Several thousand cars a year. And would they move in April and May?

A. No; they move earlier.

Q. And for the converse reason they consider a part of them go via El Paso?

A. They move in season and according to the season.

Q. They would not move in April or May?

A. No; that movement is earlier than that.

Q. Then the only eastbound traffic of moment in this item through Ogden of 368,975 tons, which was conspicuously heavy in April and May, was this citrus fruit movement from southern California?

A. Oh, I could not say that.

Q. What else was there that would be conspicuously heavy?

A. The lumber and the dried fruit and canned goods move
2286 all the year round. The business that comes in from Asia moves all the year round. Everything moves all the year round except this green fruit.

Q. I say, anything that is conspicuously heavy in April and May.

A. Well, what I mean is that I am not able to say whether these other commodities move heavier in April and May than they do in any other months.

Q. There is nothing in your knowledge of the general situation to indicate that such is the fact?

A. No.

Q. If you take this citrus movement of something like 37,757 tons from the total, you observe that you have a little over 330,000 tons, or precisely 331,218 tons, as shown on your Exhibit No. 77?

A. 331,218 tons.

Q. That figure being reached after we have taken away from the total Ogden-Middle West-Eastern movement the citrus fruit movement from southern California, is there any reason that any of the balance of that 331,218 tons would be particularly excessive in April and May?

A. I have no reason to think that it would or that it would not. I really do not know.

2287 Q. If that movement were divided equally over the months you would have moving in two months 55,000 tons, would you not?

A. No; I would not say it would be that.

Q. 331,000 divided by six?

A. Oh, of this total of 331,218 tons?

Q. That is, after we have deducted the citrus fruit from the total, you have this 331,218 tons?

A. Yes.

Q. So that I say, if that moved equally, that would mean 55,203 tons within two months, would it not?

A. It would leave a difference of 55,203 tons, a substantial part of which moves in two months.

Q. If you assumed that there was, of all other classes than the citrus fruit, at least a pro rata share moving during those two months of the 55,203 plus the citrus fruit from southern California, you would have during those two months moving eastward to Middle West territory through Ogden 93,960 tons, would you not? There would be 55,203 tons plus 37,757 tons of citrus fruit, which gives 92,960.

Mr. BLAIR. Do you mean that moves in any one month?

Mr. McCLENNEN. In two months. The citrus fruit move-
288 ment of 37,757 tons would be forty per cent of the total move-
ment during the two months, would it not?

The WITNESS. Approximately, but still only ten per cent of the
nnual tonnage.

By Mr. McCLENNEN:

Q. But still only ten per cent of the annual tonnage. Is it not
air to say that the Ogden gateway is competitive for a substantial
mount of southern California freight during certain times of the
ear for Middle West territory east bound?

A. It is fair to say that the route is competitive for a substantial
hare of the citrus fruit from southern California.

Q. I call your attention to petitioner's Exhibit 43–44, to the east-
ound tonnage through Ogden to the Atlantic seaboard of 154,229
ons, and to defendants' Exhibit No. 80, eastbound tonnage via Og-
len from north of Mojave and Santa Barbara in California, and in
Nevada 140,900 tons. From what source did the 13,329 tons come?

A. From southern California?

Q. That was probably a citrus fruit movement, was it?

A. Yes.

289 Q. And was eight plus per cent of the total Ogden move-
ment eastbound to the Atlantic seaboard?

A. Yes.

Q. And was moved presumably in the two months, as you have
entioned in the case of the Middle West?

A. Chiefly.

Q. Chiefly. And in like manner was perhaps thirty-two or thirty-
hree per cent of the total movement through Ogden to the Atlantic
eaboard east during the period when the movement was in prog-
ess; that is, April and May of the year?

A. I make the calculation that it is thirty per cent of the move-
ent of those two months, but still only eight per cent of the annual
onnage.

Q. Of the annual tonnage. Would it be fair to say that the Og-
len gateway is competitive for southern California freight, southern
California citrus fruit, eastbound to the Atlantic seaboard, to a sub-
tantial extent during portions of the year?

Mr. BLAIR. With what?

Mr. McCLENNEN. With the El Paso gateway.

The WITNESS. The Ogden route is competitive for citrus fruit
290 to Atlantic seaboard territory from southern California during
certain seasons of the year.

By Mr. McCLENNEN.

Q. And to a substantial extent?

A. To the extent of the percentages that I have stated.

Q. As a traffic matter that is pretty substantial, is it not?

A. Eight per cent is not very substantial.

Q. What would you call the minimum percentage of what was substantial?

A. In this case of which I was speaking I would call it fifty per cent.

Q. Then, all you mean when you speak of the Ogden gateway as not being competitive to a substantial extent for southern California freight, is that it can not control fifty per cent of that traffic?

A. No; I mean that it takes an inappreciable amount, westbound and it takes only this citrus fruit eastbound.

(Whereupon an adjournment was taken until to-morrow, Friday April 23, 1915, at 10.30 o'clock a. m.)

2291 TWENTY-EIGHTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Friday, April 23, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. H. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2292 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. McCLENNEN:

Q. Is it correct to say, Mr. Spence, that in your opinion the territories as to which the Ogden gateway and the El Paso gateway are competitors, in a real and practical sense, are the Middle West territory as you have described it and the Atlantic seaboard territory as you have described it, on the east; and southwestern Oregon, Nevada, California north of a line drawn across the State through Mojave and Santa Barbara, and, as to citrus fruits during a certain portion of the year, California south of that line down to a line drawn across the State through Banning, as the territory on the west?

A. Between all points in the territories that you have described through rates apply via the El Paso route and via the Ogden route, and the line west of Ogden, with its connections east thereof, and the line west of El Paso, with its connections east thereof, afford alternative routes for that traffic, and in that sense are competitive.

2293 Q. And not merely theoretically, but practically, in the movement of substantial volumes of freight?

A. We encourage and facilitate the movement of as much as possible by both gateways.

Q. I was speaking more of what actually did move than of the effort at this moment; and from the territories defined in the question there move through the two gateways substantial volumes of freight, making the gateways competitive in a practical sense and not merely as paper gateways. That is true, is it not?

A. The two through routes are competitive in the practical sense that I have described. The statistics show whether the volume of business is substantial.

Q. And competitive between the east and west territories just described?

A. Yes.

Q. Have you before you now petitioner's Exhibit 47–48 and defendants' Exhibit 63?

A. Yes.

Q. On petitioner's Exhibit 47–48, the eastbound tons, you note, are 163,180?

A. Yes.

2294 Q. And on defendants' Exhibit 63 you notice the eastbound tons are 85,059?

A. Yes.

Q. The first figure being from all of the territory covered by the Southern Pacific Company west of Ogden and El Paso, and the second figure being further defined by the phrase, in the defendants' Exhibit 63, "open to traffic via Ogden gateway". That definition in defendants' Exhibit 63 is what accounts for the difference in those two figures, is it not?

A. Yes.

Q. In arriving at your 85,059 on defendants' Exhibit 63, what territory on the west did you include?

A. In Exhibit 63 we included all points west or northwest of Banning, inclusive.

Q. Does that mean, then, that 78,121 tons destined to Atlantic seaboard territory through El Paso originated between Banning and El Paso?

A. Yes.

Q. Was much of that in California?

A. No. It consists largely of products of the mines from Arizona and New Mexico.

2295 Q. Comparing the same exhibits westbound, you note that the figure for the whole is 105,808 tons, and for the more confined territory, 94,737 tons, leaving a difference of 11,071 tons?

A. Yes.

Q. Was that 11,071 tons pretty much all destined to New Mexico and Arizona?

A. Yes.

Q. Have you the figures which disclose how much of this 85,059 on Exhibit 63 originated north of the Santa Barbara-Mojave imaginary cross-State line?

A. We have it here in one of the statements.

Q. In answer to this question you call my attention to defendants' Exhibit 80?

A. Yes.

Q. Is it true that the item on defendants' Exhibit 80 of 37,166 plus 603, plus 13,362, making 51,131 tons, plus the item on Exhibit 77 of Oregon, 7,533 tons, making a total of 58,664 tons, states the part which originated north of the Santa Barbara-Mojave line, of the 85,059 which appears on Exhibit 63?

A. No.

2296 Q. You mean that the figure which I have just given of 58,664 would require a slight correction by the deduction of such freight from Oregon as passed through Ogden during the fifteen days in which the Roseville gateway was open?

A. Yes.

Q. Then would it be sufficiently accurate for practical purposes to say that of this item of 85,059 eastbound through El Paso, defendants' Exhibit 63 included approximately 58,000 tons which originated in Oregon and California north of an imaginary transverse line drawn through Santa Barbara and Mojave?

A. I do not want to quibble on figures, but without any knowledge of what the Oregon traffic is, I would not want to subscribe to the 58,000 tons. I do subscribe to your previous question that, deducing whatever moved via Ogden——

Q. You mean you do not want to commit yourself on what went through Ogden during those fifteen days?

A. Yes. I do not know.

Q. It necessarily was an inconsiderable amount as compared with the total figure of 58,664, was it not?

A. Well, it would necessarily be about one-twenty-fourth of the natural movement via Ogden.

2297 Q. From Oregon alone?

A. From Oregon alone; yes.

Q. Now, am I right in understanding that to get the westbound tonnage from the Atlantic seaboard through El Paso which was destined north of the Santa Barbara-Mojave imaginary line, and is buried in the item of 94,737 on defendants' Exhibit No. 63, we should add the figures appearing on defendants' Exhibit 80, of 41,762, and 2,174, and 14,546, making 58,482, and such portion of the figure 1,743 on defendants' Exhibit No. 77 as did not move west through Ogden during the last fifteen days of the period?

A. Yes.

Q. The result, then, is that the westbound tonnage from Atlantic seaboard territory to the points north of Santa Barbara-Mojave, through El Paso, was somewhere between 59,000 and 60,000 tons?

A. I would say that it exceeded 58,500 tons.

Q. And did not exceed 60,225 tons?

A. Yes.

Q. Have you before you petitioner's Exhibit No. 49–50, and defendants' Exhibit No. 64?

A. Yes.

2298 Q. Is it true that the difference on the eastbound to Middle West territory, through El Paso, of 271,897 tons, on petitioner's Exhibit 49–50, and 222,325 tons on defendants' Exhibit No. 64, of 49,572 tons, originated between Banning and El Paso?

A. Yes.

Q. And therefore most of it in Arizona and New Mexico?

A. Yes.

Q. On the same exhibits, is it true that the difference between the westbound El Paso-Middle West figure, 269,970 tons, on petitioner's Exhibit 49–50, and 219,246 tons on defendants' Exhibit No. 64, or 50,724 tons, was destined for points between Banning and El Paso?

A. Yes.

Q. And therefore mostly to Arizona and New Mexico?

A. Yes.

Q. Is it true that in order to get the portion which originated north of the Santa Barbara-Mojave imaginary line, and which is buried in the item 222,325 tons on defendants' Exhibit No. 64, we should turn to defendants' Exhibit No. 79 and add the figures 1,244 and 1,177 and 76,777, making a total of 79,198 tons, and should

2299 add to that from defendants' Exhibit No. 78 such portion of the item 1,878 as did not move east through Ogden after the opening of the Roseville gateway during the last fifteen days of the period?

A. That is correct.

Q. So that the figure is somewhere between 80,000 and 81,000 tons?

A. Yes.

Q. That is, there moved from points north of Santa Barbara and Mojave through the El Paso gateway to the Middle West territory, east bound, somewhere between 80,000 and 81,000 tons?

A. Yes.

Q. Is it correct that to get the figure in the reverse direction between the same territories, which is buried in the figure 219,246 on defendants' Exhibit No. 64, we should turn to defendants' Exhibit No. 79 and add the figures 13 and 11,278 and 75,754, making a total of 87,045 tons, and such portion of the figure on defendants' Exhibit No. 78 of 10,716 as did not move west through Ogden during the last fifteen days after the opening of the Roseville gateway?

A. Yes.

Q. If we added the total, it would be 97,761. From
2300 that is it safe to say that the true figure was somewhere between 90,000 and 97,000 tons?

A. Yes.

Q. Then there moved west from Middle West territory through the El Paso gateway to points north of the imaginary line through Santa Barbara and Mojave somewhere between 90,000 and 97,000 tons?

A. Yes.

Q. Have you before you defendants' Exhibit No. 77?

A. Yes.

Q. Yesterday you will recall determining that 13,329 tons, from between the Mojave line and the Banning line, moved through Ogden to Atlantic seaboard territory, which you defined as being citrus fruit traffic [referring to page 2288, et seq. of the record]?

A. Yes.

Q. Am I correct that that 13,329 tons is buried in the figure 41,[illegible] on defendants' Exhibit No. 77?

A. Yes.

Q. Have you before you defendants' Exhibit No. 78?

A. Yes.

2301 Q. Calling your attention to yesterday's testimony, [illegible] 2279, and the figure thereon, 37,757, as that substantially all of which originated in southern California, am I right that that figure is buried in the figure 178,978 on defendants' Exhibit 78?

A. Yes.

Q. Both of your answers as to these east and west figures just discussed may require a little correction, may they not, for such traffic may have moved east or west through Ogden to Oregon during the 15 days after the opening of the Roseville gateway?

A. Yes.

Q. Have you before you defendants' Exhibit No. 65?

A. Yes.

Q. On that statement you have included the east and west tonnage through each gateway between the areas which you have defined this morning as being the areas as to which the two gateways are competitive, have you not?

A. Yes.

Q. If you add the figure 179,796 east and west via El Paso to and from Atlantic seaboard to the figure 441,571 tons east and west El Paso to and from Middle West territory, and the figure 223,145

2302 east and west Ogden tons to and from Atlantic seaboard territory and 628,623 east and west Ogdon tons to and from Middle West territory, it gives you a total of what?

A. 1,473,135 tons.

Q. That was the total east and west tonnage through the two gateways between what you conceive to be the areas as to which the two gateways are competitive?

A. That represents the total tonnage via El Paso and via Ogden.

Q. You mean the total between the territories described?

A. Between the territories that I have described.

Q. If you add from, say, defendants' Exhibit 65, the four items of revenue from the four totals in tons that we have just considered, what was the total Southern Pacific Company's revenue from the movement of this 1,473,135 tons; that is to say, adding $3,101,292 and $4,149,911 and $1,519,772 and $5,028,084?

A. $13,799,059.

Q. Have you before you petitioner's Exhibit 53 and defendants' Exhibit 68-1/2 and defendants' Exhibit 70?

A. Yes.

2303 Q. The westbound tonnage from the Atlantic seaboard to Nevada in the year in question via El Paso was 539 tons and that via Ogden 2,138 tons?

A. Yes.

Q. About twenty per cent moved via El Paso and eighty per cent via Ogden?

A. Yes.

Q. Have you before you defendants' Exhibit 80?

A. Yes.

Q. In that you have subdivided the central and northern California-Atlantic seaboard movement into the different gateways?

A. Yes.

Q. Did substantially all of that Ogden tonnage go over the Union Pacific?

A. Yes.

Q. Since the opening of the Western Pacific the Central Pacific does not get, at Ogden, or deliver at Ogden, much through tonnage from or to the Denver & Rio Grande?

A. A small percentage of the tonnage.

Q. But very small?

A. Well, comparatively speaking, small.

2304 Q. The next three items east and west in the subdivision of defendants' Exhibit No. 80 are subdivisions of the El Paso movement into the Sunset-Gulf routes, either Galveston or New Orleans, and New Orleans all-rail, and to El Paso and other gateways, all-rail?

A. Yes.

Q. In what ways would those items, Atlantic seaboard-New Orleans rail, move between New Orleans and Atlantic seaboard? Would it move over many different routes, or is there any conspicuous example of a rail route over which that moves?

A. There is no conspicuous example.

Q. You distribute that among quite a number?

A. Yes; as the result of the efforts of the various connections.

Q. Does the Southern Pacific Company make any effort on any commodities to work an all-rail movement between the Atlantic seaboard and the Pacific coast through New Orleans?

A. No.

Q. Turning, now, on the same exhibit, to the east and west movement via El Paso and other gateways, which I think will mean substantially other Texas gateways, can you give me any idea of

2305 the portion of those two items that is Rock Island?

A. Not in figures, but in a general statement; the major portion.

Q. What other connection is there worth mentioning that would enter into those items?

A. Kansas City, Mexico & Orient Railroad connections at Alpine, Texas; Missouri, Kansas & Texas, at San Antonio; of the various lines at Houston.

Q. Is that movement, resulting from Atlantic seaboard through El Paso by rail in 13,362 tons east and 14,546 tons west, due to any substantial extent to the efforts of eastern connections of the Rock Island, or is it chiefly due to the Rock Island's own effort?

A. From Atlantic seaboard territory it is due to the joint efforts of the Rock Island and connections.

Q. Do the lines east of Chicago make an effort for El Paso as against Ogden?

A. Such effort as the Rock Island can secure as a reciprocal return for what they may give those connections.

Q. That is, it is no ambition on the part of the eastern lines to put it through El Paso, but simply to do something for the Rock
06 Island in return for what the Rock Island does for them?

A. The eastern line has no interest in sending it through El
aso, but derives its long haul to Chicago or St. Louis, whether it
es El Paso or whether it goes Ogden or Santa Fe or Missouri
acific.

Q. Have you any means of stating how much of those El Paso
nd other Texas gateways items originate or are destined north of
Iojave?

A. All of them. Are you speaking of defendants' Exhibit No. 80
ow?

Q. I am speaking of defendants' Exhibit No. 80; yes.

A. All of them.

Q. Have you before you defendants' Exhibit No. 79?

A. Yes.

Q. This is for the Middle West, the correlative of defendants'
Exhibit No. 80 for the Atlantic seaboard?

A. Yes.

Q. Referring, on defendants' Exhibit No. 79, to the Ogden gate-
way movement, is that substantially all Union Pacific?

A. Much the largest percentage of it.

307 Q. The next item on that exhibit, via Sunset-Gulf route—
does that mean an eastbound tonnage that actually gets on the
oat at New Orleans or Galveston, or is that simply a tonnage that
tarted out routed via the steamer lines and was changed before it
eached the boat?

A. It is tonnage that moved via the steamship lines, by reason of
ts having been originally consigned to New York, and having been
reconsigned either in transit or upon arrival at New York to these
points on the Atlantic seaboard territory.

Q. So that the delivery was made into the Middle West territory
by eastern lines drawing it west from New York?

A. Yes.

Q. The next item on defendants' Exhibit No. 79—what are the
lines over which the substantial part of those New Orleans rail items
moved?

A. I should say it was distributed between all the lines east of
New Orleans.

Q. Such as what?

A. The Queen & Crescent route; the Louisville & Nashville; the
Illinois Central; the Southern Railway; the Atlanta & West Point;
the Western Railway of Alabama.

308 Q. Is the Southern Pacific Company making any effort for
the New Orleans gateway on Middle West territory?

A. The Southern Pacific is making its preferential effort for the Ogden route. It does not interfere with or in any way restrict the efforts of its connections to secure business via New Orleans.

Q. Does it make any effort to use any of that business with the Mississippi Valley lines, as you spoke of in connection with the Rock Island and its eastern connections—that is, to route traffic that way in return for getting the valley lines to use the Sunset rails instead of others?

A. Only that much effort that you might find in the total traffic from Texas, Louisiana, New Mexico, and Arizona, and all territory combined, that may be delivered to our connections at New Orleans, which is large.

Q. Does the Southern Pacific Company make any effort to obtain passenger traffic for the Pacific coast from New Orleans?

A. From Atlantic seaboard territory.

Q. It does?

A. Yes.

Q. What are the lines east of New Orleans, for that?

A. The short line to New Orleans is the Pennsylvania
2309 or Baltimore & Ohio to Washington and the Southern Railway and Atlanta & West Point and Louisville & Nashville. That is the shortest route. The passenger can be ticketed via Cincinnati—over any of the trunk lines via Cincinnati—and the line via Cincinnati to New Orleans.

Q. Are any through passengers passed from Cincinnati to New Orleans?

A. There is a daily tourist car from Washington to New Orleans. There is no first-class equipment.

Q. That runs over what road?

A. The Southern Railway.

Q. Any Middle West-Pacific passenger movement through New Orleans would be practically out of the question?

A. It would be simply the result of the passenger's especially wishing to go South, wishing to go through that country for some reason or to visit some point on that line.

Q. Coming, now, to defendants' Exhibit No. 79, to the item of El Paso and other gateways, which we understand to mean other Texas gateways; are those items substantially all Rock Island?

A. No; not substantially all. The largest percentage of the tonnage is Rock Island.

2310 Q. What other substantial route is there?

A. That previously described, the business which is brought to Alpine, Texas, by the Kansas City, Mexico & Orient and to San Antonio by the M., K. & T., and that which is brought to Houston by the several connecting lines east and north thereof.

. Will you repeat comprehensively the commodities which, from
ir nature, can not be moved by the split rail and water haul?
. Citrus fruit, deciduous fruit, vegetables, pianos and organs not
ackages, earthenware and crockery in bulk, fresh oysters, furni-
, automobiles and other vehicles, all bulk freight such as coal
coke, and freight in tank cars, considerable freight that may be
ked, but in such light packages that it will not bear rehandling;
example, the business of the National Biscuit Company, the
kages are so light that they require them to go through in the orig-
l car from point of shipment to destination; machinery which is
boxed or crated. There are doubtless other articles that I do not
ll at the moment.
. You use the term "fresh oysters" to distinguish from canned
oysters?
1 A. To distinguish from canned oysters; yes. Fresh oysters
move in trainloads from the east to California.
. Are none of these articles which you have just mentioned han-
d via the Panama routes?
A. Not to my knowledge. They may be, because the Panama
te does not involve the transfer that the Sunset Route does at Gal-
ton.
. It would, for all points except on the Pacific harbors and the
lantic harbors, would it not?
A. It would involve a transfer at New York if it came from the
erior, and so would the Sunset Route.
. A transfer from a short haul would not differ particularly,
its injurious consequences, from a transfer from a long haul.
uld it?
A. No; but two transfers are more objectionable than one, and
ee transfers are more objectionable than two.
. All of these articles which you have mentioned are articles
hich can be handled through the Ogden gateway or through the
l Paso gateway with rail connections east, are they not?
A. They can be, in so far as the application of rates is con-
12 cerned; but no one could persuade the oyster shipper to send
freight by any other than the shortest route.
. The articles which you have mentioned, other than eatables,
uld all be handled, and are handled, through El Paso in substan-
l quantities on the rail lines, are they not?
A. The routing via El Paso is entirely practicable on all of them
cept the perishable freight.
. What would that fresh-oyster business amount to, in tons, in
ear, so far as it is handled by the Southern Pacific Company?
A. I do not know. They are all shipped within a very short
riod of time, and they are shipped in train loads, when they are

shipped, in order to get quick despatch, I suppose. I do not kn
how many cars a year that would amount to.

Q. What is the season?

A. I think it is our oyster season here. They are sent out th
for seeding, very largely.

Q. The citrus fruit, deciduous fruit, and vegetable movement
practically exclusively eastward, not westward, is it not?

A. Chiefly eastward. Strange to say, citrus fruit
2313 shipped from Florida to California.

Q. The citrus fruit and the deciduous fruit and the veg
tables now move in substantial quantities through each gatew
Ogden and El Paso?

A. From the entire State; yes.

Q. What is the oriental freight—what kinds? I think silk a
teas have been mentioned.

A. I mentioned the principal imports as silk, tea, and matting

Q. What is the westbound freight?

A. I think the largest westbound freight—the largest single ite
I think of—is condensed milk. That is shipped from the Midd
West by the Borden Company, from their Middle West factories

Q. Does the tea and the matting as well as the silk take a pass
ger schedule?

A. No.

Q. Is it only the silk that takes a passenger schedule?

A. Only the silk, as a rule.

Q. The oriental freight eastbound, other than silk, can be handl
then, much as ordinary freight can be handled?

A. If the matting and tea go directly to the Atla
2314 seaboard territory from the Orient, it is handled via S

If it comes through the Pacific ports, it is usually sent
Middle West points for storage, and eventually reshipped and d
tributed to other territory.

Q. And it can go over any of the rail lines from San Francis
the Middle West?

A. I am not sure about the storage arrangements. The stor
arrangements and reconsignment arrangements are made by the li
on which the storing is undertaken, and the importers have usu
made their arrangements directly with those lines and have stored
warehouses served by the lines with which they have made th
arrangements. I am sure the arrangements do not apply by
routes. I am not sure by which ones they do not apply.

Q. Is the eastbound silk movement through Ogden exclusively

A. No.

Q. What other way does that move?

A. Vancouver and Seattle.

3315 Q. Then, limiting it to the silk which arrives in California, is that exclusively by Ogden?

A. That moves exclusively by Ogden.

Q. The Santa Fe has never put in an organization for that?

A. They have apparently never been able to make the time.

Q. Have they sought that business?

A. I presume they have. I do not know. I can not state for them. I presume they have.

Q. Do they run any passenger time freight over the Atchison?

A. Not to my knowledge.

Q. What is that eastbound silk movement, in volume?

A. I could not tell you from memory what it is, in volume; but it arrives at the Pacific ports, say, at Vancouver or at Seattle or at San Francisco, in lots of ten or twelve or fifteen cars on a ship, and its arrival at either of those ports is anticipated by the railroad putting the equipment there ready to load, and despatched in a special train, practically, as soon as the freight is out of the ship.

3316 Q. Is it a traffic that arrives with regularity?

A. Yes.

Q. And is it a matter of daily, weekly, or monthly arrival, or what is a fair estimate of the periods when a trainload arrives; that is, a short trainload of the kind you have described?

A. I should imagine that a trainload of silk would arrive at one of the three ports, Vancouver, Seattle, or San Francisco, perhaps every sixty days.

Q. The occasion for great expedition in that was originally the Suez competition, was it not?

A. I do not see how the Suez competition could have created the necessity for despatch. My understanding has always been that it was on account of the risk entailed, and the enormous value of the silk, that the practice was inaugurated and became competitive between the Canadian Pacific, the Great Northern, the Northern Pacific, and the Southern Pacific.

Q. Does that mean it was due to the desire of the railroads to get it off their hands as soon as possible?

A. Yes; to get it out of their possession. That is my under-

3317 standing of the matter. It has been going on many years.

Q. On page 2160 of your testimony of April 21 you give an item of 122,481 tons. Is that exclusively Southern Pacific Ogden eastbound fruit and vegetables to the Atlantic seaboard?

A. No; that embraces the fresh fruit and vegetables from California to the Atlantic seaboard by the Ogden and El Paso routes.

Q. How is it divided as between the two routes?

A. From that district of Ohio and Indiana that I described in my direct testimony.

Q. Is there much transcontinental movement of coal and
2322 coke?

A. If by "transcontinental movement" you mean California——

Q. I mean defined as you defined it, to California from east of what you call the Colorado gateway and north of the south line extended from that gateway.

A. There is a very considerable movement from Utah and Colorado. There is a movement from Virginia and the eastern part of West Virginia, and some from Pennsylvania. What the total volume is I do not recall.

Q. You would not comparatively speak of it as a large volume of traffic, would you?

A. That which originates where?

Q. East of the Colorado gateway.

A. I would say that there was a considerable tonnage, including that which originates in Colorado. I am not sure whether that is east of the gateway or west. There is a very considerable coal traffic.

Q. Apart from that Colorado movement there is not much, if any, moved from east of the Colorado gateway, is there?

A. When you speak of coal you speak of a commodity, of
2323 course, which you generally consider in very large volumes, but there is quite considerable coal and coke from Virginia from the Pocahontas district and the Virginia district, and from eastern West Virginia, and I think there is some from Pennsylvania and some from Maryland, to California. There is some soft coal and some anthracite coal.

Q. That comes, to a considerable extent, through El Paso?

A. No; I think through Ogden, chiefly.

Q. Would you think there was much divergence between the two figures on the two gateways?

A. I do not know, really. I have never seen the figures on the two gateways. Both gateways are open for the traffic.

Q. The tank-car movement is largely—eastbound—wines, is it?

A. The tank-car movement consists of wines, liquid asphalt, and they ship mineral water in tank cars, and oil. Those are the chief commodities.

Q. Is the great bulk eastbound?

A. Of the wine and asphalt, eastbound. Of the mineral water and oil, westbound.

Q. You have some arrangement, have you not, with some
2324 tank-car lines to ship wine to New Orleans and barrel it there?

A. We have tried some of that. I am sorry to say it has not been effective in meeting water competition.

Q. When was that special attempt to meet water competition inaugurated?

A. Last summer, I think.

Q. Do you remember what the rate was?

A. Fifty-five cents.

Q. That was fifty-five cents via the Sunset-Gulf route, with a barreling in transit privilege at New Orleans?

A. At New Orleans.

Q. Was the barrel included in the paid weight?

A. In the paid weight?

Q. Yes.

A. According to my recollection, there was a specific provision in the tariff that covered that. I think it was stated that way. It was considered in making the rate, I know. The tariff, however, would speak for itself. It is somewhat specific, and makes plain just what it is intended to cover.

2325 Q. It resulted in a much more favorable rate than the all-rail rate?

A. The all-rail rate was seventy-five cents.

Q. That is, it was seventy-five cents against fifty-five cents?

A. Yes.

Q. The barrels originate largely in the eastern part of the country?

A. No; in Louisiana and Arkansas.

Q. In Louisiana and Arkansas?

A. That was the purpose of the arrangement, to bring the barreling of the wine in close proximity to the staves. They had been shipping staves to California, and they expected they would be able to establish some business by that arrangement, as against the sea route, by saving the cost of transportation of the staves, and in that way bring the two costs of transportation closer together.

Q. That would result in a saving to the shipper on his barrel cost?

A. Yes.

(Whereupon a recess was taken until two o'clock p. m.)

2326 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of recess, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Mr. Spence, will you please give the method by which you arrived at 122,481 tons being 55.8 per cent, as appears on page 2160 of the record?

A. The total traffic via El Paso and Ogden during the fiscal year ending June 30, 1914, from points in California to Atlantic seaboard territory aggregated 219,384 tons, of which the 122,481 tons which constituted the fresh fruit and vegetables represented 55.8 per cent.

Q. Have you there that 219,384 divided as between Ogden and El Paso?

A. No; it was compiled to get this percentage.

Q. You have referred to petitioner's Exhibit No. 22, page 61 whereon the percentage of traffic carried via the Atchison, Topeka & Santa Fe, there described as the "Atlantic & Pacific", between

2327 October 1, 1884, and December 31, 1885, is stated as 20.34 per cent. That percentage, you understand, do you not, to be a percentage of east and west bound combined?

A. Yes; through traffic.

Q. There is nothing on the exhibit, is there, from which to determine how much of that originated or was laid down north of Mojave?

A. No.

Q. Have you any means outside of the exhibit of stating statistically or forming any valuable estimate as to how much of that was north of Mojave?

A. I have no means of stating statistically how much of it was north of Mojave, but I was in the field and actively encountered the competition of the Santa Fe for northern and central California traffic.

Q. You were in the eastern field?

A. Yes.

Q. And the effort of the Santa Fe was exerted chiefly upon the eastern end, whether it was for the western movement or the eastern movement, was it not?

A. The effort was not entirely confined to the eastern end. The success may have been.

2328 I would like to say, with reference to my answer, that I was I was in the field during the several years preceding 1899 that were covered by the original question, not in the field on the date of the exhibit.

Q. That is, your comment upon being in the field has more reference to the period near to 1899 than it does to the precise period covered by the exhibit, which ended with the end of 1885?

A. It would include the early nineties.

Q. Was there much southern California traffic in 1885?

A. It was not very large; no. The citrus fruit industry had not developed at that time.

Q. How about the westbound traffic to that region?

A. Well, it would bear a corresponding ratio in importance to the eastbound, for the reason that the population had not at that time increased.

Q. In reading this exhibit, petitioner's Exhibit No. 22, from which this percentage 20.34 is taken, you have assumed the 100 per cent to be California traffic, have you not?

A. Whatever the exhibit shows. I described it as through transcontinental traffic, I think. I do not think there is any doubt about its having been confined to California, because at that time
2329 there was no connecting rail line north of California.

Q. Had the Arizona or New Mexico traffic come to an appreciable amount in 1885?

A. It never moved via Mojave.

Q. You will observe that this exhibit does not indicate a Mojave——

A. Yes; it indicates the Atlantic & Pacific, which went via Mojave.

Q. Was there not any access to the Atlantic & Pacific except through Mojave?

A. No.

Q. That is, neither Arizona nor New Mexico freight for the Atlantic or Middle West could get on to it?

A. No. The Santa Fe would have to take that freight through Deming. I think, too, that exhibit shows that the tonnage represented by this percentage was Atlantic & Pacific-Southern Pacific tonnage.

Mr. BLAIR. It does.

The WITNESS. It indicates that it chiefly moved north of Mojave.

By Mr. MCCLENNEN:

Q. Coming, now, to the present time, have you any means of
2330 giving, in approximate figures, the amount of tonnage originating on Southern Pacific rails and delivered to the Santa Fe in California, and destined to Middle West or Atlantic seaboard points?

A. I could give you an idea of the total traffic from Southern Pacific points delivered to the Santa Fe at California junctions, destined to all transcontinental territory; that is to say, to points east of Albuquerque, which is accessible to our longer-haul routes. For example, we can take freight via El Paso to any point on the Santa Fe east of Albuquerque, and Albuquerque is the defined transcontinental line.

Q. Your answer, under those circumstances, would include some freight for Atchison local delivery?

A. It would include no freight for which we can not compete via El Paso.

Q. But would include a substantial amount of freight that would eventually be short-hauled by the Atchison at the delivering end?

A. The Atchison, extending all the way to Chicago. All points west of Chicago would come within your last statement. They would be short-hauled unless they hauled it all the way to Chicago.

Q. Can you state, correspondingly, the tonnage from the
2331 Atlantic seaboard and the Middle West territory long-hauled over the Atchison to California junctions and delivered on Southern Pacific rails?

A. No.

Q. You have not the westbound figure?

A. No.

Q. What is the eastbound figure for the tonnage as you have described it in your answer?

A. During the last fiscal year about 90,000 tons.

Q. Have you any knowledge of how much of that went east of the Mississippi River?

A. No; that tonnage is compiled for the purpose of ascertaining what traffic originating on our lines, destined to points that we would like to haul via El Paso and can haul via El Paso, has gone to our connections at a short-haul junction.

Q. What are the conspicuous commodities in that tonnage?

A. Everything which that section of California produces.

Q. Is there any large amount of fruit in that tonnage?

A. Yes.

Q. Would that be the largest item?

A. Not necessarily green fruit. It would include dried
2332 fruit, canned goods, wine, asphalt, beans, barley, and green fruit.

Q. That delivery to the Atchison at the California junctions is due to the shipper's routing?

A. Yes.

Q. From your general knowledge of the soliciting situation, can you say whether that routing is or is not largely influenced by the efforts of the Atchison with the eastern consignees?

A. No; I could not say, with respect to that particular traffic, how much was due to the influence or control of the consignees and how much was due to the influence or control of the shippers. The Atchison has the same access to the shipper as it has to the consignee, and the same opportunity to solicit him. It is in a position to afford him facilities, to put its equipment in, and all that sort of thing.

Q. Has that tonnage, short-hauled by the Southern Pacific and hauled from California east by the Atchison, been a more or less constantly increasing amount?

A. Undoubtedly so.

Q. The Atchison service has been an improving service, has it not?

2333 A. Yes.

Q. When, should you say, did the Atchison service reach an equality with the service rendered by the Sunset Route or the Ogden route?

A. In the early nineties.

Q. Do you remember when it was that the Atchison perfected its arrangements for the billing and through trackage of cars to the Atlantic seaboard?

A. No; I do not remember. The line was not completed into Chicago until 1888.

Q. Yes.

A. I think it was sometime after that.

Q. It was a pioneer in that, was it not?

A. I am not sure about that. Through billing in the early days was a very uncommon thing. Whether the Santa Fe put it in ahead of other transcontinental lines I could not say. It was taken up by one line after another, not only in transcontinental business, but all over the United States.

Q. When did the Southern Pacific begin to through bill through Ogden to the Atlantic seaboard?

A. I could not state from memory accurately, but I should say in the early nineties.

2334 Q. When did it begin to run through package cars to the Atlantic seaboard?

A. I could not tell you that from memory, but they have been run for a great many years.

Q. Did they precede the through billing?

A. I do not think they did.

Q. Through freight cars for carload lots have been moved ever since the railroads had junctions?

A. Originally to a limited extent. It was not a common practice, as it is in recent years. Each railroad used to hold on to its own equipment and transfer at the junctions; and retained its own equipment, and did not allow it out of its possession.

Q. When did through cars for carload lots become the practice through Ogden?

A. I could not say with any degree of accuracy. That was one of the gradual developments not only there but throughout the United States. That is, on a small number of through cars that might be run, more and more were run every year. That has been a gradual transition.

Q. It was really one of the competitive elements of the situation that were growing?

2335 A. Growing more acute all the time.

Q. The Santa Fe's most effective competition with the Southern Pacific was during the nineties, with reference to southern California, being in opposition to the Santa Fe route, was it not?

A. With reference to southern California?

Q. Yes.

A. In the early nineties; yes.

Q. The presence of the Atchison, with the improving service thereon, was a spur to the Southern Pacific to improve its service, was it not?

A. The spur was applied the other way. The Southern Pacific had supplied a service superior to anything that had ever been given across the continent, and the Santa Fe was spurred to improve its service to meet the competition.

Q. At some time the Ogden route—and by the Ogden route I mean from San Francisco to New York that way—was spurred on to an improvement in its service, was it not?

A. Especially the eastern lines in that route, who had been in the service for many years.

Q. The presence of the Atchison's competition had an effect on that improvement in service, did it not?

2336 A. It may have had some effect, but the improvement was mainly stimulated by the Sunset service.

Q. The Sunset service was, at least up to 1901, the pet service of the Southern Pacific Company?

A. It was the route by which it sought to secure the Atlantic seaboard traffic.

Q. It was the route on which it was putting out its great efforts to make the service so effective that the freight would move that way, was it not?

A. I do not know that the Southern Pacific exerted any more effort on the Sunset Route than it did on its part of the line west of Ogden, but it was unable to coordinate the efforts of the lines between Ogden and the Atlantic seaboard territory.

Q. It succeeded in coordinating the efforts of the Mississippi Valley line, so far as Middle West territory was concerned, did it not?

A. Between Cincinnati and New Orleans?

Q. Yes.

A. Yes.

Q. It made an effort to secure that coordination, did it not?

2337 A. Those lines made the effort themselves. They were hungry for the business and sought the business.

Q. Were they any hungrier for the business than were the lines operating to Omaha?

A. East of Omaha?

Q. Operating westward to Omaha?

A. No; I do not think that they wanted the business any worse than the Union Pacific did.

Mr. BLAIR. What was that question?

Mr. MCCLENNEN. I am referring to the lines from Cincinnati, if you please, to Omaha.

By Mr. MCCLENNEN:

Q. Were not the lines in that region as anxious to get business to Omaha as the Mississippi Valley lines were to get business to New Orleans?

A. I never saw any manifestation of it.

Q. You never did?

A. No.

Q. Do you know personally of the effort, if any, made by the Southern Pacific to get coordination with those lines between Omaha and points east of Omaha in Middle West territory?

2338 A. In the usual course of events, that effort would be made by the Union Pacific with its immediate connections east.

Q. Did the Southern Pacific ever, so far as you know, attempt to organize that coordination?

A. I do not know. I would not know.

Q. You did know of the efforts that were put forth to improve the Sunset service?

A. I was at one end of it; yes.

Q. Is it true that, in your judgment, the Sunset Route would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California if the Southern Pacific's short line had been to Los Angeles, we will say, or to the southern boundary of California, and its longer haul to Ogden? Or, in other words, if the influence of the Southern Pacific upon that traffic had been exerted in favor of the Ogden haul the Sunset Route could never have made the progress that it made in getting business?

A. That is true.

Q. Was not, then, the progress of the Sunset Route in its outstripping of the Ogden route due not merely to the lack of coordination of the eastern railroad connections of the Ogden route, but to the intense effort of the Southern Pacific Company to improve and secure the use of its Sunset haul, with the correlative relaxation of effort by the Southern Pacific Company over its Ogden route?

2339

A. It was attributable to the operation of the line under management between California and New York.

Q. The Atchison, as soon as it took up the effort to induce through business across the country, succeeded with rapid strides, did it not?

A. It succeeded with gradual strides. It was a process of years for them to accomplish the desired result.

Q. Its carrying trade, its through business, increased year by year with considerable rapidity after it came under the reorganization management, after 1895, and got into San Francisco in 1899, did it not?

A. What do you mean by "rapidity"?

Q. I mean barring the effect of the business depression upon freight carriage, that the Atchison takings in each year were substantially in excess of those of the preceding year?

A. I think so.

Q. When you said, in answer to an earlier question, that
2340 was true that if the influence of the Southern Pacific Company upon that traffic had been exerted in favor of the Ogden haul the Sunset Route could never have made the progress that it made in getting business, you meant to indicate, did you not, that the influence of the Southern Pacific Company upon that business had not in fact, been exerted in favor of the Ogden haul?

A. No; I meant that the influence had been exerted in favor of the Sunset haul.

Q. You say that if the influence of the Southern Pacific Company had been exerted in favor of the Ogden haul, the Sunset Route could never have made the progress that it made in getting business. Under the conditions under which you made that answer, you meant to convey the idea, did you not, that the Sunset Route had made this progress because it had not exerted its influence in favor of the Ogden route?

A. I meant to answer it by saying that the success of the Sunset Route was due to the influence of the Southern Pacific being exerted in favor of that route.

Q. I put the whole statement before you [handing witness record in Union Pacific merger suit] as I read it from the Union Pacific record, page 3392. You meant to convey the impression, did
2341 you not, that the lack of influence by the Southern Pacific Company in favor of the Ogden route was an essential to the success which the Sunset Route had had?

A. I answered two questions, and they were both incorporated in your first question to-day. The first, that if the Southern Pacific Company had not been in management of the entire line from coast to coast, what effect would that have had?

Mr. McEnerney. I think Mr. Spence has not finished his answer.

The Witness (continuing). The question was: What effect would that have had upon the Sunset Route into California? My answer was that the Sunset Route, in my judgment, would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California if the Southern Pacific's short haul had been to Los Angeles, we will say, or to the southern boundary of California, and its longer haul to Ogden. What followed is a part of the same answer.

By Mr. McClennen:

Q. And what followed was the words: "Or, in other words, if the influence of the Southern Pacific upon that traffic had been ex-
3342 erted in favor of the Ogden haul, the Sunset Route could never have made the progress that it made in getting business", was it not?

A. Coupled with the previous statement that if the Southern Pacific's line had stopped at Los Angeles or at the southern boundary of California.

Q. Coupled with the statement that you have just read?

A. Yes; the statement I have just read; if its line had stopped at Los Angeles or the southern boundary of California.

Q. To avoid the slightest question about the whole context—it is true, is it not, that there is no occasion to begin to read before this last question on page 3991 [indicating in record]?

A. I really do not know. I shall have to look at it.

Q. Will you glance at that and see whether it occurs to you that there is anything prior to that that is of consequence in order to get perfectly fairly the context in which you used the words to which we have just referred?

A. There is nothing immediately preceding it which affects that question.

Q. Then I will begin with that question, at the bottom of page 3991 of the Union Pacific merger record, and I read as follows:
3343 "Q. By the way, Mr. Spence, if the Southern Pacific line in California had stopped at the southern boundary of the State, if the Southern Pacific Company had not been in the management of the entire line from coast to coast, what effect would that have had upon the development of transcontinental business by the Sunset Route into California?

"A. The Sunset Route, in my judgment, would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California. If the Southern Pacific's short haul had been to Los Angeles, we will say, or to the southern boundary of California and its longer haul to Ogden; or, in other words, if the

influence of the Southern Pacific Company upon that traffic had b
exerted in favor of the Ogden haul, the Sunset Route could n
have made the progress that it made in getting business.

"Q. The Southern Pacific would naturally have preferred its l
haul would it not?

"A. Its long haul; yes."

Now, from that point on will you glance at the book to see whe
it is necessary to read anything more to make the portion read wh
fair to you?

A. I think that statement that has been read into
2344 record is correct.

Q. You see, in the connection in which you use those wo
do you not, that you have put the lack of influence of the South
Pacific Company in favor of Ogden as a prerequisite to the suc
which the Sunset Route did obtain?

A. There are two prerequisites.

Q. Two prerequisites?

A. One, if the Southern Pacific line had ended at the Colo
River in southern California and the remainder of the line to
York had been under a separate management, that the line w
not have achieved the success which it did achieve in securing
traffic.

Q. Do you observe that, in the phrase as you put it, you put i
the alternative, in this form:

"Or, in other words, if the influence of the Southern Pacific C
pany upon that traffic had been exerted in favor of the Ogden h

In using that expression in that case, did you not intend to lea
that the Southern Pacific Company's influence in those days had
been exerted in favor of the Ogden haul?

2345 A. I intended to be understood as meaning that the pr
ential effort of the Southern Pacific Company was to s
the traffic between California and the Atlantic seaboard via the
set Route. I did not intend it to be understood that the Sout
Pacific made no effort by its Ogden route, or that it did anyt
to interfere with anybody else making an effort by the Ogden r

Q. You meant to be understood to say, did you not, that some
in some way, the effort of the Southern Pacific in favor of the O
route had not been as great as it might have been?

A. I did not.

Q. Did you mean to leave it, when you made that answer i
Union Pacific case, that the Southern Pacific Company had
everything that it could to encourage through business through O
to the Atlantic seaboard from California?

A. I meant this: That the Southern Pacific Company's int
from the outset, and the interests of the people and the mercha

California, were absolutely identical; that if the Southern Pacific had had its own line through Ogden to New York prior to the time when the Sunset line was started, that it had as much interest in getting the California products promptly to the seaboard and in getting
2346 the merchants' products promptly from the seaboard to them, as it had after the opening of the Sunset Route, and that the opening of the Sunset Route afforded the facilities, which it did not have before, to accomplish that result.

Q. Do you think that which you are now stating was what you intended to convey by the language which I have used here?

A. I think so.

Q. What did you mean by the words in the quoted phrase "if"—and I emphasize that—"if the influence of the Southern Pacific Company upon that traffic had been exerted in favor of the Ogden haul"?

A. I meant that if the Southern Pacific line had stopped at the Colorado River that the preferential effort probably would have been in favor of the Ogden haul, but it did not stop at the Colorado River. It had its own line to New York, and thereby was afforded facilities to do what it could not do via Ogden.

Q. And you meant also, did you not, that if the preferential effort of the Southern Pacific Company had been exerted in favor of the Ogden haul the Ogden route would have prevailed over the Sunset Route?

2347 A. If our ownership had stopped at the Colorado River and the remainder of the line had been under separate control, we would have been as powerless to accomplish the service by that route as we would via Ogden, and that under those circumstances the Sunset Route would not have prevailed over the Ogden route.

Q. Did you not think that if the Southern Pacific Company's effort had been exerted in favor of the Ogden route with all the inspiration that comes from 100 per cent of the rate that the Ogden route would have prevailed over the Sunset Route even if the Sunset Route were a through route?

A. No, sir; and it would not have prevailed.

Q. Has it not now prevailed?

A. Conditions have changed very materially in recent years. I have said that the coordination that was impossible to get in those days, the interests of eastern lines that it was impossible to get in those days, have been thoroughly aroused and the business has been extended, the business has grown, and those lines are all absolutely interested.

Q. Was not one of the things as to which the Southern Pacific's interest might have been exerted in those early days if it had not had another 100 per cent route, the getting of coordination with the eastern roads?

2348 A. It made those efforts to get that coordination before the Sunset Route was opened, and was not successful.

Q. I thought you said that you did not know of those efforts yourself.

A. I did say that I did not know. You asked me if I knew what efforts had been made, and I told you I did not; but I do say that the Southern Pacific Company—this is obvious—that the Southern Pacific Company, when it had only its Ogden line, was interested in securing that traffic between the Atlantic seaboard and the Pacific coast against the Panama route and against the Cape Horn route, and it was not very successful; and it wanted the traffic, if any line ever did want it, and certainly it put forth efforts to improve its service.

Q. The Sunset Route, so far as Atlantic seaboard territory was concerned, furnished as efficient a means of competing with the Panama routes and the Horn routes as the Ogden route would furnish, did it not?

A. After it was opened; yes.

Q. So that in order to fend against the Panama routes and the Horn routes, so far as that could be done by rail carriers, the Sunset Route was sufficient?

2349 A. Any route was sufficient.

Q. The Southern Pacific Company did not need the Ogden route for that particular purpose, did it?

A. After the opening of the Sunset Route?

Q. Yes.

A. It did not need it for that purpose; no.

Q. The person having the important say as to the methods of developing traffic for the Southern Pacific Company prior to 1901, and thereafter to some extent, was Mr. J. C. Stubbs, was it not?

A. Yes.

Q. If any effort had been made to organize a through service through Ogden from the Atlantic to the Pacific and the reverse, in the ordinary course, it would have been made by Mr. Stubbs?

A. I think that is likely.

Q. Mr. Stubbs is still living?

A. He was the last time I heard of him.

Q. And upon the rolls of the Southern Pacific Company?

A. Upon the pension roll.

Q. Did you ever talk with Mr. Stubbs about the efforts, if any,

2350 which he had made to coordinate the eastern rail carriers with the Union Pacific and the Central Pacific for through transcontinental business?

A. I think my information prior to 1885 is historical, and I have no doubt that a good deal of it was gained from Mr. Stubbs.

Q. Do you mean by that that you did or did not talk with him on
t subject?
A. I could not tell you whether I talked with him or not.
Q. Do you now recall Mr. Stubbs having informed you of any
ort which he made after the opening of the Sunset Route to get co-
dination between the eastern roads and the Union Pacific and Cen-
l Pacific for through transcontinental service?
A. No.
Q. You were in the office of Mr. Edwin Hawley, were you not?
A. Yes.
Q. And Mr. Edwin Hawley was for years the general eastern agent
the Southern Pacific Company?
A. Yes; and subsequently assistant general traffic manager.
351 Q. Mr. Hawley was a peculiarly able railroad man?
A. One of the ablest railroad men of his day.
Q. His work directly and through his subordinates in securing
affic for the Southern Pacific Company was directed exclusively
ward the Sunset-Gulf route?
A. Preferentially.
Q. Mr. Hawley remained with the Southern Pacific Company up
what time?
A. March 1, 1902, as an officer.
Q. Up to what time was he the general eastern agent?
A. My recollection is that he became assistant general traffic man-
ger about 1890. I could not speak accurately as to that, but I think
at was about the date.
Q. Did he in that position also continue to exercise the functions
general eastern agent?
A. Yes.
Q. And he remained as assistant general traffic manager up to
hat time?
A. March 1, 1902.
Q. The general traffic manager being Mr. Stubbs?
A. When Mr. Hawley was appointed assistant general traffic
352 manager, Mr. Richard Gray was general traffic manager at San
Francisco.
Q. When did Mr. Stubbs become general traffic manager?
A. He was general traffic manager when I came with the company,
think. I would not be sure about that.
Q. Mr. Gray is not living, is he?
A. No.
Q. And Mr. Hawley is not living?
A. No.

Q. Did Mr. Hawley ever tell you of any efforts which he had m
to get a coordination between eastern roads and the Union Pacif
Central Pacific for through service via the Ogden gateway?

A. No.

Q. The first railroad to get a coordination with eastern roads f
through freight between the Atlantic and Pacific coast was the S
Fe, was it not?

A. I am not sure about that. I expect they think so.

Q. Do you bear in mind any instance of anything of the kind pr
to the through-route arrangements made between the Atchison a
the Erie, to which Mr. Chambers has testified?

A. I have no recollection of anything prior to that.

2353 Q. You have spoken of the falling off in the Sunset-G
route's business. Am I right in understanding you to mea
relative and not an absolute falling off?

A. No; an absolute falling off; an absolute decline in tonnage, n
withstanding an increase in the total tonnage.

Q. What was the maximum Sunset-Gulf tonnage in any year; d
you know?

A. I do not remember it; no.

Q. How do you arrive at this statement that there has been a
actual falling off in tonnage?

A. From my recollection of the business from year to year.

Q. How much do you think it is now below its maximum?

A. I do not know, in figures; but it is very substantially below i
maximum.

Q. Is that true both of the eastbound and westbound?

A. Yes.

Q. That decline has come, in part, since the opening of the Pana
Canal, has it not?

A. Partly.

Q. And may be due, in part, also, to present general business con
tions?

A. No; the decline was substantially below the maxim
2354 before the canal ever opened, and before the present conditi
of business existed.

Q. By "substantially" you mean what?

A. Thousands of tons.

Q. Did the tonnage of the Sunset-Gulf route, speaking in absolu
and not in relative terms, decline before the Union Pacific-Southe
Pacific merger, so called, in 1901?

A. I could not say as to the tonnage. The percentage of the tak
ings of all lines very materially declined prior to 1901. I could n

whether the actual tonnage declined prior to that date, because total tonnage was expanding very rapidly, and the number of may not have been less, but its percentage of takings was very ch less.

Q. During the Southern Pacific-Union Pacific merger period, m September 1, 1901, approximately, to February 1, 1913, did the uthern Pacific Company continue its vigorous effort to get as ch as possible of the Atlantic seaboard-California tonnage via the nset-Gulf route?

A. So far as my knowledge of the situation is concerned, from any structions which I had myself, we did.

Q. You mean to include in that so far as your belief goes?

55 A. I do not know what instructions officers in California might have had from the director of traffic, who was the joint ficer of the Union Pacific and Southern Pacific.

Q. Have you anything to arouse any suspicion in your mind on at subject?

A. No. The Union Pacific had another route to southern Cali-rnia in 1905.

Q. You refer to the San Pedro, from 1905 on?

A. Yes.

Q. During that merger period were you the immediate head of e Atlantic seaboard solicitation?

A. Yes.

Q. Did you also have to do with the Union Pacific solicitation in e seaboard territory?

A. On behalf of the line west of Ogden.

Q. You had under you, in the Atlantic seaboard territory during at period, solicitors whose business was to solicit for the Sunset-ulf route?

A. Preferentially.

Q. The Union Pacific Company had solicitors in the Atlantic sea-oard territory whose business it was to solicit for the Ogden route preferentially?

356 A. The Union Pacific had an organization in New York, Boston, and Philadelphia which was exclusively Union Pa-ific. Its offices at Pittsburgh, Cincinnati, Chicago, Atlanta, Kan-as City, and St. Louis were joint offices of the Union Pacific and outhern Pacific.

Q. Perhaps I did not emphasize it sufficiently, but I meant to keep, or the moment, the distinction between the Atlantic seaboard ter-itory and the Middle West.

A. Oh!

Q. I was coming to the Middle West later.

So far as the Atlantic seaboard territory was concerned, there w a Union Pacific—if I may so call it—Ogden preferential organiz tion?

A. Yes.

Q. And the Middle West territory——

A. I would like to qualify that: It was an Ogden preferential o ganization to and from central California after 1905; it was a Sa Lake route preferential organization for southern California bu ness after that time, and had its own line to and from Oregon, a was not a preferential Ogden solicitor for Oregon.

Q. But was for northern and central California?

2357 A. Yes.

Q. In the Middle West territory, prior to 1901, for a dou or more years, the Southern Pacific Company had maintained soli tors whose business it was to get as much freight as possible to m by the Southern Pacific Company's long haul?

A. In some places.

Q. And for all points east of a line drawn from Toledo throu Danville, Terre Haute, or Indianapolis to East St. Louis; that eff meant the New Orleans gateway?

A. Preferentially.

Q. And the Texas gateways next?

A. Yes.

Q. In that same territory the Union Pacific maintained solicitor that is, in the Middle West territory?

A. Yes.

Q. And their effort, during that period before 1901, was direct toward moving the traffic as much as possible through Omaha a Ogden?

A. Yes; to and from central and northern California.

2358 Q. After the merger in 1901, the line of division in t Southern Pacific Company's solicitation which had run described, from Toledo to East St. Louis, was moved southerly easterly down to the Ohio River and points thereon?

A. Southerly to the Ohio River and easterly to and includ Pittsburgh and its environs and Buffalo and its environs.

Q. And to the south of that line the effort continued to be in fa of the Sunset rail route?

A. The preferential effort was in favor of the Sunset route, there had been instructions to work with their connections.

Q. Northerly of that line the preferential effort was via Om and Ogden?

A. Yes; to and from central California.

Q. That condition persisted during the period of the merger?

A. Yes.

Q. You were aware, were you not, at about the time of the unmerger, so called, in February, 1913, that the Attorney General had manifested an intention to bring proceedings to question the
2359 legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. Yes.

Q. One of the elements which entered into the solicitation of traffic, before the punitive or other enlightenments of the twentieth century, was the giving of rebates to a considerable extent?

A. I understand so.

Q. Has the policy of solicitation which you have just indicated as existing during the period of the merger continued unchanged so far as the Southern Pacific Company is concerned, since the unmerger?

A. With respect to California traffic, the same policy of solicitation has been pursued, except more actively and vigorously.

Q. How with respect to Atlantic seaboard and Middle West?

A. I am speaking of the traffic between California and the Atlantic seaboard and Middle West.

Q. Oh, I see. That is, you did not mean to distinguish between east and west bound traffic in that?

A. No.

Q. The steamship lines operating through the Panama
2360 Canal are, as to many points in interior California, dependent for delivery upon the Southern Pacific rails, are they not?

A. The large points of consumption in California are all reached by other rails than the Southern Pacific.

Q. Those other rails being what?

A. The Santa Fe and the Western Pacific; the Oakland, Antioch & Eastern, and the Northern Electric and the California Traction Company, and the San Pedro line.

Q. Many of the large industries in California are situated upon the rails of the Southern Pacific or Central Pacific Railroad, are they not?

A. Yes.

Q. I am now using it, as you understand, in the sense of being immediately upon those rails and not merely in the towns.

A. Oh, no; I thought you meant served by the tracks.

Q. I meant to ask you if many of the large industries in California were not situated immediately upon the Southern Pacific rails or Central Pacific rails, in the sense that they are reached by short sidings from those rails?

A. By "industries" I suppose you mean agricultural
2361 speaking in that sense. The eastbound products are agricul-
tural, chiefly. The westbound products are warehoused in the
large cities I referred to as served by the rails of the different lines.

Q. Do you not have large industries out in California that have
sidings? I mean, to a considerable extent.

A. The fruit-packing houses, or something of that sort, you mean?
There is not much manufacturing in California, you know.

Q. I do not mean to define the particular kind of industry or busi-
ness, but simply to find out what the fact is with respect to that,
whether there are considerable numbers of receivers or shippers of
large amounts of freight that have their own sidings or spurs from
the Southern Pacific or Central Pacific tracks?

A. There are not many shippers that are located in the large cities.
The fruit-packing houses, of course, are at interior points, and some
of them are served exclusively by the Santa Fe lines, and some of
them are served exclusively by the Southern Pacific lines, and some
of them exclusively by the Western Pacific lines, and some of them
exclusively by the San Pedro.

2362 Q. Very little by the Western Pacific, of that sort of things?

A. Well, at Stockton and large cities up in central California. We switch to all of those lines, of course; for them all on an equal basis.

Q. Have you before you now defendants' Exhibits 84 to 94?

A. I have.

Q. Are you the author of them? I do not mean are you the draughtsman, but are you the author of the ideas portrayed by the lines on them?

A. I think I can take the credit for them.

Q. Defendants' Exhibit No. 84 you intend as indicating particularly alternative routes between Chicago and Seattle?

A. And Tacoma.

Q. And Tacoma. Which of those two alternative routes became complete first?

A. Complete?

Q. Yes.

A. The line from Chicago to Omaha was completed before the line from Seattle to Tacoma.

2363 Q. By that do you mean that the line from Chicago to Omaha ends the necessary rail connection through to Seattle and was completed before the line was through from Chicago to Seattle over the Chicago, Milwaukee & St. Paul?

A. Yes.

Q. What section of the new through line over the Chicago, Milwaukee & St. Paul between Chicago and Seattle was the last link in that line to be constructed or acquired?

A. I am unable to tell you where the last link was built. The western end of the line, known as the Chicago, Milwaukee & Puget Sound, was the last part of the road that was built.

Q. Between what points have you last described?

A. Between St. Paul and Seattle.

Q. That is, you mean you do not know which portion of the tracks between St. Paul and Seattle was the last to be built?

A. No; my understanding is that they built both ways, and I do not know where they met.

Q. That was a new building, was it not?

A. Yes.

Q. Was that conducted by the Chicago, Milwaukee & St. Paul?

364 A. For their account, as I understand it.

Q. Do you know of their having any other line projected through that territory at the time that they built that section?

A. I do not.

Q. Did the Chicago, Milwaukee & St. Paul stop any existing competition or prevent the arriving of any immediately threatened competition, so far as you know, by completing the building of that line?

A. I do not know of the St. Paul having stopped any threatened construction by any other line. If you mean, did they stop the soliciting of traffic by the Omaha line and in lieu thereof soliciting by their long haul, I will say yes.

Q. About how many lines parallel, in the common sense, with the Chicago, Milwaukee & St. Paul are there between Chicago & Omaha?

A. Between Chicago and Omaha?

Q. Yes.

A. About five.

Q. Do you know whether or not there ever has been a substantial tonnage moving over the Chicago, Milwaukee & St. Paul to

365 Omaha and thence by Union Pacific and the other connections which you have shown in yellow on defendants' Exhibit No. 4 to Tacoma and Seattle?

A. My understanding is that there was, prior to the construction of its own line.

Q. How substantial was it, to your understanding?

A. Do you mean how much?

Q. Yes.

A. The relations of the Chicago, Milwaukee & St. Paul with the Union Pacific were such that they were expected to put forth an

effort to secure the traffic that way. There was a reciprocal ob-
ligation.

Q. A comparatively small portion of the Chicago-Seattle traf-
moved that way, did it?

A. I should say that the Northern Pacific would have come firs
possibly the Great Northern second, and the St. Paul-Union Paci
line third.

Q. Once for all, let me ask you: On all of these maps you hav
approached the subject from the standpoint of the line denoted i
green, have you not?

A. Yes; the yellow lines are connecting lines.

Q. On defendants' Exhibit No. 85 you indicate as the eas-
2366 ern terminus of the alternative of the Union Pacific throug
eastern connections—or at least the determining line—the At-
lantic seaboard points. What do you intend to indicate as the wes-
ern terminus of the haul for which the map supplies alternati
routes?

A. Portland, San Francisco, and Los Angeles.

Q. What do you mean to denote as the alternative route to Por
land, to the obviously direct route, the Oregon Short Line, and t
Oregon-Washington Railroad & Navigation Company?

A. The Southern Pacific via Roseville; the Southern Pacific v
San Francisco, and the steamship line of the San Francisco & Por
land Steamship Company; the San Pedro, Los Angeles & Salt La
Railroad, and the steamship line of the San Francisco & Portla
Steamship Company.

Q. Does Union Pacific freight to any extent, destined to Portla
Oregon, move via San Pedro, and by steamship to Portland?

A. It does not, because of the facilities afforded by the line west
Ogden, which are so excellent that they have no need to use the alte
native route.

Q. Would not the facilities afforded by the Oregon Short Line a
the Oregon-Washington Railroad & Navigation Company
2367 pretty influential to keep the Union Pacific from movi
traffic via San Pedro and boat line to Portland?

A. Yes.

Q. Is any route practicable for the Union Pacific to San Pedro e
cept the San Pedro route?

A. I have heard a great deal about citrus fruits from southern Ca
fornia moving via Sacramento and Ogden.

Q. And that is a substantial use, is it?

A. Substantial, so far as that freight is concerned.

Q. Is the route via the Oregon Short Line and the Oregon-Wa
ington Railroad & Navigation Company and boat to San Francisc

ine over which any substantial amount of through freight to San Francisco is moved?

A. No.

Q. Is the line from Ogden via San Pedro, and boat to San Francisco, a line over which any substantial amount of freight is moved?

A. No. I should like to add, to both of those answers, that both lines actively work for passenger traffic.

Q. You mean, by those inducements that are attractive, thrown out as to scenery?

A. And fried chicken.

Q. The San Pedro route is the one which was the subject
368 matter of a part of the Union Pacific merger case?

A. Yes.

Q. Where some contentions and replies thereto were made as to whether that had been acquired to prevent a competitive route?

Mr. BLAIR. I object on the ground that the record in the case and the decision of the court is the best evidence.

Mr. MCCLENNEN. I think the suggestion is one which can not be disputed.

By Mr. MCCLENNEN:

Q. On defendants' Exhibit No. 86 the green lines are what is popularly known as the Gould system?

A. Yes.

Q. Why is the line from Marshall to El Paso hatched?

A. Because it is under separate operation; but a very large block of its stock is owned by the Missouri Pacific.

Q. The termini within which you intend by this exhibit to show the alternative routes are St. Louis and California terminals such as Stockton, San Francisco, and Oakland?

A. And Sacramento and Marysville.

Q. The last link to be constructed in the alternative route
369 was the Western Pacific from Salt Lake City to the San Francisco terminals?

A. Yes.

Q. There was no other line threatened, so far as you know, through that territory when that line was constructed?

A. No; not to my knowledge.

Q. Defendants' Exhibit No. 87 you intend to have present alternative Santa Fe routes?

A. Yes.

Q. And the points that you emphasize are New York on the one hand and California terminals on the other?

A. Those are not the first points that I emphasize.

Q. What are the first?

A. The first are Chicago on the one hand and Stockton, Oakland, and San Francisco on the other, between which the Santa Fe operates its own complete line, and a line from Chicago to Pueblo which, in connection with the Denver & Rio Grande and Western Pacific, forms an alternative competitive route between Chicago and California terminals.

The second point is that the Santa Fe line from San Francisco and Oakland to Chicago in connection with the Erie Railroad to New York forms one through route, and the Santa Fe system to
2370 Galveston, in connection with the Mallory Steamship Line to New York forms an alternative through route in competition for the Atlantic seaboard traffic.

Q. Dealing with the first that you mentioned, first; that is, Chicago and San Francisco: The last link in the alternative route was the Western Pacific from Salt Lake City to San Francisco?

A. Yes.

Q. Dealing with your second next; that is, the routes between New York and San Francisco: The last link in the alternative route was the line from Texico to Galveston or Temple, making thus to Galveston?

A. Yes; but the Santa Fe had a route to Galveston prior to that through some point farther north—I think I can tell you what it is.

Q. Do you refer to the line from Newton, Kansas?

A. I think that is the junction.

Q. Coming down to Galveston?

A. That line was in operation in connection with the Mallory Steamship Line as early as 1886. It is not shown here, because this map is designed to show the lines now in use.

Q. What was the last link, then, in the San Francisco
2371 to Galveston Atchison route, as it first went through, so as to be usable in a practical sense as a line from San Francisco to Galveston and thence by the Mallory Line to New York?

A. The line via Newton, Kansas, was used for many years as a practical route.

Q. That was the link that completed that line, was it?

A. I am not sure what part of it was last built. The Atchison, Topeka & Santa Fe acquired the Gulf, Colorado & Santa Fe Line from Newton, Kansas, south in 1886. The line was there, I think, before that.

Q. Was it a competitor in transcontinental business?

A. Yes.

Q. The line from Newton, Kansas, to Galveston?

A. Yes; the Mallory Line-Santa Fe route has been a competitor for California business for many years, while the Texico Line has only been completed within recent years.

Q. Irrespective of whether it was Santa Fe ownership or other
wnership, what was it that first bridged the last gap so that the
eight could be moved through the Needles and thence on down to
alveston?

A. From and to what point in California?

Q. Well, I will say Mojave.

372 A. The Atlantic & Pacific, I think, was the last.

Q. That was the last thing built?

A. Yes. Let me see. Wait a moment. It would depend upon
hether this line from Newton, Kansas, south was in existence prior
1883. I don't know whether it was or not. If it is true that that
ne was not in existence prior to 1883, then the link from Newton,
ansas south was the last link.

Q. Was the Atlantic & Pacific competitive in any way with the
anta Fe when it was acquired by the Santa Fe?

A. That depends on the broad meaning of that word. The Santa
e had a line through Deming in connection with the Southern Pa-
ific, competing for transcontinental traffic.

Q. Did the Atlantic & Pacific ever operate before it was operated
y the Atchison, Topeka & Santa Fe?

A. I think so.

Q. Did it operate between the Needles and Mojave ever before it
as operated by the Atchison?

A. I am not sure about that, but my understanding is that—I do
ot know whether it was in operation there prior to its being operated
y the Santa Fe or not.

Q. What were the practical means by which the Atlantic
373 & Pacific could reach eastern points except over the Atchison,
when the Atchison acquired the Atlantic & Pacific from Mo-
ave and Needles; and by "acquired" I mean acquired the lease over
hat line?

A. I do not understand that the Atlantic & Pacific had any con-
ection east of Needles.

Q. On defendants' Exhibit No. 88 the Great Northern is the line
ith which you are dealing?

A. Yes.

Q. The western termini being Seattle, Portland, Astoria, and
Spokane?

A. Yes.

Q. The eastern termini on one proposition being Chicago, and on
he other proposition being these innumerable Atlantic seaboard
oints?

A. The eastern termini of the Great Northern road is not shown
s Chicago.

Q. I mean, in preparing this map to show alternative routes, one of the things that you intended to show was the Great Northern's alternative routes by connection to Chicago?

A. Yes; between Seattle, Astoria, and Portland on the west
2374 and Chicago, St. Louis, and Atlantic seaboard on the east.

Q. Dealing with the longer line—that is, from Seattle and the other western points to New York and the other eastern points—you intend to show three lines, one through Billings, one through Minneapolis and St. Paul, and one through Superior, Wisconsin, and boat lines to Buffalo and rail to New York?

A. Yes.

Q. Which was the first of those three that was a through service able line, say, from Seattle to New York?

A. The Great Northern, Burlington, and Pennsylvania lines via St. Paul and Chicago, according to the best of my recollection.

Q. Which was the second?

A. I think the Superior line.

Q. And then the third was the one through Billings?

A. The one through Billings.

Q. What was the last link in the line through Superior?

A. I do not know.

Q. What was the last link in the line through Billings?

A. I think the line from Omaha to Billings.

Q. That is, the Burlington's line?

2375 A. The Billings route, at all events; possibly the Great Northern line from Shelby down to Billings may have been. It was all about the same time.

Q. That is, the completion of that through route was the work of the Burlington Railroad?

A. The completion of the through route?

Q. Yes; through Billings.

A. As far as I know; yes.

Q. Was any other line immediately projected at the time the Burlington built the line to Billings?

A. I have no knowledge of any.

Q. And, of course, you did not mean to convey the impression that the completing of a line by the Burlington to Billings would be a suppression of competition by the Great Northern Railroad?

A. I do not know what the Burlington does as between its line to Billings and its connection which owns it.

Q. Do you know anything about the movement of traffic from Seattle through Superior and boat lines and the New York Central to New York?

A. Yes. During the season of lake navigation traffic moves that way freely.

2376 Q. Is the volume large?

A. I think so.

Q. On defendants' exhibit No. 89 the prominent line is the Chicago & North Western?

A. Yes.

Q. And you intend to show three possible routes which it has, by connection between Chicago and Washington and Oregon points?

A. Yes.

Q. Which was the first one that was completed?

A. I don't remember whether the line from Chicago to Council Bluffs or the line from Chicago to St. Paul was first built. It is a matter of record, of course, but I do not recall it.

Q. Well, the first completion of the through line was made by the developments in Oregon or Washington, was it not? That is, the Oregon-Washington Railroad & Navigation Company's extension from Portland?

A. Yes.

Q. Going next to the line which starts out through St. Paul from Chicago; what completed the through line?

A. The Great Northern.

2377 Q. Is the same true of the line which starts out from Chicago through Ashland?

A. The Northern Pacific completed that route.

Q. And of course you do not mean to suggest that the completion of through routes by the Great Northern or the Northern Pacific would be a suppression of competition by the Chicago & North Western?

A. No.

Q. Defendants' Exhibit No. 90 is designed to emphasize the alternative routes of the Rock Island?

A. Yes.

Q. By its connections?

A. Yes.

Q. And whenever we say "Rock Island" we mean, unless otherwise indicated, the Chicago, Rock Island & Pacific Railway Company, plus the El Paso & Southwestern and El Paso & Southeastern?

A. It will be so understood.

Q. What are the termini betwen which you intend to show the alternative routes by this exhibit?

A. First, between Chicago & St. Louis and between Atlantic
2378 seaboard territory on the east, and San Francisco, Oakland, Sacramento, and Stockton, California, on the west.

Q. Dealing with the Atlantic seaboard on the east and California terminals on the west, which of these routes that you have shown here was the first physically complete?

A. I could not say as between the New York Central and Pennsylvania on the east and the Southern Pacific on the west.

Q. I have misled you again by the form of my question, I am afraid.

Over which of these alternative routes that you show on this plat did the Rock Island, by connection, first close up the last link of the chain connecting New York and San Francisco?

A. Between Chicago and Council Bluffs.

Q. That is, when the Rock Island built from Chicago to Council Bluffs it completed the first?

A. Yes.

Q. And that meant the use of the Union Pacific from that point west?

A. Yes.

Q. What was the next of these alternative routes?

A. The line from the Missouri River to Colorado junction.

2379 Q. That is the line from Council Bluffs to Pueblo?

A. Yes.

Q. And Denver?

A. Yes.

Q. Do you know whether any line was immediately threatened when that gap was closed by the building of that line?

A. I do not.

Q. And the third route that you suggest is the route through Tucumcari, is it?

A. Tucumcari and Santa Rosa.

Q. What was the last link to make that a through route from New York to San Francisco?

A. The southwestern end of the Rock Island line, connecting at Santa Rosa with the El Paso & Northeastern, it was at that time is now the El Paso & Southwestern.

Q. Do you know whether any other road was threatened at that point at that time?

A. I do not.

Q. Exhibit No. 91 you intend to show the alternative routes by connection of the so-called Burlington route, the Chicago, Burlington & Quincy?

A. Yes.

2380 Q. And the points are Chicago and St. Louis on the east and Pacific coast points on the west?

A. Yes.

Q. The last of those alternative routes to be completed was the uilding of the Burlington to Billings?

A. That is my recollection.

Q. And the first——

A. Was between Chicago and Council Bluffs.

Q. Was between Chicago and Council Bluffs, and that was com-leted by the extensions into Oregon?

A. What do you mean by "extensions"?

Q. Extensions of the lines of other carriers, not Burlington, into Oregon?

A. Yes.

Q. The only line which the Burlington finally completed the last ink of was this line to Billings?

A. That is the last line that was constructed, according to my un-erstanding.

Q. And, so far as you know, no other line was threatened through here at the time that was completed?

A. I have no knowledge of any.

Q. Defendants' Exhibit No. 92 is designed to show the 381 alternative routes of the Pennsylvania Railroad from Atlantic seaboard points to California points?

A. From Pittsburgh and Atlantic seaboard territory to California oints.

Q. The completion of the alternative routes there was put through y the connecting routes and not by the Pennsylvania?

A. Yes.

Q. Mr. Blair questioned you as to some resemblance between the ennsylvania situation in reference to Pittsburgh with the Central acific situation. Do you have in mind the incident?

A. Yes.

Q. I do not bear in mind just what the comparison was. Will you escribe it?

A. That the Pennsylvania lines have one route from Pittsburgh, ia Chicago, engaged in the transcontinental traffic, and a completely lternative route from Pittsburgh, via St. Louis, engaged in the same affic.

Mr. BLAIR. That may have been what the witness understood me o mean, but I had reference to an entirely different situation. How-ever, it is all the same.

382 By Mr. MCCLENNEN:

Q. In seemingly assenting to Mr. Blair's proposition, this as what you understood him to mean, as you have now stated it?

A. I would like to have his question and my answer before me.

Mr. BLAIR. You will find that my question related to the relati of the Pennsylvania, considering its line from Chicago to New Yo and the Sunset-Gulf route from New York to California; wheth that was not exactly analogous to the position created by the Centr Pacific line from Ogden to San Francisco and the Sunset-Gulf rou to New York; one presenting the same situation on the east as th other presented on the west.

By Mr. MCCLENNEN:

Q. Well, now, calling your attention to page 2246 of the recor keeping in mind Mr. Blair's explanation of what he meant by th question, will you not put in your own words, comprehensively, th comparison?

A. Well, Mr. Blair's question, as I now understand it, did not rel to transcontinental business. As I now understand it, it r
2383 ferred to the Pennsylvania line having its own line betwe New York and St. Louis——

Mr. BLAIR. I have never mentioned St. Louis, Mr. Spence.

The WITNESS. Will you let me read the question?

(After reading the question from the record.) Oh, yes; I s The Pennsylvania line between Chicago and New York is the Centra Pacific.

Mr. BLAIR. On the east?

The WITNESS. On the east.

By Mr. MCCLENNEN:

Q. That is, the Pennsylvania line between Chicago and New Yor you analogize to the Central Pacific?

A. Yes.

Q. Now, having established that, what do you analogize to th Southern Pacific to make the comparison?

Mr. BLAIR. The Southern Pacific was used——

Mr. MCCLENNEN. One moment. I want Mr. Spence to answer.

The WITNESS. The Sunset-Gulf route.

By Mr. MCCLENNEN:

Q. The Sunset-Gulf route?

A. Yes.

Q. That is, you mean that substituting Chicago for Ogden
2384 and New York for San Francisco you then use as the alterna tive the Sunset-Gulf route? Is that it?

A. Yes.

Q. That is, for the purposes of comparison you are assuming that the Pennsylvania lines from Chicago to New York and the Sunset-Gulf route are both owned by some company that we will cal the "X. Y. Company"; is that it?

A. That the X. Y. Company has an interest in both lines.

Q. The distinction between the two cases which you make analogous in your comparison being that in the case of the Central Pacific and the Sunset-Gulf route the Southern Pacific Company owns both of them and that in the other case the X. Y. Company does not exist at all; is that it?

A. The X. Y. Company is used as an example for comparison.

Q. I see. Mr. Spence, had this comparison that Mr. Blair called to your attention on page 2246 occurred to you before he mentioned the comparison at that time?

A. I do not know what he refers to.

Q. Had the comparison which you thought he referred to when you answered the question occurred to you before that time?

A. Yes; I prepared the map to show what I thought was
2385 comprehended by his question.

Q. And when you answered the question on page 2246 of the record you had in mind the Pennsylvania routes made by connection, the one through Chicago and the other through St. Louis, from Pittsburg to California?

A. Yes; that the lines between New York and Chicago, on the one hand, and the line from New York to St. Louis, on the other hand, formed parts of alternative competitive through routes.

Q. Now that you have had an opportunity to consider Mr. Blair's comparison, as you now understand that he meant it, from the explanation that he has given this afternoon, what do you think of it as a comparison representing your views?

A. He does not seem to think I understand his question yet.

Q. And the comparison, as he put it before you, is not so clear and obvious that you have yet got hold of it; is that it?

A. I have my own idea of this kind of a comparison, but have no idea of what Mr. Blair has in mind or what his question means.

The comparison that I made with your X. Y. example you
2386 stated for me—that if the same company had a route from New York via the Sunset-Gulf route to San Francisco and had an interest in another route between New York and Chicago it would be like the Central Pacific-Southern Pacific case.

Mr. BLAIR. You have got my idea at last, Mr. Spence.

By Mr. MCCLENNEN:

Q. Does the comparison, now that I understand from Mr. Blair's comment that you have got the idea he intended to convey, seem to you an accurate comparison from the standpoint of a practical railroad traffic official?

A. Yes.

Q. Now, to avoid doing you any injustice, will you restate, in yo
own language, the comparison which you have just described,
seeming to you a valuable one from a practical standpoint? Wh
is it?

A. If one company or interest had a line from New York to Ch
cago, and the same company had an interest in a line, a Gulf a
rail line, between New York and San Francisco via Galveston, th
we would have a parallel case to the Southern Pacific and Centr
Pacific.

Q. That is, you mean that if the Pennsylvania Railroad, having
line from Chicago to New York, with connections to San Fra
2387 cisco, should acquire a water and rail line from New York v
the Gulf of Mexico, and thence by rail to San Francisco, th
you would have a condition analogous to the one that we have i
the case of the Central Pacific Railroad?

A. Yes.

Q. The difference between the case on trial and that one bei
that the Pennsylvania Railroad has not yet acquired that line by t
Gulf? Is that the distinction?

A. I have no knowledge of what the Pennsylvania has acquired.

Q. You are not, from your general knowledge of traffic condi
tions, aware of the Pennsylvania Railroad having any such Gu
and rail line?

A. No.

Q. Defendants' Exhibit No. 93 you have prepared to show th
alternative routes which the Baltimore & Ohio Railroad has by co
nections from Philadelphia, Washington, and other Atlantic se
board points to California points?

A. Yes; and Pittsburgh.

Q. Had the lines of the Baltimore & Ohio which you have show
on the map reached Chicago and St. Louis before there were throug
rail connections to California?

A. I do not recollect.

2388 Q. You recall that the Baltimore & Ohio Railroad was th
first railroad in the United States?

A. I do not think it had reached Philadelphia. I think it wa
built originally from Baltimore.

Q. Built to what point?

A. I do not remember.

Q. Which of these alternative routes that you have outlined ha
was the first to be a through route by connection from the Atlantic t
the Pacific?

A. I do not think either of them can be described accurately in
answer to that question, because they are made up of links, some o
the links in one having been built before some of the links in

other. For example, the Illinois Central between Chicago and Council Bluffs was not built until after the Missouri Pacific west of St. Louis. On the other hand, the Southern Pacific west of Ogden was built before the Western Pacific west of Salt Lake City.

Q. The Baltimore & Ohio, by some connections to Chicago, if not over its own rails, reached Chicago and reached St. Louis before either of the lines here shown as west of Ogden and Salt Lake had been completed?

2389 A. I am not sure whether it had reached both Chicago and St. Louis or not.

Q. The second of the two alternative routes which you have shown here to be completed was completed by the construction of the Western Pacific?

A. Yes.

Q. And, of course, you did not mean to intimate that the construction of the Western Pacific was a suppression of competition by the Baltimore & Ohio?

A. No.

Q. Do you recall any of the routes which you have set out in defendants' Exhibits 84 to 93, inclusive, which we have just been going over, in which the last link in the second or third alternative line was acquired by the capture of an existing competitive line over that section, or was acquired or constructed to prevent the construction or acquisition by a competitor of a line or threatened line?

A. No.

Q. If in 1899, after the act had been passed directing the President to institute foreclosure proceedings on the Central Pacific Railroad line unless an adjustment of the debt was accomplished, that railroad had been sold to any concern other than the Southern

2390 Pacific Company, it would undoubtedly have competed strongly with the Southern Pacific from San Francisco Bay to New York, by connections, would it not?

A. As it does to-day.

Q. Passing to perhaps a little more fitting season for that part of your argument, I will ask you the simple question whether it would not in fact, irrespective of what it does to-day, have competed strongly against the Southern Pacific route?

A. As a purely academic question, the Central Pacific alone could not have competed with the Southern Pacific. The Central Pacific, joined with seventy-five per cent more mileage between Ogden and New York, would have completed a through competitive route.

Q. The Central Pacific Railroad, in the actual course of business under those circumstances, would, if managed as railroads ordinarily are managed, have tried to get business against the efforts of the Southern Pacific Company through El Paso?

A. It would have joined its efforts with the efforts of its connections, I have no doubt.

Q. To that end?

A. To that end.

2391 Q. You have, on defendants' Exhibit No. 94, sought to show the alternative routes of the New York Central Railroad from New York by connections to Los Angeles?

A. Yes.

Q. The New York Central Railroad acquired the West Shore Road, which you show here, the Michigan Central, which you show here, and the Lake Shore & Michigan Southern, which you show here, and some other roads not shown here, after those roads were already complete operating roads to the various points which you show on this plan?

A. As to all of them I could not speak from recollection.

Q. Well, you could as to the Michigan Central and the Lake Shore & Michigan Southern and the West Shore, could you not, which you show here?

A. That is my impression.

Q. This is the first of your instances on these various maps of the acquisition by a railroad of the control of the two existing competitive routes between the points which you designate, is it not?

A. As nearly as I can recall.

2392 Q. What is the analogy of any value which you draw between this New York Central situation and the Southern Pacific situation?

A. The New York Central lines between New York and Chicago and between New York and St. Louis, respectively, form parts of two alternative through routes.

Q. Does it seem to you that the situation is at all similar between the Southern Pacific Company and the New York Central?

A. No. The Southern Pacific Company does not own two parallel lines which in themselves compete with each other.

Q. So that really you make a distinction between the Southern Pacific and the New York Central rather than a comparison of the two as analogous; is that it?

A. They are analogous in the sense that they form parts of alternative through routes. It does not make any difference whether the New York Central uses the same line from New York and Buffalo or a different line. The lines from Chicago and St. Louis eastward form parts of different alternative through routes.

Q. And they form parts of through routes which are competitive routes in the New York Central case?

A. Yes.

2393 Q. And the same is true in the Southern Pacific case?

A. Yes.

Q. You were aware of the fact that the analogy between the New York Central situation and the Southern Pacific situation was such that a resolution had been introduced in the Senate inquiring as to why proceedings were not taken against the New York Central Railroad, were you not?

A. No; I do not remember the resolution.

Q. Were you not aware that a resolution had been introduced in the Senate inquiring?

A. Recently?

Q. Inside of a year and perhaps inside of six months.

A. No; I was not.

Q. Inquiring why proceedings were not taken against the New York Central Railroad?

A. No; it had escaped my attention.

Q. You have called attention in defendants' Exhibits Nos. 60 and 61 to the increase in through passenger trains since 1885?

A. Yes.

2394 Q. I suppose it is safe to say that the principal reason for the increase in the number of through passenger trains is the increase in the number of through passengers traveling between those points, is it not?

A. I am sorry to say that the increase in the number of passengers traveling between those points has not justified the increase in the trains.

Q. When they were put on, it was the belief that the increase in passengers was such as to call for the addition of the trains?

A. It was the belief that the increase would be sufficient to justify the operation of the trains.

Q. And the increase in the passenger travel through Ogden has not justified the through passenger service shown on Exhibit No. 61?

A. No; some of those trains have been losing money.

Q. Is the passenger travel via the routes shown on defendants' Exhibit No. 60 such as to call for the number of trains that are here shown?

A. They have been put on with the same object in view, and much with the same result.

Q. There has been some increase in travel through Ogden since 1885?

A. Oh, yes.

2395 Q. And it has been a very large increase?

A. Yes.

Q. And there has been a substantial increase in travel over the Sunset Route?

A. Yes. My point is that we have improved the service faster than the business has increased.

Q. Your map, defendants' Exhibit No. 56, in showing the lines on December 31, 1900, shows the lines substantially as they were in February, 1899, except for the Atchison road between Mojave and San Francisco; is that true?

A. And the American-Hawaiian Line, which did not begin operation until October 15, 1900.

Q. The lines in red on defendants' Exhibit No. 56 are lines controlled by the Southern Pacific Company?

A. Yes.

Q. The lines in green are pretty much all other railroads in the country?

A. The map does not show all of the railroads that are parties to transcontinental rates—transcontinental common tariffs. It is designed to include the principal railroads in the country that are participating in transcontinental traffic.

2396 Q. And it is true, is it not, that every one of the green lines except the Atchison, in order to get by rail into San Francisco, must forward over the red lines?

A. Every other line where? West of some point?

Q. West of Deming, New Mexico, and west of Ogden, Utah.

A. There were no other rails north of the Tehachapi Mountains on the date of that map except the Atchison.

Q. What was the condition in the traffic world with respect to the efforts of the Eastern and Middle West railroads to get traffic to move to or from California?

A. The lines described were soliciting the traffic either via Ogden and Southern Pacific, or via the Santa Fe through Chicago or Kansas City and Mojave.

Q. Was that solicitation vigorous?

A. Yes.

Q. As vigorous as it is now?

A. No. It was immediately prior to 1900, but not in the early nineties.

Q. I am referring to the condition in February, 1899.

A. Oh, in 1899?

Q. Was it then as vigorous as it is now, or not as vigorous?

2397 A. As to the question of degree, it was very active and vigorous. The competition seems more acute now by reason of the opening of additional lines and the Panama Canal.

Q. Was that vigorous effort by the Eastern and Middle West lines being made in February, 1899, in the West as well as in the East, or only in the East and Middle West?

A. In 1899? I think it was active and vigorous in both the Middle West and the East.

Q. Was the effort of all the other railroads to get traffic via the Atchison or via the Ogden gateway substantially as vigorous at the time of the Union Pacific merger in 1901 as it was in February, 1899?

A. Yes. You say "at the time." You mean prior to the merger, do you?

Q. I mean prior; yes.

A. Yes.

Mr. McENERNEY. What was the date of the merger?

Mr. McCLENNEN. September, 1901.

By Mr. McCLENNEN:

Q. You have produced, as defendants' Exhibit No. 58, a list of railroads maintaining solicitors in California?

A. Yes.

2398 Q. From what source did you make that up or have it made up?

A. From the Official Railway Guide.

Q. Was that made up from the current Railway Guide, so that it shows 1914 or 1915 conditions?

A. Yes.

Q. Did you make it up yourself, or merely give directions?

A. The California list was first made in California, and was checked in my office; each railroad was checked in my office.

Q. By some trusted subordinate?

A. Yes.

Q. Did you do the same thing with the New York list, defendants' Exhibit No. 59?

A. The New York list was made in my office.

Q. Was any attention paid, in making up the list, as to the number of solicitors that any one of these roads had in California?

A. No. The list is designed to show the number of organizations to have been forty-six, some of which have a number of solicitors.

2399 Q. Was any attention paid to the number of these forty-six railroads which combined into one soliciting organization in California?

A. No.

Q. It is obvious from your reading of the list, is it not, that some of those are joint offices of several different roads?

A. None, except those lines which are under the same ownership and control.

Q. Yes; but I say, from your knowledge of the railroads, you can say that there are a number of such, can you not?

A. The Gould lines and the Union Pacific system are about the only ones I observe.

Q. Now give me, will you, from this list of forty-six on defendants' Exhibit No. 58, the railroads, by name, which you characterize as the Gould lines represented by one organization or solicitor.

A. The Missouri Pacific, the Denver & Rio Grande, and the Western Pacific.

Q. Would you not add to that the Iron Mountain and the Texas & Pacific?

A. I would add the Iron Mountain. I do not think the
2400 Texas & Pacific are represented by the same agency. They are not usually.

Q. What are the lines represented by the single Union Pacific organization, as far as shown in this list of forty-six?

A. The Union Pacific, the Oregon Short Line, the Oregon-Washington Railroad & Navigation Company.

Q. And the San Pedro?

A. No; they maintain separate organizations.

Q. But not a competitive organization with the other Union Pacific organization?

A. No; they support the efforts of the Union Pacific to get southern California business.

Q. Are the New York Central lines and the Nickel Plate represented by one organization?

A. I think they are.

Q. Are the Canadian Pacific and the Soo Line represented by one organization?

A. They must be; they are under joint ownership.

Q. Are the Empire fast freight line and the Pennsylvania system represented by one organization?

A. No; I think the Empire is separately represented.
2401 Q. Those representations are not competitive with each other, are they?

A. The Empire line, you know, is not composed entirely of Pennsylvania lines. It is a mixture of Pennsylvania and New York Central lines. They are competitive to that extent.

Q. Are the Chicago, Burlington & Quincy and the Colorado Southern represented by one organization?

A. I think they are. I do not know.

Q. Of course the El Paso & Southwestern and the Chicago, Rock Island & Pacific are represented by one organization?

A. They are represented by separate organizations.

Q. They are represented by separate organizations?

A. Yes.

Q. Are the Queen & Crescent and the Southern Railway represented by one organization?

A. No.

Q. Referring to the list, defendants' Exhibit No. 58, the Atchison maintained a soliciting organization in California at the time of the Union Pacific merger in 1901?

A. Yes.

Q. Is the same true of the Baltimore & Ohio Railroad?

A. I think so.

2402 Q. Of the Canadian Pacific Railway?

A. I think so.

Q. Of the Chesapeake & Ohio Railway?

A. I think so.

Q. Of the Chicago, Burlington & Quincy Railroad?

A. Yes.

Q. Of the Chicago Great Western Railroad?

A. I think so.

Q. Of the Chicago, Milwaukee & St. Paul Railway?

A. Yes.

Q. Of the Chicago, Rock Island & Pacific Railway?

A. Yes.

Q. Of the Chicago & Alton Railroad?

A. I think so.

Q. Of the Chicago & Eastern Illinois Railroad?

A. Yes. That line was formerly part of the Rock Island, and my impression is that they may not have had separate representation at that time.

Q. Is it true of the Chicago & North Western Railway?

A. Yes.

Q. Of the Colorado Midland Railway?

A. Yes.

2403 Q. Of the Colorado & Southern Railway?

A. I am not sure whether they were joined with the Burlington at that time.

Q. And the Delaware, Lackawanna & Western Railroad?

A. Yes.

Q. Of the Denver & Rio Grande Railroad?

A. Yes.

Q. Of the El Paso & Southwestern?

A. I would not be sure that the El Paso & Southwestern separate organization had been created at that time.

Q. Of the Empire fast freight line?

A. Yes.

Q. Of the Erie Railroad?

A. Yes.

Q. Of the Grand Trunk Railway system?

A. Yes, I think so.

Q. Of the Great Northern Railway?

A. I do not think that the Great Northern opened its offices until recently. They have established their steamship lines from Seattle to San Francisco.

Q. Did they not have an office there for that purpose?

2404 A. Whether they had their own, or were represented by the Pacific Coast Steamship Company I am not sure.

Q. Is it true of the Illinois Central Railroad?

A. I do not think the Illinois Central had representation at that time. I am not sure about that.

Q. It has had for a great many years now?

A. Well, I will not say as to that.

Q. Do not understand me as referring to any other time. I refer only to 1901.

A. I do not know whether they had at that time.

Q. Recurring to 1901, the Kansas City, Mexico & Orient Railway was not in existence?

A. It was not opened for transcontinental traffic at that time.

Q. Did the Kansas City Southern Railway have an organization in California in 1901?

A. My impression is that it did not.

Q. Did the Lehigh Valley Railroad?

A. I think so.

Q. Did the Minneapolis, St. Paul & Sault Ste. Marie Railway?

A. That is a through line which was doubtless represented by the Canadian Pacific.

2405 Q. Did the Minneapolis & St. Louis Railroad, in 1901?

A. I do not believe so.

Q. Was that one of the Hawley lines?

A. Yes.

Q. Were they represented in some form by those lines?

A. I do not think they were.

Q. The Misouri, Kansas & Texas Railway, in 1901?

A. I do not know whether the M. K. & T. had an office at that time or not.

Q. The Missouri Pacific Railway?

A. Yes.

Q. The New York Central lines?

A. Yes.

Q. The Nickel Plate?
A. Yes.
Q. The Northern Pacific Railway?
A. I think so. I would not be sure about that.
Q. The Pennsylvania?
A. Yes.
Q. The Pere Marquette?
A. I would not be sure about that.
Q. The Queen & Crescent?
2406 A. I do not think the Queen & Crescent opened its California office until within the last three or four years.
Q. The Southern Railway?
A. I do not believe the Southern Railway had an office at that time.
Q. The St. Louis, Iron Mountain & Southern Railway?
A. They were represented by the Missouri Pacific.
Q. The St. Louis Southwestern Railway?
A. I should not think it had an office.
Q. The St. Louis & San Francisco Railroad?
A. Let me see when they opened. [After consulting memorandum.] I do not think they had. I do not think the St. Louis & San Francisco had an office.
Q. The Texas & Pacific Railway?
A. They either had a separate office or were represented by the Gould Lines' office. My impression is that the Texas & Pacific maintained a separate office.
Q. The Toledo, St. Louis & Western Railway?
A. I do not think so.
Q. The Wabash?
A. My impression is that the Wabash did.
Q. By 1908 practically all of the lines shown on Exhibit
2407 No. 58, except the Western Pacific, had different organizations in California?
A. I do not think the Queen & Crescent had. My recollection is that its office has been established quite recently. I do not know whether there are any other exceptions or not, from memory, but I think the majority of them had.
Q. Recurring to defendants' Exhibit No. 50, your table of Atlantic seaboard organizations, it is true, is it not, that in a number of instances two or more of the railroads shown thereon are represented by a single organization?
A. In the same instances that I have named with reference to the other exhibits.
Q. Instead of asking you as to each one of these roads in turn, I will ask you to look down through the list of defendants' Exhibit

No. 59 and tell me any that did not have a soliciting office in Atlantic seaboard territory in 1901.

A. The El Paso & Southwestern was not even jointly represented at that time, because the Rock Island had not connected with it.

The Kansas City, Mexico & Orient.

The Kansas City Southern.

2408 The San Pedro, Los Angeles & Salt Lake Railroad.

The Western Pacific.

Those are the only ones that I can say definitely did not have agencies.

Q. The probability is that the remaining fifty-four did have?

A. I should say so.

Q. And the San Pedro representation now is the Union Pacific representation?

A. No; it maintains its own office.

Q. It maintains a separate office in New York?

A. Yes.

Q. The Western Pacific is the same organization as the Missouri Pacific?

A. As the Missouri Pacific and the Rio Grande.

Q. By 1908 the San Pedro and the El Paso & Southwestern had required a soliciting organization in Atlantic seaboard territory?

A. The San Pedro line had, and the El Paso & Southwestern had an office in New York in 1908.

Q. In 1899 was there any really important Panama route other than that made up of the Pacific Mail Steamship Company

2409 on the west?

A. Yes. Well, not on the west; I think on the east. The Panama Railroad was operating its own steamship lines in 1899.

Q. But the Pacific Mail Steamship Company was a necessary part of it?

A. On the west, I think.

Q. On the west?

A. Yes.

Q. And the Pacific Mail Steamship Company in one form or another had been subsidized by the transcontinental railroads?

A. It had not for many years.

Q. Did they not have in 1899 still in existence that gross revenue guaranty or the space-rental agreement?

A. In 1899?

Q. In 1899.

Mr. BLAIR. Counsel objects on the ground that if it is a contract in writing the contract is the best evidence. I believe those contracts are offered in evidence.

The WITNESS. I do not recollect as to the date. I should say from my memory that it was not in effect.

2410 By Mr. MCCLENNEN:

Q. It is a matter that you have not had occasion to look up?

A. I have not had occasion to look it up.

2411 Q. Have you before you defendants' Exhibits 82 and 83?

A. Yes.

Q. And the bond-aided map, defendants' Exhibit 55?

A. Yes.

Q. Is Sacramento freight included or excluded in bond-aided lines' freight?

A. Included.

Q. Is San Jose included?

A. Yes.

Q. Is Stockton included?

A. Yes.

Q. Are there any other substantial points included in the bond-aided figure?

A. It includes every point on that bond-aided line. This map does not show all the points.

Q. From your knowledge of the situation, what is there on that bond-aided section of large size in addition to Sacramento, Stockton, and San Jose?

A. Those are the important points.

Q. Is the Santa Fe to-day the strongest all-rail line in the field?

A. No. The Union Pacific Ogden route is the strongest

2412 line.

Q. The Santa Fe is next?

A. The Santa Fe is second.

Q. Does the Southern Pacific operate, with the Rock Island, as one continuous line from California to Chicago?

A. We operate very closely with the Rock Island. We cooperate with them very closely. We join in the operation of a through passenger train—two through passenger trains. We do not join in the operation of any through mail train or any through mail car. We do not join in the operation of through merchandise cars to points north of the Tehachapi Mountains, because the volume of the traffic does not justify it.

Q. What is there lacking to your describing the Southern Pacific-Rock Island operation from California to Chicago as one continuous through line?

A. I was seeking to show the differences, whatever they might be, between that route, in answer to your question, and the route through Ogden. The differences are that by the Ogden route we operate a

through mail train from Omaha to San Francisco on a schedule
two days two hours and ten minutes, and a through mail car on th
Overland Limited in two days four hours and ten minute
2413 We do not operate either by El Paso in connection with th
Rock Island. We do not operate through merchandise cars
central California via the Rock Island.

Q. When you use the term "one continuous through route" to d
scribe a route portions of which are operated by separate compani
what do you mean by that term?

A. I mean the joining in through passenger rates, in joint freig
rates, in through billing, and in through bills of lading. Those
should regard as the essential features to the operation of a co
nected continuous line. We do more. We operate the mail trai
as I have described, and a through mail car upon the fastest schedu
made, because you know the Government awards the mail to t
schedule, and we carry the mail. We join in joint advertising, as
explained a day or two ago. We also do that for the Rock Island.

Q. If I have followed your answer, you do all of the things whi
you regard as essential to that definition in your relation with t
Rock Island. Am I correct?

A. Yes.

Q. And in the sense of the essentials the Southern Pacific and Ro
Island operate one through line from California to Chicag
2414 A. In those essentials.

Q. One of the ordinary things to be expected where two ra
roads operate as one through continuous line is an effort on the pa
of each to get as much traffic as possible to travel over that line,
it not?

A. We do not do that with the Rock Island.

Q. And it does not seem to you, then, that it is one of the natur
things to be expected in the case of the operation by two compani
of one through continuous line?

A. It is not an essential.

Q. And in that particular, if that is in fact contrary to what yo
understanding is as to one of the attributes of one through continuo
line, then the Central Pacific or the Southern Pacific has not or d
not prior to 1901 operate with the Union Pacific as one through co
tinuous line?

A. The Southern Pacific did not solicit 100 per cent of the tra
continental traffic via the Ogden route.

Q. That is, the effort of the Central Pacific or the Southern Paci
Company in operating the Central Pacific was to induce as mu
freight as possible between California and points east or south of
line from Toledo to East St. Louis not to go by the Uni
2415 Pacific Railroad, but to go by the Southern Pacific Railro

A. The effort was to have the traffic that you have described go preferentially by the southern route.

Q. And therefore not to go by the Union Pacific?

A. That does not follow. If the business could not be secured for the southern route, and was in danger of going by the Santa Fe, it was actively solicited for the Ogden route.

Q. If the effort succeeded, the result was to have the traffic not go by the Union Pacific. That is true, is it not?

A. With respect to that particular traffic, which is a minor part of the whole.

Q. What do you mean by "that particular traffic"?

A. That which you have described east and south of the specified line.

Q. Are you, when you say it was a minor part, taking into consideration that I mean to include everything east and south, even to the Atlantic Ocean?

A. Yes.

Q. Do you regard ninety per cent of the California-Atlantic seaboard traffic as a minor part of the traffic?

2416 A. My answer was that the traffic to and from the territory which you describe represented a minor part of the total transcontinental traffic.

Q. You mean of the total transcontinental traffic of all railroads?

A. Of our railroad. I mean that the traffic from north and west of that line is heavier than from south and east of that line.

Q. In 1899 was that so?

A. It is so to-day, and I think it was so then. Manufacturing has been moving to the Middle West very rapidly in this country.

Q. And you think that in 1899 ninety per cent of the California-Atlantic seaboard traffic plus that amount of traffic which you carried via the Sunset rail route from Middle West territory, south and east of the line from Toledo to East St. Louis, should, fairly and calmly, be described as a minor part of the Southern Pacific Company's transcontinental traffic?

A. Yes; because I would have to describe the other as the major part.

2417 Q. Do you think that ninety per cent of the Atlantic seaboard-California traffic, plus what went from south of that line together, was substantially less than fifty per cent of what was carried through Ogden and El Paso together?

A. The Sunset-Gulf route never carried——

Q. No; I did not ask——

A. Wait a minute. I want to——

Q. Take my question and answer that, if you will. I want you to understand it fully.

A. But you are assuming something that I am not willing to assume.

Q. Let the question be read and answer, if you can, the question which I have put.

(The reporter repeated the pending question as follows:)

"Q. Do you think that ninety per cent of the Atlantic seaboard-California traffic, plus what went from south of that line together, was substantially less than fifty per cent of what was carried through Ogden and El Paso together?"

The WITNESS. I think that ninety per cent of the seaboard traffic of the character that could be handled by the Gulf route, plus that from the territory south of the line that you have described, would be less than fifty per cent of the total traffic handled by the Southern Pacific routes; but the Sunset-Gulf route never handled
2418 ninety per cent of the seaboard traffic.

By Mr. MCCLENNEN:

Q. What was the highest percentage that the Sunset-Gulf route did handle?

A. Of the total seaboard traffic I could not tell you. Of the New York City traffic it reached between eighty and ninety per cent.

Q. Have you any idea whatever of the percentage of the total Atlantic seaboard traffic to and from California it handled?

A. I think it handled the major part of it.

Q. Considerably the major part of it, did it not?

A. More than half.

Q. It handled the major part of the Pittsburgh common point traffic, did it not?

A. I do not think so.

Q. Have you ever investigated those figures?

A. Oh, I probably knew about them at the time. The Santa Fe was actively engaged in the Pittsburgh traffic.

Q. I mean the major part of the Southern Pacific's Pittsburgh traffic.

A. Oh! Of our own? I am inclined to think it handled
2419 more via New Orleans, from that particular territory than via Ogden.

Mr. BLAIR. What date are you speaking of?

The WITNESS. 1899.

Mr. MCCLENNEN. 1899; yes.

By Mr. MCCLENNEN:

Q. It handled as high as sixty-five per cent of the Central Freight Association territory traffic, did it not?

A. I never saw anything that would confirm that understanding.

Q. Have you ever investigated those figures with a view to determining what percentage it did carry?

A. I have not, in recent years; no.

Q. You knew that that was the opinion of at least some who were familiar with the Central Freight Association territory?

A. That would not make it my opinion.

Q. Could you put into terms of anything like a percentage how much of the Southern Pacific Company's transcontinental traffic did move via El Paso in 1899?

A. No.

Q. Would you be prepared to say that it was less than
2420 forty-five per cent?

A. From all territories?

Q. From all transcontinental territories.

A. I should think it was.

Q. Was it less than forty-five per cent of all Atlantic seaboard territory and Middle West territory, as you have heretofore defined it?

A. I should think so.

Q. Was it less than forty per cent?

A. Well, I could not get into definite terms. I do not know.

Q. The Southern Pacific Company tried to have that volume which we will call something less than forty-five per cent, and other freight as to which its efforts were not successful, go via the Sunset Route in preference to the Ogden route?

A. Its efforts were to have all of the traffic to and from the Atlantic seaboard territory and south of the Ohio River go by the Sunset Route if its efforts were successful.

Q. And to have it not go, in consequence, by the Union Pacific?

A. No; they did not want it not to go by the Ogden
2421 route, because they found it absolutely necessary to get a haul, very frequently, rather than to have it go to its competitor.

Q. That is, if they could not get it to go by El Paso, their desire not to have it go by the Union Pacific ceased, but up to that point the effort was to have it go not by the Union Pacific; is not that accurate and true?

A. If it could secure the business by the southern route to and from this territory we have described, its effort was not to have it go by Ogden if it could get it by the Sunset. Its effort after that was to secure it via Ogden.

Q. The effort which you have described was a systematic one, was it not?

A. Yes.

Q. It was a preconcerted one?

A. Yes.

Q. And it continued from the time you first knew about the ra road up to 1901?

A. Yes.

Q. And it still continues, except that the division line has be moved east and south from the line that you described from Tole to East St. Louis?

2422 A. Yes.

Q. In the movement of freight from San Francisco via Paso, does the larger part go by the coast line?

A. The lines are used interchangeably to suit the convenience operation. The matter is entirely in the hands of the operating offi to send the traffic south via either the coast line or the Central Paci Valley line or the other lines that are used there as interchanged routes.

Q. Is the coast line easier or harder in matter of grades than t line through Mojave?

A. Somewhat easier.

Q. How does the distance to the common point at Saugus compar

A. It is about the same, I should say.

Q. Do you know, as a matter of actual practice, at all, how t volume going by the one line compares with that going by the othe

A. No.

Q. Do any of the boats touching at Los Angeles have any prefe ential arrangement, as far as you know, with any of the railroads?

A. Not to my knowledge.

2423 Q. And none of them are affiliated with any of the ra roads?

A. That is, you mean boats running through the canal?

Q. Boats running through the canal and touching at Los Angel

A. No affiliation, to my knowledge.

Q. But the Atchison and the Mallory Line work preferentia with each other?

A. Preferentially with respect to the Gulf route; yes.

Q. Does that work both ways—the Mallory Line seeks the Atc son and the Atchison the Mallory Line?

A. Yes.

Q. They are independently operated and controlled, as far as known?

A. I could not say that they are independently operated and co trolled. It has been reported many times that the Santa Fe had interest in the Mallory Line. I do not know.

Q. You only know the rumors on the subject?

A. Yes.

Q. How does the Mallory tonnage capacity compare with your New Orleans and Galveston boats?

A. It is not as large.

2424 Q. What is your total capacity tonnage?

A. Oh! Capacity. I thought you meant tonnage carried.

Q. No; capacity.

A. I think our capacity is about 77,000 tons.

Q. Do you know what the Mallory capacity is, about?

A. Not quite as large. They have a combined fleet now, however, that they use interchangeably. The Atlantic, Gulf & West Indies Steamship Line owns the Clyde Line, the Ward Line, the Porto Rico, and the Mallory Line. All of those ships are available for the Galveston service from time to time as they may be needed.

Q. Do you know anything about the California tonnage carried by the Mallory Line?

A. No; I do not.

Q. How long has the Southern Pacific Company been confiding certain of its advertising funds to the Union Pacific Railroad Company?

A. It began during the merger and has continued since the unmerger.

Q. Did it begin away back in 1901, practically?

A. I do not think as far back as that; no. The system of

2425 joint advertising of two connecting lines, I think, was organized some time between 1901 and 1910 and the eastbound money put in the hands of the Southern Pacific Company to spend in eastbound advertising and the westbound money put in the hands of the Union Pacific Company to spend in westbound advertising. That is the practice to-day.

Q. Is that for freight and passenger business?

A. Only passenger. That advertises through train service.

Q. How does the time from Mojave, say, to Chicago for freight traffic over the Atchison compare with the time via El Paso and the Rock Island?

A. If you make that Los Angeles, I would say it is about the same.

Q. About the same from Los Angeles?

A. Yes.

Q. Is there any reason why the Southern Pacific and Rock Island together could not compete successfully with the Atchison for all California-Middle West and Atlantic seaboard business?

A. On all California business?

Q. Between the two; yes.

2426 A. It competes successfully with the Atchison for south
California. It might hold its own with the Atchison to c
tral California. It could not hold its own with the Ogden route.

Q. That is, from all parts of California to the Middle West and the Atlantic seaboard the Southern Pacific-Rock Island route ou to be able to operate on even terms with the Atchison.

A. It is 200 miles longer, according to my recollection, than Atchison.

Q. That is, for points north of Los Angeles?

A. No; it is 200 miles longer to Los Angeles.

Q. It is 200 miles longer there?

A. Yes.

Mr. McEnerney. Which is—the Sunset?

The Witness. The Rock Island line from Chicago.

By Mr. McClennen:

Q. The Rock Island is the shortest connection, is it not?

A. For the Southern Pacific El Paso route; yes.

Q. You have a gateway with the Rock Island now at Tucson, h you not?

A. Yes; with the El Paso & Southwestern at Tucson.

2427 Q. Does that shorten the route over the El Paso route?

A. No.

Q. Is it substantially the same?

A. About.

Q. Does it affect the divisions?

A. No; it does not affect the divisions east and west of El Pa

Q. Take, for example, from Chicago to San Francisco; do y divide in the same proportions with the Rock Island, whether t delivery is made at El Paso or Tucson?

A. No. The same division accrues east of El Paso, whether t traffic is handled west of there by the Southern Pacific or by t El Paso & Southwestern. The proportion west of El Paso is th subdivided between the El Paso & Southwestern from El Paso Tucson and the Southern Pacific beyond.

Q. That results in a somewhat lower division to the Southe Pacific if it comes to Tucson?

A. Yes.

Q. The possession of the initial or terminal lines is, as a practic matter, of substantial advantage in competition, is it not?

2428 A. If that line has been in the territory for a number years, and industries have built up around it and are serv by it, it is important.

Q. Should you think that the Central Pacific, viewed as a separa railroad, was in a better or a worse position than the Union Paci

Railroad, so far as competing with the Southern Pacific Railroad, if separate, in California, is concerned.

A. The Union Pacific is in a better position, because it has three arms extending, one to southern California, one to Central California, and one to the north coast.

Q. That was not so in 1899?

A. The Southern California line was not there in 1899.

Q. The Southern California line, meaning by that the San Pedro line, is not very practicable as a route for the Union Pacific for points north of Mojave?

A. It is not, under existing conditions, because of the short route west of Ogden. The same reasons operate to influence the Union Pacific to work the Central Pacific business by Ogden as influence the other lines to work the southern California business the other way; that is, the line by which they can give the best service.

2429 Q. The short line to Portland, under the conditions of railroading existing to-day, is not of great practical value as a means of access from Ogden or Granger to California for transcontinental freight, is it?

A. It does not carry any substantial freight traffic, if any, via Portland to-day.

Q. And it would not compete on anything like even terms with a direct road from Ogden or Salt Lake to California?

Mr. BLAIR. Counsel desires that this question should go in subject to their plea of estoppel and to the evidence in support of the estoppel which they have now entered, based on the contentions of the Government in what we have referred to as the Union Pacific merger suit.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. I should say that it could fix the terms for the other route.

By Mr. MCCLENNEN:

Q. You mean by that, that the presence of that reserve would put the Union Pacific in a position to see that the direct route did not seriously overreach it in the matter of terms?

2430 A. Yes.

Q. And that is all that you mean, is it not?

A. Yes; I mean that the Portland route is there as a rate-making factor.

Q. Now, apart from the possession of the San Pedro route and the Portland route, has the Union Pacific, in your mind, any better com-

petitive chance with the Southern Pacific than the Central Pacific alone would have?

A. Yes.

Q. What other element is there giving the Union Pacific a better chance than the Central Pacific?

A. The support of the Southern Pacific lines in California.

Q. Is there any reason to suppose that the Central Pacific lines would not have as much support from the Southern Pacific lines as the Union Pacific now gets?

A. I do not know why it should have.

Q. As a matter of practical railroading, would it not be to its interest to further the Central Pacific traffic?

A. I do not know why the Southern Pacific would not be just as glad to handle the traffic to Stockton and Sacramento and de-
2431 liver it to the Western Pacific as to deliver it to the Central Pacific. The revenue would be the same.

Q. Is there any reason to suppose that it would prefer the Western Pacific to the Central Pacific?

A. No. What the Central would lose is the absolute support that it has from the Southern Pacific to-day on the major part of the Calfornia traffic.

Q. Would not the Southern Pacific, as a matter of practical railroading, desire the support of the Ogden route, and naturally reciprocate so as to get it?

A. What else would the Ogden route do with the traffic?

Q. Do you mean by that that the Ogden route would have to deliver it to the Southern Pacific Company?

A. I mean that it would not be likely to deliver it to the Santa Fe and it would not be likely to deliver it to the Western Pacific.

Q. Why not?

A. The Western Pacific is a parallel line.

Q. It would not need to deliver it at those points where they are parallel, would it?

A. Where what is parallel—the Western Pacific?

Q. Yes.

A. It might deliver the Marysville business, for ex-
2432 ample, to the Western Pacific.

Q. Do you think that the Central Pacific would naturally deliver to the Western Pacific for Marysville rather than to the Southern Pacific at Roseville for Marysville?

A. I would not want to enter the field of speculation to that extent. I would like to have somebody tell me what the Central Pacific would do under those circumstances. I do not think any man knows. It would revolutionize the map.

Q. The Southern Pacific rails are the important terminal rails in California for the Ogden route, so far as it is not reached by the Central Pacific Railroad itself, are they not?

A. Yes.

Q. Do you not think that it is probable that the Ogden route, so far as it could not reach destinations over the Central Pacific's own rails, would naturally use the Southern Pacific's rails?

A. I do not know why, if there are other rails reaching the same points.

Q. You have no reason to think that they would not, have you?

A. Suppose the Southern Pacific adopted a policy of neu-
2433 trality between the Central Pacific and the Western Pacific in hauling this business up to junctions and getting the same revenue; the Central Pacific would not be under any reciprocal obligation to the Southern Pacific.

Q. That is, in a sense the Western Pacific and the Atchison and the Southern Pacific would be competitors for the delivery of Central Pacific freight?

A. Yes. They are to-day.

Q. The relation of the Union Pacific to the situation north of Mojave, in California, is much the same that the Central Pacific's situation would be, is it not?

A. No. The manifest interest which the Southern Pacific has in securing the haul to Ogden is the thing which protects the Union Pacific.

Q. You mean, you think that a dissolution between the Southern and the Central would not operate in any way to the advantage of the Union Pacific?

A. I do.

Q. You do not think that the Union Pacific would be put in any stronger position by such a dissolution?

A. No.

Mr. BLAIR. You do not mean, by the dissolution, the Union
2434 Pacific getting the Central Pacific, do you? I think it is fair to the witness that he should know what you mean by that.

Mr. MCCLENNEN. Well, it had not occurred to me that there was any doubt about what I meant.

By Mr. MCCLENNEN:

Q. What did you understand me to mean, in answering, Mr. Spence?

A. I understood you to mean the Central Pacific as a separate and independent line.

Mr. BLAIR. That is what you did mean, was it?

By Mr. McCLENNEN:

Q. And in answering, you answered on that assumption?

A. On that understanding; yes.

Q. The Central Pacific is to-day in an advantageous position in competition by reason of having Southern Pacific terminal lines to deliver over and obtain freight from?

A. Yes.

Q. The Union Pacific does not, so far as California is concerned, have the advantage of possessing any terminal lines north of Mojave in California, does it?

A. No.

2435 Q. The Central Pacific, with the Southern Pacific, is in a more influential position, in consequence of those terminal lines, than the Union Pacific in the matter of California transcontinental business, is it not?

A. The Union Pacific derives practically all of the benefits of the advantageous position that the Central Pacific occupies by being joined with the Southern Pacific to-day.

Q. The Union Pacific receives, you mean by that, the advantage of such freight as does move through Ogden over the Central Pacific?

A. And the advantage of the Southern Pacific's support in securing that traffic.

Q. To the extent that the Southern Pacific is not seeking to get it the other way, via El Paso?

A. Naturally.

Q. In that sense the welfare of the Union Pacific is dependent upon the attitude of the Southern Pacific toward the respective gateways? Is not that true?

A. To the extent of the solicitation of the Southern Pacific via other gateways, it is.

Q. That is, so long as the Southern Pacific deals with the Union Pacific in the effort to advance the business that will pass over

2436 the Union Pacific, the Union Pacific is, by so much, advantaged?

A. That effort is guaranteed the Union Pacific so long as the Central Pacific is under the control of the Southern Pacific by its very ownership.

Q. And the Union Pacific is dependent upon the existence and continuance of that effort?

A. It is dependent upon the Southern Pacific making the effort that it is to its own interest to make while it has the Central Pacific.

Q. And that effort of the Southern Pacific is diminished just by so much by its ambition to get as much as possible via the El Paso route?

A. Which is a very limited diminution.

Q. By saying it is a very limited diminution you intended to answer the question rather in the affirmative, with that limitation, did you not, than in the negative?

A. I intended to answer the question in pursuance of the statistics that are on record.

Q. You intended to assent, did you not, to that effort in favor of the Union Pacific being to some extent diminished by the desire of the Southern Pacific to get freight by El Paso?

2437 A. To that extent.

Q. The Central Pacific, if not connected with the Southern Pacific, would be actuated, naturally, by the desire to move all the freight possible through Ogden, would it not?

A. I should think so.

(Whereupon, at 6.30 o'clock p. m., an adjournment was taken until to-morrow, Saturday, April 24, 1915, at 10.30 o'clock a. m.)

2438 TWENTY-NINTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Saturday, April 24, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2439 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Mr. Spence, yesterday, at page 2331 of the record, you gave 90,000 tons as the eastbound tonnage delivered by the Southern Pacific to the Atchison, destined to points east of Albuquerque?

A. Albuquerque; yes.

Q. Did that include the tonnage originating on the industrial tracks of the Southern Pacific Company in and about San Francisco?

A. No.

Q. Could you give any idea of what part of the State this 90,000 tons originated in?

A. No.

Q. That is, how it was distributed among the parts of the State, I will say.

A. No; I have no distribution of it.

Q. In your direct testimony, at page 2112, you state that the
2440 line from Tehama to Roseville, Brighton, Stockton, and Lathrop of the Central Pacific, forms the shortest line of the Sunset Route, between Oregon and northern California, and points south and east.

You, of course, mean between Oregon and northern California, on the one hand——

A. On the one hand.

Q. (Continuing.) And points south and east on the other hand?

A. Yes.

Q. The alternative route, if you confine yourself to Southern Pacific rails, is through Davis and via the Benicia cut-off?

A. Yes.

Q. On page 2113 you say the line of the Central Pacific from Lathrop to Goshen is part of an alternative route from points north of Lathrop, as well as from Oakland and San Francisco, to points south and east.

If you disregard the freight having origin or delivery between Lathrop and Ogden, that portion of the line is not the best of the Southern Pacific routes for San Francisco and Oakland business, is it?

2441 A. I think so. It is the line that is chiefly used. It is the line over which the passenger service is routed.

Q. Is not that pasenger service routed that way for the purpose of serving the local points on the line rather than for the advantage to San Francisco and Oakland when dealing with points south of Goshen?

A. It is routed that way, the trains are operated that way, as an operating convenience to avoid congestion by concentration on those lines and by operating in that way all of the points on that line north of Goshen Junction are given a through service, given the benefit of the through service to southern California, which they would not otherwise have.

Q. If you were leaving out of consideration the places between Lathrop and Goshen, the more natural line from Oakland and San Francisco to points at Goshen and south would be via Tracy and Ingle, would it not?

A. I would not regard it as a more natural line.

Q. The mileage from Oakland to Goshen would be no more?

A. I think it would be no less.

Q. Than by Ingle?

A. I think it would be no less.

Q. You think it would be about the same?

2442 A. My impression would be that the mileage would be about the same.

Q. What places of importance are there between Goshen and Mojave, if any?

A. Between Goshen and Mojave?

Q. Yes.

A. The stations in the oil section are the most important, Famosa, Oil City, and Bakersfield; and the line served from Bakersfield by a branch.

Q. Are they important for the outgoing oil traffic or have they a large tonnage otherwise because of the oil industry?

A. They have the inbound tonnage that is incident to the oil industry, and they have the passenger traffic of the oil industry that must be served in and out.

Q. What are the large oil concerns there?

A. I could not begin to enumerate them by name.

Q. For points south of Saugus the coast line from San Francisco and Oakland is, if anything, an easier route than the line through the San Joaquin Valley and over the Tehachapi, is it not?

A. Yes.

Q. Since I asked you about the comparison from Tracy to

2443 Goshen via Lathrop or via Ingle, have you looked up and found that the mileage from Tracy to Goshen via Lathrop is 241 miles, and the mileage from Tracy to Goshen via Ingle is 247 miles?

A. Yes.

Q. On page 2134 of your direct examination you refer to the arrangements that have prevailed for through rates and divisions with other transcontinental lines. That means, so far as anything north of Mojave is concerned, the Atchison and the Western Pacific, does it not?

A. Yes.

Q. Exclusively? There are no other lines?

A. No.

Q. Has the Atchison arrangement been uniform since 1885 or so?

A. I can not say as to 1885. For many years, within my recollection, it has been uniform.

Q. Without going into precise figures, what is the method of arriving at the divisions on Atchison freight which you short-haul and deliver at California junctions, to the Atchison, or that you receive from the Atchison?

A. My understanding is that the divisions were arrived

2444 at on the basis of what we call "constructive mileage", the short line taking something for its short service.

Q. That is, without going into precise figures, you divide on a mileage basis, and you call every mile of the short haul a mile and a half or two miles, or whatever fraction may be adopted?

A. That is the theory.

Q. The arrangement with the Western Pacific is a different arrangement, is it not?

A. No; it is exactly the same.

Q. The Southern Pacific and the Western Pacific also have a working agreement, have they not, by which the freight delivered by one to the other, destined to Ogden or Salt Lake or eastward, is divided as to rate, fifty-fifty, irrespective of the length which either line hauls?

A. No; the divisions between the Southern Pacific and the Western Pacific are that the Southern Pacific takes twenty-three per cent of the west of Missouri River proportion of the through transcontinental rate, which is the same percentage that it takes from Santa Fe; the same percentage that the Santa Fe and Western Pacific charge each other, and the same percentage that they charge

2445 the Southern Pacific for like service.

Q. Twenty-three per cent of the west of Missouri River proportion?

A. Of the west of Missouri River proportion of the transcontinental rate.

Q. Twenty-three per cent of the west of Missouri River proportion is one-half of the California-Ogden proportion of the California-Missouri River rate?

A. That is the effect of the calculation. I would like to add that the Western Pacific being a part of a system of railroads from the Missouri River and east thereof, we are not interested in that subdivision. That system of railroads is accorded exactly the same treatment as the Santa Fe.

Q. That is, whatever accrues west of the Missouri River to that river and that which accrues east of the river to the Santa Fe, that division is, as between the Southern Pacific Company and the Santa Fe, favorable to the Santa Fe when the Santa Fe has the terminal line, and favorable to the Southern Pacific when the Southern Pacific has the terminal line?

A. Yes.

2446 Q. Does that or does it not mean that when the Atchison from the east terminated at Mojave for all points north of Mojave the Southern Pacific received twenty-three per cent of the Missouri River rate for hauling to Mojave and the Atchison twenty-three per cent of the Missouri River rate for hauling from Mojave to the Missouri River?

A. No; the Atchison received seventy-seven per cent for hauling from Mojave to the Missouri River, if the Southern Pacific received twenty-three west of Mojave.

Q. On page 2161 in your direct examination you were asked this question, and answered as follows:

"Q. Prior to 1901 did the control or ownership of the Central Pacific lines by the Southern Pacific Company, the preferential solicitation and routing which was described, prevent competition between the Ogden route and the Sunset line or Sunset-Gulf route?

"A. It did not."

You meant by that, did you not, that the Union Pacific and the Iowa lines and the eastern lines were competing to get the traffic via Ogden and the Southern Pacific was competing to get the traffic via the Sunset-Gulf route?

2447 A. Yes; Atlantic seaboard traffic especially I had in mind.

Q. It applied, as you have elsewhere described, to a certain portion of the Middle West territory also?

A. A small portion on the east, as previously defined.

Q. Will you refer to one of the larger maps, say defendants' Exhibit No. 54, and state the important points in California north of Mojave which are on the Central Pacific rails or connected by ferry with them, and then state separately the important points north of Mojave which are not on those rails?

Mr. BLAIR. How far north of Mojave? Do you want the whole of California?

By Mr. MCCLENNEN:

Q. The whole of California north of Mojave.

A. You want those which are on the Central Pacific rails first?

Q. Yes; give those first.

A. Fresno, Madera, Merced, Stockton, Sacramento, Marysville, San Jose, Oakland, Red Bluff, Los Molinos, Redding, Dunsmuir, and, connected by ferry, San Francisco.

What was the other part of the question?

Q. Now, the important points in the whole of California
2448 north of Majave that are not on the Central Pacific rails or connected by ferry therewith.

A. Santa Barbara, Lompoc, Guadalupe, Betteravia, San Luis Obispo, Paso Robles, Salinas, Del Monte, Pacific Grove, Watsonville, Hollister, Santa Cruz; all suburban towns between Menlo Park and San Francisco, Berkeley, and all of the suburban towns on the Oakland-Berkeley electrified line; South Vallejo, Napa, Calistoga, Santa Rosa, Rumsey, Elmira, Davis, Fruto, Oroville, Placerville, Ione, Valley Springs, Milton, Swiss-Italian Colony, Ramond, Spreckels, Pajaro, Pollasky, Exeter, Porterville, Springville, Famosa, Oil City, Bakersfield, Olig, Kerman, Ingle.

All of those points mentioned are served by the Southern Pacific rails.

I do not know how I can begin to enumerate those that are served by other lines.

Mr. BLAIR. If you do not know them, say so.

The WITNESS. I am unable to enumerate those that are served by the Santa Fe and Western Pacific that are not reached by the Southern Pacific or Central Pacific.

By Mr. McCLENNEN:

2449 Q. Do you think of any sizable places that are served by the Atchison or the Western Pacific that are not served by the Southern Pacific? If so, what are they?

A. I do not think of any important places, because the Atchison and Western Pacific have come into the important towns that the Southern Pacific-Central Pacific system had reached.

Mr. HERRIN. There is Eureka and all that country.

By Mr. McCLENNEN:

Q. There is a section, is there not, as suggested by Mr. Herrin lying north of Santa Rosa and running up to Eureka, that is served by the Northwestern Pacific, which is a joint line of the Atchison and the Southern Pacific?

A. Yes. I should have added this: Susanville and Westwood should be included in the Central Pacific enumeration.

Q. Is there anything of importance between Mojave and the Nevada line on the Central Pacific?

A. On the south end of it there is a heavy movement of construction material, such as was used in the Los Angeles aqueduct. In fact the south end of the line was built to move material for the Los Angeles aqueduct.

2450 Q. Now, will you look at the list which you have given of the Central Pacific important points, which you began with Fresno and ended with San Francisco, and state which of those are not reached by Southern Pacific rails?

A. Red Bluff, Los Molinos, Redding, and Dunsmuir.

Q. On the list of non-Central Pacific points, those beginning with Santa Barbara and running down as you gave them through Santa Cruz are on the coast line of the Southern Pacific, are they not?

A. Yes.

Q. In this list the places named by you from South Vallejo to Davis lie northerly of San Francisco Bay or San Pablo Bay?

A. Yes; they are on the line extending from Benicia to Sacramento.

Q. The largest shipping centers are those which are on the Central Pacific list?

A. The largest shipping centers of transcontinental freight are not those on the Central Pacific list.

Q. What are the conspicuous shipping centers on the Southern Pacific list which are not on the Central Pacific list?

2451 A. Nearly all the beans shipped from California originate on the coast line, which I have named here, and stations which I have not included. The barley originates on that line; every station produces some, including stations which I have mentioned and some which I have not mentioned. Considerable of the asphalt originates on that line, and on the north end of it considerable fruit; and that business originates at, you might say, every station. Watsonville produces 5,000 carloads of apples every year—the Watsonville district.

Q. Is Fresno a large shipping center?

A. Fresno proper is not a large shipping center. The business that comes out of Fresno originates principally in the Porterville district, served by the Southern Pacific rails.

Q. Is Madera a large shipping center?

A. No. All the traffic which comes from Madera originates in the Swiss-Italian colony on Southern Pacific rails.

Q. Is Merced a large shipping center?

A. I would not call it a large shipping center; no.

Q. Is Stockton?

A. Not of transcontinental traffic.

Q. Is Sacramento?

2452 A. No.

Q. Is Marysville?

A. No.

Q. Is San Jose?

A. San Jose ships more, I should say, than any of the other points you have enumerated.

Q. Is Oakland?

A. No.

Q. Is Red Bluff?

A. No.

Q. Is Dunsmuir?

A. Lumber comes from up in that country. I do not know as to the station, whether Dunsmuir ships much or not.

Q. Is San Francisco?

A. No.

Q. Are any of these points on the line beginning with Fresno and ending with San Francisco that I have just been over large receiving centers?

A. Yes; some of them.

Q. Which?

A. I speak of large receiving centers as receiving transcontinental traffic.

2453 Q. That is what I mean.

A. Stockton, Sacramento, San Jose, Oakland, and San Francisco.

Q. The competition between the Sunset Route and the Ogden route, in the sense that you have used the term in, remained just as strong all through the Union Pacific merger period as it was before?

A. I said yesterday, in response to your question, that so far as any instructions which I had received as the eastern representative of the Southern Pacific were concerned, the competition had remained as strong for the Atlantic seaboard traffic; but that I did not know what instructions the joint traffic director of the Union Pacific had given the Southern Pacific officers in California.

Q. Then you meant by that that you do not know whether it had remained as strong through that period?

A. No; I could only speak for part of it.

Q. And from your general knowledge of the traffic situation during that period, that is as extensively as you could state it?

A. Yes.

2454 Q. If the Central Pacific Railroad were operated separately the policy which you say has always been pursued by the Southern Pacific Company with reference to the Atchison would naturally give to the Central Pacific Company the same privileges and opportunities over the Southern Pacific rails that the Atchison has enjoyed?

A. I should say that the policy of the Southern Pacific Company in that respect would be as liberal as it has always been; but it takes two to make a bargain, and the policy would probably have to be reciprocal to make a bargain at all. I could not say what the other party to the bargain would do.

Q. In the natural course of events the Central Pacific, if it were separately owned and controlled—and I mean by that, not only separate from the Southern Pacific but from every other railroad—would naturally cooperate strongly with the Union Pacific and the Union Pacific with it?

A. Yes.

Q. And that cooperation would naturally bring a desire, at least on the part of both of those railroads, to avail themselves of the opportunities furnished by the terminal line of the Southern Pacific Company to California points not reached by the Central Pacific?

A. I think the desire would naturally be that.

2455 Q. The natural desire of the Southern Pacific Company would be towards moving through Ogden that freight which

it could not successfully obtain for the Sunset-Gulf route or through El Paso?

A. I should say that the Southern Pacific Company might be indifferent as to whether the traffic moved through Ogden or through Salt Lake City.

Q. Do you think that if the Southern Pacific Company remained ambitious to serve the interests of its patrons it would be at all likely to prefer the service furnished over the Missouri Pacific and allied lines to that furnished over the Ogden route?

A. I do not think that it would be likely to prefer either. I think that the routes would be open, the revenue of the Southern Pacific Company would be the same, and the shipper would be invited to pay his money and take his choice.

Q. Having the two routes—the Central Pacific and the Western Pacific—open to it, the Southern Pacific Company would be left in a good position to handle freight that could not be controlled through the El Paso gateway? I refer to transcontinental freight.

A. It would be left in a position to get a short haul.

2456 Q. The Central Pacific Railroad, if it were separated and cooperating with the Union Pacific Railroad would become an active competitor of the Southern Pacific Company on transcontinental business, as a practical matter, would it not?

A. With the through route of the Southern Pacific the Central Pacific is an active competitor to-day.

Q. You forget that we are not arguing just that point now, but I am asking——

A. That is what I understood your question to be.

Q. I will have the question read, so that you can see just what it was.

Mr. McENERNEY. Did not your question carry an implication, which he has replied to? Is not that the trouble?

Mr. McCLENNEN. No; the witness argued the other side and ignored the question asked.

Mr. McENERNEY. Does not your question presuppose the nonexistence of a thing which exists, and is not that why he answered it in that way?

Mr. McCLENNEN. I will ask to have the question read, and you can see if it is not a perfectly fair question and susceptible of a perfectly definite, direct answer.

2457 Mr. McENERNEY. I thought that it was a question like "Have you quit beating your wife?" It may be that I am wrong.

Mr. McCLENNEN. It may be that your impression to that effect may have been caused by your not hearing it in full. Now, I will

ask to have the question read, so that its character may be observ
by my opponents, and its contents by the witness, and then answer
directly, if possible.

(The reporter read the pending question, as follows:)

"Q. The Central Pacific Railroad, if it were separated and coo
erating with the Union Pacific Railroad, would become an acti
competitor of the Southern Pacific Company on transcontinent
business, as a practical matter, would it not?"

The WITNESS. I could not answer that it would become becau
it is.

By Mr. MCCLENNEN:

Q. It would be, would it not?

A. It would be as it is.

Q. Will you describe just what you mean as the competition whi
now exists by the Central Pacific Railroad against the South
Pacific Railroad?

2458 A. All of the connections of the Central Pacific Railro
with an army of forces, use the facilities of the Central Pac
to-day to actively compete for all of the traffic.

Q. Perhaps I did not make my question clear enough. I did
ask you whether the connections of the Central Pacific Railr
were now competing with the Southern Pacific Railroad. I as
you if the Central Pacific Railroad itself was now competing w
the Southern Pacific Railroad—in and of itself.

A. I do not think that the Central Pacific could compete with
Southern Pacific, in and of itself.

Q. Understanding by your answer that it could not, that
mean incidentally, therefore, that it did not, I now ask you if
Central Pacific Railroad were separated and were cooperating w
the Union Pacific Railroad, it, the Central Pacific Railroad, wo
become an active competitor of the Southern Pacific Railroad
transcontinental business?

A. I must say that it would not become an active competitor.

Q. Why not?

A. Because it is an active competitor.

2459 Q. That is to say, you say it is now an active competi
although you also say that you do not say how it could com
with the Southern Pacific Railroad?

A. In and of itself, I said.

Q. If the Central Pacific Railroad were separately operated
natural effort and competition in that sense would be to pers
business to travel via Ogden? Now, I am not referring to what
other connections would do, but what that road itself would do.

A. That would be its natural effort.

Q. And consequently its effort would be to persuade traffic not to move via El Paso?

A. That would be the effect of an affirmative solicitation of the other kind.

Q. Yes. The efforts of the Central Pacific Railroad, and of the Southern Pacific Railroad on transcontinental business, would then be directed against each other, and competitive in that sense, would they not?

A. Unless the Southern Pacific joined with and delivered this business to the Central Pacific, versus the Western Pacific.

Q. The effort, so far as it exists, of the Southern Pacific to
2460 get traffic via El Paso would naturally not be diminished if it did not own the Central Pacific or the Western Pacific, would it?

A. No.

Q. The effort would be as great as it is to-day in favor of El Paso?

A. I think so.

Q. And probably greater?

A. I do not know that it would be greater for the same insuperable reasons that exist to-day.

Q. Competition as a practical matter does furnish an inducement for the maintenance of good service and the improvement of service on the part of the competitors?

A. Yes.

Q. And competition has played a great part in the development and improvement of the service furnished by the railroads to the shippers?

A. Everywhere.

Q. And will in all probability continue to do so?

A. I expect so.

(Whereupon a recess was taken until two o'clock p. m.)

2461 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of recess, resumed the stand and testified further as follows:

Redirect examination by Mr. BLAIR:

Q. In mentioning the names of towns on and off the Central Pacific lines I notice you did not mention among the names on the Southern Pacific line and not on the Central Pacific, Monterey, Richmond, Bay Point, Benicia, and Petaluma. Those are all places on the Southern Pacific line?

A. Yes.

Q. And not on the Central Pacific?

A. No.

Q. And the originators of traffic in some amount?

A. Some traffic.

Q. They are as important places as many of the other places you named?

A. Yes; some of them.

Q. I notice also, in stating the names of places on the Central
2462 Pacific which were also reached by the Southern Pacific lines, you included Madera and Merced and Stockton. In what way are those three places reached by Southern Pacific lines?

A. By disconnected branches.

Q. By branches which have no connection with the other lines of the Southern Pacific system; not standing in the name of the Central Pacific?

A. Yes.

Q. In the cross-examination you were questioned in regard to the citrus fruit movement from southern California via the Ogden route, which you described as a seasonal movement, occurring regularly about two months of the year. I understood you to say that was due to climatic and commercial conditions.

A. Yes.

Q. Which overcame for the time being the natural disadvantages of the Central Pacific line?

A. Yes.

Q. When that movement occurred was it accompanied by a proportionate cessation of the movement via El Paso?

A. Yes; the movement via both routes is seasonal.

2463 Q. Was that movement due to any conditions which the rail carriers created or could create?

A. No.

Q. As far as it was influenced by any persons, by what persons was it controlled or influenced?

A. The shippers.

Q. Did any of that traffic have origin or destination on any line of the Central Pacific?

A. No.

Q. I understood you also to say that the Panama Canal was opened for business about what time?

A. August 15, 1914.

Q. And what effect did the opening of that canal and the inauguration of the steamship lines which you have referred to have upon the movement of transcontinental traffic, especially traffic between California and Atlantic seaboard territory?

A. I should say that it revolutionized the movement by a radical reduction of rates.

Q. It revolutionized the tonnage movement as it existed prior to that time?

A. Prior to that time; yes.

2464 Q. Is that effect likely to be temporary or is it likely to increase or decrease in the future?

A. It will be permanent, and is likely to increase.

Q. In regard to Nevada traffic via the El Paso route, westbound, there appears to have been a movement of some 539 tons. What is the explanation of that movement?

A. It consisted almost entirely of grinding pebbles which are used in the crushing of ore in the Tonopah district, and moved via the Sunset Route upon a rate which was created by a combination of a rate of fifty cents from New York to San Francisco originally made against sea competition and a rate from San Francisco to Tonopah.

Q. It consisted entirely, then, or almost entirely, of one commodity?

A. Yes.

Q. It appears, I believe, from the statement prepared by you, that there was no eastbound movement to Nevada?

A. No.

Q. Via the El Paso route?

A. None whatever.

Q. What kind of a route, Mr. Spence, is the all-rail route from northern and central California via New Orleans to and from Middle West territory?

2465 A. It may be regarded, under the existing conditions, as an impracticable route.

Q. Is it your recollection and understanding that the Santa Fe was ahead of the through route via Ogden formed by the Southern Pacific, the Union Pacific, and its eastern connections in getting into a position to offer as good service as the Sunset-Gulf route?

A. I have no such recollection. My understanding of the matter is that through billing and coordination of lines came about very much about the same time.

Q. Between all of the all-rail lines?

A. Yes.

Q. It is true, is it not, that the opening of this Sunset-Gulf route created, as it were, a great deal of transcontinental traffic which had not before that time been in existence?

A. It created it in the sense that it drew traffic from the schooner lines—sailing vessels.

Q. Did it not afford facilities for marketing traffic which did not before exist, so as to create a market which was not previously open to California products?

2466 A. It afforded better facilities than had ever before existed.

Q. Did not that have the effect of causing the movement of traffic which could not move under the existing conditions?

A. Under the conditions that previously existed?

Q. Yes.

A. I should think so.

Q. For fourteen years, from 1869 to 1883, the Southern Pacific had a 100 per cent interest in improving the transcontinental line through Ogden, did it not?

A. Yes.

Q. And naturally it must have made that effort?

A. I should think so.

Mr. McClennen. Petitioner objects to the question as excessively leading, as addressed to a witness who had nothing to do with the business prior to 1883.

By Mr. Blair:

Q. Now, Mr. Spence, if the difficulty as to coordinating the through all-rail lines was with the eastern carriers, at Omaha and farther east, which company would naturally be expected to assume the burden of arousing those connections and bringing about that coordination?

2467 Mr. McClennen. The petitioner objects to the question as calling for an opinion upon a question which is in part one of law as to the legal duty of the carriers, and as to a matter which is incompetent and immaterial, and as to which it does not appear that the witness is qualified to speak.

(By request, the reporter read the pending question as above recorded.)

The Witness. The immediate connection of those lines.

By Mr. Blair:

Q. Speaking of the Ogden route, would that mean the Union Pacific or the Southern Pacific?

A. The Union Pacific.

Q. That would be in accordance with the natural way in which railroads work under such circumstances?

A. Yes.

Q. The Union Pacific had a 100 per cent interest in securing such coordination, did it not?

A. Yes.

Q. Do you know of any hypnotic influence exerted by Mr. Stubbs during that period, or by any one connected with the Southern Pacific, over the officials of the Union Pacific to prevent that natural action on their part?

2468 Mr. McCLENNEN. The petitioner objects to the question as introducing an immaterial realm of speculation as to what the defendants mean to describe as "hypnotic."

By Mr. BLAIR:

Q. You may answer the question, and if you have any doubt as to what I mean I will explain it.

A. I do not know of any influence of any kind that was exercised, or could have been.

Q. Do you know Mr. Thomas Schumacher?

A. Yes.

Q. Was he connected with the Union Pacific during at least some considerable part of that period?

A. Yes.

Q. Do you know Mr. John A. Monroe?

A. Yes.

Q. Was he connected with the Union Pacific during that time?

A. Yes.

Q. Those are the two gentlemen who have been witnesses for the petitioner in this case?

A. Yes.

2469 Q. If the Southern Pacific or Mr. Stubbs had failed to cooperate with the Union Pacific in securing proper coordination, or in improving the service by the Ogden route, would not those two witnesses have been likely to know it?

Mr. McCLENNEN. The petitioner objects to the question as leading, calling for an opinion upon a question as to which the witness is in no better position than the court upon the evidence to express an opinion, and upon a matter which is not properly a subject of opinion evidence.

The WITNESS. Undoubtedly.

By Mr. BLAIR:

Q. During the period of the merger of the Union Pacific and the Southern Pacific was there any independent Southern Pacific Company?

Mr. McCLENNEN. The petitioner objects to the question as calling upon the witness to express an opinion upon a question of law, not upon a matter which is proper matter for opinion evidence, as to which it does not appear that the witness is qualified to express an opinion.

Mr. BLAIR. Counsel for defendants explains to the witness that he is asking the question as to the actual practical operation of the Southern Pacific Company and its lines, and as to the fact.

2470 Mr. McCLENNEN. The question is further objected to as too general in form, and so phrased that a responsive answer to it

will of necessity not indicate the facts as distinct from opinions of the witness based upon facts not stated.

By Mr. BLAIR:

Q. You may answer the question.

A. There was no independent Southern Pacific policy.

Q. What do you mean by that?

A. I mean that there was no policy that was not dominated by the interests in control of the Southern Pacific.

Q. What interest was in control of the Southern Pacific?

A. The Union Pacific interest.

Q. Leaving aside the Ogden route, in what competitive fields were the Southern Pacific system and the Union Pacific system engaged at the time of and before the merger in 1901 in the contest for traffic?

A. Traffic between Atlantic seaboard and Colorado, between Atlantic seaboard and Utah; traffic between San Francisco and Portland, the Union Pacific having operated a steamship line between those ports and the Southern Pacific a rail line; transcontinental Oregon traffic; traffic between California and points in Ore-

2471 gon and Montana, and Asiatic traffic.

Q. How about traffic in the Willamette Valley?

A. The Union Pacific operated a steamship line on the Willamette River in competition with the rail lines of the Southern Pacific.

Q. In each of those competitive fields, was there actual competition at the time I have mentioned?

A. Yes.

Q. In regard to traffic substantial in amount?

A. Yes.

Q. I do not mean substantial in comparison with the total traffic of the two systems, but considered by itself.

A. Substantial in volume.

Q. Referring to the alternative rail routes via the Southern Pacific Ogden gateway and the Southern Pacific El Paso gateway, between California on the one hand and Middle West territory and Atlantic seaboard territory on the other, through what connections is the El Paso gateway made a practicable alternate route?

A. The El Paso & Southwestern and the Rock Island and eastern connections thereof; the Kansas City, Mexico & Orient, connecting at Alpine, and eastern connections thereof.

2472 Q. Are those the principal connections through which the El Paso gateway is for practical purposes an alternative route with the Ogden gateway?

A. Yes.

Q. When was the Rock Island connection made?

A. In 1902.

Q. Due to the construction of the Rock Island lines?

A. Due to the completion of the Rock Island lines to Santa Rosa.

Q. When were the Kansas City, Mexico & Orient connections made?

A. It connected with the Texas & Pacific in 1908 and with the Galveston, Harrisburg & San Antonio in 1913.

Q. At what points?

A. With the Texas & Pacific at Sweet Water and the Galveston, Harrisburg & San Antonio at Alpine.

Q. That was due to the construction of the Kansas City, Mexico & Orient?

A. Yes; it constructed first to Sweet Water and subsequently constructed beyond, to Alpine.

Q. In other words, those two lines tied on to you after your line had been constructed?

2473 A. Yes.

Mr. BLAIR. The witness is yours, if you have any recross.

Recross-examination by Mr. MCCLENNEN:

Q. The completion of the Rock Island connection was one of the things that rendered impracticable the getting of the movement of Middle West freight through New Orleans as a gateway, was it not?

A. I do not think so. It may have had some influence, but I think that the route through the New Orleans gateway had become impracticable as a competitor before the Rock Island was completed; that is, it could not meet the competition of the Santa Fe and the route through Ogden.

Q. The effort and substantial effect favorable to the New Orleans gateway continued up to the Union Pacific merger in 1901?

A. Yes; in 1901.

Q. The competition between the Southern Pacific and Union Pacific, between the Atlantic seaboard and Colorado and the Atlantic seaboard and Utah, and for transcontinental Oregon traffic

2474 and for California and Montana traffic, for the Asiatic traffic, and for the San Francisco and Portland traffic was very unsubstantial, comparatively, with the traffic through Ogden and El Paso; between the competitive western territory and the competitive eastern territory as to which we have heretofore been speaking in this case?

A. It represented a comparatively small percentage of the whole traffic, but was substantial in volume.

Q. Mr. Blair has just asked you, on redirect examination, substantially, whether the opening of the Sunset-Gulf route did not

develop the movement of traffic from California to Atlantic seaboard territory which under previously existing conditions could not move; in other words, whether the creation of that sort of a line did not create traffic itself that did not before exist.

A. Yes.

Q. What was developed that could not be handled through Ogden?

A. I said that I thought it had the effect implied by the question, because the bringing closer together of producing and consuming markets almost invariably has that effect. By "bringing closer together" I mean it brought the producer and consumer within

2475 a little over two weeks apart instead of nearly a month apart.

Q. The through lines created by the Atchison junction with the Southern Pacific and by the Texas & Pacific junction with the Southern Pacific both preceded the completion of the through line of the Southern Pacific to New Orleans, did they not?

A. Yes.

Mr. McCLENNEN. I think that is all.

(Witness excused.)

(The following testimony of James Speyer, taken at the beginning of the afternoon session on Thursday, April 22, 1915, is inserted at this point to avoid interrupting the testimony of Lewis J. Spence.)

2476 JAMES SPEYER was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Are you a member of the firm of Speyer & Company, bankers?

A. I am.

Q. Were you a member of the firm in 1898 and 1899?

A. I was.

Q. How long have you been a resident of New York?

A. I was born in New York and have lived here about thirty years.

Q. Did your firm, Speyer & Company, participate in the settlement of the indebtedness of the Central Pacific Company to the United States?

A. Yes; they did.

Q. Did your firm participate in the readjustment of the affairs of the Central Pacific Company about the same time?

A. Yes; it did.

Q. With what parties or interests did you have negotia-

2477 tions and conferences in the course of the readjustment of the affairs of the Central Pacific Company?

A. Well, we had conferences with representatives of the bondholders, our own representatives, with the representatives of the

shareholders, both here and in Europe, and with the representatives of the United States Government.

Q. And with representatives of the Southern Pacific Company?

A. And with representatives of the Southern Pacific Company.

Q. Did those negotiations and conferences extend over some time?

A. Yes; they did.

Q. Did you have negotiations and conferences with representatives of the United States Government and others in connection with the settlement of the indebtedness to the United States?

A. Yes, sir; we did.

Q. Were those two sets of negotiations and conferences being carried on concurrently?

A. Yes; more or less.

Q. And with reference to each other?

2478 A. Yes; they were.

Q. What was the occasion or purpose of the readjustment of the affairs of the Central Pacific Company?

A. The debt of the Central Pacific to the United States Government of about fifty-eight million dollars was due and payable, and this required a readjustment of the affairs of the company in order to satisfy the United States Government as to the payment of that debt within the limits of the law that had been passed for that purpose.

Q. Do you recall the act of Congress, passed in 1898, which referred the matter of the settlement of this Central Pacific indebtedness to a commission composed of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, who were authorized to make the settlement with the approval of the President?

A. In a general way I do.

Q. Do you remember the conditions imposed by the act of Congress itself, among other conditions, that the commission should not accept less than the full principal of the debt and interest?

A. I do.

2479 Q. And that there should be no extension granted for any longer period than ten years?

A. I do.

Q. And that the whole amount should be paid in equal semiannual payments within the period so limited?

A. Yes.

Q. Please state whether the Central Pacific could have complied with the conditions imposed by that act of Congress without a financial readjustment of their affairs of the kind contained in the readjustment which you arranged for?

Mr. McCLENNEN. Petitioner objects to the question as calling for an opinion upon a matter not the subject for opinion evidence, and which the witness does not appear to be qualified to express.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. Without some kind of readjustment they could not have complied. I am not prepared to say that the adjustment we made was the only kind; but some kind of readjustment seemed absolutely necessary.

By Mr. BLAIR:

Q. And you made a plan of readjustment?

A. We did.

2480 Q. I put before you, for convenience of reference, the plan of readjustment which was used when Mr. Ruhlender was testifying. You recognize that as the plan of readjustment which was arranged for?

A. I do.

Q. Mr. Speyer, when you started to work upon that plan of readjustment did you expect and count upon the intervention and aid of the Southern Pacific Company?

A. I knew I could not carry it through without the help of the Southern Pacific; or some other railroad company, in case the Southern Pacific had not come to assist.

Q. Did you ever contemplate or work upon any plan which did not involve the intervention and aid of the Southern Pacific Company!

A. I did not.

Q. And that plan could not have been carried through without the intervention and aid of the Southern Pacific Company?

Mr. McCLENNEN. Petitioner objects to the question as already covered by the answer of the witness, and as leading.

By Mr. BLAIR:

2481 Q. Mr. Speyer, considering the terms required by the act of Congress, namely, the requirement that the entire debt of fifty-eight million eight hundred thousand dollars, in round numbers, would have to be paid in ten years, in twenty semiannual installments, would any one at all familiar with the Central Pacific affairs know that the Central Pacific, with its own resources and credit, could not comply with those conditions?

A. He would.

Q. It would be obvious to anyone at all familiar with the affairs of the Central Pacific that it could not with its own resources and credit comply with the terms of that act?

A. Yes, sir.

Q. In making the agreement which you participated in with the United States, what did you count upon to enable you to carry out the agreement with the United States?

A. The cooperation of the security holders of the Central Pacific and of the Southern Pacific Company.

Q. As outlined in your plan of readjustment?

A. Yes.

Q. Had you formulated your plan of readjustment before you executed the agreement with the United States?

2482 A. Yes, sir.

Q. Would you have signed that agreement if you had not had your plan of readjustment formulated?

A. No, sir.

Q. Would you have signed the agreement if you had not been reasonably assured of the operation of the plan?

A. No; I would not.

Q. With whom did you negotiate or confer as representing the United States Government in connection with the settlement agreement with the United States Government, which bears date February 1, 1899?

A. It is sixteen years ago, and I could not recall everybody with whom I conferred. I remember, however, that I principally conferred with the late President McKinley personally.

Q. Did you have any conference or communications with Attorney General Griggs?

A. I think I saw him, too; but the principal negotiations were with President McKinley personally.

Q. In your negotiations or conferences with the representatives of the Government, did you inform them of your plan of reorganization?

2483 A. I think I did. I could not recall the details of our conversations, but I do not see how I could have talked with them about anything else.

Q. Did they know the main features of the plan?

A. I should think so.

Q. Is that the best of your recollection, that they did?

A. It is.

Q. When it was formulated, do you remember furnishing them with a copy?

A. That is a detail I do not remember; but to the best of my knowledge and belief, I must have.

Mr. McCLENNEN. The part of the answer beginning "but to the best of my knowledge and belief" and thereafter, the petitioner moves to strike out as not responsive.

By Mr. BLAIR:

Q. I will ask you: To the best of your knowledge and belief, you did furnish them with a copy of the plan?

Mr. MCCLENNEN. The petitioner objects to the question as incompetent, immaterial, and irrelevant.

The WITNESS. I did. Do you mean the President of the United States?

By Mr. BLAIR:

Q. Or any representative of the United States.

2484 A. Well, we surely furnished a copy to the counsel that represented the United States commission; that is, Mr. Root.

Q. Mr. Root represented the commission in some of these transactions?

A. If I remember right, the mortgage securing the bonds which the United States Government got—I know that was done with his assent, and corrected by him, I think.

Q. Did the representatives of the Government know that the Southern Pacific was to guarantee the Central Pacific four per cent bonds which were to be pledged to secure the notes given to the Government, to the best of your recollection?

A. They did.

Q. I think you have answered this; but can you remember the details of your conversation with the representatives of the Government at this time?

A. In what particular? It is rather hard for me to remember. It is sixteen years ago. In what particular do you mean?

Q. I was just asking you whether they are fresh in your mind or whether you can remember them.

A. I can not remember the details.

2485 Q. You can not remember the language you used in your conversations with the representatives of the Government?

A. I remember certain parts of the first interview I had with the late President McKinley.

Q. It will come out in my series of questions, and whenever you can remember the language you can give it; otherwise you will have to do the best you can and answer to the best of your recollection.

A. Yes.

Q. What effect upon the value of the bonds as security did the Southern Pacific guaranty have?

A. It increased their value.

Q. Greatly?

A. I should say so.

Q. How did the resources and credit of the Southern Pacific Company compare with those of the Central Pacific?

A. They were superior to those of the Central Pacific.

Q. Was the superiority very great?

A. I suppose the quotations of those days, which I have not before me—the quotations of the bonds and stocks, which I do not remember—would show how great the difference was in public opinion.

486 Q. What is your recollection about it?

A. That it was very considerable.

Q. State what was the understanding as the result of your negotiations and conferences with the representatives of the Government as to the bonds which were to secure the Central Pacific notes bearing the guaranty of the Southern Pacific Company, to the best of your recollection.

Mr. McCLENNEN. Petitioner objects to the question on the ground that the understanding, except so far as incorporated in the agreement, is immaterial; and so far as incorporated in the agreement the question calls for the contents of a written instrument.

(By request the reporter repeated the pending question as above recorded.)

The WITNESS. You mean whether the Government understood they were to be guaranteed?

By Mr. BLAIR:

Q. Yes.

A. Yes; they did.

Q. Would it have been in accordance with your understanding with the Government, as you recollect it, for you or the Central Pacific to have deposited as security bonds which

487 did not have the guaranty of the Southern Pacific Company?

Mr. McCLENNEN. The petitioner objects to the question on the ground that it calls upon the witness to determine a question of law, and so far as it relates to his understanding of his contract, if it varied from the written instrument, as a matter which is immaterial.

The WITNESS. No; it would not.

By Mr. BLAIR:

Q. Mr. Speyer, I call your attention to a paragraph in the agreement with the Government of February 1, 1899, as follows:

"The mortgage securing such refunding bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof."

What lease was there at that time of the Central Pacific properties?

A. The lease to the Southern Pacific.

Q. Was there any other lease?

A. Not that I remember.

Q. Did the Government know of that lease to the Southern Pacific Company?

2488 A. I should say so.

Q. Can you tell us any of the circumstances connected with the signing of this agreement which bears date February 1, 189 by the President and the members of the commission?

A. In what way?

Q. That will enable us to approximate the date. Or perhaps may ask it in this way: Were you present when President McKinl signed the agreement?

A. Yes; I was.

Q. How did you happen to be present?

A. As far as I remember it, I took the agreement there myse from New York shortly before the 20th of February. It was a w few days before the 20th of February.

Q. Yes.

A. We had intended to put the plan in effect before the 20th February; everything was ready, the circular and all, and the fi sentence in the circular said that the agreement had been executa It was not actually executed. So I took it there myself. I went fro New York to Washington with this agreement.

Q. You had begun to get nervous as to whether the agreeme would be signed by February 20th?

2489 A. Yes.

Q. And you took it to Washington?

A. Yes.

Q. And what occurred there?

A. I remember some of the circumstances, because it was almo a blizzard and traffic had stopped, and I got stalled in Elizabeth a spent a miserable night there, and then I got as far as Philadelphi and if I remember correctly Mr. Roberts, who was then president the Pennsylvania, gave me a special train to get to Washington. got there late in the afternoon and Mr. McKinley expected me. H signed it at once, and I went over to the office of Mr. Bliss and t office of Mr. Griggs. I think I went there, or Mr. McKinley se for them and they signed it; but Mr. Gage had left Washington a could not be reached. There was great excitement about that, b cause we had to have his signature. President McKinley was leavi that same night to make a speech somewhere, where Mr. Gage w going to speak, too, and I do not remember whether it was in Bost or Albany, but he was going to speak there the same night M McKinley spoke, and Mr. McKinley promised me that he would g it signed, and he called his private secretary and gave it t

2490 him to put in his bag, and the first thing when he got to h

room, to the hotel, he was to go to Mr. Gage at once and have it it signed and then telegraph me to New York; and then he told me I could go back to New York and it would be all right. It was all done in a great hurry, and it must have been very shortly before the 20th, because this circular of the 20th said that the agreement had been executed, and it had not been then.

Q. You spoke of the intended publication of the plan of readjustment. Was that published?

A. Yes; it was published as it is dated here.

Q. Published in its present form?

A. Yes, sir.

Q. Was wide publicity given to it through the country?

A. It was widely advertised in Europe and in New York, and I suppose at other points. I can not remember; the record will show that.

Q. Were many copies mailed, and was it generally circulated?

A. Yes; it was a public document. It was published as a public document.

Mr. BLAIR. The witness is yours.

2491 Cross-examination by Mr. MCCLENNEN:

Q. Mr. Speyer, was this print that you have before you, which is the one that has been put in evidence in this case and is dated February 20, 1899, on the circular of promulgation, which perhaps you know as the plan of readjustment dated February 8, 1899, the first print of the plan of readjustment?

A. There were, no doubt, numerous proofs before that, but this was the first complete, final print.

Q. When was this put in print?

A. When?

Q. Yes.

A. In February, I should say.

Q. Can you tell me when in February?

A. No; I could not tell you any more than that. I should say that the original—these things are worked over, you know, and there were probably twenty or thirty proofs or revises, and I suppose that it was put in type before that time; but the final proof probably was made in February.

Q. When did you first take up with any member of the com-
2492 mission, or with President McKinley, the matter of the readjustment?

A. I could not tell, off-hand, when I first began. I should say that I saw President McKinley probably half a dozen times. I could not recall now when I first saw him about it.

Q. Perhaps I should have asked you before this. When, after 1899, have you had occasion to consider the details of this matter that you are testifying to?

A. When after 1899?

Q. Yes. I mean what, if anything, has there been to call the matter to your attention since 1899 up to to-day?

A. Well, quite a number of things.

Q. When, first, within the last couple of years, did you have occasion to put your mind upon the question of the details of this readjustment?

A. I saw in the papers, I suppose some three years ago—I do not know how long ago—that the Government was contesting the ownership of the thing, and I saw that, and it came back to my mind about the acquisition of the company by the Southern Pacific.

Q. Did you, on observing that a suit was brought or was in contemplation, review the papers?

2493 A. No.

Q. Or go into the matter so that your mind would be particularly refreshed about it?

A. No. I looked through that day before yesterday.

Q. That is coming down to what I wanted to call your attention to. Up to a couple of days ago, had there been in the last sixteen years any occasion for you to review the matter of these dates, or the sequence of your negotiations, or any of the other matters you have testified to?

A. I have been thinking about it, but I have not reviewed it.

Q. What have you looked at, if anything, to enable you to fix the dates?

A. Nothing, except that I have a bound copy of these papers in my desk now, which contains the Government contract and all the papers. I looked that through. My partner was here as a witness three or four days ago, and he talked to me about it before he went. Otherwise I have not looked it up.

Q. What else have you done with a view of refreshing yourself on the subject?

A. We talked together, my partner and I, about it. He remembered some things that I did not.

2494 Q. Calling your attention to the fact that the act creating the commission for the settlement of the Central Pacific claims was approved July 7, 1898, will that enable you to fix at all, approximately, the time when you took up, either with the Attorney General or any other member of the commission or with the President, Mr. McKinley, the matter of readjustment?

A. I am sorry to say that I can not remember when I first saw

Q. Had you done anything with any of these gentlemen prior to the passage of the act creating the commission?

A. I do not think so.

Q. Should you say that you began your negotiations soon thereafter?

A. I think so, but I could not tell. I have not any recollection.

Q. You had been familiar with Central Pacific Railroad matters and Southern Pacific matters to some extent for a good many years at that time?

A. Yes; I was.

Q. When did you first have to do with any of the stock, bonds, or securities of either of these companies?

2495 A. I, personally?

Q. You, personally, or the office of Speyer & Company, in any way that would come to your attention.

A. Our firm took the first Central Pacific bonds long before I was in business, and that was, I think, in 1868 or 1867; but I have had to do with Central Pacific and Southern Pacific affairs ever since I have been active in our firm.

Q. When did you first enter the office of Speyer & Company?

A. I think it was in 1884. It may have been 1885 or it may have been 1883, but it was 1884, I think. I entered the office here in 1884, but before then I was in Frankfort, and I knew then, even, about it.

Q. That is, in Germany?

A. Yes; I knew even then about Central Pacific matters.

Q. What firm were you connected with in Frankfort?

A. My father's firm. The name of that was Teixeira de Mattos Brothers.

Q. That is one of the other names appearing on this agreement here?

A. Yes.

Q. When did you enter that office?

2496 A. In 1882; in 1881 or 1882.

Q. When you took up the matter of this readjustment in 1899, the securities of the Central Pacific Railroad Company were held very largely abroad, were they not?

A. They were.

Q. The bonds were scattered through Europe and England?

A. Well, through the Continent and England.

Q. The Continent and England?

A. Yes.

Q. And the stock was, also?

A. The stock was in England and Holland. I do not think there was any stock in Germany.

Q. The majority of the outstanding stock was held either in England or in Holland?

A. That I can not say, that it was the majority; I do not know about that.

Q. Do you bear in mind the details enough to know that there was either a majority or near to a majority?

A. I could not say that; I do not remember. A large amount had been held in Holland, but I could not say what proportion.

2497 Q. The greater part, or the balance of the stock, was more or less widely distributed in the United States?

A. I do not recall that. I do not remember how much was held by Mr. Huntington, or whether he had any or not. I do not remember the amount.

Q. You do remember that there was a very large outstanding holding in the hands of comparatively small holders throughout the United States, do you not, at the time of the reorganization plan?

A. I do not know what you call a comparatively large holding. I could not tell, now, whether there was more in Europe or here, and how much there was altogether I could not tell you. The records will show that, though. You can get that. The stock was deposited under this plan partly in Europe and partly here, and you could easily in that way get at the facts.

Q. Yes. You recall that at that time, in 1899, the Southern Pacific Company did not itself own any stock in the Central Pacific Railroad Company?

A. I do not remember. I could not tell.

Q. Do you not remember about that?

A. No; I could not tell. I should think that Mr. Huntington had some of the stock, but I could not tell.

2498 Q. I meant the company itself—the Southern Pacific Company.

A. Yes. I could not tell.

Q. Do you remember, in connection with carrying through the readjustment, that it became necessary to acquire a block of stock of the Stanford estate—some 32,000 shares?

A. Yes; from the estate of Leland Stanford. I remember distinctly about seeing Mrs. Stanford about it. She wanted to sell the stock, and at first when it was quite low. I think the stock was bought afterwards at a higher price. I can not remember whether it was bought by Mr. Huntington or by us. I can not remember that.

Q. Do you remember that there was an incident of that kind?

A. I know that Mrs. Stanford was very much worried about it, and she wanted to sell. This plan was just going forward then, and

was going out, and I remember telling her to keep it, which she did.

Q. Speyer & Company had been the brokers for Mr. Huntington for some time prior to the time when you came here in 1885, and were so continuously through to his death, were they?

2499 A. Well, I should say we were his bankers. Brokers sell on commission. Of course we bought securities and we sold them. There is a little difference, as a rule.

Q. You understand, of course, that I was not using the term "brokers" in any invidious sense.

A. Yes; but there is a distinction there, as to whether you sell on commission or are the principal.

Q. Then, adopting your amendment, Speyer & Company had been the bankers for Mr. Huntington?

A. Yes.

Q. In his stock transactions, away back of 1885, had they not?

A. Well, I could not say "stock transactions". I mean that we were his bankers in the contract business, and he had very little stock transactions, except that at one time he bought a block of Central Pacific shares, and we sold them in Europe.

Q. That was a large block?

A. I could not remember now. It was before I was a partner.

Q. That is, that was somewhere back of 1884?

A. Before 1884, I think.

2500 Q. When you came into the New York office of Speyer & Company in 1883, 1884, or 1885, the stock of the Central Pacific Company was then already largely held in England and Holland?

A. Yes.

Q. And also quite widely distributed among holders in the United States?

A. I do not remember the United States part as well. I remember about Europe distinctly, because I came from Europe over here, and I knew more about the European situation.

Q. That is, you knew of the shares being over there before you came here?

A. Yes.

Q. Do you remember whether, before you came to this country, up in the vicinity of a majority of the stock of the Central Pacific Railroad Company was already distributed in England and Holland?

A. As I told you before, I can not remember the percentage at all, but that is a question of fact which can be looked up. I can not remember whether it was a majority or not.

Q. Are there any records of Speyer & Company of those
2501 early days, in the early eighties, which would shed any light on that matter?

A. I do not think so. Of course, the stockholders deposited under this agreement with the Central Trust Company, I think it is—

Q. Yes.

A. And the records would show that.

Q. Do you know to what extent the stock which in 1899 was held in England and in Holland had already been obtained by English and Holland investors, before you came to this country, in 1883, 1884, or 1885?

A. I do not know what you mean.

Q. I mean this: It has appeared already in this case, from the records of the Central Trust Company, to some extent at least, the deposits which were made under the plan of readjustment in 1899, and which came from Speyer Brothers in London and from Teixeira de Mattos Brothers in Amsterdam. It has already appeared—the deposits that came from those sources. Now, what I am trying to get at is your knowledge of the extent to which the stock so deposited from England and Holland was stock that had already got into the hands of England and Holland investors prior to 1884 or 1885
2502 when you came here.

A. There is not any person on earth who can answer that question.

Q. Was there, as far as you had any knowledge of it, any substantial activity in the sale of Central Pacific Railroad Company stock after you came to this country or after 1884 and after 1899?

A. I could not tell you.

Q. Do you remember whether Speyer & Company ever bought or sold any substantial amount of the stock of the Central Pacific Railroad Company after you came to this country?

A. I do not remember.

Q. Have you any dim recollection, either one way or the other, either that you did or did not?

A. Well, you recalled to my mind that stock of Mrs. Stanford. I do not remember whether we bought that stock or whether we did not; whether we bought it or whether Mr. Huntington bought it; but that is one thing that comes back which you have recalled to me.

Q. You knew, did you not, that at the time of the sale of the stock of the Central Pacific Railroad Company, in the early eighties,
2503 the Stanford-Huntington-Hopkins-Crocker interests were practically operated as one; that is, that the sales of Central Pacific Railroad Company stock were made for the four practically on joint account?

A. I could not answer that question now, because I think the Crocker stock was afterwards sold alone, and I could not answer that.

Q. The Crocker stock that was sold alone was, was it not, the stock that remained in the Crocker estate at the death of Mr. Crocker?

A. Yes, sir; that is true.

Q. That appears from an inventory filed in the case as of 1899 as something like 34,000 shares. Was that stock bought or sold by Speyer & Company?

A. I am just trying to think. I could not answer the question offhand.

Q. Have you books that would show that still extant?

A. I could not say. I could look it up. You understand certain records are kept in a business like ours that we consider important; but not everything is kept. Now, as to buying shares and selling them, we may have it and we may not. I could not tell.

2504 Q. Do you recall acquiring or dealing in any substantial amount of the stock of the Central Pacific Railroad Company from or for Mr. Huntington after you came to this country?

A. I do not recall it, but we may have. I do not recall it.

Q. You do not recall it?

A. No.

Q. And the same would be true as to Mr. Stanford or Mr. Crocker or the Hopkins estate?

A. I remember this transaction of the Crocker estate, and something about Mrs. Stanford; but I do not remember anything else, and you reminded me of those two.

Q. Then, to sum that up, do I understand you that you do not at the present time recall having bought any stock of the Central Pacific Railroad Company from Mr. Huntington or Mr. Stanford, Mr. Crocker, or the Hopkins estate, after you came to this country, except the holding of the Crocker estate, possibly, and the holding of Mrs. Stanford, possibly?

A. I do not recall it. I might say, in that connection, that I do not recall any single transaction—any single bond transaction—at that time, although they amounted to a great many millions of

2505 dollars, and I could not, without refreshing my memory, tell you what bonds were bought and sold up to 1899 of the Central Pacific Railroad Company.

Q. Do you remember how early it was in your career in Frankfurt that the Central Pacific Railroad Company stock was sold abroad, either in England, Holland, or Germany?

A. There was no Central Pacific stock sold in Germany at all, so far as I remember. I do not remember. I do not think there ever

was any sold. I remember about the bonds of the Central Pacific Company when I was at Frankfurt.

Q. The stock sales, so far as they were in Europe, were, as far as you know, confined to England and Holland?

A. To England particularly.

Q. Then, to amend my question that much, can you shed any light on how early the sales were first made in England?

A. It was before 1884, I should think.

Q. But how much before you are unable to state?

A. I could not tell you. It was in 1881, possibly. I could not tell.

Q. In putting through this readjustment in 1899, with whom did you deal, representing the English and other European stockholders? Did they have a representative?

2506 A. There was a stockholders' committee, of which Mr. Banbury was the chairman.

Q. Do you remember whether Mr. Banbury's committee controlled a majority of the stock?

A. I do not remember.

Q. Do you remember anything about the amount of the holdings represented by the Banbury committee?

A. I can easily look that up, but I do not remember it.

Q. Did the outside stockholders in the United States—and by "outside" I mean those not directly connected with the Central Pacific Company's interests, or the Huntington interests, or the Stanford interests, or the Crocker interests, or the Hopkins estate interests—have a committee representing them?

A. As I remember, they had; and I think Mr. August Belmont was the chairman of it.

Q. And that stock which what we will call the Belmont committee represented was the outside stock, of persons not connected with the Southern Pacific Company or with these four large interests that we have spoken of?

A. I could not remember. I could not tell you how that was.

Q. Mr. Belmont's committee did not represent in any way

2507 the Huntington interests, did it?

A. I do not think so.

Q. Or the Stanford interests?

A. No; I do not think so.

Q. Or the Crocker interests or the Hopkins interests?

A. If I remember correctly—I have not looked it up, but it can easily looked up—the Belmont committee was the committee which represented shareholders in the United States, and they would represent any stock that should be deposited with them. Now, whether

any of the interests mentioned had that Central Pacific stock and deposited it with them, I do not know. My recollection is not quite clear on that situation, but I think the Belmont committee was a committee just like the London committee; they would represent any stock that was deposited with them.

Q. Was not Mr. Huntington himself representing directly such stock as he still held in the Central Pacific Railroad Company, without the intervention of any committee?

A. Representing where?

Q. In the negotiations. That is, Mr. Huntington, so far as he was a stockholder in the Central Pacific Railroad, did not deal
2508 with you through Mr. Belmont's committee in any way, did he?

A. I do not think he dealt with me at all as a stockholder in the Central Pacific. My dealings with Mr. Huntington were, as I say, as to the Southern Pacific Company. I do not remember dealing with him at all as a Central Pacific stockholder.

Q. Do you know whether Mr. Huntington continued to hold any stock of the Central Pacific Company at that time?

A. I do not recall it now.

Q. Do you recall that the stock represented by the Belmont committee and the stock represented by the Banbury committee, together, amounted to very much more than a majority of the stock of the Central Pacific Railroad Company?

A. I do not recall it; but it is no doubt true, if you have got it there. I would like to say, about this stock part, that, apart from my not remembering things generally so very well, that stock I did not have very much to do with. The stock was handled very largely in Europe, and the negotiations with the stock committee were carried on by the London house. I had very much more to do with the bonds and in connection with the Southern Pacific Company.

2509 Q. The Banbury committee you had known of as being in existence for some time before the reorganization, had you not, as a committee representing the interests of the Central Pacific Railroad stockholders in England?

A. I can not recall that. As I said just now, I did not have very much to do with the London end or with the stockholders' negotiations. They were conducted by my London partners, and I do not recall that.

Q. Do you remember that in the period of a number of years before 1899 there had been more or less mutterings from the English stockholders of the Central Pacific Railroad Company?

A. I do.

Q. And do you remember that Mr. Banbury's committee was a committee formed in the effort to focus the interests of the British stockholders?

A. I remember that the British stockholders were dissatisfied; the stock had declined very considerably, the Central Pacific stock, since it had been sold, and they were dissatisfied; and I suppose they formed this committee and relied on the guidance of the committee to see what could be done.

Q. Do you remember at one time that Mr. Banbury's com-
2510 mittee caused to be organized the Central Pacific Railroad Shareholding Company (Limited), a British corporation?

A. I do not remember it; but, of course, the fact that I do not remember it is not saying that it was not so.

Q. Do you remember anything about the prices at which the stock was sold in England and Holland originally?

A. It was before I was there; it was before I was a partner. I should think it was sold above fifty, but I could not tell. It was before I was there. I came to London, and there was a panic—one of the panics—I think it was the panic of 1883, and the stock had then declined to thirty-six, or something like that, and went down lower. It was selling considerably below the price at which it had been sold, and everything else was, too. It was not alone in that.

Q. Did it ever rise again, substantially?

A. Well, when the settlement with the Government was carried through and the debt paid, the Southern Pacific had given its shares and bonds for the Central Pacific, the stockholders came out all right.

Q. I was not referring to the profitableness of the transaction. Of course, after this reorganization went through, then there was
2511 no longer any Central Pacific Railroad stock on the market?

A. No.

Q. But I mean after this decline in the panic that you spoke of, 1883, so far as you recall, did the stock of the Central Pacific Railroad Company ever come up again?

A. I could not tell that. You mean from 1884 to 1899?

Q. Yes.

A. I could not tell that.

Q. Do you remember that at the time the stock was put out it was a dividend-paying stock, a substantial dividend-paying stock?

A. I do not remember it myself; but, as I say, it was before I was in business, and I do not remember. It used to pay six per cent, at one time, I think—six per cent dividends, and then it stopped.

Q. And it was during that six per cent dividend period that the great bulk of the stock was sold in England and Holland?

A. It was certainly during the period that it paid dividends; I do not know whether it paid six per cent dividends or not, at that time; but we would not have sold it unless it had paid dividends.

2512 Q. In this reorganization matter, when it came to 1898 or 1899, the problem that was presented to you as a banker to

deal with was that the Central Pacific Railroad was going to be sold under the Government foreclosure unless some means was found of paying the Government debt?

A. I do not remember the legal status, but I know that we feared a receivership or bankruptcy of the company unless the Government debt was settled.

Q. Do you remember that the very act which created the commission; that is, the act of July 7, 1898, directed that if the Government debt was not settled within the terms prescribed by the act, then action was to be taken to foreclose the lien of the Government on the bond-aided part of the railroad?

A. I do not remember it; but I think you are right.

Q. There is no question about the facts. I simply wanted to get at the extent of your recollection. You remember, do you, that there was a portion of the road that was subject to a lien for the Government debt, what was commonly called the bond-aided part of the road?

A. Yes; I remember that.

Q. Do you remember that that part of the road was also
2513 subject to a first mortgage equal to the amount of the principal of the Government debt?

A. I remember there was a first mortgage on it. I do not remember about the amounts.

Q. Then you remember that there were various other bonds of the Central Pacific Railroad Company outstanding?

A. Yes.

Q. The debts that you had to deal with, or had to take into consideration, were the bonds as set out under deposit securities in the plan, plus the Government debt of fifty-eight million odd dollars?

A. Yes.

Q. Which seems to make perhaps a little upward of one hundred and fifteen million dollars, dealing roughly?

A. Yes.

Q. Do you recall that the average annual net income of the Central Pacific Railroad itself for some years had been adequate to furnish a substantial return on one hundred and fifteen million dollars?

A. The company always paid all its fixed charges. I remember that.

Q. Perhaps that does not quite cover it, because, do
2514 you recall that the interest on the Government debt had not been treated as an annual fixed charge?

A. No. When I speak of fixed charges, I mean the bonds in the hands of the public.

Q. My question to you is: Do you recall that the net income of the Central Pacific Railroad Company had been, on the average, for, say, ten years, adequate to pay not only the fixed charges on the bonds outstanding, but also a substantial rate of interest on fifty-eight million dollars beside?

A. You mean ten years prior to 1899?

Q. On the average for ten years.

A. I could not remember.

Q. You had to do with the making up or approval of the financial statements in the reorganization prospectus, did you not?

A. Yes.

Q. And the average net income of the railroad——

A. You have it right there [indicating printed pamphlet]. There is the figure.

Q. And the average net income of the railroad before the payment of the fixed charges had been $4,893,259.17?

A. Yes.

2515 Q. That is to say, if you funded the Government debt at par, and funded the other outstanding bonds at par, the average return for the past ten years in net income would have shown approximately four per cent per annum for the entire refund?

A. I suppose that is so.

Q. The question answers itself, does it not—$4,893,000 plus is substantially four per cent on $115,000,000?

A. Yes.

Q. When you spoke of the possibility of refunding, you said, as I understood you, that it was obvious that the Central Pacific Railroad Company could not meet the terms of the act of July 7, 1898, from its own resources or without the assistance of the credit of the Southern Pacific Company or some other railroad. Is that a correct statement of your attitude?

A. Yes; that is correct.

Q. And as a banker, in 1899 you had necessarily, or in fact whether necessarily or not, become familiar with railroad securities to a great extent?

A. Yes.

2516 Q. And that necessitated your having some general knowledge of railroad situations, earnings, positions, prospects?

A. That is, very general knowledge. I do not claim any great knowledge of those things.

Q. Did you, in connection with the reorganization schemes, enter into any investigation to see whether there were any other railroads connections of the Central Pacific Railroad, or other competitors with the Southern Pacific Company, who could be interested in acquiring the Central Pacific Railroad or underwriting its bonds?

A. No; I did not enter into any investigation.

Q. Did you know anything about the desires of Mr. Harriman, or the companies with which he was affiliated, to acquire the Central Pacific Railroad in 1899?

A. I do not recall anything of that kind, because Mr. Harriman in those days was not the Mr. Harriman of later years. The Union Pacific had been unable—or had great trouble in paying its own debt in full to the Government, and was not the concern it is to-day; and it did not require any investigation on our part to show us there was not much help to be had from that quarter. The Union Pacific was being reorganized itself; the stock was being assessed
2517 heavily, and sold at six or seven cents on the dollar.

Q. You are not speaking of 1899, are you?

A. When was the date of the Union Pacific—I forget when that was due. It was due about the same time as the other.

Q. Do you not bear in mind, Mr. Speyer, from your recollection of the reorganization scheme, that the Union Pacific's debt to the Government had already been disposed of before you took up the matter of this reorganization of the Central Pacific?

A. I do not think it could have been finally disposed of, because I remember that one of my first interviews with President McKinley, the first time I saw him, he had an idea that the Central Pacific was not going to pay in full. It had not been forgotten that the Union Pacific had compromised itself by not paying in full; and the first interview I had with President McKinley he evidently thought we were trying to compromise—not to pay in full the debt of the Central Pacific. I remember that distinctly, and I remember distinctly my telling him that the Central Pacific was going to pay in full in some way. So the thing can not have been finally settled then.

2518 Q. Do you not remember, now that I call it to your attention, that the impression of President McKinley, which he indicated to you in his conversation, that you were seeking to compromise, was due to the efforts that had been made to have the Central Pacific debt compromised?

A. I do not think so, because I do not believe that was the case. The papers were full at the time of the Union Pacific trying not to pay in full, and the Government, through energetic action, having prevented this; and there was a great "hullabaloo" about it about that time. I do not remember the details, but I remember that I told the President that we were going to pay in full.

Q. Do you not remember that the reorganization of the Union Pacific—Mr. Harriman's connection with it—was completed in 1898?

A. Well, you see this was the end of 1898.

Q. This was the beginning of 1899. You are referring to a paper——

A. The first time I saw President McKinley was in 1898. I can not fix the exact date, but it must have been pretty near together.

Q. Do you not think, now, having these things called to
2519 your attention, that when you put through, or when you promulgated this plan of reorganization in February, 1899, that the Union Pacific debt had already been paid?

A. Yes. Then it had.

Q. And Mr. Harriman, in 1898, was recognized as a substantial, powerful factor in railroad financing here in New York at that time?

A. I think he was.

Q. Now, my question is not asking you specifically about the Union Pacific, but was any effort made to see whether any other railroad or any other financial interest than the Southern Pacific Company was ready to acquire the Central Pacific Railroad, or to underwrite the refunding obligations of the Central Pacific Railroad, as far as you know?

A. It is sixteen years ago, but as far as I can remember, we did not think there could be anybody, outside of the Southern Pacific, except the Union Pacific; and the Union Pacific was just emerging from reorganization itself. Nobody could tell how it was to work out, and it was our judgment that we could get more assistance from the Southern Pacific Company in settling that debt than from anybody else.

Q. You knew the railroad and geographical condition in
2520 California at that time enough to know the great value to the Southern Pacific Company of preventing the Central Pacific Railroad from going into any hands other than the Southern Pacific Company's, did you not?

A. Well, I was not thinking so much of that as I was thinking: Where could we get the best financial and the strongest financial backing, and the Southern Pacific backing at that time would be a great deal more valuable than that of the Union Pacific. I do not want to compare Mr. Huntington and Mr. Harriman at all, but the Union Pacific was just then emerging from the receivership.

Q. As a matter of fact, was the problem of putting through some kind of a reorganization first presented to you by the representatives of the Central Pacific Railroad or by the representatives of the Southern Pacific Company?

A. Well, I should say by neither. I think it naturally suggested itself to us as bankers, having sold such a large amount of securities and the company being threatened with bankruptcy, we naturally sat up nights thinking how we could save it, because these bonds

were all out, all over Europe, and stock too; and we tried to find some means to work it out so that these people would not lose
2521 their money. So that I think that originally when this debt came nearer and nearer, when it got so that it became a threatening thing to the Central Pacific security holders, we naturally began to look around to see how we could stave off receivership and bankruptcy. I think the initiative probably came just as much from us as from any of the railroad companies. I am sure it did.

Q. When you had determined upon the desirability of preventing a foreclosure or receivership or bankruptcy, as you put it, did you take it up with the Central Pacific Railroad Company or did you take it up with the Southern Pacific Company, in the first instance?

A. There was not any wide difference. Mr. Huntington——

Q. Whichever you took it up with, it meant that you went to see Mr. Huntington?

A. Yes; that is it.

Q. And you did not know, when you were talking with him, just whether you were talking with him as looking out for the Central Pacific Railroad or looking out for the Southern Pacific Company's interests primarily?

A. Well, in a way that is true. I would like to say here
2522 that I had absolute confidence in Mr. Huntington, whether he represented the Southern Pacific or the Central Pacific or whether he looked out for the bonds or for his shares, or anything. I had absolute faith in Mr. Huntington. It would not have made much difference to me whom he represented.

Q. Of course a reorganization plan of this kind was in this case, as it always is, a gradual growth—one thing after another being added?

A. Yes.

Q. The vital thing about it was to get some kind of a refunding security which either would be taken by the existing security holders, or else could be put upon the market to raise money for the existing security holders. That was it, was it not?

A. And satisfy the Government debt. That was fundamental. The existing security holders were perfectly safe. Their bonds were not due except a little later, so that the first reason for this plan was to satisfy the United States Government.

Q. If the United States Government had foreclosed its lien, the stockholders abroad who had got their stock through your con-
2523 cern originally would have been virtually entirely out?

A. Every stockholder, whether he got his stock through our concern or not, would be; it would make no difference where he got it.

Q. So that the importance of getting some way of satisfying the

Government debt was to save that stock or to save the interests represented by that stock?

A. If the Government had foreclosed its lien and there had been a receivership, you could not tell how far it would go. You never can tell how far it will go. While primarily the stock would have suffered, I am not prepared to say that the other bonds of the system would not have been in some difficulty. In the case of a receivership you can never tell where it will end when it once starts.

Q. Then, to preserve the market values, both of the stock and the bonds, it was necessary to find some way of getting rid of this Government debt?

A. That is right; that is it, yes.

Q. And in order to do that it seemed to you necessary to get some security which would be satisfactory to the security holders—and by "security holders" I include the Government, having its lien.

2524 A. Yes.

Q. Or would be so marketable that you could get money with which to satisfy it?

A. Yes.

Q. Who hit first upon the fundamentals of this reorganization plan? By "fundamentals" I mean a new issue which should be a first lien and take the place of all the old securities, including the Government lien.

A. Well, if it is not going to be used against me I am willing to confess that I did it. I think I probably talked it over with either one of my partners. I think we probably talked it over, but it was worked out in our office.

Q. It is seldom that any railroad is so good that the addition of a valid guaranty by another railroad will not increase, at least slightly, the value of its securities? That is true, is it not?

A. There would not be any reason for giving it unless it did increase it.

Q. It would have been evident to you in this case, whether the Government wanted the guaranty of the Southern Pacific Company or not, that it would benefit the sale of the refunding bonds if

2525 they were backed by the guaranty of the Southern Pacific Company?

A. Yes; very much so.

Q. Did you take the matter up with President McKinley first before dealing at all with any members of the commission?

A. My memory is that I saw President McKinley first. I may be wrong about that.

Q. And when you saw him first, did you lay before him this possibility of a refunding issue which should be a first lien?

A. No; at the first interview I did not go into that detail with him at all.

Q. In this fundamental respect that I speak of, was the plan of reorganization ever changed after the first time that you did present it to President McKinley?

A. You mean that the bonds should be guaranteed?

Q. No; that they should be a new issue of refunding bonds which should be a first lien.

A. I do not think the plan was ever changed in that respect after the idea was once formulated.

Q. So that the first time you came to state any proposed
2526 terms to the United States Government those terms included at least that the refunding securities should be a first lien on the existing properties of the Central Pacific Railroad Company?

A. I should think so.

Q. Who drafted the final agreement which was made with the commission; that is, the agreement of February 1, 1899?

A. You mean the language, the formal agreement?

Q. The formal agreement.

A. The lawyers did that.

Q. Whose lawyers, in the first instance?

A. I think Mr. Beaman; Charles C. Beaman represented us, and I think Mr. Charles Steele. Mr. Tweed represented Mr. Huntington, and Mr. Root, I think, represented the commission. I could not recall who took part in which part of the documents.

Q. Do you have any recollection whether Mr. Root took any part in passing upon this agreement of February 1, 1899, upon the phraseology, the draftsmanship of it?

A. I do not remember it; but my partner told me that he did, distinctly.

Q. By your partner you mean whom?

A. Mr. Ruhlender, who remembers Mr. Root being at our
2527 office, and so on.

Q. You, of course, read this agreement of February 1, 1899, with some care before you executed it?

A. I suppose I did.

Q. And do you remember whether it included all the terms that you understood that you had agreed upon with the United States Government?

A. I do not remember it; but I take it for granted that it did.

Q. You recall that a part of the arrangement with the United States Government was that you were yourselves going to take off the hands of the Government almost immediately one-fifth of the debt?

A. There were, I think, four installments of the notes we were going to take up right away. I think it was about ten million dollars that we were going to take up right away.

Q. That is, there were twenty notes of two million nine hundred and odd thousand dollars and you were going to take up four of them?

A. I think it was——

Mr. McENERNEY. It was $11,800,000.

The WITNESS. $11,800,000; that is right. That was part
2528 of the plan.

By Mr. McCLENNEN:

Q. And in that way the Government, on the execution of this agreement, acquired the personal responsibility of Speyer & Company to take care of that much of the debt?

A. Well, I do not know about that.

Q. I mean, the personal responsibility of Speyer & Company to take care of the debt, assuming that the conditions of the agreement were met.

Mr. BLAIR. Section 7 of the agreement speaks for itself.

Mr. McCLENNEN. I am asking for his memory of his situation.

Mr. McENERNEY. Show him the clause.

The WITNESS (after referring to pamphlet). That is all right. It says so, so it must be. I do not remember all these things.

By Mr. McCLENNEN:

Q. At that time, in 1899, the financial condition of Speyer & Company was such that its obligation was, in itself, a valuable thing for the Government to obtain, was it not?

A. I do not know. I suppose they would not have done it if they did not think it was all right.

2529 Q. I am not putting this by way of paying compliments at all; but I mean this: Assuming, for the time being, that the bonds of the Central Pacific Railroad Company, guaranteed by the Southern Pacific Company, were not worth the paper they were written on, still the obligation of Speyer & Company was a valuable obligation to the Government in itself?

A. Well, if the bonds had not been good, our obligation would not have been quite as good either.

Q. You understand, Mr. Speyer, we are making a record for a court that does not necessarily know Speyer & Company.

A. I was only trying to see what you were trying to get at.

Q. What I meant was that the obligation of Speyer & Company to pay eleven million dollars to the Government was a valuable thing in itself.

A. Yes; no doubt.

Q. Did either Mr. Griggs, Mr. Bliss, Mr. Gage, Mr. Root, or President McKinley receive a copy of this reorganization plan that was promulgated by your circular of February 20, 1899?

A. I have no doubt they did.

2530 Q. By that you mean that you reason that they must have, but that you have no recollection one way or the other? Is that it?

A. I have no positive recollection; but it would be illogical to suppose that they did not get it.

Q. Since you can not help us by recollection, can you by reasoning indicate about when any of the five men that I have just mentioned received this?

A. If you will allow me to answer this in my own way, I will tell you.

These whole negotiations were carried on absolutely on the table. Everything that was done was known to everybody interested, and I am perfectly satisfied that they had this plan and the provisos of it, and knew exactly what we were doing all the time. I am satisfied that they knew about the Southern Pacific guaranty, and thought it a valuable thing. I could not tell you when I gave them this plan, or how many copies they got, or who got it. I can not remember. I do remember, however, distinctly that everything we did and everything I did was done just in that way; that they got everything; they knew everything we were doing, because I remember that President McKinley particularly thanked me when it was all

2531 over—I do not want to repeat his words, but he was very flattering about the way I had conducted this negotiation. He knew everything I was doing, and he showed me the greatest confidence, and let me do it in my own way.

Q. Don't you see, Mr. Speyer, that my question is not——

A. I answer with no feeling at all. I can not remember details of things like that sixteen years ago, but I can remember the general course of events.

Q. What I have asked you, Mr. Speyer, is this: Using both your recollection and your reasoning, simply to give me the best you can as to the time—which you have not put into this answer you have just given at all—the time when that plan which you promulgated February 20, 1899, was delivered to any of those gentlemen.

A. My answer is that the plan was handed to them as soon as it was ready, and while it was being made they were being kept posted as to what was going to be in it. They got the copy as soon as it was ready, and while we were making it up they were being kept posted as to all essential features. I do not think we told them about an item of fifty dollars or all little details like that, but the essential features of the plan they knew and were kept informed of.

2532 Q. Do you mean by that that you would be positive that they received this plan first, I will say, at least by the first of March, 1899?

A. I would be positive.

Q. You would be positive of that?

A. Yes. When I speak of them I include Mr. Root, their counsel, who probably got it first.

Q. I meant to include in these questions Mr. Bliss, Mr. Gage, Mr. Griggs, President McKinley, and Mr. Root—any one of them.

A. Yes.

Q. Now, would you be positive that they received the plan at least as early as the first of January, 1899?

A. Well, it was not ready, was it?

Q. Would you be positive that they received the plan at least as early as the first of February, 1899?

A. I would be positive that they had the plan before they signed the agreement with us.

Q. When did they sign the agreement with you?

A. It must have been a few days before the 20th of February for the reason I stated before.

Q. Then you would be positive that they had the plan a few days at least before the 20th of February, 1899?

2533 A. I can not swear to it. I should think so. I do not remember; I can not remember.

Q. Now, can you be positive of any date earlier than a few days before the 20th of February, 1899?

A. I can not be positive; no.

Q. Did you ever suggest to any of these five gentlemen their taking these bonds, or any bonds, without a guaranty?

A. Never.

Q. Did they ever talk to you about the possibility of taking any of these bonds without a guaranty?

A. You mean when I offered them the guaranty that they said they did not want it?

Q. No; I mean exactly the question.

(By request the reporter repeated the question, as follows:)

"Q. Did they ever talk to you about the possibility of taking any of these bonds without a guaranty?"

The WITNESS. No; I do not remember.

By Mr. MCCLENNEN:

Q. The first time, as far as you recall it, that the guaranty was matter of conversation between you and any of these five gen-

2534 tlemen was when you informed them that the bonds were going to be guaranteed by the Southern Pacific Company; is that right?

A. I do not quite understand.

(By request the reporter repeated the question as above recorded.)

The WITNESS. If you mean to say that they had not asked for the guaranty or mentioned it to me first, I could not say.

By Mr. MCCLENNEN:

Q. You can not say, one way or the other?

A. I could not remember whether I spoke to them first about the guaranty or whether somebody mentioned it to me.

A. Are you entirely without recollection as to whether any of the five gentlemen suggested the guaranty, or whether the first time it was mentioned it was on your suggestion?

A. I always thought the guaranty was absolutely necessary to carry through this scheme. It never occurred to me to dispense with the guaranty; so I do not attach any importance to whether they mentioned it to me or not. I knew I had to have the guaranty in order to make these bonds go.

2535 Q. That is, you knew that in order to market the bonds it would be, in your judgment, necessary to have the guaranty; is that true?

A. Well, in order to carry through the plan.

Q. In order to carry through the plan?

A. Yes.

Q. The plan provided, as indicated in it, for certain exchanges of securities?

A. Yes.

Q. Do you remember at all to what extent the old security holders took the new securities?

A. They took them very largely; a very large percentage, I think.

Q. Was there any substantial amount of the refunding bonds sold at the time, in 1899?

A. By us?

Q. By you.

A. Those we took from the Government we had to sell.

Q. That is, those you took when you took up the first four notes?

A. The eleven million dollars; and there may be some others; but that much was sure.

2536 Q. Did you have anything to do with the sale of the remaining forty-seven million dollars of those bonds as they were received back by the company from the Government when the debts were paid?

A. Yes; some of them were sold.

Q. In addition to the bonds which had been deposited with the Government, and which amounted in the aggregate to about fifty-eight million dollars, were any substantial number of the refunding

bonds sold by you, or were they taken directly by the old security holders?

A. $1,690,000 we bought and resold. The security holders, I think mostly took the new securities. I could not tell that, but I think that is what it was.

Q. A good many of those security holders who took these new re funding bonds were holders of first mortgage bonds already?

A. Yes.

Q. Of issues which were considerably less than one hundred mil lion dollars in the aggregate?

A. Yes.

Q. In order to get the security holders who held some fifty-seve million dollars of bonds to take the new bonds it was necessary t have those new bonds abundantly secured?

A. Yes.

2537 Q. In your judgment, in order to get those fifty-seven mil lion dollars of bondholders to take these new refunding bond it was necessary to have the guaranty of the Southern Pacific Com pany, or some other adequate guaranty?

A. Yes, sir; the reason being that the mortgage which they had w very considerably increased in amount by the bonds that went to th Government. If it had just been the question of extending the lie which they had, that probably could have been done without a gua anty; but the fact that the existing lien was so much increased in th bonds given to the Government, necessitated the guaranty of th Southern Pacific in order to make them good.

Q. That is, one of the effects of this arrangement was—if it is not to flippant a use of language—to let the Government down from th second story on to the ground floor, so far as security was concerned

A. Yes.

Q. And that had the effect of greatly increasing the securities wi which the old security holders would have to pro rate in case deficient assets?

A. Well, if it was not the Government, people would call

2538 diluting them. I would say the security was diluted; but long as the Government gets it, I do not use that word.

Q. Do you recall, now, whether any of the three commissioner the President, or Mr. Root suggested or required any substanti change in the plan which you originally proposed?

A. I do not recall it.

Q. Would it meet your recollection, as best you can give it, th they did not, and that the plan, in its essential features, as you fir presented it was the one which went through?

A. I rather think so.

Mr. McCLENNEN. That is all.

Mr. BLAIR. No questions.
(Witness excused.)

2539 JAMES A. SIMPSON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Mr. Simpson, what is your occupation?

A. Transfer agent for the Southern Pacific Company.

Q. Do you remember that after the unmerger the stock of the Southern Pacific Company which was owned by the Union Pacific——

A. The Oregon Short Line.

Q. Or rather, by the Oregon Short Line. That part of it which was not transferred to the Pennsylvania Railroad was transferred to the Central Trust Company of New York, as trustee, under the decree?

A. Yes.

Q. Are you able to state, or have you prepared a statement from your records, showing the exact amount of the stock which was so transferred to the Central Trust Company of New York, as trustee, and which was in its name in that way on July 17, 1913?

A. Yes; I have.

2540 Q. Please state the number of shares which were so in the name of the Central Trust Company as trustee on July 17, 1913.

A. 883,576 shares.

Q. How many shares were left in the name of the Central Trust Company as trustee on August 17, 1913?

A. There was no change; 883,576.

Q. Can you explain why there was no change in that period?

A. The date of subscription to those certificates of interest which were issued by the Central Trust Company against the deposit of that stock was fixed as September 2, 1913, and no subscriptions had been anticipated on that date.

Q. How many of the shares which we have been referring to remained in the name of the Central Trust Company on September 17, 1913?

A. 353,192 shares.

Q. And on October 17, 1913?

A. 215,837 shares.

Q. And on November 17, 1913?

A. 179,911 shares.

Q. And on February 11, 1914?

A. 103,114 shares.

2541 Q. And what is the difference between the last figures you have named and the first figures—the original deposit? Just subtract that.

A. I make it 780,462 shares.

Q. Is it true to say that the number of shares you have last named had, during the period which you have covered by your testimony, been sold into the hands of the public generally?

A. I should say so.

Q. What was the increase in the number of stockholders between July 17, 1913, and February 11, 1914?

Answer my question first, and then I will ask you to give it to me by months.

A. The difference between the number of stockholders on July 17, 1913, and February 11, 1914, was 8,650.

Q. Give the number of stockholders on July 17, 1913.

A. 17,088.

Q. And on August 17?

A. 17,731.

Q. And on September 17?

A. 19,747.

Q. And on October 17?

2542 A. 21,553.

Q. And on November 17?

A. 23,100.

Q. And on February 11, 1914?

A. 25,738.

Q. How many shares which stood in the name of the Union Pacific, which were by it under the terms of the decree transferred to the Central Trust Company of New York as trustee, now remain in the name of the Central Trust Company of New York as trustee?

A. On April 17, 1915, the number was 36,513 shares.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Do you remember how long a time elapsed after the Attorney General informed the Southern Pacific Company of his intention to file an unmerger suit as to the Central Pacific Railroad before the first sales were made to which you have testified here?

A. I can not tell the time. The time the first sales were made, I think, was of record about thirty days prior to the date of subscription. I am not certain of that.

2543 Q. And how many of these shares have been sold since the unmerger suit now on trial was actually begun, namely, since February 11, 1914?

A. 66,601 shares.

Mr. MCCLENNEN. That is all.

Mr. BLAIR. That is all.

(Witness excused.)

Mr. MCENERNEY. The Commercial and Financial Chronicle is a weekly newspaper devoted to commercial and financial affairs, published weekly on Saturday in the city of New York, and has been in existence for twenty-five years, the first issue of the year 1899 being volume 68 and No. 1750. This paper had throughout the year 1899, and had for many years before that time, a large circulation amongst commercial and financial people and bankers in the United States of America and was one of the leading commercial and financial papers of the country, and the volumes that I have here are volumes 68 and 69 of that newspaper, covering the year 1899.

Mr. MCCLENNEN. The petitioner objects to this statement as immaterial, incompetent, and irrelevant; but, subject to this ob-
2544 jection, concedes that the statement may be taken to be proof of the facts stated.

Mr. MCENERNEY. We desire to offer in evidence from the issue of February, 1899, the item appearing in volume 68, page 329, at the foot of the second column, commencing with the words "Central Pacific R. R.," and ending on the next page, 330, with "V. 67, p. 1157, 1163."

Mr. MCCLENNEN. The petitioner objects to the introduction in evidence of this article and the others about to be offered by the defendants from the "Chronicle," and on the ground that the publications are immaterial, incompetent, and irrelevant, and are hearsay as to the facts narrated in the articles, and do not appear to have reached the eyes of anyone whose reading of them would be of consequence in this case.

Mr. MCENERNEY. The next one is an article in volume 68 of the "Chronicle", page 352, under date of February 25, 1899, entitled "The Central Pacific reorganization plan," occupying practically all of page 352, all of page 353, and a little over half of the first column of page 354.

The next one is under date of February 25, 1899, volume 68 of the "Chronicle", page 378, headed "Central Pacific R. R.–Southern
2545 Pacific Company," and running down to the second line of page 379, first column.

Under date of March 4, 1899, the next one appears in volume 68 of the "Chronicle", page 397, commencing with the sixth line on page 397, column one: "As expected, the Central Pacific readjustment is proving an unqualified success," and ending on the tenth line of the second column of the same page with the words "could have been attained in any other way".

The next one is March 4, 1899, volume 68, page 427, commencing with "Central Pacific R. R.–Southern Pacific Co.," in the first col-

umn of page 427, and running to the third paragraph of that item, ending with the words "or at the offices of their agents in Europe," but not putting in the paragraph: "Extension to be completed."

The next one is under date of March 11, 1899, volume 68, page 472, a five-line item headed "Central Pacific R. R.—*Listed.*"

The next one is under date of March 18, 1899, volume 68, page 523, column two, an item of five lines headed "Central Pacific R. R.—*Four notes paid.*"

2546 The next one is under date of April 1, 1899, volume 68, page 617, second column, commencing with: "Central Pacific R. R.—Southern Pacific Co.," down to and including the small type in the paragraph ending with the words: "They have been issued in accordance with the plan", but excluding the paragraph headed "Large sale of stock."

The next one is under date of April 15, 1899, volume 68, of the "Chronicle", at the foot of page 721, column two, headed "Central Pacific R. R.," which extends over to the next page, column one, down to the seventh line, inclusive, ending "V. 68, p. 617."

Next, from the Investor's Supplement, issued by the "Chronicle" April 29, 1899, page 24, column one, all of the matter commencing with "Central Pacific R. R." and ending with a series of page numbers, the last one being "721"; that is, down to but not including "Central Ry. of New Brunswick".

The next one is from the Investor's Supplement for July, 1899, page 24, volume 69, commencing, in column one, with "Central Pacific R. R. Co.," down to a series of page numbers ending with "V. 69, p. 26"; that is, just before "Central Ry. of New Brunswick".

2547 The next one is under date of August 5, 1899, volume 69, of the "Chronicle", page 282, at the foot of the second column, headed "Central Pacific Railway", an item of five lines.

The next is under date of September 23, 1899, volume 69, of the "Chronicle", page 645, column one, an item headed "Central Pacific R. R.—reorganization notice", an item of seven lines.

Then, the Supplement for October, issued October 28, 1899, page 22, commencing in column one, down to the end of the subdivision in the second column, ending just before the heading "Central Ry. of New Brunswick."

(The foregoing extracts from the Commercial and Financial Chronicle and the Investor's Supplement were marked, collectively, "Defendants' Exhibit No. 95, April 24, 1915," and will be found in the volume of defendants' exhibits.)

Mr. McCLENNEN. It is stipulated that the following are extracts from the Congressional Record at the volume and page from which they purport to be taken, namely:

"Proceedings of the United States Senate, Monday, February 20, 1899.

"'Pacific railroads.

"'The Vice President laid before the Senate a communication
2548 from Hon. L. J. Gage, Secretary of the Treasury, Hon. Cornelius N. Bliss, Secretary of the Interior, and Hon. John W. Griggs, Attorney General, the commission appointed by the act of Congress of July 7, 1898, to settle the indebtedness of the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific Railroads, which, with the accompanying paper, was referred to the Committee on Pacific Railroads and ordered to be printed.' (Congressional Record, 3rd session, 55th Congress, volume 32, p. 2082.)"

"Proceedings of the House of Representatives February 20, 1899.

"'Executive communications, etc.

"'Under clause 2 of Rule XXIV, the following executive and other communications were taken from the Speaker's table and referred as follows: * * *

"'Report of the commissioners appointed to settle the indebtedness to the Government growing out of the issue of the bonds in aid of the construction of the Central Pacific and Western Pacific Railroads—to the Committee on Pacific Railroads and ordered to be printed.' (Congressional Record, 3rd session, 55th Congress, volume 32, p. 2121.)"

2549 Mr. McCLENNEN. It is stipulated that there is a record in the United States Department of Agriculture Weather Bureau files in New York as follows, and that these statements concerning the conditions narrated in that report are correct:

U. S. Department of Agriculture. Weather Bureau. Forecast district and marine center.

NEW YORK, N. Y., *April 22, 1915.*

Mr. CHARLES FRANKLIN,
Attorney Southern Pacific Railway,
165 Broadway, New York, N. Y.

DEAR SIR: In reply to your letter of this date relative to weather conditions of February 11–19, 1899, as affecting travel by railroad, I have the honor to report as follows:

During the three days preceding the 11th there was an unusually severe cold wave, the temperature reaching its lowest point, six de-

grees below zero, at 7.30 a. m. of the 11th. This caused practically
a blockade of all the traffic in the waters about New York be-
2550 cause of the heavy ice. At 8 p. m. of the 11th there remained
on the ground from previous snowstorms 8.5 inches of snow where not removed or disturbed. Snow began falling at 9.10 p. m. of the 11th, continuing through the 12th, becoming heavier during the night of the 12th–13th, continuing through the 13th, and ending before daybreak of the 14th. The total fall of fresh snow in the storm was 15.5 inches, which, together with the old snow, made a total of 24.0 inches when measured at 8 p. m. of the 14th.

The following quotations from the Daily Journal of this station, under date of February 13, 1899, will show the severity of the storm:

"About 4 a. m. a gale set in from the northeast, which continued with increasing force till 4.30 p. m., when it shifted to northwest and continued through the night with hurricane velocity.

"The dry character of the snow caused it to drift heavily. Local traffic, which had not before been seriously interrupted, was thrown into utter confusion and finally abandoned altogether, with the exception of two cable lines; on these an occasional car was sent out.
behind a snow plough, for the purpose of keeping the line clear.
2551 "The street cleaning department was overwhelmed with
the storm. As fast as the snow was piled in mounds it would be scattered adrift by the high winds. At noon, all efforts to oppose the storm having been futile, the department stopped work until the wind should subside.

"All railroad lines centering here received ample warning from this office, but they were powerless in the face of such odds. By night the city was absolutely cut off from railway communication in every direction.

"The New York Central Railroad Company informed this office that the tracks of that line were covered in places with ten feet of snow. The Empire State Express, a noted fast train of that line, running between New York and Buffalo, failed to get through from Albany to New York for the first time since the initial trip was made, about seven years ago.

"The hurricane winds, which prevailed at night, were forecast in ample time, and every effort was made by the station force to communicate with every interest involved. As the day was generally observed as a holiday, much difficulty was met in trying to reach some of the shipping companies. Happily, however, the ice gorge
so effectually checked the entrances to the ocean and sound
2552 that not a vessel left this port, which is the first instance of
the kind in eleven years.

"The temperature at 7 p. m. was 10 degrees, the highest reached since 2 a. m. February 9, making a record of exceptional severity which is unequaled in point of duration in the history of this station."

Under date of February 14 the following is recorded:

"Northwest gale from midnight of the 13th till 5.30 p. m.; maximum velocity, 61 miles, at 3.45 a. m."

The temperature, though showing a slight rising tendency, did not rise above the freezing point, 32 degrees, till the 16th, and gales of sufficient strength to drift the snow continued through the 19th.

Very respectfully,

JAMES H. SCARR,
District Forecaster.

Mr. MCCLENNEN. Counsel for the defendants having called to the attention of counsel for the petitioner certain newspaper items of the New York Herald of February 16, 17, and 19, 1899, it is on the faith of these stipulated that President McKinley left Washington on the evening of Wednesday, February 15, 1899, for the Home Market Club dinner in Boston with his secretaries, including
2553 Mr. Cortelyou, and Cabinet officers, and other public men, and that the party reached Washington on its return journey on the morning of Saturday, February 18, 1899, at seven o'clock a. m.; and that it appears that Secretary Bliss was one of the party, but that Secretary Gage is not mentioned.

Mr. HERRIN. I wish to add, concerning the petitioner's offer in evidence of the inventory of the estate of Charles Crocker, another fact having reference to that offer. I wish to add the item concerning the ownership of shares of the stock of the Pacific Improvement Company, that 12,500 shares of the Pacific Improvement Company's stock was also shown as stock owned by that estate.

I make the same offer of an item appearing from the decree of distribution of the Stanford estate, from which counsel for the petitioner read, showing that there were owned by the Stanford estate 12,500 shares of the stock of the Pacific Improvement Company.

Mr. MCCLENNEN. The petitioner stipulates that the inventory of the estate of Charles Crocker, referred to, and the decree of distribution of the Stanford estate, referred to, contain the items referred to by counsel of 12,500 shares in each case of the stock of the Pacific Improvement Company.

2554 Mr. HERRIN. If it does not appear in the testimony into how many shares the capital stock of the Pacific Improvement Company was divided, we will submit that by an exhibit or memorandum of some kind. I think it is shown that there were 50,000 shares of the capital stock of the Pacific Improvement Company. If it does not so appear, I will get a certified copy from the auditor and file it.

In other words, the Stanford estate and the Crocker estate each held one-quarter of the capital stock of the Pacific Improvement Company, 12,500 shares; and Mr. Huntington and Mr. Mark Hopkins owned one-quarter each of the capital stock, making up between them the other half.

Mr. McCLENNEN. On Mr. Herrin's statement, the petitioner stipulates, without further proof, but under objection, that the capital stock of the Pacific Improvement Company consisted of 50,000 shares of stock.

Mr. HERRIN. We offer in evidence a certified copy of a bill in equity or petition filed in the Circuit Court of the United States for the 9th Circuit, Southern District of California, by the United States of America, by direction of the Attorney General thereof, represented by George J. Denis, United States attorney, and Joseph H.
2555 Call, special attorney, it being a petition in equity against the Southern Pacific Company and a number of other companies and parties, which in substance sets forth that the Southern Pacific Company had obtained a lease of the Southern Pacific Railroad Company's line, and also of the lines of the Central Pacific Railroad Company, copies of which leases are in evidence as exhibits to the bill, thereby constituting a combination in restraint of trade or commerce, and praying the setting aside of those leases and the dissolution of that combination.

The bill is signed by Richard Olney, Attorney General of the United States, and by George J. Denis, United States attorney for the southern district of California, and by Joseph H. Call, special attorney.

I also offer in evidence the order made by the judge of the court, E. M. Ross, judge of the District court, on the filing of the petition, directing that subpœnas issue, and so forth.

I offer this bill with all the exhibits, and all other proceedings shown in the case. This is a certified copy of the record, with the certificate of the clerk of the court.

Mr. McCLENNEN. It is stipulated that in copying this cer-
2556 tified copy of the record as an exhibit there may be omitted from the copy the lease dated February 10, 1885, of the Central Pacific Railroad Company and others to the Southern Pacific Company, and that the copy attached to the bill is the same as the copy of that lease which has heretofore been put in evidence by the defendants.

It is also stipulated that the lease of February 17, 1885, of the Central Pacific Railroad Company to the Southern Pacific Company, which is a copy of the lease of that date, constituting Exhibit A of the petition in the present case, may be omitted in copying defendants' Exhibit No. 96.

It is also stipulated that the exhibit entitled "Articles of Association, Incorporation, Amalgamation, and Consolidation," of May 4, 1888, need not be copied as a part of defendants' Exhibit No. 96, because the substance thereof appears in a petitioner's exhibit.

It is also stipulated that the indenture of August 25, 1888, between the Southern Pacific Railroad Company and the Southern Pacific Company and the Central Trust Company of New York need not be copied as a part of defendants' Exhibit No. 96.

These stipulations are made tentatively. I should like to get
2557 hold of this defendants' Exhibit No. 96 and read it through, and then see if I have any objection to any of it.

The petitioner objects to the introduction of this copy on the ground that it is immaterial, irrelevant, and incompetent, and does not tend in support of any allegations contained in the answer of the defendants or in denial of any allegation contained in the petition.

(The bill in equity referred to was thereupon marked "Defendants' Exhibit No. 96, April 24, 1915," and, with the exceptions above specified, will be found in the volume of defendants' exhibits.)

Mr. BLAIR. So far as counsel for defendants can see, that is all that we have. Of course the case is not formally closed, and we claim the right, if anything is brought to our attention that we think should go in, to offer it.

Mr. MCCLENNEN. The petitioner puts in evidence the fact that between June 30, 1913, and June 30, 1914, there were declared two regular three per cent dividends on the preferred stock of the Central Pacific Railway Company, amounting, in the aggregate, to $1,044,000, and a six per cent dividend on the common stock of the Central Pacific Railway Company, amounting, in the aggregate, to $4,036,530, and that, in addition to this, a special dividend, referred to by
2558 Mr. Kruttschnitt in his testimony, was declared on December 29, 1913, amounting to twenty per cent on the preferred stock and twenty per cent on the common stock, namely, $16,935,100.

(Whereupon an adjournment was taken, subject to notice, counsel for the defendants announcing that they, as far as they know, have no further testimony, but will give the matter further detailed consideration and formally announce the closing of their testimony hereafter.)

(Counsel for the petitioner stated that it is at present their belief that they will have no rebuttal to offer, but that they reserve the right to give definite notice on that subject after the defendants have definitely rested, it being understood that if nothing is said to the examiner as to further offers by counsel before the first of June, 1915, he may then place upon the record an automatic closing of the case.)

2559 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, et al., defendants.
} In Equity. No. 420.

NEW YORK CITY, *May 29, 1915.*

Stipulation.

Counsel for defendants put in evidence a copy of the lease made March 1, 1912, by and between the Central Pacific Railway Company and the Southern Pacific Company.

Counsel for petitioner, while objecting to the offering of said lease in evidence on the ground that it is immaterial, incompetent, and irrelevant, and should not be taken as evidence of the facts recited in it, yet, subject to said objections, stipulate that the said copy may be put in evidence with the same effect as if it were the original of said lease; and it is

2560 Further stipulated that said offer of evidence will have the same effect as if it were made before the examiner with all parties present.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendants.

(The lease referred to was thereupon marked "Defendants' Exhibit No. 97, May 29, 1915," and will be found in volume 9 of defendants' exhibits.)

2561 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
against
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.
} In Equity. No. 420.

It is stipulated by and between the parties to the above-entitled action that the printed copy of the mortgage of the S[illegible]

Pacific Company to the Union Trust Company of New
2562 York, dated August 1, 1899, to which is prefixed the certificate of John V. B. Thayer, vice president of the Union Trust Company of New York, that said copy is a true copy of the original mortgage, shall be received in evidence in this action without further proof as to its execution and shall have the same force and effect as if the original mortgage had been produced before the examiner and offered in evidence. All objections except as to form of proof are reserved.

Dated, May, 27, 1915.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendant,
Southern Pacific Company and others.
PERRY D. TRAFFORD,
Counsel for Union Trust Company of New York.

(The mortgage referred to was thereupon marked "Defendants' Exhibit No. 98, May 29, 1915," and will be found in volume 9 of defendants' exhibits.)

2563 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *against* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goetlet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.	In Equity. No. 420.

It is stipulated by and between the parties to the above-entitled action that the affidavit of John V. B. Thayer, vice president of
2564 the defendant Union Trust Company of New York, verified the 22nd day of May, 1915, shall be received in evidence in this action and spread upon the minutes and shall have the same force and effect as if the said John V. B. Thayer had appeared personally

before the examiner and had testified orally in the terms of his said affidavit. All objections except as to form of proof are reserved.

Dated, May 27, 1915.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendant,
Southern Pacific Company and others.
PERRY D. TRAFFORD,
Counsel for Union Trust Company of New York.

2565 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *against* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.	In Equity. No. 420.

CITY AND COUNTY OF NEW YORK, *ss.:*

John V. B. Thayer, being duly sworn, deposes and says: That

2566 he is one of the vice presidents of the Union Trust Company of New York, one of the defendants in the above-entitled action.

That on August 1, 1899, a certain mortgage or deed of trust was made by and between the defendant Southern Pacific Company and the Union Trust Company of New York.

That the original of said mortgage or deed of trust is in the possession of the Union Trust Company of New York; that he has compared a printed copy of said mortgage with the said original mortgage; that he has prefixed to said copy a certificate dated May 21, 1915, and signed by him, to the effect that said printed copy is a true copy of the original mortgage, and that the said printed copy is, in fact, a true copy of said mortgage.

That the stock of the Central Pacific Railway Company deposited with the defendant Union Trust Company of New York, as trustee of the said mortgage, consists of certificates of preferred stock to the amount, at its face value, of seventeen million, four hundred thousand dollars ($17,400,000), and certificates of common stock to the amount, at its face value, of sixty-seven million, two hundred seventy-four thousand two hundred dollars ($67,274,200), and that the said
2567 certificates are all assigned in blank with irrevocable power to transfer the same.

That bonds secured by said mortgage have been issued, and that there are now outstanding such bonds secured by the said mortgage to the amount of thirty-four million, two hundred eighteen thousand, five hundred dollars ($34,218,500).

JOHN V. B. THAYER.

Sworn to before me this 22d day of May, 1915.

WILLIAM B. LOERY,
Notary Public, New York County, No. 167,
New York County Register's No. 7079.

Commission expires March 30, 1917.

(Whereupon the hearing in the above-entitled matter was closed.)

×

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19[redacted]1921

No. [redacted]5

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

VOLUME IV.

FILED JULY 20, 1917

(26050)

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 4.

PETITIONER'S EXHIBITS.

Pages 1223 to 1676, inclusive.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 4.

PETITIONER'S EXHIBITS.

Pages 1223 to 1676, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

1 PETITIONER'S EXHIBIT No. 1, SEPTEMBER 21, 1914.

(Map of the United States showing, in purple, the lines of the Central Pacific Railroad Company; in red, the lines operated or controlled by the Southern Pacific Company other than the Central Pacific; and in blue, the lines operated by the Union Pacific Railroad Company. Pursuant to agreement of counsel this map is not to be reproduced in the volume of exhibits.)

2 PETITIONER'S EXHIBIT No. 2, SEPTEMBER 21, 1914.

(U. S. Statutes at Large, vol. 12, pp. 489–498.)

CHAP. CXX.—An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Walter S. Burgess, William P. Blodget, Benjamin H. Cheever, Charles Fosdick Fletcher, of Rhode Island; Augustus Brewster, Henry P. Haven, Cornelius S. Bushnell, Henry Hammond, of Connecticut; Isaac Sherman, Dean Richmond, Royal Phelps, William H. Ferry, Henry A. Paddock, Lewis J. Stancliff, Charles A. Secor, Samuel R. Campbell, Alfred E. Tilton, John Anderson, Azariah Boody, John S. Kennedy, H. Carver, Joseph Field, Benjamin F. Camp, Orville W. Childs, Alexander J. Bergen, Ben Holliday, D. N. Barney, S. De Witt Bloodgood, William H. Grant, Thomas W. Olcott, Samuel B. Ruggles, James B. Wilson, of New York; Ephriam Marsh, Charles M. Harker, of New Jersey; John Edgar Thompson, Benjamin Haywood, Joseph H. Scranton, Joseph Harrison, George W. Cass, John H.
3 Bryant, Daniel J. Morell, Thomas M. Howe, William F. Johnson, Robert Finney, John A. Green, E. R. Myre, Charles F. Wells, junior, of Pennsylvania; Noah L. Wilson, Amasa Stone, William H. Clement, S. S. L'Hommedieu, John Brough, William Dennison, Jacob Blickinsderfer, of Ohio; William M. McPherson, R. W. Wells, William P. Hall, Armstrong Beatty, John Corby, of Missouri; S. J. Hensley, Peter Donahue, C. P. Huntington, T. D.

Judah, James Bailey, James T. Ryan, Charles Hosmer, Charles Marsh, D. O. Mills, Samuel Bell, Louis McLane, George W. Mowe, Charles McLaughlin, Timothy Dame, John R. Robinson, of California; John Atchison and John D. Winters, of the Territory of Nevada; John D. Campbell, R. N. Rice, Charles A. Trowbridge, and Ransom Gardner, Charles W. Penny, Charles T. Gorham, William McConnell, of Michigan; William F. Coolbaugh, Lucius H. Langworthy, Hugh T. Reid, Hoyt Sherman, Lyman Cook, Samuel R. Curtis, Lewis A. Thomas, Platt Smith, of Iowa; William B. Ogden, Charles G. Hammond, Henry Farnum, Amos C. Babcock, W. Seldon Gale, Nehemiah Bushnell, and Lorenzo Bull, of Illinois; William H. Swift, Samuel T. Dana, John Bertram, Franklin S. Stevens, Edward R. Tinker, of Massachusetts; Franklin Gorin, Laban J. Bradford, and John T. Lewis, of Kentucky; James Dunning, John M.
4 Wood, Edwin Noyes, Joseph Eaton, of Maine; Henry H. Baxter, George W. Collamer, Henry Keyes, Thomas H. Canfield, of Vermont; William S. Ladd, A. M. Berry, Benjamin F. Harding, of Oregon; William Bunn, junior, John Catlin, Levi Sterling, John Thompson, Elihu L. Phillips, Walter D. McIndoe. T. B. Stoddard, E. H. Brodhead, A. H. Virgin, of Wisconsin; Charles Paine, Thomas A. Morris, David C. Branham, Samuel Hanna, Jonas Votaw, Jesse L. Williams, Isaac C. Elston, of Indiana; Thomas Swan, Chauncey Brooks, Edward Wilkins, of Maryland; Francis R. E. Cornell, David Blakely, A. D. Seward, Henry A. Swift; Dwight Woodbury, John McKusick, John R. Jones, of Minnesota; Joseph A. Gilmore, Charles W. Woodman, of New Hampshire; W. H. Grimes, J. C. Stone, Chester Thomas, John Kerr, Werter R. Davis, Luther C. Challiss, Josiah Miller, of Kansas; Gilbert C. Monell and Augustus Kountz, T. M. Marquette, William H. Taylor, Alvin Saunders, of Nebraska; John Evans, of Colorado; together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic in deed and in law, by the name, style, and title of "The Union Pacific Railroad Company"; and by
5 that name shall have perpetual succession, and shall be able to sue and to be sued, plead and be impleaded, defend and be defended in all courts of law and equity within the United States, and may make and have a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley

of the Platte River, in the Territory of Nebraska, to the western boundary of Nevada Territory, upon the route and terms hereinafter provided, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one hundred thousand shares of one thousand dollars each, which shall be subscribed for and held in not more than two hundred shares by any one person, and shall be transferable in such manner as the by-laws of said corporation shall provide. The persons hereinbefore named, together with those to be appointed by the Secretary of the Interior, are hereby constituted and appointed commis-
6 sioners, and such body shall be called the board of commissioners of the Union Pacific Railroad and Telegraph Company, and twenty-five shall constitute a quorum for the transaction of business. The first meeting of said board shall be held at Chicago at such time as the commissioners from Illinois herein named shall appoint, not more than three nor less than one month after the passage of this act, notice of which shall be given by them to the other commissioners by depositing a call thereof in the post office at Chicago, post paid, to their address at least forty days before said meeting, and also by publishing said notice in one daily newspaper in each of the cities of Chicago and St. Louis. Said board shall organize by the choice from its number of a president, secretary, and treasurer, and they shall require from said treasurer such bonds as may be deemed proper, and may from time to time increase the amount thereof as they may deem proper. It shall be the duty of said board of commissioners to open books, or cause books to be opened, at such times and in such principal cities in the United States as they or a quorum of them shall determine, to receive subscriptions to the capital stock of said corporation, and a cash pay-
ment of ten per centum on all subscriptions, and to receipt
7 therefor. So soon as two thousand shares shall be in good faith subscribed for, and ten dollars per share actually paid into the treasury of the company the said president and secretary of said board of commissioners shall appoint a time and place for the first meeting of the subscribers to the stock of said company, and shall give notice thereof in at least one newspaper in each State in which subscription books have been opened at least thirty days previous to the day of meeting, and such subscribers as shall attend the meeting so called, either in person or by proxy, shall then and there elect by ballot not less than thirteen directors for said corporation; and in such election each share of said capital shall entitle the owner thereof to one vote. The president and secretary of the board of commissioners shall act as inspectors of said election, and shall certify under their hands the names of the directors elected at said

meeting; and the said commissioners, treasurer, and secretary shall then deliver over to said directors all the properties, subscription books, and other books in their possession, and thereupon the duties of said commissioners and the officers previously appointed by them shall cease and determine forever, and thereafter the stock-
8 holders shall constitute said body politic and corporate. At the time of the first and each triennial election of directors by the stockholders two additional directors shall be appointed by the President of the United States, who shall act with the body of directors, and to be denominated directors on the part of the Government; any vacancy happening in the Government directors at any time may be filled by the President of the United States. The directors to be appointed by the President shall not be stockholders in the Union Pacific Railroad Company. The directors so chosen shall, as soon as may be after their election, elect from their own number a president and vice president, and shall also elect a treasurer and secretary. No person shall be a director in said company unless he shall be a bona fide owner of at least five shares of stock in the said company, except the two directors to be appointed by the President as aforesaid. Said company, at any regular meeting of the stockholders called for that purpose, shall have power to make by-laws, rules, and regulations as they shall deem needful and proper touching the disposition of the stock, property, estate, and effects of the company not inconsistent herewith, the transfer of shares, the term of office, duties and conduct of their officers and servants, and all matters whatsoever which may appertain to the concerns of
9 said company; and the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of this act, and to do all acts and things touching the location and construction of said road and telegraph. Said directors may require payment of subscriptions to the capital stock after due notice, at such times and in such proportions as they shall deem necessary to complete the railroad and telegraph within the time in this act prescribed. Said president, vice president, and directors shall hold their office for three years, and until their successors are duly elected and qualified, or for such less time as the by-laws of the corporation may prescribe; and a majority of said directors shall constitute a quorum for the transaction of business. The secretary and treasurer shall give such bonds, with such security, as the said board shall from time to time require, and shall hold their offices at the will and pleasure of the directors. Annual meetings of the stockholders of the said corporation for the choice of officers (when they are to be chosen) and for the transaction of annual business shall be hold

at such time and place and upon such notice as may be prescribed in the by-laws.

10 SEC. 2. And be it further enacted, That the right of way through the public lands be, and the same is hereby, granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other materials for the construction thereof; said right of way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, and depots, machine shops, switches, side tracks, turntables, and water stations. The United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act and required for the said right of way and grants hereinafter made.

SEC. 3. And be it further enacted, That there be, and is hereby, granted to the said company, for the purpose of aiding in the construction of said railroad and telegraph line and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate

11 sections per mile on each side of said railroad, on the line thereof and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed: Provided, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands so granted by this section which shall not be sold or disposed of by said company within three years after the entire road shall have been completed shall be subject to settlement and preemption like other lands at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

SEC. 4. And be it further enacted, That whenever said company shall have completed forty consecutive miles of any portion of said railroad and telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, the rails and all the other iron used in the construction

12 and equipment of said road to be American manufacture of the best quality, the President of the United States shall appoint three commissioners to examine the same and report to him in

relation thereto; and if it shall appear to him that forty consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said railroad and telegraph line are completed, upon certificate of said commissioners. Any vacancies occurring in said board of commissioners by death, resignation, or otherwise shall be filled by the President of the United States: Provided, however, That no such commissioners shall be appointed by the President of the United States unless there shall be presented to him a statement, verified on oath by the president of said company that such forty miles have been completed, in the manner required by this act, and setting forth with certainty the points where such forty miles begin and where the same end; which oath shall be taken before a
13 judge of a court of record.

SEC. 5. And be it further enacted, That for the purposes herein mentioned the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest (said interest payable semiannually), which interest may be paid in United States Treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property of every kind and description, and
14 in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury for the use and benefit of the U[illegible]

States: Provided, This section shall not apply to that part of any road now constructed.

SEC. 6. And be it further enacted, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit despatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all compensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid. Said company may also pay the United States, wholly or in part, in the same or other bonds, Treasury notes, or other evidences of debt against the United States, to be allowed at par; and after said road is completed, until said bonds and interest are paid, at least five per centum of the net earnings of said road shall also be annually applied to the payment thereof.

SEC. 7. And be it further enacted, That said company shall file their assent to this act, under the seal of said company, in the Department of the Interior, within one year after the passage of this act, and shall complete said railroad and telegraph from the point of beginning as herein provided, to the western boundary of Nevada Territory before the first day of July, one thousand eight hundred and seventy-four: Provided, That within two years after the passage of this act said company shall designate the general route of said road, as near as may be, and shall file a map of the same in the Department of the Interior, whereupon the Secretary of the Interior shall cause the lands within fifteen miles of said designated route or routes to be withdrawn from preemption, private entry, and sale; and when any portion of said route shall be finally located, the Secretary of the Interior shall cause the said lands hereinbefore granted to be surveyed and set off as fast as may be necessary for the purposes herein named: Provided, That in fixing the point of connection of the main trunk with the eastern connections, it shall be fixed at the most practicable point for the construction of the Iowa and Missouri branches, as hereinafter provided.

SEC. 8. And be it further enacted, That the line of said railroad and telegraph shall commence at a point on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of

the valley of the Platte River, in the Territory of Nebraska, at a point to be fixed by the President of the United States, after actual surveys; thence running westerly upon the most direct, central, and practicable route through the territories of the United States to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

SEC. 9. And be it further enacted, That the Leavenworth,
17 Pawnee, and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line from the Missouri River, at the mouth of the Kansas River on the south side thereof, so as to connect with the Pacific Railroad of Missouri to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid; and in case the general route or line of road from the Missouri River to the Rocky Mountains should be so located as to require a departure northwardly from the proposed line of said Kansas railroad before it reaches the meridian of longitude aforesaid, the location of said Kansas road shall be made so as to conform thereto; and said railroad through Kansas shall be so located between the mouth of the Kansas River, as aforesaid and the aforesaid point, on the one hundredth meridian of longitude, that the several railroads from Missouri and Iowa, herein authorized to connect with the same, can make connection within the limits prescribed in this act, provided the same can be done without deviating from the general direction of
18 the whole line to the Pacific coast. The route in Kansas west of the meridian of Fort Riley to the aforesaid point, on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States and to be determined by him on actual survey. And said Kansas company may proceed to build said railroad to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, in the Territory of Nebraska. The Central Pacific Railroad Company of California, a corporation existing under the laws of the State of California, are hereby authorized to construct a railroad and telegraph line from the Pacific coast at or near San Francisco or the navigable waters of the Sacramento River to the eastern boundary of California upon the same terms and conditions in all respects as are contained in this act for the construction of said railroad and telegraph line first mentioned, and to meet and connect with the first-mentioned railroad and telegraph line on the eastern boundary of California. Each of said companies shall

file their acceptance of the conditions of this act in the Department of the Interior within six months after the passage of this act.

SEC. 10. And be it further enacted, That the said company
19 chartered by the State of Kansas shall complete one hundred miles of their said road, commencing at the mouth of the Kansas River, as aforesaid, within two years after filing their assent to the conditions of this act, as herein provided, and one hundred miles per year thereafter until the whole is completed; and the said Central Pacific Railroad Company of California shall complete fifty miles of their said road within two years after filing their assent to the provisions of this act, as herein provided, and fifty miles per year thereafter until the whole is completed; and after completing their roads, respectively, said companies, or either of them, may unite upon equal terms with the first-named company in constructing so much of said railroad and telegraph line and branch railroads and telegraph lines in this act hereinafter mentioned through the Territories from the State of California to the Missouri River as shall then remain to be constructed on the same terms and conditions as provided in this act in relation to the said Union Pacific Railroad Company. And the Hannibal and St. Joseph Railroad, the Pacific Railroad Company of Missouri, and the first-named company, or either of them, on filing their assent to this act, as aforesaid, may unite upon equal terms under this act with the said Kansas
20 company in constructing said railroad and telegraph to said meridian of longitude, with the consent of the said State of Kansas; and in case said first-named company shall complete their line to the eastern boundary of California before it is completed across said State by the Central Pacific Railroad Company of California, said first-named company is hereby authorized to continue in constructing the same through California, with the consent of said State, upon the terms mentioned in this act, until said roads shall meet and connect and the whole line of said railroad and telegraph is completed; and the Central Pacific Railroad Company of California, after completing its road across said State, is authorized to continue the construction of said railroad and telegraph through the Territories of the United States to the Missouri River, including the branch roads specified in this act, upon the routes hereinbefore and hereinafter indicated, on the terms and conditions provided in this act in relation to the said Union Pacific Railroad Company, until said roads shall meet and connect and the whole line of said railroad and branches and telegraph is completed.

SEC. 11. And be it further enacted, That for three hundred miles of said road, most mountainous and difficult of construction, to wit: one hundred and fifty miles westwardly from the eastern base

of the Rocky Mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada Mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the construction thereof shall be treble the number per mile hereinbefore provided, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed; and between the sections last named of one hundred and fifty miles each, the bonds to be issued to aid in the construction thereof shall be double the number per mile first mentioned, and the same shall be issued, and the lands herein granted be set apart, upon the construction of every twenty miles thereof, upon the certificate of the commissioners as aforesaid that twenty consecutive miles of the same are completed: Provided, That no more than fifty thousand of said bonds shall be issued under this act to aid in constructing the main line of said railroad and telegraph.

SEC. 12. And be it further enacted, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber, and all materials required for constructing and furnishing said first mentioned line between the aforesaid point, on the one-hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named company, at cost, over that portion of the roads of said companies constructed under the provisions of this act.

SEC. 13. And be it further enacted, That the Hannibal and Saint Joseph Railroad Company of Missouri may extend its roads f

Saint Joseph, via Atchison, to connect and unite with the road through Kansas, upon filing its assent to the provisions of this act, upon the same terms and conditions in all respects, for one hundred miles in length next to the Missouri River, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and may for this purpose use any railroad charter which has been or may be granted by the Legislature of Kansas: Provided, That if actual survey shall render it desirable, the said company may construct their road, with the consent of the Kansas Legislature, on the most direct and practicable route west from St. Joseph, Missouri, so as to connect and unite with the road leading from the western boundary of Iowa at any point east of the one hundredth meridian of west longitude or with the main trunk road at said point; but in no event shall lands or bonds be given to said company, as herein directed, to aid in the construction of their said road for a greater distance than one hundred miles. And the Leavenworth, Pawnee and Western Railroad Company of Kansas may construct their road from Leavenworth to unite with the road through Kansas.

SEC. 14. And be it further enacted, That the said Union Pacific Railroad Company is hereby authorized and required to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, upon the most direct and practicable route, to be subject to his approval, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa, upon the same terms and conditions in all respects as are contained in this act for the construction of the said railroad and telegraph first mentioned; and the said Union Pacific Railroad Company shall complete one hundred miles of the road and telegraph in this section provided for in two years after filing their assent to the conditions of this act, as by the terms of this act required, and at the rate of one hundred miles per year thereafter until the whole is completed: Provided, That a failure upon the part of said company to make said connection in the time aforesaid and to perform the obligations imposed on said company by this section and to operate said road in the same manner as the main line shall be operated shall forfeit to the Government of the United States all the rights, privileges, and franchises granted to and conferred upon said company by this act. And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to

a point on and so as to connect with the branch railroad and telegraph in this section hereinbefore mentioned or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned.

26 SEC. 15. And be it further enacted, That any other railroad company now incorporate, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words, their associates, successors, and assigns, the same as if the words had been properly added thereto.

SEC. 16. And be it further enacted, That at any time after the passage of this act all of the railroad companies named herein, and assenting hereto, or any two or more of them, are authorized to form themselves into one consolidated company; notice of such consolidation, in writing, shall be filed in the Department of the Interior, and such consolidated company shall thereafter proceed to construct said railroad and branches and telegraph line upon the terms and conditions provided in this act.

SEC. 17. And be it further enacted, That in case said company or companies shall fail to comply with the terms and conditions of this act, by not completing said road and telegraph and branches within a reasonable time, or by not keeping the same in repair and use,

27 but shall permit the same, for an unreasonable time, to remain unfinished or out of repair and unfit for use, Congress may pass any act to insure the speedy completion of said road and branches, or put the same in repair and use, and may direct the income of said railroad and telegraph line to be thereafter devoted to the use of the United States, to repay all such expenditures caused by the default or neglect of such company or companies: Provided, That is, said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock

machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States: Provided, That of the bonds of the United States in this act provided to be delivered for any and all parts of the roads to be constructed east of the one hundredth meridian of west longitude from Greenwich, and for any part of the road west of the west foot of the Sierra Nevada Mountain, there shall be reserved of each part and installment twenty-five
28 per centum, to be and remain in the United States Treasury, undelivered, until said road and all parts thereof provided for in this act are entirely completed; and of all the bonds provided to be delivered for the said road, between the two points aforesaid, there shall be reserved out of each installment fifteen per centum, to be and remain in the Treasury until the whole of the road provided for in this act is fully completed; and if the said road or any part thereof shall fail of completion at the time limited therefor in this act, then and in that case the said part of said bonds so reserved shall be forfeited to the United States.

SEC. 18. And be it further enacted, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon,
29 if unreasonable in amount, and may fix and establish the same by law. And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

SEC. 19. And be it further enacted, That the several railroad companies herein named are authorized to enter into an arrangement with the Pacific Telegraph Company, the Overland Telegraph Company, and the California State Telegraph Company, so that the present line of telegraph between the Missouri River and San Francisco may be moved upon or along the line of said railroad and branches as fast as said roads and branches are built; and if said arrangement be entered into and the transfer of said telegraph line be made in accordance therewith to the line of said railroad and branches, such transfer shall, for all purposes of this act, be held and considered a fulfillment on the part of said railroad companies of

the provisions of this act in regard to the construction of
30 said lines of telegraph. And, in case of disagreement, said telegraph companies are authorized to remove their line of telegraph along and upon the line of railroad herein contemplated without prejudice to the rights of said railroad companies named herein.

SEC. 20. And be it further enacted, That the corporation hereby created and the roads connected therewith, under the provisions of this act, shall make to the Secretary of the Treasury an annual report wherein shall be set forth—

First. The names of the stockholders and their places of residence, so far as the same can be ascertained;

Second. The names and residences of the directors and all other officers of the company;

Third. The amount of stock subscribed and the amount thereof actually paid in;

Fourth. A description of the lines of road surveyed, of the lines thereof fixed upon for the construction of the road, and the cost of such surveys;

Fifth. The amount received from passengers on the road;

Sixth. The amount received for freight thereon;

Seventh. A statement of the expense of said road and its fixtures;

31 Eighth. A statement of the indebtedness of said company, setting forth the various kinds thereof, which report shall be sworn to by the president of the said company, and shall be presented to the Secretary of the Treasury on or before the first day of July in each year.

Approved July 1, 1862.

32 PETITIONER'S EXHIBIT NO. 3, SEPTEMBER 21, 1914.

[Extract from U. S. Statutes at Large, volume 13, pp. 356-365.]

CHAP. CCXVI.—An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the capital stock of the company entitled the Union Pacific Railroad Company, authorized by the act of which this act is amendatory, shall be in shares of one hundred dollars, instead of one thousand dollars, each;

that the number of shares shall be one million instead of one hundred thousand; and that the number of shares which any person shall hold to entitle him to serve as a director in said company (except the five directors to be appointed by Government) shall be fifty shares instead of five shares; and that every subscriber to said capital stock for each share of one thousand dollars, heretofore subscribed, shall be entitled to a certificate for ten shares of one hundred dollars each; and that the following words in section first of said act, "which shall be subscribed for and held in not more than two hundred shares by any one person", be, and the same are hereby, repealed.

SEC. 2. And be it further enacted, That the Union Pacific Railroad Company shall cause books to be kept open to receive subscriptions to the capital stock of said company (until the entire capital of one hundred millions of dollars shall be subscribed), at the general office of said company in the city of New York, and in each of the cities of Boston, Philadelphia, Baltimore, Chicago, Cincinnati, and Saint Louis, at such places as may be designated by the President of the United States, and in such other localities as may be directed by him. No subscription for said stock shall be deemed valid unless the subscriber therefor shall, at the time of subscribing, pay or remit to the treasurer of the company an amount per share subscribed by him equal to the amount per share previously paid by the then existing stockholders. The said company shall make assessments upon its stockholders of not less than five dollars per share, and at intervals of not exceeding six months from and after the passage of this act, until the par value of all shares subscribed shall be fully paid; and money only shall be receivable for any such assessment, or as equivalents for any portion of the capital stock hereinbefore authorized. The capital stock of said company shall not be increased beyond the actual cost of said road. And the stock of the company shall be deemed personal property, and shall be transferable on the books of the company, at the general office of said company in the city of New York, or at such other transfer office as the company may establish.

SEC. 3. And be it further enacted, That the Union Pacific Railroad Company, and all other companies provided for in this act and the act to which this is an amendment, be, and hereby are, empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, de-

pots, station house(s), or any other structures required in the construction and operating of said road. And each of said companies shall have the right to cut and remove trees or other materials that might by falling encumber its roadbed, though standing or
35 being more than one hundred feet therefrom. And in case the owner or claimant of such lands or premises and such company can not agree as to the damages, the amount shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by any party to any judge of a court of record in any of the territories in which the lands or premises to be taken lie; and said commissioners, in their assessments of damages, shall appraise such premises at what would have been the value thereof if the road had not been built; and upon return into court of such appraisement, and upon the payment to the clerk thereof of the amount so awarded by the commissioners for the use and benefit of the owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved by said assessment may, within thirty days, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary in the construction of its road. And said party appealing shall give bonds with sufficient surety or sureties for the payment of any
36 costs that may arise upon such appeal. And in case the party appealing does not obtain a more favorable verdict, such party shall pay the whole cost incurred by the appellee, as well as its own. And the payment into court for the use of the owner or claimant of a sum equal to that finally awarded shall be held to vest in said company the title of said land and the right to use and occupy the same for the construction, maintaining, and operating of the road of said company. And in case any of the lands to be taken as aforesaid shall be held by any person residing without the territory, or subject to any legal disability, the court may appoint a proper person who shall give bonds with sufficient surety or sureties for the faithful execution of his trust, and who may represent in court the person disqualified or absent as aforesaid, when the same proceeding shall be had in reference to the appraisement of the premises to be taken and with the same effect as have been already described. And the title of the company to the land taken by virtue of this act shall not be affected nor impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case it shall be necessary for either of the said companies to enter upon lands which are unoccupied, and of which there is no apparent owner or
37 claimant, it may proceed to take and use the same for the purpose of its said railroad, and may institute

in manner described for the purpose of ascertaining the value of and acquiring a title to the same; and the court may determine the kind of notice to be served on such owner or owners, and may, in its discretion, appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or nonappearance. But in case no claimant shall appear within six years from the time of the opening of said road across any land, all claim to damages against said company shall be barred. It shall be competent for the legal guardian of any infant, or any other person under guardianship, to agree with the proper company as to damages sustained by reason of the taking of any lands of any such person under disability as aforesaid for the use as aforesaid; and upon such agreement being made and approved by the court having supervision of the official acts of said guardian, the said guardian shall have full power to make and execute a conveyance thereof to the said company and shall vest the title thereto in the said company.

SEC. 4. And be it further enacted, That section three of said act be hereby amended by striking out the word "five", where it the same occurs in said section, and by inserting in lieu thereof the word "ten"; and by striking out the word "ten", where the same occurs in said section, and by inserting in lieu thereof the word "twenty". And section seven of said act is hereby amended by striking out the word "fifteen", where the same occurs in said section, and inserting in lieu thereof the word "twenty-five". And the term "mineral land", wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any preemption, homestead, swamp land, or other lawful claim, nor include any Government reservation or mineral lands, or the improvements of any bona fide settler, or any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturalist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office in conformity with the provisions of the preemption laws: Provided, That the quantity thus exempted by the operation of this act, and the act to which this act is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agriculturalist, and such quantity for each settler who claims as a miner, as the same commissioner may establish by general regulation: Provided also, That the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company", in the proviso to said section three, shall not apply to the timber growing or being on any land farther than [illegible] miles from the center line of any one of said roads or branches

mentioned in said act or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this act is an amendment, which were located, or selected to be located, under the provisions of an act entitled "An act donating lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts", approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land office.

SEC. 5. And be it further enacted, That the time for designating the general route of said railroad, and of filing the map of the same, and the time for the completion of that part of the railroads required by the terms of said act of each company, be, and the same is hereby, extended one year from the time in said act designated; and that the Central Pacific Railroad Company of California shall be required to complete twenty-five miles of their said road in each
40 year thereafter, and the whole to the State line within four years, and that only one-half of the compensation for services rendered for the Government by said companies shall be required to be applied to the payment of the bonds issued by the Government in aid of the construction of said roads.

SEC. 6. And be it further enacted, That the proviso to section four of said act is hereby modified as follows, viz.: And the President of the United States is hereby authorized, at any time after the passage of this act, to appoint for each and every of said roads three commissioners, as provided for in the act to which this is amendatory; and the verified statement of the president of the California company, required by said section four, shall be filed in the office of the United States surveyor-general for the State of California, instead of being presented to the President of the United States; and the said surveyor-general shall thereupon notify the said commissioners of the filing of such statement, and the said commissioners shall thereupon proceed to examine the portion of said railroad and telegraph line so completed, and make their report thereon to the President of the United States, as provided by the act of which this is amendatory. And such statement may be filed, and such rail-
41 road and telegraph line be examined and reported on, by the said commissioners and the requisite amount of bonds may be issued and the lands appertaining thereto may be set apart, located, entered, and patented, as provided in this act and the act to which this is amendatory, upon the construction by said railroad company of California of any portion of not less than twenty consecutive miles of their said railroad and telegraph line, upon the certificate of said commissioners that such portion is completed as required by the act to which this is amendatory. And section ten of the act of

which this is amendatory is hereby amended by inserting, after the words "United States", in the last clause, the words "and States intervening".

SEC. 7. And be it further enacted, That so much of section seventeen of said act as provides for a reservation by the Government of a portion of the bonds to be issued to aid in the construction of the said railroads is hereby repealed. And the failure of any one company to comply fully with the conditions and requirements of this act, and the act to which this is amendatory, shall not work a forfeiture of the rights, privileges, or franchise of any other company or companies that shall have complied with the same.

SEC. 8. And be it further enacted, That for the purpose of facilitating the work on said railroad, and of enabling the said company as early as practicable to commence the grading of said railroad in the region of the mountains, between the eastern base of the Rocky Mountains and the western base of the Sierra Nevada Mountains, so that the same may be finally completed within the time required by law, it is hereby provided that whenever the chief engineer of the said company, and said commissioners, shall certify that a certain proportion of the work required to prepare the road for the superstructure on any such section of twenty miles is done (which said certificate shall be duly verified), the Secretary of the Treasury is hereby authorized and required, upon the delivery of such certificate, to issue to said company a proportion of said bonds, not exceeding two-thirds of the amount of bonds authorized to be issued under the provisions of the act, to aid in the construction of such section of twenty miles, nor in any case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section is fully completed and certified by the commissioners appointed by the President, according to the terms and provisions of the said act; and no such bonds shall issue to the Union Pacific Railroad Company for work done west of Salt Lake City under this section, more than three hundred miles in advance of the completed continuous line of said railroad from the point of beginning on the one hundredth meridian of longitude.

SEC. 9. And be it further enacted, That to enable any one of said corporations to make convenient and necessary connections with other roads, it is hereby authorized to establish and maintain all necessary ferries upon and across the Missouri River and other rivers which its road may pass in its course; and authority is hereby given said corporation to construct bridges over said Missouri River, and all other rivers for the convenience of said road: Provided, That any bridge or bridges it may construct over the Missouri River, or any other navigable river on the line of said road, shall be constructed with suitable and proper draws for the passage of steamboats, and

shall be built, kept, and maintained at the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do: And provided further, That any company authorized by this act to construct its road and telegraph line from the Missouri River to the initial point aforesaid may
44 construct its road and telegraph line so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits, and be subject to all the conditions and restrictions, of this act: Provided further, however, That the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided, if the same had united with the Union Pacific Railroad on the 100th degree of longitude; nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided.

SEC. 10. And be it further enacted, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company, and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph
45 lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies, respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property, and equipments, except as to the provisions of the sixth section of the act to which this act is an amendment, relating to the transmission of despatches and the transportation of mails, troops, munitions of war, supplies, and public stores for the Government of the United States. And said section is further amended by striking out the word "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty".

SEC. 11. And be it further enacted, That if any of the railroad companies entitled to bonds of the United States, or to issue their first mortgage bonds herein provided for has, at the time of the ap[illegible]

of this act issued, or shall thereafter issue, any of its own bonds or securities in such form or manner as in law or equity to entitle the same to priority or preference of payment to the said guaranteed bonds, or said first mortgage bonds, the amount of such corporate bonds outstanding and unsatisfied, or uncancelled, shall be deducted from the amount of such Government and first mortgage bonds which the company may be entitled to receive and issue; and such an amount only of such Government bonds and such first mortgage bonds shall be granted or permitted as, added to such outstanding, unsatisfied, or uncancelled bonds of the company, shall make up the whole amount per mile to which the company would otherwise have been entitled: And provided further, That before any bonds shall be so given by the United States, the company claiming them shall present to the Secretary of the Treasury an affidavit of the president and secretary of the company, to be sworn to before the judge of a court of record, setting forth whether said company has issued any such bonds or securities, and, if so, particularly describing the same, and such other evidence as the secretary may require, so as to enable him to make the deduction herein required; and such affidavit shall then be filed and deposited in the office of the Secretary of the Interior. And any person swearing falsely to any such affidavit shall be deemed guilty of perjury and, on conviction thereof, shall be punished as aforesaid: Provided, also, That no land granted by this act shall be conveyed to any party or parties, and no bonds shall be issued to any company or companies, party or parties, on account of any road or part thereof, made prior to the passage of the act to which this act is an amendment, or made subsequent thereto under the provisions of any act or acts other than this act and the act amended by this act.

SEC. 12. And be it further enacted, That the Leavenworth, Pawnee, and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall build the railroad from the mouth of Kansas River by the way of Leavenworth or, if that be not deemed the best route, then the said company shall, within two years, build a railroad from the city of Leavenworth to unite with the main stem at or near the city of Lawrence; but to aid in the construction of said branch the said company shall not be entitled to any bonds. And if the Union Pacific Railroad Company shall not be proceeding in good faith to build the said railroad through the territories when the Leavenworth, Pawnee, and Western Railroad Company, now known as the Union Pacific Railroad Company, eastern division, shall have completed their road to the hundredth degree of longitude, then the last-named company may proceed to make said road westward until it meets and connects with the Central Pacific Railroad Company on the same line. And the said

railroad from the mouth of Kansas River to the one hundredth meridian of longitude shall be made by the way of Lawrence and Topeka or on the bank of the Kansas River opposite said towns: Provided, That no bonds shall be issued or land certified by the United States to any person or company for the construction of any part of the main trunk line of said railroad west of the one hundredth meridian of longitude and east of the Rocky Mountains until said road shall be completed from or near Omaha on the Missouri River to the said one hundredth meridian of longitude.

SEC. 13. And be it further enacted, That at and after the next election of directors the number of directors to be elected by the stockholders shall be fifteen; and the number of directors to be appointed by the President shall be five; and the President shall appoint three additional directors to serve until the next regular election, and thereafter five directors. At least one of said Government directors shall be placed on each of the standing committees of said company and at least one on every special committee that may be appointed. The Government directors shall, from time to time, report to the Secretary of the Interior, in answer to any inquiries he may
49 make of them, touching the condition, management, and progress of the work, and shall communicate to the Secretary of the Interior at any time such information as should be in the possession of the department. They shall, as often as may be necessary to a full knowledge of the condition and management of the line, visit all portions of the line of road, whether built or surveyed; and while absent from home attending to their duties as directors shall be paid their actual travelling expenses and be allowed and paid such reasonable compensation for their time actually employed as the board of directors may decide.

SEC. 14. And be it further enacted, That the next election for directors of said railroad shall be held on the first Wednesday of October next, at the office of said company in the city of New York, between the hours of ten o'clock a. m. and four o'clock p. m. of said day; and all subsequent regular elections shall be held annually thereafter at the same place; and the directors shall hold their offices for one year, and until their successors are qualified.

SEC. 15. And be it further enacted, That the several companies authorized to construct the aforesaid roads are hereby required
50 to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or busine[illegible]

or either of the others, and it shall not be lawful for the proprietors of any line of telegraph authorized by this act or the act amended by this act to refuse or fail to convey for all persons requiring the transmission of news and messages of like character on pain of forfeiting to the person injured for each offence the sum of one hundred dollars and such other damage as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States or of any State or Territory of competent jurisdiction.

SEC. 16. And be it further enacted, That any two or more of the companies authorized to participate in the benefits of this act are hereby authorized at any time to unite and consolidate their organizations, as the same may or shall be, upon such terms and conditions, and in such manner as they may agree upon, and as shall not be incompatible with this act or the laws of the State or States in which the roads of such companies may be, and to assume and adopt such corporate name and style as they may agree upon, with a capital stock not to exceed the actual cost of the roads so to be consolidated, and shall file a copy of such consolidation in the Department of the Interior; and thereupon such organization so formed and consolidated shall succeed to, possess, and be entitled to receive from the Government of the United States all and singular the grants, benefits, immunities, guarantees, acts, and things to be done and performed, and be subject to the same terms, conditions, restrictions, and requirements which said companies respectively, at the time of such consolidation, are or may be entitled or subject to under this act, in place and substitution of said companies so consolidated, respectively. And all other provisions of this act, so far as applicable, relating or in any manner appertaining to the companies so consolidated, or either thereof, shall apply and be of force as to such consolidated organization. And in case upon the completion by such consolidated organization of the roads, or either of them, of the companies so consolidated, any other of the road or roads of either of the other companies authorized as aforesaid (and forming or intended or necessary to form a portion of a continuous line from each of the several points on the Missouri River hereinbefore designated to the Pacific coast) shall not have constructed the number of miles of its said road within the time herein required, such consolidated organization is hereby authorized to continue the construction of its road and telegraph in the general direction and route upon which such incomplete or unconstructed road is hereinbefore authorized to be built until such continuation of the road of such consolidated organization shall reach the constructed road and telegraph of said other company, and at such point to connect and unite therewith; and for and in aid

thereof the said consolidated organization may do and perform, in reference to such portion of road and telegraph as shall so be in continuation of its constructed road and telegraph, and to the construction and equipment thereof, all and singular, the several acts and things hereinbefore provided, authorized, or granted to be done by the company herinbefore authorized to construct and equip the same, and shall be entitled to similar and like grants, benefits, immunities, guarantees, acts, and things to be done and performed by the Government of the United States, by the President of the United States, by the Secretaries of the Treasury and Interior, and by
53 commissioners in reference to such company, and to such portion of the road hereinbefore authorized to be constructed by it, and upon the like and similar terms and conditions, so far as the same are applicable thereto. And said consolidated company shall pay to said defaulting company the value to be estimated by competent engineers of all the work done and material furnished by said defaulting company, which may be adopted and used by said consolidated company in the progress of the work under the provisions of this section: Provided, nevertheless, That said defaulting company may at any time, before receiving pay for its said work and material, as hereinbefore provided, on its own election, pay said consolidated company the value of the work done and material furnished by said consolidated company, to be estimated by competent engineers, necessary for and used in the construction of the road of said defaulting company, and resume the control of its said road; and all the rights, benefits, and privileges which shall be acquired, possessed, or exercised pursuant to this section shall be to that extent an abatement of the rights, benefits, and privileges hereinbefore granted to such other company. And in case any company authorized thereto shall not enter into such consolidated organization, such company, upon the completion of its road as hereinbefore pro-
54 vided, shall be entitled to, and is hereby authorized to, continue and extend the same under the circumstances and in accordance with the provisions of this section, and to have all the benefits thereof, as fully and completely as are herein provided touching such consolidated organization. And in case more than one such consolidated organization shall be made pursuant to this act, the terms and conditions of this act hereinbefore recited as to one shall apply in like manner, force, and effect to the other: Provided, however, That rights and interests at any time acquired by one such consolidated organization shall not be impaired by another thereof. It is further provided that, should the Central Pacific Railroad Company of California complete their line to the eastern line of the State of California before the line of the Union Pacific Railroad Company shall have been extended westward so as to meet the

of said first-named company, said first-named company may extend their line of road eastward one hundred and fifty miles on the established route so as to meet and connect with the line of the Union Pacific road, complying in all respects with the provisions and restrictions of this act as to said Union Pacific road, and upon doing so shall enjoy all the rights, privileges, and benefits conferred by this act on said Union Pacific Railroad Company.

SEC. 17. And be it further enacted, That so much of section fourteen of said act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa or Minnesota to Sioux City, such company, now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska as the President of the United States, by its request, may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route, to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act to which this is an amendment, for the construction of the said Union and Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year: Provided, That said Union Pacific Railroad Company shall be, and is hereby, released from the construction of said branch. And said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch: And provided further, That if a railroad should not be completed to Sioux City, across Iowa or Minnesota, within eighteen months from the date of this act, then said company designated by the President, as aforesaid, may commence, continue, and complete the construction of said branch as contemplated by the provisions of this act: Provided, however, That if the said company so designated by the President as aforesaid shall not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act, then, and in that case, all of the railroad which shall have been constructed by said company shall be forfeited to, and become the property of, the United States.

SEC. 18. And be it further enacted, That the Burlington and Missouri River Railroad Company, a corporation organized under and by virtue of the laws of the State of Iowa, be, and hereby is, author-

ized to extend i[t]s road through the Territory of Nebraska from the point where it strikes the Missouri River, south of the mouth
57 of the Platte River, to some point not further west than the one-hundredth meridian of west longitude, so as to connect by the most practicable route with the main trunk of the Union Pacific Railroad, or that part of it which runs from Omaha to the said one-hundredth meridian of west longitude. And, for the purpose of enabling said Burlington and Missouri River Railroad Company to construct that portion of their road herein authorized, the right of way through the public lands is hereby granted to said company for the construction of said road. And the right, power, and authority is hereby given to said company to take from the public lands adjacent to the line of said road earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet where it may pass over the public lands, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side-tracks, turntables, and water stations. And the United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this section and required for the said right of way and grant of land herein made.

SEC. 19. And be it further enacted, That for the purpose
58 of aid in the construction of said road there be, and hereby is, granted to the said Burlington and Missouri River Railroad Company every alternate section of public land (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed: Provided, That said company shall accept this grant within one year from the passage of this act, by filing such acceptance with the Secretary of the Interior, and shall also establish the line of said road and file a map thereof with the Secretary of the Interior within one year of the date of said acceptance, when the said Secretary shall withdraw the lands embraced in this grant from market.

SEC. 20. And be it further enacted, That whenever said Burlington and Missouri River Railroad Company shall have completed twenty consecutive miles of the road mentioned in the foregoing section, in the manner provided for other roads mentioned in this act and the act to which this is an amendment, the President of the United States shall appoint three commissioners to examine
59 and report to him in relation thereto; and if it shall appear

him that twenty miles of said road have been completed, as required by this act, then, upon certificate of said commissioner(s) to that effect, patents shall issue conveying the right and title to said lands to said company on each side of said road, as far as the same is completed, to the amount aforesaid; and such examination, report, and conveyance, by patents, shall continue from time to time in like manner until said road shall have been completed. And the President shall appoint said commissioners, fill vacancies in said commission, as provided in relation to other roads mentioned in the act to which this is an amendment. And the said company shall be entitled to all the privileges and immunities granted to the Hannibal and Saint Joseph's Railroad Company by the said last-mentioned act, so far as the same may be applicable: Provided, That no Government bonds shall be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road: And provided further, That said extension shall be completed within the period of ten years from the passage of this act.

SEC. 21. And be it further enacted, That before any land granted by this act shall be conveyed to any company or party entitled to thereto under this act, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same, by the said company or party in interest, as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the Commissioner of the General Land Office for the prosecution of the survey of the public lands along the line of said road, and so from year to year until the whole shall be completed as provided under the provisions of this act.

SEC. 22. And be it further enacted, That Congress may at any time alter, amend, or repeal this act.

Approved July 2, 1864.

61 PETITIONER'S EXHIBIT No. 4, SEPTEMBER 21, 1914.

[Extract from U. S. Statutes at Large, volume 13, page 504.]

CHAP. LXXXVIII.—An act to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and to amend an act amendatory thereof, approved July second, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section ten of

said act of July second, eighteen hundred and sixty-four, be so modified and amended as to allow the Central Pacific Railroad Company and the Western Pacific Railroad Company, of California; the Union Pacific Railroad Company; the Union Pacific Railroad Company, eastern division; and all other companies provided for in the said act of the second of July, eighteen hundred and sixty-four, to issue their six per centum thirty years' bonds, interest payable in any lawful money of the United States, upon their separate roads.

62 And the same companies are hereby authorized to issue, respectively, their bonds to the extent of one hundred miles in advance of a continuous completed line of construction.

SEC. 2. And be it further enacted, That the assignment made by the Central Pacific Railroad Company of California to the Western Pacific Railroad Company of said State of the right to construct all that portion of said railroad and telegraph from the city of San Jose to the city of Sacramento is hereby ratified and confirmed to the said Western Pacific Railroad Company, with all the privileges and benefits of the several acts of Congress relating thereto and subject to all the conditions thereof: Provided, That the time within which the said Western Pacific Railroad Company shall be required to construct the first twenty miles of their said road shall be one year from the first day of July, eighteen hundred and sixty-five, and that the entire road shall be completed from San Jose to Sacramento, connecting at the latter point with the said Central Pacific Railroad, within four years thereafter.

Approved, March 3, 1865.

63 PETITIONER'S EXHIBIT No. 5, SEPTEMBER 21, 1914.

[14 Statutes at Large, pp. 79, 80.]

CHAP. CLIX.—An act to amend an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862," approved July 2, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Union Pacific Railway Company, eastern division, is hereby authorized to designate the general route of their said road and to file a map thereof, as now required by law, at any time before the first day of December, eighteen hundred and sixty-six; and upon the filing of the said map, showing the general route of said road, the lands along

the entire line thereof, so far as the same may be designated, shall be reserved from sale by order of the Secretary of the Interior: Provided, That said company shall be entitled to only the same amount of the bonds of the United States to aid in the construction of their line of railroad and telegraph as they would have been entitled to if they had connected their said line with the Union Pacific Railroad on the one hundredth degree of longitude as now required by law: And provided further, That said company shall connect their line of railroad and telegraph with the Union Pacific Railroad, but not at a point more than fifty miles westwardly from the meridian of Denver in Colorado.

SEC. 2. And be it further enacted, That the Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, are hereby authorized to locate, construct, and continue their road from Omaha, in Nebraska Territory, westward, according to the best and most practicable route, and without reference to the initial point on the one hundredth meridian of west longitude, as now provided by law, in a continuous completed line, until they shall meet and connect with the Central Pacific Railroad Company of California; and the Central Pacific Railroad Company of California, with the consent and approval of the Secretary of the Interior, are hereby authorized to locate, construct, and continue their road eastward, in a continuous completed line, until they shall meet and connect with the Union Pacific Railroad: Provided, That each of the above-named companies shall have the right, when the nature of the work to be done, by reason of deep cuts and tunnels, shall for the expeditious construction of the Pacific Railroad require it, to work for an extent of not to exceed three hundred miles in advance of their continuous completed lines.

Approved, July 3, 1866.

PETITIONER'S EXHIBIT No. 6, SEPTEMBER 21, 1914.

[Extract from U. S. Statutes at Large, volume 14, pp. 292–299.]

CHAP. CCLXXVIII.—An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John B. Brown, Anson P. Morrill, Samuel F. Hersey, William G. Crosby, Samuel E. Spring, Samuel P. Dinsmore, of Maine; N. S. Upham, Frederick Smyth, Onslow Stearns, S. G. Griffin, William E. Chandler, of New Hampshire; T. W. Parke, H. H. Baxter, John Gregory Smith, A. P. Lyman, of Vermont; Walter S. Burges, William S.

Slater, Stephen Harris, Thomas P. Shepard, of Rhode Island; William Merritt, Alexander H. Bullock, George L. Stearns, Genery Twitchell, Charles H. Warren, Chester W. Chapin, of Massachusetts; John Boyd, Robert C. Wetmore, John T. Wait, Cyrus Northrop, of Connecticut; Solon Humphreys, J. Bigler, Homer Ramsdell, Isaac H. Knox, John A. C. Gray, Daniel L. Ross, A. V. Stout, M. K. Jessup, R. E. Fenton, E. L. Fancher, J. C. Fremont, James Hoy, Jesse M. Bolles, Edward Gilbert, James P. Robinson, Oliver C. Billings, of New York; Charles Bachelor, John Edgar
67 Thompson, Morton McMichael, T. Haskins Du Puy, Thomas A. Scott, Charles Rickettson, William Lyon, George W. Cass, Levi Parsons, of Pennsylvania; Charles Knap, J. L. N. Stratton, James B. Dayton, Robert F. Stockton, Alexander G. Cattell, A. W. Markley, of New Jersey; John W. Garrett, Charles J. M. Gwinn, Robert Fowler, Jacob Tome, Thomas M. Lanahan, of Maryland; Charles J. Dupont, Henry Ridgley, Andrew C. Gray, Nat. Smythers, of Delaware; Bellamy Storer, George B. Senter, William Baker, Samuel Galloway, David Tod, Charles Anderson, Bird B. Chapman, Edward Sturgis, Israel Dille, of Ohio; Edwin Peck, William D. Griswold, James P. Luse, Samuel E. Perkins, Conrad Baker, of Indiana; Richard J. Oglesby, N. B. Judd, Samuel A. Buckmaster, D. L. Phillips, L. P. Sanger, of Illinois; Eber B. Ward, Omar D. Congar, Nathaniel W. Brooks, Alexander H. Morrison, of Michigan; Z. G. Simmons, Alexander Mitchell, J. J. Williams, G. A. Thompson, J. J. R. Pease, John H. Hersey, of Wisconsin; Henry A. Smith, Sherman Finch, William Mitchell, R. F. Crowell, L. F. Hubbard, E. F. Drake, of Minnesota; Lyman Cook, Platt Smith, Jacob Butler, Henry I. Reid, Hoyt Sherman, of Iowa, William G. Brownlow, of Tennessee; Thomas C. Fletcher, B. R. Bonner, John M. Richardson, Emil Pretorious, E. W. Fox, R. J. McElheny, Charles H. Howland, Madison Miller, George W. Fishback, T. J. Hubbard,
68 George Knapp, Charles K. Dickson, A. G. Braun, G. L. Hewitt, P. A. Thompson, James W. Thomas, Charles E. Moss, Edward Walsh, A. R. Easton, Truman J. Horner, J. B. Eads, D. R. Garrison, W. A. Kayser, George P. Robinson, of Missouri; Thomas E. Bramlette, Benjamin Gratz, C. E. Warren, Lazarus W. Powell, John Mason Brown, Joshua Speed, of Kentucky; Solon Thatcher, Jacob Stotter, William B. Edwards, James G. Blunt, Robert McBratney, of Kansas; Harrison Hagaus, James Cook, Robert Crangle, Benjamin H. Smith, of West Virginia; Lorenzo Sherwood, A. J. Hamilton, of Texas; William Gilpin, Henry C. Leach, of Colorado; Phinneas Banning, Timothy G. Phelps, William B. Carr, Edward F. Beale, Fred. F. Lowe, Benj. B. Redding, B. W. Hathaway, Leonidas Haskell, Frederick Billings, of California; W. S. Ladd, J. R. Moores, Walter Monteith, John Kelly, B. F. Dowell, of Oregon; James I.

Henry Connelly, Franciscus Perea, of New Mexico; J. H. A. P. K. Safford, E. S. Davis, of Nevada; King S. Woolsey, H. Hardy, Coles Bashford, of Arizona; Henry D. Cooke, District of Columbia; and all such other persons who shall be associated with them and their successors, are hereby and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Atlantic and Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be pleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. said corporation is hereby authorized and empowered to lay locate, and construct, furnish, maintain, and enjoy a continuous road and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by most eligible railroad route as shall be determined by said company to a point on the Canadian River; thence to the town of Albuquerque, on the River Del Norte; and thence, by way of the Agua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito; and thence, along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific. The said company shall have the right to construct a branch from the point at which the road strikes the Canadian River eastwardly, along the most suitable route as selected, to a point in the western boundary line of Arkansas, at or near the town of Van Buren. And the said company is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth. The capital stock of said company shall consist of one million shares of one hundred dollars each, which shall in all respects be deemed personal property, and shall be transferable in such manner as the laws of said corporation shall provide. The persons hereinbefore named are hereby appointed commissioners, and shall be called the board of commissioners of the "Atlantic and Pacific Railroad Company," and fifteen shall constitute a quorum for the transaction of business. The first meeting of said board of commissioners shall be held at the Turner Hall, in the city of St. Louis, on the first day of October, anno Domini eighteen hundred and sixty-six, or at such time within three months thereafter as any ten commissioners herein named from Missouri shall appoint, notice of which shall be given by them to the other commissioners by publishing said notice in at least one daily newspaper in the cities of Boston, New York, Cincinnati, Saint Louis,

Memphis, and Nashville once a week for at least four weeks previou
to the day of meeting. Said board shall organize by the choic
from its number of a president, vice president, secretary, an
71 treasurer, and they shall require from said treasurer such
bonds as may be deemed proper, and may from time to time
increase the amount thereof as they may deem proper. The secre
tary shall be sworn to the faithful performance of his duties, an
such oath shall be entered upon the records of the company, signe
by him, and the oath verified thereon. The president and secretar
of said boards shall in like manner call all other meetings, namin
the time and place thereof. It shall be the duty of said board o
commissioners to open books, or cause books to be opened, at suc
times and in such principal cities or other places in the United State
as they or a quorum of them shall determine, within twelve month
after the passage of this act, to receive subscriptions to the capita
stock of said corporation, and a cash payment of ten per centum o
all subscriptions, and to receipt therefor. So soon as ten thousan
shares shall in good faith be subscribed for, and ten dollars pe
share actually paid into the treasury of the company, the said presi
dent and secretary of said board of commissioners shall appoint
time and place for the first meeting of the subscribers to the stoc
of said company, and shall give notice thereof in at least one new
paper in each State in which subscription books have been opene
at least fifteen days previous to the day of meeting, and suc
72 subscribers as shall attend the meeting so called, either i
person or by lawful proxy, then and there shall elect by ball
thirteen directors for said corporation; and in such election eac
share of said capital stock shall entitle the owner thereof to one vot
The president and secretary of the board of commissioners, and i
case of their absence or inability any two of the officers of said boar
shall act as inspectors of said election, and shall certify under the
hands the names of the directors elected at said meeting. And th
said commissioners, treasurer, and secretary shall then deliver ov
to said directors all the moneys, properties, subscription books, an
other books in their possession, and thereupon the duties of sai
commissioners and the officers previously appointed by them sha
cease and determine forever, and thereafter the stockholders sha
constitute said body politic and corporate. Annual meetings of th
stockholders of the said corporation for the choice of officers (whe
they are to be chosen) and for the transaction of business shall
holden at such time and place and upon such notice as may be pr
scribed in the by-laws.

SEC. 2. And be it further enacted, That the right of wa
73 through the public lands be, and the same is hereby, grant
to the said Atlantic and Pacific Railroad Company, its

cessors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power, and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations; and the right of way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

Sec. 3. And be it further enacted, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure to the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: Provided, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as said routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided further, That the railroad company receiving the previous

grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: And provided further, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: And provided further, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

SEC. 4. And be it further enacted, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five
76 consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

77 SEC. 5. And be it further enacted, That said Atlantic and Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turn-outs, stations, and watering places, and all other appurtenances, including furniture and rolling stock, equal in all respects to railroads of the first class when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line of the most substantial and approved description, to be operated along the entire line: Provided, That the said company shall

charge the Government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Atlantic and Pacific Railroad Company to permit any other railroad which shall be authorized to be built by the United States, or by the legislature of any Territory or State in which the same may be situated, to form running connections with it, on fair and equitable terms.

SEC. 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or preemption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting preemption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

SEC. 7. And be it further enacted, That the said Atlantic and Pacific Railroad Company be, and is hereby, authorized and empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for turnouts, standing places for cars, depots, station houses, or any other structures required in the construction and working of said road. And the said company shall have the right to cut and remove trees and other material that might, by falling, encumber its roadbed, though standing or being more than two hundred feet from the line of said road. And in case the owner of such lands or premises and the said company cannot agree as to the value of the premises taken, or to be taken, for the use of said road, the value thereof shall be determined by the appraisal of three disinterested commissioners, who may be appointed upon application by either party to any court of record in any of the Territories in which the lands or premises to be taken lie; and said commissioners, in their assessment of damages, shall appraise such premises at what would have been the value thereof if the road had not been built. And upon return into court of such appraisement, and upon the payment into the same of the assessed value of the premises taken for the use and benefit of the

owner thereof, said premises shall be deemed to be taken by said company, which shall thereby acquire full title to the same for the purposes aforesaid. And either party feeling aggrieved at said
80 appraisement may, within thirty days after the same has been returned into court, file an appeal therefrom, and demand a jury of twelve men to estimate the damage sustained; but such appeal shall not interfere with the rights of said company to enter upon the premises taken, or to do any act necessary and proper in the construction of its road. And said party appealing shall give bonds, with sufficient surety or sureties, for the payment of any cost that may arise upon such appeal; and in case the party appealing does not obtain a verdict more favorable, such party shall pay the whole cost incurred by the appellee, as well as his own, and the payment into court, for the use of the owner of said premises taken, at a sum equal to that finally awarded, shall be held to vest in said company the title of said land, and the right to use and occupy the same for the construction, maintenance, and operation of said road. And in case any of the lands to be taken as aforesaid shall be held by an infant, femme covert, non compos, insane person, or persons residing without the Territory within which the lands to be taken lie, or persons subjected to any legal disability, the court may appoint a guardian, for any party under any disqualification, to appear in proper person,
81 who shall give bonds, with sufficient surety or sureties, for the proper and faithful execution of his trust, and who may represent in court the person disqualified, as aforesaid, from appearing, when the same proceedings shall be had in reference to the appraisement of the premises to be taken for the use of said company, and with the same effect as has been already described; and the title of the company to the lands taken by virtue of this act shall not be affected or impaired by reason of any failure by any guardian to discharge faithfully his trust. And in case any party shall have a right or claim to any land for a term of years, or any interest therein, in possession, reversion, or remainder, the value of any such estate, less than a fee simple, shall be estimated and determined in the manner hereinbefore set forth. And in case it shall be necessary for the company to enter upon any lands which are unoccupied, and of which there is no apparent owner or claimant, it may proceed to take and use the same for the purposes of said railroad, and may institute proceedings, in manner described, for the purpose of ascertaining the value of, and of acquiring a title to, the same; but the judge of the court hearing said suit shall determine the kinds of notice to be served on such owner or owners, and he may, in his discretion,
82 appoint an agent or guardian to represent such owner or owners in case of his or their incapacity or nonappearance. But in case no claimant shall appear within six years from

the opening of said road across any land, all claims to damages against said company shall be barred.

Sec. 8. And be it further enacted, That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

Sec. 9. And be it further enacted, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same upon the further condition that if the said company make any breach of the conditions thereof and allow the same to continue for upwards of one year, then in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

Sec. 10. And be it further enacted, That all people of the United States shall have the right to subscribe to the stock of the Atlantic and Pacific Railroad Company until the whole capital named in this act of incorporation is taken up by complying with the terms of subscription.

Sec. 11. And be it further enacted, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

Sec. 12. And be it further enacted, That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of the Interior.

Sec. 13. And be it further enacted, That the directors of said company shall make and publish an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, a copy of which shall be deposited in the office of said Secretary of the Interior, and they shall, from time to time, fix, determine, and regulate the fares, tolls,

and charges to be received and paid for transportation of persons and property on said road, or any part thereof.

SEC. 14. And be it further enacted, That the directors chosen in pursuance of the first section of this act shall, so soon as may be after their election, elect from their own number a president and vice president; and said board of directors shall, from time to time, and so soon as may be after their election, choose a treasurer and secretary, who shall hold their offices at the will and pleasure of the board of directors. The treasurer and secretary shall give such bonds, with such security as the said board from time to time may require. The secretary shall, before entering upon his duty, be sworn to the faithful discharge thereof, and said oath shall be made
85 a matter of record upon the books of said corporation. No person shall be a director of said company unless he shall be a stockholder, and qualified to vote for directors at the election at which he shall be chosen.

SEC. 15. And be it further enacted, That the president, vice president, and directors shall hold their offices for the period indicated in the by-laws of said company, not exceeding three years, respectively, and until others are chosen in their place, and qualified. In case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, the corporation shall not for that excuse be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors. The directors, of whom seven, including the president, shall be a quorum for the transaction of business, shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of the company, the transfer of shares, the duties and conduct of their officers and servants touching the election and meeting of the directors, and all matters whatsoever which may appertain
86 to the concerns of said company; and the said board of directors may have full power to fill any vacancy or vacancies that may occur from any cause or causes from time to time in their said board. And the said board of directors shall have power to appoint such engineers, agents, and subordinates as may from time to time be necessary to carry into effect the object of the company, and to do all acts and things touching the location and construction of said road.

SEC. 16. And be it further enacted, That it shall be lawful for the directors of said company to require payment of the sum of ten per centum cash assessment upon all subscriptions received of all subscribers, and the balance thereof at such times and in such proportions and on such conditions as they shall deem to be ne[illegible]

complete the said road and telegraph lines within the time in this act prescribed. Sixty days' previous notice shall be given of the payments required and of the time and place of payment by publishing a notice once a week in one daily newspaper in each of the cities of Boston, New York, Cincinnati, Saint Louis, Memphis, and Nashville, and in case any stockholder shall neglect or refuse to pay in pursuance of such notice the stock held by such person shall be forfeited absolutely to the use of the company, and also any payment or payments that shall have been made on account thereof, subject to the condition that the board of directors may allow the redemption on such terms as they may prescribe.

SEC. 17. And be it further enacted, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to or conferred on said company by the Congress of the United States, by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation through whose reservation the road herein provided for may pass; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance, to its own use for the purpose aforesaid: Provided, That any such grant or donation, power, aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States.

SEC. 18. And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for.

SEC. 19. And be it further enacted, That unless the said Atlantic and Pacific Railroad Company shall obtain bona fide subscriptions to the stock of said company to the amount of one million of dollars, with ten per centum paid, within two years after the passage of and approval of this act, it shall be null and void.

SEC. 20. And be it further enacted, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government

at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress
89 may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act.

SEC. 21. And be it further enacted, That whenever in any grant of land or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners, or other agents, to examine said roads, or act in conjunction with other officers of said company or companies, all the costs, charges, and pay of said directors, engineers, commissioners, or agents, shall be paid by the respective companies. Said directors, engineers, commissioners, or agents shall be paid for said services the sum of ten dollars per day for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily travelled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for said services. And in case any company shall refuse or neglect to make such payments, no more patents for lands or other subsidies shall be issued to said company until these requirements are complied with.

Approved, July 27, 1866.

90 PETITIONER'S EXHIBIT NO. 7, SEPTEMBER 21, 1914.

[Extract from U. S. Statutes at Large, volume 15, page 79.]

CHAP. LXXVII.—An act relative to filing reports of railroad companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the reports required to be made to the Secretary of the Treasury on or before the first day of July of each year, by the corporations created by or entitled to subsidies under the provisions of an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two, and the acts supplemental to and amendatory thereof, shall hereafter be made to the Secretary of the Interior, on or before the first day of October of each year. Said reports shall furnish full and specific information upon the several points mentioned in the twentieth section of the said act of eighteen hundred and sixty-two, and shall be verified as
91 therein prescribed, and on failure to make the same as he[illegible]

uired the issue of bonds or patents to the company in default
ll be suspended until the requirements of this act shall be com-
d with by such company. And the reports hitherto made to the
retary of the Treasury under the said act of July first, eighteen
ndred and sixty-two, shall be transferred and delivered by him to
Secretary of the Interior to be filed by him.

Sec. 2. And be it further enacted, That the corporations created by
provisions of the acts of Congress approved July second, eighteen
ndred and sixty-four, and July twenty-seventh, eighteen hundred
d sixty-six, and known as the Northern Pacific Railroad Company,
Atlantic and Pacific Railroad Company, and the Southern Pacific
ilroad Company, shall make reports to the Secretary of the Inte-
r on or before the first of October of each year, as are required to
made by the Union Pacific Railroad and branches, under the pro-
ions of the first section of this act, and on failure so to do shall
ubject to the like suspension.

Sec. 3. And be it further enacted, That the reports required from
commissioners appointed to examine and report in relation to
the road of any of the corporations whereto reference is made
in this act shall be addressed to and filed in the Department of
the Interior; and all such reports heretofore made shall be
nsferred to and filed in said Department of the Interior: and so
ch of any and all acts as requires any reports from such com-
nies, or any officers thereof, to be made to the Secretary of the
reasury, is hereby repealed.

Sec. 4. And be it further enacted, That, in addition to the eight
bjects referred to in section twenty of the act of July, eighteen
ndred and sixty-two, to be reported upon, there shall also be fur-
shed annually to the Secretary of the Interior all reports of engi-
ers, superintendents, or other officers who make annual reports to
y of said railroad companies.

Approved, June 25, 1868.

PETITIONER'S EXHIBIT No. 8, SEPTEMBER 21, 1914.

[U. S. Statutes at Large, vol. 16, pp. 56–57.]

No. 19.) Joint resolution for the protection of the interests of the United States in the Union Pacific Railroad Company, the Central Pacific Railroad Company, and for other purposes.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the stockholders of the Union Pacific Railroad Company, at a meeting to be held on the twenty-second day of April, eighteen hundred and

sixty-nine, at the city of Boston (with power to adjourn from day to day), shall elect a board of directors for the ensuing year; and said stockholders are hereby authorized to establish their general office at such place in the United States as they may select at said meeting: Provided, That the passage of this resolution shall not confer any other right upon said Union Pacific Railroad Company than to hold such election, or be held in any manner to relinquish or waive any rights of the United States to take advantage of any act or neglect of said Union Pacific Railroad Company heretofore done or omitted whereby the rights of the general Government have been or may be prejudiced: And provided further, That the common terminus of the Union Pacific and the Central Pacific railroads shall be at or near Ogden; and the Union Pacific Railroad Company shall build, and the Central Pacific Railroad Company pay for and own the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line.

94

SEC. 2. And be it further resolved, That to ascertain the condition of the Union Pacific Railroad and the Central Pacific Railroad, the President of the United States is authorized to appoint a board of eminent citizens, not exceeding five in number, and who shall not be interested in either road, to examine and report upon the condition of, and what sum or sums, if any, will be required to complete each of said roads, for the entire length thereof, to the said terminus as a first-class railroad, in compliance with the several acts relating to said roads; and the expense of such board, including an allowance of ten dollars to each for their services for each day employed in such examination or report, to be paid equally by such companies.

SEC. 3. And be it further resolved, That the President is hereby authorized and required to withhold from each of said companies an amount of subsidy bonds authorized to be issued by the United States under said acts sufficient to secure the full completion as a first-class road of all sections of such road upon which bonds have already been issued, or in lieu of such bonds he may receive as such security an equal amount of the first mortgage bonds of such company; and if it shall appear to the President that the amount of subsidy bonds yet to be issued to either of said companies is insufficient to insure the full completion of such road, he may make requisition upon such company for a sufficient amount of bonds already issued to said company, or in his discretion of their first mortgage bonds, to secure the full completion of the same. And in default of obtaining such security as (is) in this section provided, the President may authorize and direct the Attorney General to

95

stitute such suits and proceedings on behalf and in the name of United States, in any court of the United States having jurisdiction, as shall be necessary or proper to compel the giving of such security, and thereby, or in any manner otherwise, to protect the interests of the United States in said road, and to insure the full completion thereof as a first-class road, as required by law and the statutes in that case made.

SEC. 4. And be it further resolved, That the Attorney General of the United States be, and he is hereby, authorized and directed to investigate whether or not the charter and all the franchises of the Union Pacific Railroad Company and of the Central Pacific Railroad Company have not been forfeited, and to institute all necessary and proper legal proceedings; also, to investigate whether or not said companies have or have not made any illegal dividends upon their stock, and if so to institute the necessary proceedings to have the same reimbursed; and also to investigate whether any of the directors or any other agents or employees of said companies have or not violated any penal law, and if so to institute the proper criminal proceedings against all persons who have violated such laws.

Approved, April 10, 1869.

PETITIONER'S EXHIBIT No. 9, SEPTEMBER 21, 1914.

[U. S. Statutes at Large, vol. 16, pp. 573–579.]

CHAP. CXXII.—An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John C. Frement, James L. Alcorn, G. M. Dodge, O. C. French, John D. Caldwell, J. J. Noah, A. C. Osborne, Timonthy Hurley, C. C. Pool, Silas L. Martin, John M. Corse, George E. Wentworth, Philip H. Morgan, A. D. Cameron, Marshal O. Roberts, James L. Hodges, John Ray, J. T. Vermilye, Enoch L. Faucher, Charles F. Livermore, Joseph H. Oglesby, John Whytock, Daniel Drew, F. S. Davis, W. Orton, A. C. Babcock, Thomas A. Scott, Samuel D. Hoffman, H. Ramsdale, William H. Jackson, R. C. Parsons, Delos W. Emmons, M. A. Southworth, John H. Hall, G. C. Kinzey, W. P. Clark, James Dart, H. Jacobs, L. T. Smith, W. P. Dole, C. A. Weed, A. P. K. Safford, T. McCullough, Charles Jackson, Elisha Dyer, Alfred Anthony, James Hoy, M. W. Benjamin, H. D. Cooke, Joseph R. West, W. S. Huntington, J. M. Tebbetts, C. C. Leondridge, D. D. Porter, M. Woodhull, Hiram Price, M. C. Hunter, W. T. Walters,

J. B. Brownlow, T. A. Morris, Owen Tuller, J. H. Ledlie, R. M. Bishop, Samuel Craighead, D. N. Stanton, Augustus H. Whiting, G. L. Johnston, J. W. Goodland, D. N. Powell, Samuel Tate, W. Bolton, H. Robinson, George Maney, O. H. Bynum, M. Burns, J. C. Goodloe, E. G. Barney, Cyrus Busey, J. W. Forney, J. Lockwood, E. M. Davis, N. Patton, W. Flanegan, G. O'Brien, G. P. Buell, G. H. Gidding, J. J. Newell, E. W. Rice, R. M. Shoemaker, Samuel Sloan, S. W. Morton, J. B. Bowman, L. M. Elournoy, J. J. Hinds, G. R. Weeks, J. T. Ludling, B. C. Gilbert, B. D. Williams, Thomas Olcott, G. A. Fosdick, Harry Hays, P. S. Forbes, John T. Sprague, L. R. Marsh, A. W. Beckwith, J. C. Stanton, Cyrus H. Baldwin, A. J. Hamilton, Rush R. Sloan, Silas C. Colgrove, Samuel D. Jones, N. H. Decker, William N. Leet, B. F. Allen, J. B. Chaves, Augustus Kountze, John N. Goodwin, William S. Rosecrans, Michael Hahn, H. C. Warmouth, J. S. Williams, G. M. Spencer, L. J. Higby, W. C. Kimball, and all such persons as shall or may be associated with them, and their successors, are hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Company, and by that name shall have perpetual succession, and shall be able to sue and be sued, plead
99 and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and use a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to ship's channel, in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the pur(po)ses of this act.

SEC. 2. That the persons named in the first section of this act shall constitute a board of commissioners (twenty of whom shall con-
100 stitute a quorum for the transaction of business), to be known as the Texas Pacific Railroad commissioners, who shall meet in the city of New York within ninety days after the passage of this act, at a time to be designated in a notice to be signed by the person first named in the list of corporators and six of his associates, and to be published for two weeks in, at least, one daily newspaper in New

York, New Orleans, and Washington; and, when so met, they may cause books to be opened for the subscription of the capital stock of said company, and when twenty thousand shares, amounting to two millions of dollars, shall have been subscribed, and ten per centum actually paid thereon, in money, to the treasurer, to be elected by said commissioners, who shall give bond for its safe-keeping and payment to the treasurer of the company when organized, then it shall be lawful for such subscribers or stockholders, or a majority thereof, to organize said company in accordance with the provisions of this act, and to elect not less than seven nor more than seventeen directors, a majority of whom shall be necessary to the transaction of business, and who shall hold their offices for one year and until their successors shall be elected and qualified; and the said di-
101 rectors shall immediately proceed to elect a president, vice president, secretary, and treasurer; the president and vice president shall be directors. At all elections for directors each share of stock shall be entitled to one vote, which may be given by the holders in person, or by proxy, who shall also be a shareholder. The directors shall hold their offices for any term not exceeding three years, as may be provided in the by-laws; and the annual meetings of stockholders shall take place as provided for in said by-laws.

SEC. 3. That the capital stock of the Texas Pacific Railroad Company shall be fixed by the board of directors, at a sum not exceeding fifty millions of dollars, in shares of one hundred dollars; and when the amount is so fixed, it shall never be increased, except by consent of Congress. Assessments upon said stock shall only be made by a majority vote of the whole number of directors at a regular meeting, which said assessments shall be paid at the expiration of thirty days after a notice given in one newspaper in each of the cities of Washington, Philadelphia, New York, and New Orleans.

SEC. 4. That the said Texas Pacific Railroad Company shall have power and lawful authority to purchase the stock, land grants,
102 franchises, and appurtenances of, and consolidate on such terms as may be agreed upon between the parties, with any railroad company or companies heretofore chartered by congressional, State, or Territorial authority, on the route prescribed in the first section of this act; but no such consolidation shall be with any competing through line of railroads to the Pacific Ocean.

SEC. 5. That the said company shall have power and authority to make running arrangements with any railroad company or companies heretofore chartered, or that may hereafter be chartered by congressional, State, or Territorial authority; also to purchase lands, or to accept donations, or grants of lands, or other property from States or individuals, for the purpose of aiding in carrying out the object of this company.

SEC. 6. That the rights, lands, land grants, franchises, privileges, and appurtenances, and property of every description, belonging to each of the consolidated or purchased railroad company or companies, as herein provided, shall vest in and become absolutely the property of the Texas Pacific Railroad Company: Provided, That in all contracts made and entered into by said company with any and all other railroad company or companies, to perfect such
103 aforesaid consolidation or purchase, the indebtedness or other legal obligations of said company or companies shall be assumed by the said Texas Pacific Railroad Company as may be agreed upon, and no such consolidation or purchase shall impair any lien which may exist on any of the railroads so consolidated or purchased; but said company shall not assume the debts or obligations of any company with which it may consolidate or purchase as aforesaid, to an amount greater than the cash value of the assets received from the same.

SEC. 7. That the said Texas Pacific Railroad Company shall have power to make and enforce rules and by-laws for the election of its officers and the government and management of the business of the company, and to do and perform all needful and proper things to be done and performed to promote the objects of the company hereby incorporated, not inconsistent with the laws of the United States and the provisions of this charter.

SEC. 8. That the right of way through the public lands be, and the same is hereby, granted to the said company for the construction of the said railroad and telegraph line, and the right, power, and authority is hereby given to said company to take, from the pub-
104 lic lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands; and there is also hereby granted to said company grounds for stations, buildings, workshops, wharves, switches, side tracks, turntables, water stations, and such other structures as may be necessary for said railroad, not exceeding forty acres of land at any one point.

SEC. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for there is hereby granted to the said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have not have been sold

served, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of said lands shall have been sold, reserved, occupied, or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections first above named and not including the reserved numbers. If, in case too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled can not be selected immediately on the line of said railroad, in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest the line of said railroad, may be selected as above provided; and the word "mineral" where it occurs in this act shall not be held to include iron or coal: Provided, however, That no public lands are hereby granted within the State of California further than twenty miles on each side of road, except to make deficiencies as aforesaid, and then not to exceed twenty miles from the lands originally granted. The term "ship's channel" as used in this bill shall not be construed as conveying any greater right to said company to the water front of San Diego Bay than it may acquire by gift, grant, purchase, or otherwise, except the right of way, as herein granted: And provided further, that all such lands, so granted by this section to said company, which shall not be sold or otherwise disposed of as provided in this act within three years after the completion of the entire road, shall be subject to settlement and preemption like other lands at a price to be fixed by and paid to said company, not exceeding an average of two dollars and fifty cents per acre for all the lands herein granted.

Sec. 10. That when the route of said railroad and telegraph line shall pass through the lands of private persons, or where it may be necessary for said railroad company to take any lands belonging to private persons for any of the purposes herein mentioned necessary for said road, such right of way through or title to such lands shall be secured in accordance with the laws of the State or Territory in which they may be situated.

Sec. 11. That the Texas Pacific Railroad Company shall have power and authority to issue two kinds of bonds, secured by mortgage, namely: First, construction bonds; second, land bonds. Construction bonds shall be secured by mortgage, first, on all or any portion of the franchises, roadbed, or track of said railroad, and all the appurtenances thereto belonging, when constructed in the course of construction, from a point at or near Marshall to

ship's channel, in the bay of San Diego, in the State of California, a
aforesaid. Land bonds shall be secured by mortgage, first, on all or an
portion of the lands hereby granted in aid of the construction of sai
railroad as is provided for in this act; second, on lands acquired b
any arrangement or purchase or terms of consolidation with any rail
road company or companies to whom grants of lands may have bee
made, or may hereafter be made, by any congressional, State, o
Territorial authority, or who may have purchased the same previou
to any such arrangement or consolidation: Provided, That all th
mortgages made and executed by said railroad company shall be file
and recorded in the Department of the Interior, which shall be
sufficient evidence of their legal execution, and shall confer all th
rights and property of said company as therein expressed: And pr
vided also, That the proceeds of the sales of the aforesaid constru
tion and land bonds shall be applied only in the construction, oper
tion, and equipment of the contemplated railroad line: And provide
further, That said mortgage shall in no wise impair or affect any li
existing on the property of said company or companies at
108 before the time of such consolidation.

SEC. 12. That whenever the said company shall comple
the first and each succeeding section of twenty consecutive miles
said railroad and put it in running order as a first-class road in
its appointments, it shall be the duty of the Secretary of the Interi
to cause patents to be issued conveying to said company the numb
of sections of land opposite to and coterminus with said complet
road to which it shall be entitled for each section so completed. Sa
company, within two years after the passage of this act, shall desi
nate the general route of its said road, as near as may be, and sh
file a map of the same in the Department of the Interior; and wh
the map is so filed the Secretary of the Interior immediately the
after shall cause the lands within forty miles on each side of sa
designated route within the Territories and twenty miles within t
State of California to be withdrawn from preemption, private ent
and sale: Provided, however, That the provisions of the act of Se
tember, eighteen hundred and forty-one, granting preempti
109 rights, and the acts amendatory thereof, and of the act
titled "An act to secure homesteads to actual settlers on t
public domain," approved May twenty, eighteen hundred and six
two, and the amendments thereto, shall be, and the same are herel
extended to all other lands of the United States on the line of s
road when surveyed, except those hereby granted to said company

SEC. 13. That the president of the company shall annually, by t
first day of July, make a report and file it with the Secretary of t
Interior, which report shall be under oath, exhibiting the financ
situation of the company, the amount of money received and

ended, and the number of miles of road constructed each year; and further, the names and residences of the stockholders, of the directors, and of all other officers of the company, the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received from passengers and for freight, respectively, on the road, a statement of the expenses of said road and its features, and a true statement of the indebtedness of said company and the various kinds thereof.

SEC. 14. That the certificates of the capital stock must be
110 signed by the president and secretary, and attested by the seal of the company, and shall contain an extract from the proceedings of the board of directors fixing the amount thereof, as well as from this act, authorizing such issue. All the bonds and mortgages issued by said company must be signed by the president and secretary, and attested by the seal of said company, and shall contain an extract from the law authorizing them to be issued. The face value of said bonds shall be one thousand dollars in gold, and shall be redeemable at such times and to bear such rate of interest, payable semiannually in gold, as may be determined by the directors. The total value of the construction bonds to be issued shall not exceed thirty thousand dollars per mile of said railroad, and the total face value of the land bonds shall not exceed two dollars and fifty cents per acre for all lands mortgaged; the total amount of each to be determined by the board of directors.

SEC. 15. That all railroads constructed, or that may be hereafter constructed, to intersect said Texas Pacific Railroad shall have a right to connect with that line; that no discrimination as regards charges for freight or passengers, or in any other matter, shall be made by said Texas Pacific Railroad Company against any of the
said connecting roads; but that the same charges per mile as
111 to passengers and per ton per mile as to freight passing from the said Texas Pacific Railroad over any of said connecting roads, or passing from any of said connecting roads over any part of said Texas Pacific Railroad, shall be made by said company as they make for freight and passengers over their own road: Provided also, That said connecting roads shall reciprocate said right of connection and equality of charges with said Texas Pacific Railroad: And provided further, That the rates charged for carrying passengers and freight per mile shall not exceed the prices which may be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific Railroads.

SEC. 16. That said road shall be constructed of iron or steel rails manufactured from American ore, except such as may have hereto-

fore been contracted for by any railroad company which may be
purchased or consolidated with by the company hereby incorpo-
rated, as provided by this act.

SEC. 17. That the said Texas Pacific Railroad Company shall com-
mence the construction of its road simultaneously at San Diego, in
the State of California, and from a point at or near Marshall, Texas
as hereinbefore described, and so prosecute the same as to have
112 at least fifty consecutive miles of railroad from each of said
points complete and in running order within two years after
the passage of this act; and to so continue to construct each year
thereafter a sufficient number of miles to secure the completion of
the whole line from the aforesaid point on the eastern boundary of
the State of Texas to the Bay of San Diego, in the State of Califor-
nia, as aforesaid, within ten years after the passage of this act; and
upon failure to so complete it, Congress may adopt such measures as
it may deem necessary and proper to secure its speedy completion.

SEC. 18. That the President of the United States, upon the com-
pletion of the first section of twenty miles, shall appoint one com-
missioner, whose duty it shall be to examine the various sections of
twenty miles as they shall be completed and report thereon to him
in writing; and if from such report he be satisfied that said com-
pany has fully completed each section of its road, as in this act pro-
vided, he shall direct the Secretary of the Interior to issue patents
to said company for the lands it is entitled to under this act, as far
as each section of said road is completed.

SEC. 19. That the Texas Pacific Railroad Company shall be, and
it is hereby, declared to be a military and post road; and for
113 the purpose of insuring the carrying of the mails, troops,
munitions of war, supplies, and stores of the United States
no act of the company nor any law of any State or Territory shall
impede, delay, or prevent the said company from performing its
obligations to the United States in that regard: Provided, That said
road shall be subject to the use of the United States for postal, mili-
tary, and all other governmental services at fair and reasonable rates
of compensation not to exceed the price paid by private parties for
the same kind of service, and the Government shall at all times have
the preference in the use of the same for the purpose aforesaid.

SEC. 20. That it shall not be lawful for any of the directors, either
in their individual capacity or as members of an incorporated or
joint-stock company, to make any contracts or agreements with the
said Texas Pacific Railroad Company for the construction, equip-
ment, or running of its road, or to have any interest therein; and
all such contracts or agreements are hereby declared null and void,
and all money or property received under such contracts or agree-

ments may be recovered back for the benefit of the company by any stockholder.

114 SEC. 21. That any railroad company whose route lies across the route of the Texas Pacific Railroad may cross the same, and for the purpose of crossing shall have the right to acquire at the double minimum price all lands, whether of the United States or granted by this act, which shall be needed for a right of way two hundred feet wide through said lands, and for depots, stations, side-tracks, and other needful purposes, not exceeding for such purposes forty acres at any one station.

SEC. 22. That the New Orleans, Baton Rouge, and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect by the most eligible route, to be selected by said company, with the said Texas Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public lands per mile in the State of Louisiana as are by this act granted in

115 the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and preemption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company within said State of California: Provided, That said company shall complete the whole of said road within five years from the passage of this act.

SECTION 23. That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachpa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and, privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

Approved, March 3, 1871.

116 PETITIONER'S EXHIBIT NO. 10, SEPTEMBER 21, 1914.

[U. S. Statutes at Large, vol. 18, pp. 111–112.]

CHAP. 331.—An act making additions to the fifteenth section of the act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and is hereby, added to the fifteenth section of the act approved July second, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," the following words, namely: "And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who
117 shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, or shall refuse in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States in the Territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount
118 of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act a new cause of action shall

arise; and in case of suit in any such Territory, district, or circuit, process may be served upon any agent of the defendant found in the Territory, district, or circuit in which such suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March third, eighteen hundred and sixty-nine.

Approved, June 20, 1874.

PETITIONER'S EXHIBIT No. 11, SEPTEMBER 21, 1914.

[Statutes at Large, vol. 20, pp. 169–171.]

CHAP. 316.—An act to create an auditor of railroad accounts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, anno Domini eighteen hundred and sixty-two, and the act entitled "An act relative to filing reports of railroad companies," approved June twenty-fifth, anno Domini eighteen hundred and sixty-eight, be, and the same are hereby, repealed.

SEC. 2. That the office of auditor of railroad accounts is hereby established as a bureau of the Interior Department. The said auditor shall be appointed by the President of the United States, by and with the advice of the Senate. The annual salary of the said auditor shall be, and is hereby, fixed at the sum of five thousand dollars. To assist the said auditor to perform the duties of said office the Secretary of the Interior shall appoint one bookkeeper, at an annual salary of two thousand four hundred dollars; one assistant bookkeeper, at an annual salary of two thousand dollars; one clerk, at an annual salary of one thousand four hundred dollars; and one copyist, at an annual salary of nine hundred dollars. Actual and necessary traveling and other expenses incurred in visiting the offices of the railroad companies hereinafter described, and for which vouchers shall be rendered, are hereby allowed, not to exceed the sum of two thousand dollars per annum; and it is hereby specially provided that each of said railroad companies shall furnish trans-

portation over its own road, without expense to the United States, for the said auditor or any person acting under his direction. Incidental expenses for books, stationery, and other material necessary for the use of said bureau are hereby allowed, not to exceed the sum of seven hundred dollars per annum. And the sum of twelve thousand dollars is hereby appropriated for the uses and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and seventy-nine.

121 SEC. 3. That the duties of the said auditor under and subject to the direction of the Secretary of the Interior, shall be, to prescribe a system of reports to be rendered to him by the railroad companies whose roads are in whole or in part west, north, or south of the Missouri River, and to which the United States have granted any loan of credit or subsidy in bonds or lands; to examine the books and accounts of each of said railroad companies once in each fiscal year, and at such other times as may be deemed by him necessary to determine the correctness of any report received from them; to assist the Government directors of any of said railroad companies in all matters which come under their cognizance whenever they may officially request such assistance; to see that the laws relating to said companies are enforced; to furnish such information to the several departments of the Government in regard to tariffs for freight and passengers and in regard to the accounts of said railroad companies as may be by them required, or, in the absence of any request therefor, as he may deem expedient for the interest of the Government; and to make an annual report to the Secretary of the Interior, on the first day of November, on the condition of each of said railroad companies, their road, accounts, and affairs,

122 for the fiscal year ending June thirtieth immediately preceding.

SEC. 4. That each and every railroad company aforesaid which has received from the United States any bonds of the said United States, issued by way of loan to aid in constructing or furnishing its road, or which has received from the United States any lands granted to it for a similar purpose, shall make to the said auditor any and all such reports as he may require from time to time and shall submit its books and records to the inspection of said auditor or any person acting in his place and stead, at any time that the said auditor may request, in the office where said books and records are usually kept; and the said auditor, or his authorized representative, shall make such transcripts from the said books and records as he may desire.

SEC. 5. That if any railroad company aforesaid shall neglect or refuse to make such reports as may be called for, or refuse to sub-

its books and records to inspection, as provided in section four of this act, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand nor more than five thousand dollars, to be recovered by the Attorney General of the United States in the name and for the use and benefit of the United States; and it shall be the duty of the Secretary of the Interior, in all such cases of neglect or refusal as aforesaid, to inform the Attorney General of the facts, to the end that such forfeiture or forfeitures may be judicially enforced.

SEC. 6. This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies.

SEC. 7. This act shall take effect on and after the first day of July, anno Domini eighteen hundred and seventy-eight.

Approved, June 19, 1878.

PETITIONER'S EXHIBIT No. 12, SEPTEMBER 21, 1914.

Central Pacific Railroad Company—Central Pacific Railway Company.

Outline history of corporate organization.

I.

Central Pacific Railroad Company.

1. *Central Pacific Railroad Company of California.*—Incorporated June 28, 1861. Capital stock, $8,500,000. First board of directors named in original articles: Leland Stanford, Charles Crocker, James Bailey, Theodore D. Judah, L. A. Booth, C. P. Huntington, Mark Hopkins, D. W. Strong, Charles Marsh.

Corporate purposes.—"The places from and to which the proposed road is to be constructed are the city of Sacramento and the eastern boundary of the State of California. The counties into and through which this road is intended to pass are: Sacramento, Placer, and Nevada."

2. *October 8, 1864.*—Articles of Central Pacific Railroad Company of California amended by increasing capital stock to $20,000,000. Board of directors named in amended articles: Leland Stanford, C. P. Huntington, Mark Hopkins, Edwin B. Crocker, E. H. Miller, Jr., A. P. Stanford, Charles Marsh, D. W. Strong, Lucius A. Booth.

Corporate purposes.—"This association is organized for the purpose of constructing, operating, and maintaining a railroad with the

necessary and proper branches and extensions. The route of the railroad proposed to be constructed, operated, and maintained by the company, as relocated by the company, is from and to the following places, to wit: From the city of Sacramento, in Sacramento County, California, to the eastern boundary line of the State of California at or near the place where the said line crosses the Truckee River, and running through Roseville, at the junction of said railroad with the California Central Railroad, and by or near to Newcastle, Auburn, Neilsburg, Illinoistown, Gold Run, Dutch Flat, Bear Valley, Crystal Lake, Summit Valley, and Donner Pass, together with such branches and extensions of the said railroad as the board of directors of this company may at any time deem necessary or proper to construct, operate, and maintain, and which this
126 company is or may be authorized to construct, operate, and maintain by the laws of the State of California or other States or Territories or the acts of Congress of the United States now in force or which may hereafter be enacted."

3. *July 23, 1868.*—Articles of incorporation Central Pacific Railroad Company of California amended by increasing capital stock to $100,000,000.

4. *June 23, 1870.—Central Pacific Railroad Company of California* consolidated with *Western Pacific Railroad Company* under a corporate name "Central Pacific Railroad Company." First board of directors named in articles of consolidation: Leland Stanford, C. P. Huntington, Mark Hopkins, Charles Crocker, E. B. Crocker, E. H. Miller, Jr., and A. P. Stanford. Capital stock, $100,000,000.

Corporate purposes.—"The objects and purposes of the said new and consolidated company and corporation are to purchase, construct, own, maintain, and operate the railroad and telegraph lines hereinbefore described of said parties of the first and second parts hereto, so as to form a continuous line of railway and telegraph from
127 Ogden, in the Territory of Utah, to San Jose, in California, and to the waters of the Bay of San Francisco, to wit: Commencing at or near Ogden, in Utah, at the connecting point of the Central Pacific Railroad and Union Pacific Railroad, and running thence along the lines of the Central Pacific Railroad and the Western Pacific Railroad, by way of Sacramento and the several routes mentioned in the several articles of association of the said The Central Pacific Railroad Company of California and of the said The Western Pacific Railroad Company, to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose, California, and to the several other points heretofore herein mentioned, to wit: The city of San Francisco—Yerba Buena Island, and otherwise called Goat Island, and the point in the Bay of

ancisco between the Encinal and the city of San Francisco. Also purchase, construct, own, maintain, and operate such branch and de lines and railroads between the said The Western Pacific Rail- ad and such several points on the Bay of San Francisco, and be- een the said The Central Pacific Railroad and such several points the Bay of San Francisco, and the navigable waters thereof, as e board of directors of said new and consolidated company may from time to time determine. The length of the said railroad and telegraph lines being, as near as may be, one thousand miles."

Said *articles of consolidation executed* on behalf of Central Pacific ailroad Company of California, as follows:

"The Central Pacific Railroad Co. of California, by Leland Syan- ord, president; and E. H. Miller, Jr., secretary."

Said articles of consolidation bear written consent, dated June 22, 870, of following as holders of more than ¾ of capital stock of entral Pacific Railroad Company of California, to wit: Leland tanford, Charles Stanford, Mark Hopkins, C. P. Huntington, C. rocker, E. B. Crocker, E. H. Miller, Jr., C. S. Scudder, A. P. Stan- ford, B. B. Crocker, D. O. Mills & Co., Albert Gallatin, W. R. S. oye, C. H. Cummins, L. E. Hollister, Julius Wetzler, J. S. Friend, riend & Terry, W. E. Terry.

4. *June 23, 1870, consolidation* (continued).

Western Pacific Railroad Company.—Incorporated by consolida- tion November 2, 1869. Capital stock, $10,400,000. First board of directors named in said articles: Leland Stanford, C. P. Huntington, Mark Hopkins, Charles Crocker, E. B. Crocker, E. H. Miller, Jr., and A. P. Stanford.

Corporate purposes.—The objects and purposes of the said new and consolidated company and corporations are to pur- chase, construct, own, maintain, and operate the railroad and tele- graph lines hereinbefore described of said parties of the first and econd part hereto, so as to form a continuous line of railway and elegraph, commencing at a point on the Central Pacific Railroad nd connecting therewith at or near the city of Sacramento, and run- ing thence, by way of Stockton and the several routes mentioned in he several articles of association of the said The Western Pacific Railroad Company and of the said San Francisco Bay Railroad Com- pany, to a point on the San Francisco and San Jose Railroad, and connecting therewith at or near the city of San Jose and to the several other points heretofore herein mentioned, to wit: The city of San Francisco, Yerba Buena Island, otherwise called Goat Island, nd the point in the Bay of San Francisco between the Encinal and he city of San Francisco.

Said articles of consolidation of June 23, 1870, signed in behalf o
Western Pacific Railroad Company as follows:

"The Western Pacific Railroad Co., by Leland Stanford, presi
dent, and E. H. Miller, Jr., secretary."

130 Said articles of consolidation bear written consent, date
June 22, 1870, of Leland Stanford, Mark Hopkins, C. P
Huntington, C. Crocker, E. B. Crocker, E. H. Miller, Jr., A. P
Stanford, and C. H. Cummings, as holders of more than ¾ capita
stock of Western Pacific R. R. Co.

Railroads actually constructed June 23, 1870: Sacramento to San
Francisco via Stockton and Niles; Niles to San Jose.

5. *August 22, 1870.*—Central Pacific Railroad Company consoli
dated with—

(a) California and Oregon Railroad Company.

(b) The San Francisco, Oakland and Alameda Railroad Company

(c) San Joaquin Valley Railroad Company.

Consolidated company.—Capital stock, $100,000,000. First board
of directors named in articles of consolidation: Leland Stanford
William E. Brown, Mark Hopkins, Collis P. Huntington, Charle
Crocker, Edward H. Miller, Jr., and Charles H. Cummings.

Corporate purposes.—"The object and purpose of said new cor
poration shall be to purchase, construct, own, maintain, and
131 operate all and each of the railroad and telegraph lines here
inbefore described." (Those of constituent companies.)

(a) *California and Oregon Railroad Company.*—Incorporated
December 18, 1869, by consolidation. Capital stock, $15,000,000
First board of directors named in articles: Leland Stanford, C. P
Huntington, Mark Hopkins, Charles Crocker, E. B. Crocker, E. H
Miller, Jr., and A. P. Stanford.

Corporate purposes.—"The objects and purposes of the said new
and consolidated company and corporation are to purchase, construct
own, maintain, and operate the railroad and telegraph line herein
before described of the said parties of the first and second part
hereto, so as to form a continuous line of railroad and telegraph
beginning at some point at or near the town of Roseville in Placer
County, thence to some point on the northern boundary line of the
State of California to be selected by the board of directors of said
new and consolidated company and corporation, with such extension
thereof into the State of Oregon as the board of directors may deem
proper under the provisions of the said act of Congress hereinbefore
referred to. The said new and consolidated company and cor
132 poration by its board of directors shall be and are hereby au
thorized to change the south terminus of the said railroad and
telegraph line to some other point on the Central Pacific Railroad

en said town of Roseville and the bridge across the American
r whenever they may deem proper."
ilroads actually constructed August 22, 1870: Roseville to
o.
id articles of consolidation of August 22, 1870, signed in behalf
alifornia and Oregon Railroad Company, as follows:
'alifornia and Oregon Railroad Company, by Leland Stanford,
dent; and by E. H. Miller, Jr., secretary."
id articles of consolidation bear written consent, dated August
870, of Leland Stanford, Mark Hopkins, C. P. Huntington, C.
ker, E. B. Crocker, E. H. Miller, Jr., B. B. Redding, as holders
ore than ¾ of capital stock of California and Oregon Railroad
pany.
) *The San Francisco, Oakland and Alameda Railroad Com-*
.—Incorporated by consolidation June 29, 1870. Capital stock,
$2,000,000. First board of directors named in articles: Faxon
D. Atherton, D. O. Mills, William C. Ralston, Alfred A.
Cohen, and David P. Barstow.
rporate purposes.—"The objects and purposes of the said new
gamated and consolidated company and corporation are to pur-
, construct, complete, own, maintain, and operate the railroads
ibefore described of the said parties of the first and second part
to, and so as to form a continuous line of railway from the city
id county of San Francisco, through the city of Oakland, and
gh a point in the easterly part thereof in Alameda County, to a
t in the line of the road of the said The San Francisco and Ala-
a Rail Road Company, party of the second part hereto at or
Fruitvale station, in said county of Alameda, and a continuous
of railway from the extreme western point of the Encinal of
Antonio in the county of Alameda, and to pass through said
ty of Alameda to a point on the line of the Western Pacific
road at or near Haywards, in said county of Alameda, State of
fornia; also to purchase, construct, own, maintain, and operate
branch and side lines and railroads between the said The San
Francisco, Oakland and Alameda Railroad and such several
points on the Bay of San Francisco as the board of directors of
said new amalgamated and consolidated railroad company
from time to time determine."
ilroads actually constructed August 22, 1870: Oakland Pier to
klyn and local lines in Oakland and Alameda.
id articles of consolidation of August 22, 1870, signed in behalf
n Francisco, Oakland & Alameda R. R. Co., as follows:
San Francisco, Oakland and Alameda Railroad Company, by
d A. Cohen, president; and by H. Lacy, secretary."

Said articles of consolidation bear written consent, dated Augus 16, 1870, of Alf. A. Cohen, D. O. Mills, F. D. Atherton, D. P. Bar stow, W. C. Ralston, as holders of more than ¾ of capital stock o San Francisco, Oakland & Alameda R. R. Co.

(c) *San Joaquin Valley Railroad Company.*—Incorporated Feb 5, 1868. Capital stock, $15,000,000. First board of directors name in articles: Leland Stanford, Mark Hopkins, Charles Crocker, Ed win B. Crocker, and C. P. Huntington.

135 *Corporate purposes.*—"* * * purpose of purchasing constructing, owning, maintaining, and operating a railroa from a point in the Western Pacific Railroad, at or near the city o Stockton, in the county of San Joaquin, and between said city and th crossing of the San Joaquin River, to a point on Kern River in th county of Tulare, both points to be hereafter selected and fixed by th board of directors of this company. The counties into or through which the said railroad is intended to pass are San Joaquin, Stanis laus, Merced, Fresno, and Tulare."

Railroads actually constructed August 22, 1870: Lathrop southerly to about Modesto.

Said articles of consolidation of Aug. 22, 1870, signed in behalf o San Joaquin Valley Railroad Co., as follows:

"San Joaquin Valley Railroad Company, by Leland Stanford president; and by E. H. Miller, Jr., secretary."

Said articles of consolidation bear written consent, dated Augus 16, 1870, of Leland Stanford, Mark Hopkins, C. P. Huntington, C Crocker, E. B. Crocker, E. H. Miller, Jr., B. B. Redding, C. H. Cum mings, as holders of more than ¾ of capital stock of San Joaquin Valley R. R. Co.

136 PETITIONER'S EXHIBIT NO. 13, SEPTEMBER 21, 1914.

Southern Pacific Railroad Company.

Outline history of corporate organization.

Consolidation 1.

Southern Pacific Railroad Company (of Cal.), formed Oct. 12, 1870, by consolidation under laws of California of following companies:

(a) San Francisco and San Jose Railroad Company.
(b) Santa Clara and Pajaro Valley Railroad Company.
(c) Southern Pacific Railroad Company.
(d) California Southern Railroad Company.

Capital stock, $50,000,000.

Articles of consolidation show following *directors* named for first year: Lloyd Tevis, Leland Stanford, Chas. Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue.

Corporate purposes.—"The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado River, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City, in the said last-named county, a distance of forty-five miles, as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation and direct to be established."

Railroads actually constructed Oct. 12, 1870: San Francisco to San Jose; thence to Gilroy.

Constituent companies absorbed Oct. 12, 1870.

(a) *San Francisco and San Jose Railroad Company.*—Incorporated Aug. 18, 1860. Capital stock, $2,000,000. Subscribers to articles of incorporation: J. A. McDougall, Chas. McLaughlin, A. H. Houston, William I. Lewis, John Middleton, T. G. Phelps, C. L. Weller, Robt. E. Hunter, H. M. Newhall, B. F. Mann, John H. Atchison, Timothy Dame, C. E. Allen, W. B. Farwell, Jno. V. Wattson, E. A. Rockwell, Fred'k A. Benjamin, J. F. Bowman, H. O'Donnell, Rich'd Roman, D. S. Cook, Jno. O. Nagle, Casper Babbock, H. W. Seale, Sam'l H. Dwinelle, Geo. H. Bodfish, Myles D. Sweeny, Wm. Schmolz.

Corporate purpose.—"* * * for the purpose of constructing, owning, and maintaining a railroad from the city of San Francisco in the county of San Francisco, through said county, and the counties of San Mateo and Santa Clara to the city of San Jose, all in the said State of California."

Railroad actually constructed Oct. 12, 1870: San Francisco to San Jose.

Articles of consolidation of October 12, 1870, signed: "The San Francisco and San Jose Railroad Company, by H. M. Newhall, president; J. L. Willcutt, secretary."

Said articles of consolidation bear written consent of "H. M. Newhall, P. Donahue, Chas. Mayne, W. C. Ralston, Jas. O'Neill, G. Pinache, Myles D. Sweeny," under date of Oct. 11, 1870, as holders of more than ¾ of capital stock.

(b) *Santa Clara and Pajaro Valley Railroad Company.*—Incorporated Jan. 2, 1868. Capital stock, $1,000,000. Original articles of incorporation subscribed to by following incorporators: H. M. Newhall, Peter Donahue, Chas. Mayne, H. Barroilhet, Myles
139 D. Sweeny, T. O. Eldridge, Edward Martin, Jas. O'Neill, Rich'd P. Hammond, Jos. L. Willcutt.

Corporate purpose.—"* * * for the purpose of constructing, owning, and maintaining a railroad from a point at or near the city of San Jose, in the county of Santa Clara, connecting at such point with The San Francisco and San Jose Railroad, and to pass to a point at or near the town of New Gilroy, in the same county, said railroad being wholly within the limits of said county of Santa Clara, in the State of California."

Railroad actually constructed Oct. 12, 1870: San Jose to Gilroy.

Articles of consolidation of October 12, 1870, signed: Santa Clara and Pajaro Valley Railroad Company, by P. Donahue, president; J. L. Willcutt, secretary."

Said articles of consolidation bear written consent, dated October 11, 1870, of H. M. Newhall, P. Donahue, Chas. Mayne, Myles D. Sweeny, Rich'd P. Hammond, J. L. Willcutt, J. O. Eldridge, Jas. O'Neill, Edward Martin, as holders of more than ¾ of capital stock.

(c) *Southern Pacific Railroad Company.*—Incorporated
140 Dec. 2, 1865. Capital stock, $30,000,000. Original articles of incorporation subscribed to by following incorporators: T. G. Phelps, Chas. N. Fox, Benjamin Flint, C. I. Hutchinson, B. G. Lathrop, W. S. Rosecrans, J. B. Cox, B. W. Hathaway, John F. Sears, Wm. T. Coleman, J. W. Stephenson.

Corporate purpose.—"* * * for the purpose of constructing, owning, and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego to the town of San Diego, in said State; thence eastward through the said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River."

Railroads actually constructed Oct. 12, 1870: None.

Articles of consolidation of October 12, 1870, signed: "Southern Pacific Railroad Company, by Lloyd Tevis, president; B. B. Minor, secretary."

Said articles of consolidation bear written consent, dated October 11, 1870, of Lloyd Tevis, Wm. E. Barron, Thomas Bell, W. B. Carr, B. B. Minor, as holders of more than ¾ of capital stock.

141 (d) *California Southern Railroad Company.*—Incorporated January 22nd, 1870. Capital stock, $1,500,000. Original ar-

cles of incorporation subscribed to by the following incorporators: Chas. Mayne, Peter Donahue, H. M. Newhall, Rich'd P. Hammond, Edward Martin, Myles D. Sweeny, J. O. Eldridge, H. Barroilhet, G. Palache, J. L. Willcutt.

Corporate purpose.—"* * * for the purpose of constructing, owning, and maintaining a railroad from a point at or near the town of Gilroy in the county of Santa Clara, and to pass through the counties of Santa Clara, Santa Cruz, and Monterey, to a point at or near the town of Salinas City, in said county of Monterey."

Railroad actually constructed Oct. 12, 1870: None.

Articles of consolidation of October 12, 1870, signed: "California Southern Railroad Company, by Chas. Mayne, president; J. L. Willcutt, secretary."

Said articles of consolidation bear written consent, dated October 12, 1870, of H. M. Newhall, P. Donahue, Chas. Mayne, Myles D. Sweeny, Rich'd P. Hammond, J. L. Willcutt, G. Palache, J. O. Eldridge, Edward Martin, as holders of more than ¾ of capital stock.

April 15, 1871.—Articles of incorporation, Southern Pacific Railroad Company amended, increasing capital stock to $70,000,000. Board of directors named in amended articles: Lloyd Tevis, Leland Stanford, Chas. Crocker, C. P. Huntington, Chas. Mayne, Mark Hopkins, and Peter Donahue.

Corporate purposes amended to include "also a line of railroad from a point at or near Taheechaypah Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, a distance of 324 miles, as near as may be."

Consolidation 2.

Southern Pacific Railroad Company (of Cal.), consolidated Aug. 20, 1873, with Southern Pacific Branch Railroad Company.

Consolidated company, capital stock $90,000,000. Board of directors named in articles of consolidation: C. P. Huntington, D. D. Colton, Robert Robinson, Chas. Mayne, S. T. Gage, E. H. Miller, Jr., and J. L. Willcutt.

Corporate purposes.—"The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate the several lines of railroad hereinbefore described, to wit, a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado River in the southeastern part of the State of California,

a distance of seven hundred and twenty miles, as near as may be; also, a line of railroad from a point at or near Tehichipa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, passing through the counties of Los Angeles, San Bernardino, and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also, a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last named county, a distance of forty-five miles as near as may be; also, a line of railroad from a point on the line thirdly above described, at or near Salinas City, in the county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare Lake, in said last named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also, a line of railroad from a point on the last
144 above described line, at or near San Miguel, in the county of San Luis Obispo, thence in a southerly direction through said county, the county of Santa Barbara, and into the county of Los Angeles, to a point of intersection with the line of railroad secondly above described, to wit, the line from Tehichipa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of two hundred and forty miles, as near as may be—making in all, fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter, from time to time, establish."

Southern Pacific Branch Railroad Company.—Incorporated Dec. 23, 1872. Capital stock, $20,000,000. Original articles of incorporation subscribed by the following incorporators: E. H. Miller, Jr., Albert Gallatin, W. R. S. Foye, C. H. Cummings, E. I. Robinson, Leland Stanford, Mark Hopkins, Benjamin B. Redding, E. W. Hopkins, B. R. Crocker.

Corporate purpose.—"* * * for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad at or near Salinas City in the county of Monterey, southeasterly to a point in Kern County
145 south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad. Also, from a point on the above described line, at or near San Miguel in San Luis Obispo County, thence in a southerly direction to a point of intersection in Los Angeles County, with the line of the Southern Pacific Railroad running from Taheechepah Pass by way of Los Angeles to Fort Yuma. The counties into or through which the said railroad is intended to pass are Monterey, San Luis Obispo, Kern, Santa Barbara, and Los Angeles."

Railroad actually constructed Aug. 19, 1873: Salinas to Soledad.

Articles of consolidation of Aug. 19, 1873, signed: "Southern Pacific Branch Railroad Company, by B. R. Crocker, president; by E. H. Miller, Jr., secretary."

Said articles of consolidation bear written consent, dated Aug. 12, 1873, of Leland Stanford, E. H. Miller, jr., Albert Gallatin, Mark Hopkins, E. W. Hopkins, C. H. Cummings, and B. R. Crocker, as holders of more than ¾ of capital stock.

Consolidation 3.

Southern Pacific Railroad Company (of Cal.), consolidated Dec. 31, 1874, with Los Angeles and San Pedro Railroad Company.

Consolidated company, capital stock $90,000,000. Board of directors named in articles of consolidation: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage, Joseph L. Willcutt.

Corporate purposes.—"The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate the several lines of railroad * * * from the city and county of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado River, in the southeastern part of the State of California, a distance of six hundred and thirty-five and 87/100 miles, as near as may be; also a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and fifty-six and 7/10 miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last-named county, a distance of thirty-five and 1/10 miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established. And also from a point on said road aforesaid at or near Salinas City, in the county of Monterey, southerly to a point in Kern County south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad; also from a point on the above-described line at or near San Miguel, in San Luis Obispo County, thence in a southerly direction to a point of intersection, in Los Angeles County, with the line of the said Southern Pacific Railroad running from Tehachapa Pass by way of Los Angeles to Fort

Yuma, said roads passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara, and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and two miles in length; also from a point in the city of Los Angeles, in the county of Los Angeles, State of California, to a point on or near
the Bay of San Pedro, in said county, a distance of twenty
148 and one-half miles. The aggregate length of all of said rail-
roads being one thousand four hundred and forty-nine and fifty-four one-hundredths miles."

The Los Angeles and San Pedro Railroad Company.—Incorporated Feb. 18, 1868. Capital stock, $500,000. Original articles of incorporation named following directors: John G. Downey, D. W. Alexander, J. S. Griffin, John King, Matthew Keller.

Corporate purpose.—"The Los Angeles and San Pedro Railroad Company is to extend from the city of Los Angeles, in the county of Los Angeles, State of California, to a point on or near the Bay of San Pedro, in said county, and the length of said road is to be, as near as may be, the distance of twenty-five miles."

Railroad actually constructed Dec. 18, 1874: Los Angeles to Wilmington.

Articles of consolidation of Dec. 18, 1874, signed: "Los Angeles and San Pedro Railroad Company, by Leland Stanford, president; J. L. Willcutt, secretary."

149 Said articles of consolidation bear written consent, dated Dec. 17, 1874, of Leland Stanford, Chas. Crocker, David D. Colton, Mark Hopkins, C. P. Huntington, Robert Robinson, J. L. Willcutt, Contract & Finance Company, as holders of more than 3/4 of capital stock.

Consolidation 4.

Southern Pacific Railroad Company (of Cal.) consolidated May 14, 1888, with—

(a) San Jose and Almaden Railroad Company.
(b) Pajaro and Santa Cruz Railroad Company.
(c) Monterey Railroad Company.
(d) Monterey Extension Railroad Company.
(e) Southern Pacific Branch Railway Company.
(f) San Pablo and Tulare Railroad Company.
(g) San Pablo and Tulare Extension Railroad Company.
(h) San Ramon Valley Railroad Company.
(i) Stockton & Copperopolis Railroad Company.
(j) Stockton & Tulare Railroad Company.
(k) San Joaquin Valley & Yosemite Railroad Company.
(l) Los Angeles and San Diego Railroad Company.

(m) Los Angeles and Independence Railroad Company.
(n) Long Beach, Whittier & Los Angeles County R. R. Company.
(o) Long Beach Railroad Company.
(p) Southern Pacific Railroad Extension Company.
(q) Ramona and San Bernardino Railroad Company.

Consolidated company, capital stock, $142,990,000. First board of directors named in articles of consolidation: Chas. F. Crocker, Timothy Hopkins, Charles Mayne, W. V. Huntington, N. T. Smith, J. L. Willcutt, and A. N. Towne.

Corporate purposes.—"The places to and from which said lines of railroad are to run are as follows:

"First. Commencing at the city and county of San Francisco, in the State of California, and running thence through the city and county of San Francisco, the counties of San Mateo, Santa Clara, San Benito, Monterey, Fresno, Tulare, Kern, and San Bernardino, by way of Mojave, to Needles, on the Colorado River, in the county of San Bernardino, State of California, a distance of six hundred and thirty-five and eighty-seven one-hundredths miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to Yuma, in the county of San Diego, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz, San Benito, and Monterey, to a point at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; and also from a point on said road aforesaid, at or near Salinas City, in the county of Monterey, southerly, to a point in Kern County south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad, said road passing into or through the counties of Monterey, San Luis Obispo, and Kern, and being, as near as may be, two hundred miles in length; also, commencing at or near Hillsdale, in Santa Clara County, and running thence to a point at or near New Almaden, in Santa Clara County, a distance of [illegible] miles, more or less; the aggregate length of all of said railroads being one thousand two hundred and thirty-five and forty-seven one-hundredths miles.

"Second. Commencing at or near San Miguel, in the county of San Luis Obispo, and running thence southerly through the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles to a point at or near Saugus, in Los Angeles County, on the line of the Southern Pacific Railroad, a distance of 250 miles, more or less; also, commencing at or near Castroville, in Monterey County, and running thence southwesterly to a point at or near Monte-

rey, thence northeasterly to Pacific Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel River, a distance of 31.12 miles, more or less, and all in the county of Monterey; also, commencing at or near Pajaro, in Monterey County, and running thence northerly and northwesterly to a point at or near Santa Cruz, in Santa Cruz County, a distance of 21.2 miles, more or less; also, commencing at or near Aptos, in Santa Cruz County, and running thence northerly and northeasterly to a point at or near Loma Prieta, in the same county, a distance of five miles, more or less, aggregating 307.32 miles, more or less.

"Third. Commencing at or near Martinez, in Contra Costa County, and running easterly and southeasterly through the county of Alameda, via Antioch, to a point at or near Tracy, in San Joaquin County, and thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, and Tulare to a connection with the Southern Pacific Railroad at or near Pampa, in the county of Kern, a distance of 307.58 miles, more or less.

"Fourth. Commencing at or near the city of Stockton, and
153 running thence easterly and northeasterly to or near Milton, in the county of Calaveras, a distance of 25.68 miles, more or less; also, commencing at or near Peters, in the county of San Joaquin, and running thence in a southeasterly direction, through the counties of Stanislaus, Merced, Fresno, Tulare, to a connection with the Southern Pacific Railroad at or near Poso, in Kern County, a distance of 218.69 miles, more or less, with a branch from said last-mentioned line westerly to or near Modesto, in Stanislaus County, a distance of about sixteen miles; a branch westerly to a point on Central Pacific Railroad at or near Merced, in Merced County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Sycamore, in Fresno County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Fresno in Fresno County, a distance of about ten miles; and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare, in Tulare County, a distance of about sixteen miles, aggregating in all 306.37 miles, more or less.

"Fifth. Commencing at or near Berenda, in the county of Fresno running thence northeasterly to a point at or near Perry's ranch, in said county, a distance of twenty-five miles, more or less.

154 "Sixth. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southeasterly to Anaheim and Santa Ana, in said county, and thence southeasterly through the counties of Los Angeles and San Diego, to a point at or near the city of San Diego, a distance of 140 miles, more or less.

"Seventh. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence northwesterly to Santa Monica, a distance of 18.50 miles, more or less.

"Eighth. Commencing at or near Los Angeles, in the county of Los Angeles, and running thence southwesterly to San Pedro; thence to a point at or near Point Fermin; thence westerly through the lands of the San Pedro Harbor, Dock and Land Association, to a point at or near the westerly boundary of said lands; all in said county of Los Angeles, and being 29.65 miles in length, more or less.

"Ninth. Commencing at or near Long Beach, in the county of Los Angeles, and running thence in a general northeasterly direction to Whittier, thence northwesterly to a point at or near Ramona; also, commencing at or near Los Angeles, running thence easterly to a point on the main line of the Southern Pacific Railroad, between El Monte and Puente, and thence in a northeasterly direction
155 to a point on or near San Dimos Creek, all in said county of Los Angeles, and being sixty miles in length, more or less.

"Tenth. Commencing at or near Long Beach Junction, in the county of Los Angeles, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Rancho Los Cerritos and Rancho Los Alamitos, in the county of Los Angeles, a distance of four miles, more or less.

"Eleventh. Commencing at or near Ramona, in Los Angeles County, and running thence to a point at or near Crafton, in the county of San Bernardino, a distance of seventy-one miles, more or less.

"Twelfth. Commencing at a point on the line of the San Pablo and Tulare Railroad, at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad, at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less.

"Said lines of railroad lying all within the State of California, and being composed of the lines of the several railroads hereinbefore mentioned and described. Together with such other and fur-
156 ther appendages and adjuncts, including branches and spur tracks in the counties hereinbefore named, or in one or more thereof, as the board of directors of said consolidated and amalgamated company may direct from time to time."

(a) *San Jose and Almaden Railroad Company.*—Incorporated March 2, 1886. Capital stock, $100,000. Incorporators and first board of directors named in articles of incorporation: Chas. F. Crocker, Ariel Lathrop, N. T. Smith, A. C. Bassett, and J. L. Willcutt.

Corporate purposes.—"That said corporation is formed for the purpose of constructing, owning, maintaining, and operating a broad-

gauge line of steam railroad in the county of Santa Clara, in the State of California. * * * That said railroad is to commence at a point on the line of the Northern Division of the Southern Pacific Railroad, distant one-quarter of a mile south of Oak Hill station on said road, and running thence southerly to the junction of the Guadaloupe and Los Alamitos Creeks; thence southeasterly up and along said Los Alamitos Creek to the town of New Almaden."

Railroads actually constructed May 14, 1888: Hillsdale to New Almaden.

157 Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president San Jose & Almaden Railroad Company; J. L. Willcutt, secretary San Jose & Almaden Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Chas. F. Crocker, J. L. Willcutt, N. T. Smith, Pacific Improvement Co., Ariel Lathrop, A. C. Bassett, as holders of more than ¾ of capital stock.

(b) Pajaro and Santa Cruz Railroad Company.—Incorporated June 3, 1884. Capital stock, $650,000. First board of directors named in articles: George Crocker, A. C. Bassett, N. T. Smith, J. L. Willcutt, C. F. Crocker.

Corporate purposes.—"The places from and to which said railroad is to run are as follows:

"1st. The main line thereof, being the line before this consolidation owned and operated by the Pajaro and Santa Cruz Railroad Company, commencing at the town of Pajaro, in the county of Monterey and State of California, and running thence in a general northerly and northwesterly direction a distance of twenty-one and two

158 tenths ($21\frac{2}{10}$) miles, to the town of Santa Cruz aforesaid.

"2nd. The branch thereof, being the line before this consolidation owned and operated by the Loma Prieta Railroad Company; commencing at Aptos, in said county of Santa Cruz, and running thence in a northerly direction along the Aptos Creek, a distance of about three miles, to the point of confluence of Bridge Creek with said Aptos Creek; thence in a northeasterly direction following the meanders of said Aptos Creek to the point of confluence of said Aptos Creek with the creek running from White Lagoon, a distance of about two miles; the whole length of said branch being five (5) miles, as near as may be."

Railroad actually constructed May 14, 1888: Pajaro to Santa Cruz.

Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president Pajaro & Santa Cruz Railroad Company; J. L. Willcutt, secretary Pajaro & Santa Cruz Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Chas. F. Crocker, N. T. Smith, Pacific Improvement Co.

A. C. Bassett, Timothy Hopkins, J. L. Willcutt, C. E. Green, S. T. Gage, Creed Raymond, as holders of more than ¾ of capital stock.

(c) *Monterey Railroad Company.*—Incorporated Jan. 24, 1880. Capital stock, $250,000. First board of directors named in articles: Charles Crocker, J. L. Willcutt, W. V. Huntington, Charles F. Crocker, N. T. Smith.

Corporate purposes.—"Said corporation is formed for the purpose of purchasing, constructing, owning, maintaining, and operating a line of wide-gauge steam railroad, situate wholly within the county of Monterey and State of California. That said railroad is to commence at Castroville, in said county, there connecting with the Southern Pacific Railroad, and running thence to the town of Monterey, in said county."

Railroads actually constructed May 14, 1888: Castroville to Monterey.

Articles of consolidation of May 14, 1888, signed: "Chas Crocker, president Monterey Railroad Company; J. L. Willcutt, secretary Monterey Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Chas. F. Crocker, W. V. Huntington, J. L. Willcutt, Pacific Improvement Co., C. P. Huntington, Timothy Hopkins, Chas. Crocker, N. T. Smith, Leland Stanford, Mrs. M. F. Searles, as holders of more than ¾ of capital stock.

(d) *Monterey Extension Railroad Co.*—Incorporated Jan. 6, 1888. Capital stock, $250,000. Incorporators and first board of directors named in articles: Charles Crocker, Charles F. Crocker, Timothy Hopkins, W. V. Huntington, N. T. Smith.

Corporate purpose.—"Said corporation is formed for the purpose of purchasing, constructing, owning, maintaining, and operating a standard-gauge line of steam railroad situated wholly within the county of Monterey and State of California."

Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president Monterey Extension Railroad Company; J. L. Willcutt, secretary Monterey Extension Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Chas. F. Crocker, W. V. Huntington, Timothy Hopkins, Chas. Crocker, N. T. Smith, as holders of more than ¾ of capital stock.

(e) *Southern Pacific Branch Railway Company.*—Incorporated April 12, 1886. Capital stock, $10,000,000. Incorporators and first board of directors named in articles: Chas. F. Crocker, N. T. Smith, W. V. Huntington, W. E. Brown, Timothy Hopkins, S. T. Gage, J. L. Willcutt.

Corporate purpose.—"That said corporation is formed for th purpose of constructing, owning, maintaining, and operating a stand ard-gauge line of steam railroad in the counties of San Luis Obispo Santa Barbara, Ventura, and Los Angeles, in said State, and carry ing passengers and freight thereon and thereover for hire. The said railroad is to commence at a point at or near San Miguel, in sai county of San Luis Obispo, there to connect with the railroad of th Southern Pacific Railroad Company, and run from thence in a gen eral southeasterly direction by the most practicable route throug and into said counties of San Luis Obispo, Santa Barbara, Ventura and Los Angeles to a point on the line of and there to connect wit the Southern Pacific Railroad in said Los Angeles County, at or nea Newhall."

Railroads actually constructed May 14, 1888: San Miguel to Tem pleton; Saugus to Ellwood.

162 Articles of consolidation of May 14, 1888, signed: "Cha F. Crocker, president Southern Pacific Branch Railway Com pany; J. L. Willcutt, secretary Southern Pacific Branch Railway Company."

Said articles of consolidation bear written consent, dated May 1888, of Chas. F. Crocker, W. V. Huntington, W. E. Brown, Pacif Improvement Co., Timothy Hopkins, J. L. Willcutt, N. T. Smith, S T. Gage, as holders of ¾ of capital stock.

(f) *San Pablo and Tulare Railroad Company.*—Incorporate July 19, 1871. First board of directors named in articles: C. P Huntington, Leland Stanford, Mark Hopkins, E. H. Miller, Jr., C H. Cummings.

Corporate purpose.—"The places from and to which the propose railroad is to be constructed are a point at or near Martinez, in th county of Contra Costa, and a point at or near Los Gatos Creek, i the county of Fresno, all in the State of California. The counti into and through which this railroad is intended to pass are Contr Costa, San Joaquin, Stanislaus, Merced, and Fresno."

Railroads actually constructed May 14, 1888: Martinez t Tracy.

163 Articles of consolidation of May 14, 1888, signed: "Cha Crocker, vice president San Pablo & Tulare Railroad Com pany; W. V. Huntington, secretary San Pablo & Tulare Railroa Company."

Said articles of consolidation bear written consent, dated May 1888, of Western Development Co., Chas. F. Crocker, Timothy Hop kins, C. P. Huntington, Leland Stanford, W. V. Huntington, Cha Crocker, as holders of more than ¾ of capital stock.

(g) *San Pablo and Tulare Extension Railroad Company.*—Incor porated Feb. 7, 1887. Capital stock, $8,000,000. Incorporators a

t board of directors named in articles: Charles F. Crocker, Tim- y Hopkins, Willard V. Huntington, W. E. Brown, C. E. Green.

Corporate purpose.—"* * * for the purpose of constructing, ing, maintaining, and operating a standard-gauge line of steam road in the counties of San Joaquin, Stanislaus, Merced, Fresno, lare, and Kern, State of California, * * * said railroad is to mence at Tracy, in the county of San Joaquin, there connecting with the San Pablo and Tulare Railroad, and running thence in a general southeasterly direction to Pampa, in the county of Kern."

Railroad actually constructed May 14, 1888: Approximately Tracy Armona.

Articles of consolidation of May 14, 1888, signed: "Chas. F. ocker, president San Pablo & Tulare Extension Railroad Com- ay; W. V. Huntington, secretary San Pablo & Tulare Extension ilroad Company."

Said articles of consolidation bear written consent, dated May 4, 8, of Chas. F. Crocker, Timothy Hopkins, W. V. Huntington, . E. Brown, Pacific Improvement Co., C. E. Green, as holders of re than ⅔ of capital stock.

(h) *San Ramon Valley Railroad Company.*—Incorporated April 1888. Capital stock $1,050,000. Incorporators and first board of ectors named in articles: James P. Brown, D. D. Stubbs, W. L. own, A. J. Treat, G. L. Lansing.

Corporate purpose.—"* * * constructing, owning, maintain- g, and operating a standard-gauge line of steam railroad in the unties of Contra Costa and Alameda, State of California * * * id railroad to commence at a point on the line of the San Pablo and Tulare Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, all the State of California."

Railroad actually constructed May 14, 1888: None.

Articles of consolidation May 14, 1888, signed: "Jas. P. Brown, sident San Ramon Valley Railroad Company; D. D. Stubbs, sec- ary San Ramon Valley Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 8, of A. J. Treat, G. L. Lansing, Pacific Improvement Co., D. D. ubbs, Jas. P. Brown, W. L. Brown, as holders of more than ⅔ f capital stock.

(i) *Stockton & Copperopolis Railroad Company.*—Incorporated n. 8, 1865. Capital stock $1,500,000. First board of directors med in articles: E. S. Holden, C. T. Meader, Thomas Hardy, T. Anthony, W. K. Reed, George Gray, Timothy Paige, Geo. H. nderson, H. B. Underhill.

Corporate purpose.—"* * * constructing, owning, and mai
taining a railroad from the city of Stockton, in the county of S
Joaquin, through said county and the counties of Stanislaus a
Calaveras, to the town of Copperopolis, all in the said State
California."

166 Railroad actually constructed May 14, 1888: Stockton
Milton, with branch, Peters to Oakdale.

Articles of consolidation May 14, 1888, signed: "Chas. F. Crock
vice president Stockton & Copperopolis Railroad Company; W.
Huntington, secretary Stockton & Copperopolis Railroad Co
pany."

Said articles of consolidation bear written consent, dated May
1888, of W. E. Brown, Chas. F. Crocker, Timothy Hopkins, C.
Huntington, W. V. Huntington, E. H. Pardee, N. T. Smith, Lela
Stanford, Mrs. M. F. S. Searles, as holders of more than ¾ of capit
stock.

(i–1) *Stockton and Copperopolis Railroad Company.*—Incorp
rated Oct. 11, 1865. Capital stock, $1,500,000. First board of dir
tors named in articles: T. G. Phelps, W. A. Dana, Austin Sper
T. R. Anthony, and W. F. McKee, C. T. Meader, E. S. Holden, H.
Hewlett, Geo. Gray.

Corporate purposes.—"For the purpose of constructing, owni
and maintaining a railroad from the city of Stockton, in the cou
of San Joaquin, through said county and the counties of Stanisla
and Calaveras to the town of Copperopolis, all in the said State
California."

167 (NOTE.—It is believed that the latter company (i–1) is t
company consolidated with the S. P. R. R. May 14, 1888, a
not the former company.

Officers and stockholders same as (i).

(j) *Stockton and Tulare Railroad Company.*—Incorporated D
2, 1887. Capital stock, $7,860,000. Incorporators and first board
directors named in articles: Leland Stanford, Charles F. Crock
Timothy Hopkins, W. V. Huntington, W. E. Brown.

Corporate purposes.—"* * * constructing, owning, maintai
ing, and operating a standard-gauge line of steam railroad in t
counties of Stanislaus, Merced, Fresno, Tulare, and Kern, in t
State of California, with branches thereto * * * the route
said proposed railroad lies wholly within the State of Californi
and the places to and from which said road and its branches are
run and the lengths thereof are as follows: The main line of s
railroad is to commence at Oakdale, in the county of Stanislaus, a
run from thence in a general southeasterly direction through a
into said counties of Stanislaus, Merced, Fresno, and Tulare to t

town of Poso, in Kern County, there connecting with the line of the Central Pacific Railroad, a distance of about two hundred miles.

The branches to said road are to run as follows:

"First. Commencing at the town of Modesto, in the county of Stanislaus, there connecting with the Central Pacific Railroad and running thence in a general easterly direction by the most practicable route to a connection with the aforesaid main line, a distance of about seven miles.

"Second. Commencing at Merced, in the county of Merced, there connecting with the line of the Central Pacific Railroad and running thence in a general easterly direction by the most practicable route to a connection with the aforesaid main line, a distance of about ten miles.

"Third. Commencing at Sycamore, in the county of Fresno, there connecting with the line of the Central Pacific Railroad and running thence in an easterly direction by the most practicable route to a connection with the aforesaid main line, a distance of about ten miles.

"Fourth. Commencing at Fresno, in the county of Fresno, there connecting with the main line of the Central Pacific Railroad and running thence in a general easterly direction by the most practicable route to a connection with the aforesaid main line, a distance of about ten miles.

"Fifth. Commencing at Tulare, in the county of Tulare, there connecting with the line of the Central Pacific Railroad, and running thence in a general easterly direction by the most practicable route to a connection with the aforesaid main line, a distance of about sixteen miles."

Railroads actually constructed May 14, 1888: Oakdale to Merced; Fresno to about Sanger.

Articles of consolidation May 14, 1888, signed: "Chas. F. Crocker, vice president Stockton & Tulare Railroad Company; W. V. Huntington, secretary Stockton & Tulare Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of W. E. Brown, Leland Stanford, Chas. F. Crocker, Timothy Hopkins, W. V. Huntington, Pacific Improvement Co., as holders of more than ¾ of capital stock.

(t) *San Joaquin Valley and Yosemite Railroad Company.*—Incorporated Feb. 15, 1886. Capital stock, $5,600,000. Incorporators and first board of directors named in articles: Charles F. Crocker, Timothy Hopkins, W. V. Huntington, S. T. Gage, C. E. Green.

Corporate purpose.—"* * * for the purpose of constructing, owning, maintaining, and operating a broad-gauge line of steam railroad in the county of Fresno and * * * said railroad is to commence at a point on the line of the Central Pacific

Railroad at Berenda station, in the county of Fresno, running thence in a northeasterly direction to Perry's ranch, in said county."

Railroads actually constructed May 14, 1888: Berenda to Raymond.

Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president San Joaquin Valley & Yosemite Railroad Company; W. V. Huntington, secretary San Joaquin Valley & Yosemite Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Chas. F. Crocker, Timothy Hopkins, W. V. Huntington, S. T. Gage, Pacific Improvement Co., C. E. Green, as holders of more than ¾ of capital stock.

(l) *The Los Angeles and San Diego Railroad Company.*—Incorporated Oct. 10, 1876. Capital stock $5,600,000. First board of directors named in articles: Leland Stanford, David D. Colton, Mark Hopkins, Charles Crocker, B. B. Redding.

171 Corporate purposes.—"* * * for the purpose of constructing, owning, maintaining, and operating a line of railroad and telegraph, situated in the counties of Los Angeles and San Diego, in the State of California. * * * Said railroad and telegraph is to commence at the city of Los Angeles, in the county of Los Angeles, in the State of California, and to run thence in a southeasterly direction to the town of Anaheim, in said county, and thence in a southeasterly direction by the most practicable route through said counties of Los Angeles and San Diego to the city of San Diego, in said last-named county."

Railroads actually constructed May 14, 1888: Florence Junction to Santa Ana.

Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president Los Angeles & San Diego Railroad Company; J. L. Willcutt, secretary Los Angeles & San Diego Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of Western Development Co., C. P. Huntington, Timothy Hopkins, Chas. Crocker, J. L. Willcutt, N. T. Smith, Leland Stanford, as holders of more than ¾ of capital stock.

172 (m) *The Los Angeles and Independence Rail Road Company.*—Incorporated Jan. 8, 1875. Capital stock $4,000,000. First board of directors named in articles: John P. Jones, F. P. F. Temple, James A. Pritchard, Trenor W. Park, R. S. Baker, J. S. Slauson.

Corporate purposes.—"* * * the construction, maintenance, and operation of a railroad between Independence, in the county of Inyo, and the city of Los Angeles, and thence by branch road to the town site of Santa Monica, on the shore of the Pacific Ocean. The

...e of said road shall be by the Cajon Pass, and the most prac-...ble and convenient course otherwise."

...ilroads constructed May 14, 1888: Los Angeles to Santa Monica.

Articles of consolidation of May 14, 1888, signed: "Chas. F. ...cker, president Los Angeles & Independence Railroad Company; ...S. Douty, secretary Los Angeles & Independence Railroad Com-...y."

Said articles of consolidation bear written consent, dated May 4, 1888, of Western Development Co., C. P. Huntington, W. V. Huntington, Timothy Hopkins, F. S. Douty, Chas. Crocker, Leland Stanford, Chas. F. Crocker, as holders of more than ...f capital stock.

(a) *Long Beach, Whittier & Los Angeles County R. R. Com-...y.*—Incorporated Dec. 17, 1887. Capital stock, $1,500,000. In-...rporators and first board of directors named in articles: Leland ...anford, Charles F. Crocker, Timothy Hopkins, W. V. Huntington, ...E. Brown.

...rporate purposes.—"* * * purpose of constructing, owning, ...intaining, and operating a standard-gauge line of steam railroad ...the county of Los Angeles, State of California * * * said rail-...d to commence at Long Beach, in the county of Los Angeles, ...te of California, and running thence in a northeasterly direction ...Whittier; thence northwesterly to Ramona; also commencing at ...s Angeles and running thence in an easterly direction to a point ...the main line of the Southern Pacific Railroad between El Monte ...d Puenta, and thence in a northeasterly direction to a point on or ...r San Dimas Creek, all in said county of Los Angeles."

Railroads actually constructed May 14, 1888: Studebaker to Whittier.

Articles of consolidation of May 14, 1888, signed: "Chas. F. Crocker, president Long Beach, Whittier & Los Angeles ...unty Railroad Company; W. V. Huntington, secretary Long ...ach, Whittier & Los Angeles County Railroad Company."

Said articles of consolidation bear written consent, dated May 4, ...88, of Leland Stanford, Chas. F. Crocker, W. V. Huntington, ...imothy Hopkins, W. E. Brown, Pacific Improvement Co., as holders ...more than ¾ of capital stock.

(c) *Long Beach Railroad Company.*—Incorporated Oct. 31, 1887. ...apital stock, $100,000. Incorporators and first board of directors ...med in articles: E. B. Cushman, W. B. Wilshire, H. G. Wilshire, ...M. White, John D. Bicknell.

...rporate purposes.—"* * * to construct, maintain, operate, ...n, carry on, and control a steam railroad of standard gauge run-...g from the station known as Long Beach Junction on the line of ...Los Angeles and San Pedro Railroad in Los Angeles County,

California, to the town of Long Beach, and through said town i
an easterly direction to the boundary line between the Ranchos Lo
Cerritos and Los Alamitos, in said county, at or near the poin
where Second Street in the said town of Long Beach extende
175 easterly would intersect the boundary line of said ranchos
and to acquire by purchase or otherwise rights of way for sai
railroad, lands for depot purposes, franchises, rolling stock, and al
other property and things necessary or convenient for the construc
tion, operation, and use of said railroad, and to construct telegraph
lines to be used in operating said railroad, and to acquire by pur
chase or otherwise any railroad heretofore operated by dummies
horses, and other means of propelling cars over and upon the lin
aforesaid or any part thereof, and to acquire stock in any corporatio
owning railroads upon the line aforesaid, and to do all things tha
may be necessary to effectually carry out the aforesaid objects fo
which this corporation is formed."

Railroads actually constructed May 14, 1888: Thenard to Lon
Beach.

Articles of consolidation of May 14, 1888, signed: "Chas. F
Crocker, president Long Beach Railroad Company; F. S. Douty
secretary Long Beach Railroad Company."

176 Said articles of consolidation bear written consent, date
May 4, 1888, of Pacific Improvement Co., F. S. Douty, Tim
othy Hopkins, W. E. Brown, C. E. Green, Chas. F. Crocker, a
holders of more than ¾ of capital stock.

(p) *Southern Pacific Railroad Extension Company.*—Incorpo
rated Feb. 21, 1888. Capital stock, $250,000. Original incorporator
and first board of directors named in articles: Leland Stanford
Charles Crocker, Timothy Hopkins, W. V. Huntington, W. F
Brown.

Corporate purposes.—"* * * for the purpose of purchasing
constructing, owning, maintaining, and operating a standard-gaug
line of steam railroad situated wholly within the county of Lo
Angeles, State of California."

Railroads actually constructed May 14, 1888: San Pedro to Fermi

Articles of consolidation of May 14, 1888, signed: Chas. Crocke
president Southern Pacific Railroad Extension Company; J. F
Willcutt, secretary Southern Pacific Railroad Extension Company

Said articles of consolidation bear written consent, date
177 May 4, 1811, of Pacific Improvement Co., Timothy Hopkin
W. V. Huntington, Chas. Crocker, W. E. Brown, Leland Stan
ford, as holders of more than ¾ of capital stock.

(q) *Ramona and San Bernardino Railroad Company.*—Incorpo
rated Apr. 25, 1888. Capital stock, $2,135,000. Incorporators an

st board of directors named in articles: G. L. Lansing, James P. wn, Frederick Madge, C. G. Lathrop, Chas. E. Green.

Corporate purposes.—" * * * for the purpose of construct- owning, maintaining, and operating a standard-gauge line of n railroad in the counties of Los Angeles and San Bernardino, te of California, and * * * said railroad to commence at a nt on the line of the Southern Pacific Railroad at or near Ramona, the county of Los Angeles, and running thence to a point at or r the town of Crafton, in the county of San Bernardino."

Railroads actually constructed May 14, 1888: None.

Articles of consolidation of May 14, 1888, signed: G. L. Lansing, sident Ramona & San Bernardino Railroad Company; C. E. Green, secretary Ramona & San Bernardino Railroad Company."

Said articles of consolidation bear written consent, dated May 4, 1888, of G. L. Lansing, C. E. Green, Jas. P. Brown, s. G. Lathrop, Fredk. Madge, as holders of more than ¾ of the pital stock.

November 3, 1892, articles of incorporation, Southern Pacific Rail- d Company (of California), amended by reducing capital stock 0,000,000, etc. First board of directors named in amended icles: Charles F. Crocker, C. P. Huntington, Charles Mayne, W. V. ntington, N. T. Smith, J. L. Willcutt, A. N. Towne.

Consolidation 5.

Southern Pacific Railroad Company (of Cal.) consolidated April 1898, with—

(a) Northern Railway Company.

(b) Northern California Railway Company.

(c) California Pacific Railroad Company.

Consolidated company, capital stock $129,455,000. First board of ectors named in articles of consolidation: C. P. Huntington, T. H. bbard, George Crocker, C. E. Green, Charles G. Lathrop, H. E. Huntington, F. S. Douty, Russell J. Wilson, N. T. Smith.

Corporate purposes.—"The places to and from which said lines of railroad are to run are as follows:

"First. Commencing at the city and county of San Francisco, in e State of California, and running thence through the city and unty of San Francisco, the counties of San Mateo, Santa Clara, n Benito, Monterey, Fresno, Tulare, Kern, and San Bernardino, y way of Mojave to Needles, on the Colorado River, in the county f San Bernardino, State of California, a distance of six hundred d thirty-five and eighty-seven one-hundredths miles, as near as y be; also a line of railroad from a point at or near Tehachapi , by way of Los Angeles and across the Colorado River to the

east bank thereof near Yuma, in the Territory of Arizona, a distance of three hundred and fifty-six and seven-tenths miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz, San Benito, and Monterey, to a point at or near Salinas City, in said last-named county, a distance of thirty-five and one-tenth miles, as near as may be; also from a point on said railroad at or near Salinas City, in said last-named county, to the so-called Spreckels Sugar Factory, a distance of three miles, more or less; also from a point on said road
180 aforesaid, at or near Salinas City, in the county of Monterey, southerly and easterly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin division of the said Southern Pacific Railroad, said road passing into and through the counties of Monterey, San Luis Obispo, and Kern, and being as near as may be two hundred miles in length; also commencing at or near Los Angeles, in the county of Los Angeles, and running thence southwesterly to San Pedro, in the same county, a distance of twenty-four and sixty-five one-hundredths miles, as near as may be, the aggregate length of all of said railroads being one thousand two hundred and fifty-five and thirty-two one-hundredths miles, as near as may be.

"Second. Commencing at or near Hillsdale, in Santa Clara County, and running thence to a point at or near New Almaden, in Santa Clara County, a distance of seven and eight-tenths miles, as near as may be.

"Third. Commencing at or near Pajaro, in Monterey County, and running thence northerly and northwesterly to a point at or near Santa Cruz, in Santa Cruz County, a distance of twenty-one and two-tenths miles, more or less; also commencing at or near Aptos, in Santa Cruz County, and running thence northerly and north-
181 easterly via Loma Prieta and Monte Vista to a point at or near the headwaters of Apros Creek, in the same county, a distance of ten miles, more or less; the aggregate length of said railroads being thirty-one and two-tenths miles, more or less.

"Fourth. Commencing at or near San Miguel, in the county of San Luis Obispo, and running thence southerly through the counties of San Luis Obispo, Santa Barbara, Ventura, and Los Angeles, to a point at or near Saugus, in Los Angeles County, on the line of the Southern Pacific Railroad, a distance of two hundred and fifty miles, more or less, with a branch from a point at or near the Santa Ynez River in a southeasterly direction to Lompoc, in Santa Barbara County, with a 'Y' track or connection from said branch line to the said main line at or near Surf, in Santa Barbara County, a distance of eleven miles, more or less.

"Fifth. Commencing at or near Castroville, in Monterey County, and running thence southwesterly to a point at or near Monterey, thence northwesterly to Pacific Grove Retreat, and thence southwesterly to a point at or near the mouth of the Carmel River, a distance of thirty-one and twelve one-hundredths miles, more or less, and all in the county of Monterey.

"Sixth. Commencing at or near Martinez, in Contra Costa County, and running easterly and southeasterly through the counties of Contra Costa, Alameda, and San Joaquin via Antioch to a point at or near Tracy, in San Joaquin County, and thence in a general southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, Tulare, and Kern to a connection with the Southern Pacific Railroad at or near Pampa, in the county of Kern, a distance of three hundred and seven and fifty-eight one-hundredths miles, more or less.

"Seventh. Commencing at a point on the line of the Southern Pacific Railroad at or near Avon, in the county of Contra Costa, and running thence to a point on the Central Pacific Railroad at or near Pleasanton, in the county of Alameda, a distance of thirty-five miles, more or less.

"Eighth. Commencing at or near the city of Stockton, in the county of San Joaquin, and running thence easterly and northeasterly to or near Milton, in the county of Calaveras, a distance of twenty-five and sixty-eight one-hundredths miles, more or less; also an extension thereof in a general northeasterly direction to the Big Trees, with a branch from Altaville in a northwesterly direction to Valley Springs, said extension and branch being in said county of Calaveras, the estimated length of which said extension and branch is eighty miles.

"Ninth. Commencing at or near Peters, in the county of San Joaquin, and running thence in a southeasterly direction through the counties of San Joaquin, Stanislaus, Merced, Fresno, Tulare, and Kern to a connection with the Southern Pacific Railroad at or near Poso, in Kern County, a distance of two hundred and eighteen and sixty-nine one-hundredths miles, more or less, with a branch from said last-mentioned line westerly to or near Modesto, in Stanislaus County, a distance of about sixteen miles; a branch westerly to a point on the Central Pacific Railroad at or near Merced, in Merced County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Sycamore, in Fresno County, a distance of about ten miles; a branch westerly to a connection with the Central Pacific Railroad at or near Fresno, in Fresno County, a distance of about ten miles; and a branch westerly to a connection with the Southern Pacific Railroad at or near Tulare, in

Tulare County, a distance of about sixteen miles, aggregating in a
two hundred and eighty and sixty-nine one-hundredths miles, mo
or less.

184 "Tenth. Commencing at or near Berenda, in the county
Fresno, running thence northeasterly to a point at or ne
Perry's ranch, in said county, a distance of twenty-five miles, more
less.

"Eleventh. Commencing at or near Los Angeles, in the county
Los Angeles, and running thence southeasterly to Anaheim and San
Ana, in the county of Orange, and thence southeasterly through t
counties of Los Angeles, Orange, and San Diego, to a point at or ne
the city of San Diego, a distance of one hundred and forty mil
more or less, with a branch from Miraflores, in said county of Oran
to Tustin, in same county, a distance of twelve miles, more or les
also a branch from Anaheim, in said county of Los Alamitos, a
thence to Long Beach, in the county of Los Angeles, a distance
twenty miles, more or less.

"Twelfth. Commencing at or near Los Angeles, in the county
Los Angeles, and running thence northwesterly to Santa Monica,
same county, a distance of eighteen and fifty one-hundredths mil
more or less; also commencing at a point near the town of San
Monica, on said last-mentioned line, and running thence westerly
the Soldiers' Home Grounds (with a branch line thereto for
185 ing the west arm of a Y at the Home Junction station of sa
railroad, and running thence easterly to the Soldiers' Ho
Branch), the estimated length of which is three miles, all in sa
county of Los Angeles.

"Thirteenth. Commencing at a point on the line of the Wilmin
ton division of the Southern Pacific Railroad between the towns
Wilmington and San Pedro, in the county of Los Angeles, and ru
ning thence southwesterly through said town of San Pedro to a poi
at or near Point Fermin, thence westerly through the lands of t
San Pedro Harbor, Dock and Land Association to a point at or ne
the westerly boundary of said lands, all in said county of Los Angel
and being five miles in length, more or less.

"Fourteenth. Commencing at or near Long Beach, in the coun
of Los Angeles, and running thence in a general northeasterly dir
tion to Whittier, thence northwesterly to a point at or near Ramo
a distance of thirty miles, more or less; also commencing at or ne
Los Angeles, running thence easterly to Bassett; and thence in
northeasterly direction to a point on or near San Dimas Creek; the
in a southeasterly direction to Pomona, a distance of thirty-se
miles, more or less.

"Fifteenth. Commencing at or near Long Beach Junction, in the county of Los Angeles, and running thence to the town of Long Beach, and thence in an easterly direction to the boundary line between the Rancho Los Cerritos and Rancho Los Alamitos, in the county of Los Angeles, a distance of four miles, more or less.

"Sixteenth. Commencing at or near Ramona, in Los Angeles County, and running thence to a point at or near Crafton, in the county of San Bernardino, a distance of seventy-one miles, more or less.

"Seventeenth. Commencing at the city and county of San Francisco, State of California, and running thence in a general southerly direction by the most practicable route to San Bruno, in the county of San Mateo, the estimated length of which is eleven miles; also, commencing at South San Francisco, in said county of San Mateo, and running thence in a general northwesterly direction to Baden, in said county, a distance of two miles, more or less.

"Eighteenth. Commencing at Kings City, in the county of Monterey, and running thence in a general easterly direction to Lewis Creek, in the county of Monterey, the estimated length of which is fifteen miles.

"Nineteenth. Commencing at Paso Robles, in the county of San Luis Obispo, and running thence in a general southeasterly direction to Carisso Plains, in the same county, the estimated length of which is fifty-six miles.

"Twentieth. Commencing at San Luis Obispo, in the county of San Luis Obispo, and running thence in a general southeasterly direction to a point on the Santa Ynez River, at Santa Ynez Mission, in the county of Santa Barbara, the estimated length of which is eighty miles.

"Twenty-first. Commencing at a point at or near the mouth of the Santa Ynez River, in the county of Santa Barbara, and running thence in a general southeasterly direction via Lompoc to Santa Ynez Mission, in said county of Santa Barbara, the estimated length of which is thirty-five miles.

"Twenty-second. Commencing at San Buena Ventura, in the county of Ventura, and running thence in a general easterly direction via Hueneme Plains and San Fernando Valley to Los Angeles, in the county of Los Angeles, the estimated length of which is seventy miles.

"Twenty-third. Comemncing at Santa Monica, in the county of Los Angeles, and running thence in a general westerly direction to the new wharf west of Santa Monica Canyon, in said county, the estimated length of which is three miles.

"Twenty-fourth. Commencing at Ontario, in the county of San Bernardino, and running thence southeasterly via Chino and South

Riverside to Elsinore, in the county of San Diego, the estimated length of which is forty-one miles.

"Twenty-fifth. Commencing at San Bernardino, in the county of San Bernardino, and running thence in a general southerly direction via Colton and Riverside to South Riverside, in the county of Riverside, and thence in a northwesterly direction to Pomona, in the county of Los Angeles, the estimated length of which is forty-three miles.

"Twenty-sixth. Commencing at Declez, in the county of San Bernardino, and running thence in a general southerly direction to Declezville, in the same county, the estimated length of which is three miles.

"Twenty-seventh. Commencing at Redlands Junction, in the county of San Bernardino, and running thence in a general easterly direction via Redlands and Crafton to Yucaipa Valley, in the county of San Bernardino, the estimated length of which is fifteen miles.

"Twenty-eighth. Commencing at San Bernardino, in the
189 county of San Bernardino, running thence in a general southeasterly direction to Motor Junction, in said county, the estimated length of which is eight miles.

"Twenty-ninth. Commencing at Collis, in the county of Fresno, and running thence in a general easterly direction to Fresno, in the same county, the estimated length of which is sixteen miles.

"Thirtieth. Commencing at Mendota, in the county of Fresno, and running thence in a general southeasterly direction to Lokern, in the county of Kern, the estimated length of which is one hundred and ten miles.

"Thirty-first. Commencing at Lokern, in the county of Kern, and running thence in a general easterly direction to Rio Bravo, in the same county, the estimated length of which is sixteen miles.

"Thirty-second. Commencing at Stevens, in the county of Kern, and running thence in a general easterly direction to Bakersfield, in the same county, the estimated length of which is fifteen miles.

"Thirty-third. Commencing at Lokern, in the county of Kern, and
running thence in a general southwesterly direction to As-
190 phalto, in the same county, the estimated length of which is ten miles.

"Thirty-fourth. Commencing at Stevens, in the county of Kern, and running thence in a general southerly direction via Sunset Asphaltum Beds and thence in a general easterly and northerly direction to Pampa, in the county of Kern, the estimated length of which is fifty-six miles.

"Thirty-fifth. Commencing at the city of Fresno, in the county of Fresno, and running thence in a general northeasterly direction via the town of Pollasky, on the San Joaquin River, to a point near the

of the San Joaquin River, in said county, the estimated length which is seventy-five miles.

"Thirty-sixth. Commencing at Montpelier, in the county of Stanus, and running thence in an easterly and northerly direction to Yosemite Valley, in Mariposa County, the estimated length of ich is ninety-two miles.

"Thirty-seventh. Commencing at Shorb, in the county of Los geles, running thence in a northerly direction to Pasadena, in said nty, a distance of five miles, more or less.

"Thirty-eighth. Commencing at Shorb, in the county of Los Angeles, running thence in a northeasterly direction, via Monrovia and Duarte, to San Bernardino, in the county of San rnardino, a distance of fifty-three miles, more or less.

"Thirty-ninth. From Los Angeles to Shorb via San Gabriel Vain a northeasterly direction, a distance of six miles, more or less.

"Fortieth. Commencing at the city and county of San Francisco, running thence to and through the counties of Alameda, Contra sta, Solano, Yolo, Sacramento, Colusa, and Tehama to a point Tehama County, a distance of 197 miles, more or less; with a nch from a point on said main line at or near Davisville, in the nty of Yolo, to the city of Sacramento, in the county of Sacraento, a distance of 13 miles, more or less; also such wharves and ds as may be necessary to the working and operating of said d and its branches, and ferries to connect the same with the city San Francisco, a distance in all of 210 miles, more or less.

"Forty-first. Commencing at or near Winters, in the county of lo, State aforesaid, and running thence northwesterly up Berryessa Valley, through and into the counties of Yolo, Solano, Napa, Lake, and Mendocino to Clear Lake, and thence to a point at or near Ukiah, in Mendocino County, a distance of miles, more or less.

"Forty-second. Commencing at or near Woodland, in the county Yolo, and running thence in a general northwesterly direction to oint at or near Lakeport, in the county of Lake, a distance of 100 les, more or less.

"Forty-third. Commencing at or near the town of Willows, in county of Colusa, and running thence in a general northwesterly rection to a point in, at, or near Round Valley, in the county of ndocino, a distance of seventy-five miles, more or less.

"Forty-fourth. Commencing at or near Elmira, in the county of lano, and running thence in a general northerly direction to a int at or near Madison, in the county of Yolo, a distance of 28.55 les, more or less.

"Forty-fifth. Commencing at or near the junction of Otter or g Slough with the South Fork of the Mokelumne River, thence

passing through the county of San Joaquin and the adjoining county of Calaveras to a point about 9.80 miles east of the west line of Calaveras County, a distance of 39.60 miles, more or less.

"Forty-sixth. Commencing at or near Sacramento City, in
193 the county of Sacramento, and running thence in a general northeasterly direction to Folsom; then southeasterly to a point at or near Latrobe; thence northeasterly through Shingle Springs to a point at or near Placerville, in El Dorado County, a distance of 60.50 miles, more or less.

"Forty-seventh. Commencing at or near the town of Santa Rosa, in the county of Sonoma, and running thence through the counties of Sonoma and Napa to or near the town of Benicia, in the county of Solano, a distance of 50 miles, more or less.

"Forty-eighth. Commencing at or near the town of Galt, in the county of Sacramento, and running thence in a general northeasterly direction to or near to Iona, in the county of Amador, a distance of 27.20 miles, more or less.

"Forty-ninth. Commencing at or near Shell Mound, in the county of Alameda, and running thence in a general easterly direction to or near to North Berkeley Station, in said county, a distance of 3.84 miles, more or less.

"Fiftieth. Commencing at a point in the city of Marysville, thence from said point, crossing Feather River, into the county of Sutter, and thence on a practicable line to Knights Landing, in the county of Yolo, a distance of 28 miles, more or less.

194 "Fifty-first. Commencing at the city of Marysville, in the county of Yuba, State of California, and running thence to the town of Oroville, in the county of Butte, in said State, a distance of 27 miles, more or less.

"Fifty-second. From the city of Vallejo, Solano County, California, to the city of Sacramento; also from a point in said line at Davisville, Yolo County, to Marysville, in Yuba County; also from a point in said first-named line at or near Adelanta to a point at or near Sonoma, thence to a point at or near Petaluma, thence to a point at or near Santa Rosa, thence to a point at or near Healdsburg, and thence to Clover Sale, with a branch from Santa Rosa via West Bloomfield at Bodega Corners; also from said intersection at Adelante to Calistoga, and thence via Knights Valley to Healdsburg, an aggregate length of 247 miles, more or less.

"Fifty-third. Commencing at Goshen, in the county of Tulare, and running thence via Visalia to Exeter, in said county, a distance of 17 miles, more or less.

"Together with such other and further appendages and adjuncts, including branches and spur tracks in the counties hereinbefore named, or in one or more thereof, as the board of directors of said

solidated and amalgamated company may from time to time direct."

Constituent companies to consolidation of April 14, 1898:

(a) *Northern Railway Company.*—Incorporated by consolidation with ten different railroad corporations, May 15, 1888. Capital stock of Northern Railway Company as consolidated, $26,175,000. First board of directors, named in said articles of consolidation: Leland Stanford, Chas. F. Crocker, W. V. Huntington, Timothy Hopkins, N. T. Smith.

Corporate purposes.—"The places from and to which said railroads are to run are as follows:

"First. Commencing at the city and county of San Francisco and running thence to and through the counties of Alameda, Contra Costa, Solano, Yolo, Sacramento, Colusa, and Tehama to a point in Tehama County, a distance of 197 miles, more or less, with a branch from a point on said main line at or near Davisville, in the county of Yolo, to the city of Sacramento, in the county of Sacramento, a distance of thirteen miles, more or less; also such wharves and docks as may be necessary to the working and operating of said road and its branches, and ferries to connect the same with the city of San Francisco, a distance in all of 210 miles, more or less.

"*Second.* Commencing at or near Winters, in the county of Yolo, State aforesaid, there connecting with the Vaca Valley and Clear Lake Railroad, and running thence northwesterly by Berryessa Valley through and into the counties of Yolo, Solano, Napa, Lake, and Mendocino to Clear Lake, and thence to a point at or near Ukiah, in Mendocino County, a distance of 105 miles, more or less.

"*Third.* Commencing at or near Woodland, in the county of Yolo, and running thence in a general northwesterly direction to a point at or near Lakeport, in the county of Lake, a distance of 100 miles, more or less.

"*Fourth.* Commencing at or near the town of Willows, in the county of Colusa, and running thence in a general northwesterly direction to a point in, at, or near Round Valley, in the county of Mendocino, a distance of seventy-five miles, more or less.

"*Fifth.* Commencing at or near Elmira, in the county of Solano, and running thence in a general northerly direction to a point at or near Madison, in the county of Yolo, a distance of 28.55 miles, more or less.

"*Sixth.* Commencing at or near the junction of Otter or Hog Creek with the South Fork of the Mokelumne River, thence passing through the county of San Joaquin and the adjoining county of Calaveras to a point about 9.80 miles east of the

west line of Calaveras County, a distance of 39.60 miles, more or less.

"*Seventh.* Commencing at or near Sacramento City, in the county of Sacramento, and running thence in a general northeasterly direction to Folsom; thence southeasterly to a point at or near Latrobe; thence northeasterly through Single Springs to a point at or near Placerville, in El Dorado County, a distance of 60.50 miles, more or less.

"*Eighth.* Commencing at or near the town of Santa Rosa, in the county of Sonoma, and running thence through the counties of Sonoma and Napa to or near to the town of Benicia, in the county of Solano, a distance of fifty miles, more or less.

"*Ninth.* Commencing at or near the town of Galt, in the county of Sacramento, and running thence in a general northeasterly direction to or near to Ione, in the county of Amador, a distance of 27.20 miles, more or less.

"*Tenth.* Commencing at or near Shell Mound, in the county of Alameda, and running thence in a general easterly direction to or near to Berryman Station, in said county, a distance of three and eighty-four one-hundredths miles, more or less.

198 "Said lines of railroad, lying all within the State of California, and being composed of the lines of the several railroads hereinbefore mentioned and described, together with such other and further appendages and adjuncts, including branches and spur tracks in the counties hereinbefore named, or in one or more thereof, as the board of directors of said consolidated and amalgamated company may direct from time to time."

Railroads actually constructed April 14, 1898: East end of Oakland Mole to Martinez; Benicia to Suisun; Woodland to Tehama; Elmira to Rumsey; Willows to Fruto; Woodbridge to Valley Springs; Sacramento to Placerville via Folsom; Napa Junction to Santa Rosa; Shellmound to Berryman; Galt to Ione.

Articles of consolidation of April 14, 1898, signed: "Northern Railway Company, by George Crocker, president; George T. Klink, secretary."

Said articles of consolidation bear written consent, dated
199 April 13, 1898, of Southern Pacific Company, Chas. G. Lathrop, H. E. Huntington, George Crocker, C. E. Green, N. T. Smith, as holders of more than ¾ of capital stock.

(b) *Northern California Railway Company.*—Incorporated Sept. 3, 1888. Capital stock, $1,280,000. Incorporators and first board of directors named in original articles: Norman D. Rideout, Andrew Binney, Norman Rideout, Justus Greely, Charles S. Brooks.

Corporate purposes—"The purposes for which it is formed are the following, to wit:

"1st. To construct, own, maintain, and operate a standard-gauge line of steam railroad in the counties of Yuba, Sutter, and Yolo, in the State of California, and carry passengers and freight thereon and thereover for hire; also

"2nd. To construct, own, maintain, and operate a telegraph and telephone line parallel with and near the track of said railroad; also

"3rd. To purchase, lease, operate, and maintain railroads already constructed, and particularly to purchase, operate, and maintain, in connection with said railroad to be constructed, that certain railroad known as 'The Northern California Railroad,' which commences at the city of Marysville, in the county of Yuba, State of California, and extends to the town of Oroville, in said State, and has an estimated length of twenty-seven miles; together with the telegraph and telephone lines, rolling stock, and all its other properties; also

"4th. To borrow money for the purposes of constructing, equipping, repairing, and operating the railroad first named, and purchasing, repairing, and operating the railroad last named and the said telegraph and telephone lines, and to issue interest-bearing bonds therefor and secure the payment thereof by the execution and delivery of mortgages upon said properties and the franchises belonging thereto.

"That said railroad to be constructed is to commence at a point in said city of Marysville; thence from said point, crossing Feather River, into said county of Sutter, and thence on a practicable line to Knights Landing, in said county of Yolo."

Railroads actually constructed Apr. 14, 1898: Knights Landing to Oroville via Marysville.

Articles of consolidation of April 14, 1898, signed: "Northern California Railway Company, by George Crocker, president; F. S. Douty, secretary."

Said articles of consolidation bear written consent, dated April 13, 1898, of Southern Pacific Company, F. S. Douty, H. E. Huntington, C. E. Green, George Crocker, N. T. Smith, Chas. G. Wilcop, as holders of more than ¾ of capital stock.

(c) *California Pacific Railroad Company.*—Incorporated, by consolidation, Dec. 29, 1869. Capital stock, $12,000,000. First board of directors named by said articles of consolidation: D. W. C. Rice, Solomon Temple, D. C. Fowler, C. G. Bockins, A. D. Starr, W. K. Jackson, J. P. Jackson, F. L. Sullivan.

Corporate purposes.—"The places from and to which this railroad is to run are from the city of Vallejo, Solano County, California, to

the city of Sacramento; also from a point in said line at Davisville, Yolo County, to Marysville, in Yuba County; also from a point in said first-named line at or near Adelante to a point at or near Sonoma, thence to a point at or near Petaluma, thence to a point at or near Santa Rosa, thence to a point at or near Healdsburg, and thence to Cloverdale, with a branch from Santa Rosa via West Bloomfield to Bodega Corners; also from said intersection at Adelanta to Calistoga and thence via Knights Valley to
202 Healdsburg. The counties into and through which this road is to pass are Solano, Yolo, Sacramento, Sutter, Yuba, Napa, and Sonoma."

Railroads actually constructed Apr. 14, 1898: Vallejo to Sacramento via Suisun; Davis to Knights Landing via Woodland; Napa Junction to Calistoga.

Articles of consolidation of April 14, 1914, signed: "California Pacific Railroad Company, by N. T. Smith, vice president; George T. Klink, secretary,"

Said articles of consolidation bear written consent, dated April 13, 1898, of Southern Pacific Company, F. S. Douty, Pacific Improvement Co., Chas. G. Lathrop, H. E. Huntington, C. P. Huntington, Stillman & Hubbard, George Crocker, H. T. Scott, C. E. Green, as executors; Crocker Estate Company, N. T. Smith, J. L. Willcutt, Jane L. Stanford, as executrix of last will of Leland Stanford, deceased, as holders of more than ¾ of capital stock.

203 *Consolidation 6.*

March 10, 1902, *Southern Pacific Railroad Company* (of California) consolidated with—

(a) Southern Pacific Railroad Company (of Arizona).

(b) Southern Pacific Railroad Company of New Mexico.

Consolidated company, capital stock, $159,455,000. First board of directors named in articles of consolidation: E. H. Harriman, Chas. H. Tweed, J. Kruttschnitt, N. T. Smith, J. L. Willcutt, Wm. F. Herrin, Wm. Sproule, Homer S. King, Alvinza Hayward, J. S. Slauson, Jas. K. Wilson.

Corporate purposes.—Same as set forth in articles of incorporation of April 14, 1898, except:

Fourth purpose amended to include "With a branch from a point on said line at Guadalupe, in said county of Santa Barbara, in a southeasterly direction to Better Avia, in said county, a distance of four and fifty-hundredths miles, more or less."

Sixth purpose amended to include a line "Commencing at Firebaugh, in the county of Fresno, State of California, and running thence in a northeasterly direction to Madera, in the county of

(there connecting with the Central Pacific Railroad), a distance of twenty-five miles, more or less."

Eighth purpose amended to include "A branch from Valley Springs via Paloma to the Gwin mine, in said county of Cal-, a distance of ten miles, more or less."

Eleventh purpose amended to include "A branch from Santa , in said county of Orange, to Newport and to the end of the f there, a distance of twelve miles, more or less; and a branch Newport via Smeltzers to Benedict, in the county of Orange, a ce of sixteen miles, more or less."

Thirteenth purpose amended to include "Commencing at a point id line one mile southwest of the 'Station Point' of Wilming- tation and running thence from said point of commencement, ing to the left and thence tangent southeasterly crossing Wil- ton Channel and continuing parallel with Third Street and t thirty feet northeasterly therefrom and the prolongations f in the town of East San Pedro to the shore line of the Pa- Ocean, which bounds Terminal Island on the southeast, a dis- e of one mile, more or less."

Twenty-second purpose amended to read "Commencing at Mon- lvo, in the county of Ventura, State of California, and run- ning thence in a general easterly direction via Hueneme Plains and San Fernando Valley to Burbank, in the county of Angeles, the estimated length of which is sixty-three miles; also anch from Oxnard, in the county of Ventura, State of Cali- ia, to Hueneme, in said county, a distance of four miles, more less."

Forty-fourth purpose amended to read "Commencing at or near ir, in the county of Solano, State of California, and running ce in a general northerly direction via Madison and Rumsey to r Lake, in the county of Lake, a distance of seventy-five miles, re or less."

Following purposes added:

"Commencing at a point on the main line of the Southern Pacific ilroad known as Oil Junction, five miles west of Bakersfield, in county of Kern, State of California, and running thence easterly ard Oil City, a distance of seven miles, more or less, with a 'Y' ck connecting the same with said main line, together with a spur ck from a point on said last-described line near Oil City, and run- g thence in a general northerly direction a distance of three miles, re or less.

"Commencing at Mojave, in the county of Kern, State of Cali- fornia, and running thence in a northeasterly direction to Keeler, in the county of Inyo, a distance of one hundred and thirty miles, more or less.

"Commencing at or near San Pablo Railroad station, in the county of Contra Costa, in the State of California, and running thence in a general southwesterly direction to deep water of San Francisco Bay, a distance of five miles, more or less, with a branch from a point on said line in a general northwesterly direction to a point in San Pablo Bay, a distance of three miles, more or less.

"Commencing at a point on the Southern Pacific Railroad in the vicinity of San Mateo station, in the county of San Mateo, State of California, and thence running southerly and easterly by the most suitable route to the vicinity of Niles station, in the county of Alameda, State of California, a distance of twenty-five (25) miles, more or less.

"Commencing on the west boundary of the Territory of Arizona at the town or village of Yuma, and in the center of the Colorado River three hundred and thirty (330) feet, more or less, west of the center line, produced northerly, of Main Street in said village of Yuma, running thence easterly, following as near as practicable the thirty-second (32d) parallel of north latitude, to the eastern
207 boundary line of said Territory at a point that is sixty (60) miles, more or less, north of the intersection of said boundary line with the international boundary line between the United States and Mexico, said railroad being 392.90 miles in length, as near as may be.

"Commencing at or near Cochise, in the county of Cochise, in the Territory of Arizona, and running thence southerly to the international boundary line between the United States and Mexico at or near Naco, in said county and Territory, a distance of sixty-five miles, more or less.

"Commencing on the west boundary line of the Territory of New Mexico sixty (60) miles, more or less, north of the intersection of said boundary with the international boundary line between the United States and Mexico, running thence easterly, following as near as practicable the thirty-second (32d) parallel of north latitude, to a point in the center of the Rio Grande seventeen hundred (1,700) feet, more or less (measured along said center line), north of said international boundary line, and connecting with the western end of the Galveston, Harrisburg & San Antonio Railway, a corporation organized under the laws of the State of Texas, said railroad being 167.45 miles in length, as near as may be.

208 "Together with such other and further appendages and adjuncts to the hereinbefore described lines of railroad, including branches and spur tracks, as the board of directors of said consolidated company may from time to time direct."

Constituent companies to consolidation of March 10, 1902:

(a) *Southern Pacific Railroad Company (of Arizona).*—Incorporated Sept. 20, 1878. Capital stock, $20,000,000. Incorporators named in original articles: D. D. Colton, Chas. F. Crocker, A. P. K. Safford, Chas. Hudson, and David Neahr.

Corporate purposes.—"The enterprise and business in which said corporation proposes to engage is the construction, maintaining, and operating of a line of railroad and telegraph commencing on the western boundary of said Territory at the town or village of Yuma where it is to connect with the railroad and telegraph line of a certain corporation organized under the laws of the State of California and known as the Southern Pacific Railroad Company of that State), running thence easterly, following as near as may be found practicable the thirty-second parallel of north latitude, to the eastern boundary of said Territory—the eastern terminus of said railroad and telegraph to be at or as near as may be found practicable to the point of intersection of the eastern boundary of said Territory and the said thirty-second parallel of north latitude."

Railroads actually constructed March 10, 1902: Yuma to Arizona-New Mexico line.

Articles of consolidation of March 10, 1902, signed: "Southern Pacific Railroad Company (of Arizona), by H. E. Huntington, President; countersigned by J. L. Willcutt, secretary."

Said articles of consolidation bear written consent, dated March 5, 1902, of Southern Pacific Company as owner of more than ¾ of capital stock of S. P. RR. Co. of Arizona.

(b) *Southern Pacific Railroad Company of New Mexico.*—Incorporated April 14, 1879. Capital stock, $10,000,000. Subscribers to articles of incorporation and first board of directors therein named: Charles F. Crocker, Richard P. Hammond, John E. Foulds, William Breenden, Lehman Spiegelberg.

Corporate purposes.—"The purpose for which said corporation is formed shall be to construct, maintain, and operate a railroad and telegraph line across that portion of the said Territory of New Mexico between its western boundary and the Rio Grande, following as nearly as may be found practicable the thirty-second parallel of north latitude, the termini of said railroad and telegraph line being hereinafter more particularly stated and defined."

Railroads actually constructed March 10, 1902: From Arizona-New Mexico line to New Mexico-Texas line.

Articles of consolidation of March 10, 1902, signed: "Southern Pacific Railroad Company of New Mexico, by H. E. Huntington, President; countersigned by J. L. Willcutt, secretary."

Said articles of consolidation bear written consent, dated March
1902, of Southern Pacific Company as owner of more than ¾ o
capital stock of S. P. R. R. Co. of New Mexico.

August 28, 1905, articles of incorporation and consolidatio
amended to increase capital stock to $160,000,000.

211 PETITIONER'S EXHIBIT No. 14, SEPTEMBER 21, 1914.

In the District Court of the United States for the District of Uta

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY Company et als., defendants. No. 420

Stipulation.

It is believed, and it is accordingly agreed, that the attached li
giving the names of the officers and directors of the Central Paci
Railroad Company from 1861 to 1899, inclusive; of the Centr
Pacific Railway Company from 1900 to 1914, inclusive; of the Sout
ern Pacific Railroad Company from 1868 to 1914, inclusive; and
the Southern Pacific Company from 1885 to 1914; and also givi
the names of the executive committees of said companies during t
years when they had executive committees is correct; and it is furth
agreed that the same may be offered and received in evidence
212 behalf of any party to this cause, subject, however, to the rig
of any party, which is hereby reserved, to offer addition
explanatory, or corrective evidence on the same subject.

Dated September 17th, 1914.

(Signed) JAMES W. ORR,
EDWARD F. MCCLENNEN,
For petitioner.

J. P. BLAIR,
For defendants.

Central Pacific Railroad Company—Central Pacific Railway Co
pany—Southern Pacific Railroad Company—Southern Paci
Company.

List of officers and directors.

Central Pacific Railroad Company, 1861 to 1899, inclusive.
Central Pacific Railway Company, 1900 to 1914, inclusive.
Southern Pacific Railroad Company, 1868 to 1914, inclusive.
Southern Pacific Company, 1885 to 1914, inclusive.

Central Pacific Railroad Company.

Year 1861—Directors: Leland Stanford, C. P. Huntington, Lucius A. Booth, Charles Crocker, James Bailey, Mark Hopkins, Theo. D. Judah, D. W. Strong, Charles Marsh. Officers: President, Leland Stanford; vice president, C. P. Huntington; treasurer, Mark Hopkins; Chief Engr., Theo. D. Judah.

Year 1862—Directors: Leland Stanford, Charles Crocker, James Bailey, Theodore D. Judah, L. A. Booth, C. P. Huntington, Mark Hopkins, D. W. Strong, Charles Marsh. Officers: President, Leland Stanford; vice pres., C. P. Huntington; treasurer, Mark Hopkins; Chief Engr., Theo. D. Judah.

Year 1864 (March 1st)—Directors: Leland Stanford, Mark Hopkins, C. P. Huntington, E. B. Crocker, D. W. Strong, A. P. Stanford, L. A. Booth, Charles Marsh, E. H. Miller, Jr. Officers: President, Leland Stanford; vice pres., C. P. Huntington; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; act'g chief engr., Sam S. Montague.

Year 1864 (Dec. 31st.)—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, E. B. Crocker, A. P. Stanford, Charles Marsh, E. H. Miller, Jr. Officers: President, Leland Stanford; vice pres., C. P. Huntington; secretary; E. H. Miller, Jr.; treasurer, Mark Hopkins; act. chief engr., Sam S. Montague; genl. supt., Chas. Crocker.

Year 1865.—Directors: Leland Stanford, C. P. Huntington, E. B. Crocker, Mark Hopkins, E. H. Miller, Jr., Charles Marsh, A. P. Stanford. Officers: President, Leland Stanford; vice president, C. P. Huntington; secretary E. H. Miller, Jr.; treasurer, Mark Hopkins; act'g chief engr., S. S. Montague.

Year 1866.—Directors: Leland Stanford, C. P. Huntington, E. B. Crocker, Mark Hopkins, E. H. Miller, Jr., Chas. Marsh, A. P. Stanford. Officers: President, Leland Stanford; vice president, C. P. Huntington; secretary, E. H. Miller, Jr.; treasurer, Mark Hopkins; act'g chief engr., S. S. Montague.

Year 1867.—Directors: Leland Stanford, E. B. Crocker, Mark Hopkins, E. H. Miller, Jr., Chas. Marsh, A. P. Stanford, C. P. Huntington. Officers: President, Leland Stanford; vice president, C. P. Huntington; secretary, E. H. Miller, Jr.; treasurer, Mark Hopkins; act'g chief engr., S. S. Montague.

218 Central Pacific Railroad Co.

Year 1868.—Directors: Leland Stanford, C. P. Huntington, E. B. Crocker, Mark Hopkins, E. H. Miller, Jr., Chas. Marsh, A. P. Stanford. Officers: President, Leland Stanford; vice pres., C. P. Huntington; secretary, E. H. Miller, Jr.; treasurer, Mark Hopkins; chief engr., S. S. Montague; genl. supt., Chas. Crocker.

219 Year 1869. — Directors: Leland Stanford, E. B. Crocker, Mark Hopkins, E. H. Miller, Jr., C. P. Huntington, Chas. Marsh, A. P. Stanford. Officers: President, Leland Stanford; vice pres., C. P. Huntington; secretary, E. H. Miller, Jr.; treasurer, Mark Hopkins; chief engr., S. S. Montague; genl. supt., Chas. Crocker.

220 Year 1870.—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, Chas. Crocker, E. B. Crocker, E. H. Miller, Jr., A. P. Stanford. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Chas. Crocker; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; genl. supt., A. N. Towne; land agent, B. B. Redding.

Southern Pacific Railroad Co.

Year 1868.—Directors: T. G. Phelps, B. G. Lathrop, W. R. Carr, T. B. Shannon, Lloyd Tevis, Lewis Cunningham, Edgar Mills. Officers: President, T. G. Phelps; secretary, Lloyd Tevis; treasurer, Edgar Mills.

Year 1869.—Directors: Lloyd Tevis, Wm. E. Barron, D. O. Mills, Thomas Bell, Lewis Cunningham, Henry E. Robinson, Edgar Mills. Officers: President, Lloyd Tevis; vice pres., D. O. Mills; secretary, B. B. Minor; treasurer, Edgar Mills.

Year 1870.—Directors: Lloyd Tevis, Wm. E. Barron, Thomas Bell, D. O. Mills, J. B. Haggin, Wm. B. Carr, Edgar Mills. Officers: President, Lloyd Tevis; vice pres., J. B. Haggin; secretary, B. B. Minor; treasurer, Edgar Mills; chief engr., Thos. J. Arnold.

1321 Central Pacific Railroad Company.—Southern Pacific Railroad Company.

Names of officers and directors for years 1871 to 1914, inclusive.

Central Pacific Railroad Co.

Year 1871.—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, E. H. Miller, Jr., C. H. Cummings, Wm. E. Brown, Robert Robinson. Officers: President, Leland Stanford: vice pres., C. P. Huntington; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; land agent, B. N. Redding; genl. supt., A. N. Towne.

1322 Year 1872.—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, E. H. Miller, Jr., C. H. Cummings, Wm. E. Brown, Robert Robinson. Officers: President, Leland Stanford; vice pres., C. P. Huntington; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; land agent, B. B. Redding; genl. supt., A. N. Towne.

1323 Year 1873.—Directors: C. P. Huntington, Robert Robinson, E. H. Miller, Jr., Leland Stanford, Mark Hopkins, C. H. Cummings, Charles Crocker. Officers: President, Leland Stanford; vice pres., C. P. Huntington; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; genl. supt., A. N. Towne; land agent, B. B. Redding.

Southern Pacific Railroad Co.

Year 1871.—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, Peter Donahue, Chas. Crocker, Lloyd Tevis, Charles Mayne. Officers: President, Chas. Crocker; vice pres., C. P. Huntington; treasurer, Mark Hopkins; secretary, J. L. Willcutt; chief engr., Geo. E. Gray.

Year 1872.—Directors: Leland Stanford, C. P. Huntington, Mark Hopkins, Lloyd Tevis, Peter Donahue, Charles Mayne, J. L. Willcutt. Officers: President, C. P. Huntington; treasurer, Mark Hopkins; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; land agent, B. B. Redding; genl. supt., A. N. Towne.

Year 1873.—Directors: C. P. Huntington, Robert Robinson, E. H. Miller, Jr., S. T. Gage, D. D. Colton, Charles Mayne, J. L. Willcutt. Officers: President, C. P. Huntington; vice pres., D. D. Colton; treasurer, E. H. Miller, Jr.; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; genl. supt., A. N. Towne.

224 Year 1874.—Directors: C. P. Huntington, E. H. Miller, Jr., Robert Robinson, Leland Stanford, Mark Hopkins, C. H. Cummings, Charles Crocker. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Chas. Crocker; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; land agent, B. B. Redding; genl. supt., A. N. Towne.

Year 1874.—Directors: C. P. Huntington, E. H. Miller, Jr., Robert Robinson, D. D. Colton, Chas. Mayne, S. T. Gage, J. L. Willcutt. Officers: President, C. P. Huntington; vice pres., D. D. Colton; treasurer, E. H. Miller, Jr.; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; land agent, B. B. Redding; genl. supt., A. N. Towne.

225 Year 1875.—Directors: Charles Crocker, Robert Robinson, E. H. Miller, Jr., Leland Stanford, Mark Hopkins, C. P. Huntington, C. H. Cummings. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Chas. Crocker; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; land agent, B. B. Redding; genl. supt., A. N. Towne.

Year 1875.—Directors: Charles Crocker, Robert Robinson, E. H. Miller, Jr., David D. Colton, N. T. Smith, S. T. Gage, J. L. Willcutt. Officers: President, Charles Crocker; vice pres., David D. Colton; treasurer, E. H. Miller, Jr.; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; land agent, B. B. Redding; superintendents, northern div., A. C. Bassett; Los Ang. div., E. E. Hewitt.

226 Year 1876.—Directors: Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., Leland Stanford, C. P. Huntington, Mark Hopkins. Officers: President, Leland Stanford; 1st vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., Saml. S. Montague; genl. supt., A. N. Towne; land agent, Benj. B. Redding.

Year 1876.—Directors: Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, Jr., H. M. Newhall, N. T. Smith, J. L. Willcutt. Officers: President, Charles Crocker; vice pres., David D. Colton; treasurer, N. T. Smith; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; superintendents, northern div., A. C. Bassett; Los Ang. div., E. E. Hewitt; land agent, B. B. Redding.

227 Year 1877.—Directors: Charles Crocker, David D. Colton, E. H. Miller, Jr., Leland Stanford, C. P. Huntington, Mark Hopkins, S. T. Gage.

Year 1877.—Directors: Charles Crocker, David D. Colton, E. H. Miller, Jr., Robert Robinson; H. M. Newhall, N. T. Smith, J. L. Willcutt. Officers: President,

Officers: President, Leland Stanford; 1st vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, Mark Hopkins; secretary, E. H. Miller, Jr.; chief engr., S. S. Montague; land agent, B. B. Redding; genl. supt., A. N. Towne.

228 Year 1878.—Directors: Charles Crocker, Leland Stanford, E. H. Miller, Jr., E. W. Hopkins, S. T. Gage, C. F. Crocker, C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, E. W. Hopkins; secretary, E. H. Miller, Jr.; land agent, B. B. Redding; chief engr., S. S. Montague; genl. supt., A. N. Towne.

229 Year 1879.—Directors: Charles Crocker, Chas. F. Crocker, W. V. Huntington, Leland Stanford, E. H. Miller, Jr., E. W. Hopkins, C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, E. W. Hopkins; secretary, E. H. Miller, Jr.; land agent, B. B. Redding; chief engr., S. S. Montague; genl. supt., A. N. Towne.

230 Year 1880.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, Leland Stanford, E. H. Miller, Jr., E. W. Hopkins, C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, E. W. Hopkins; secretary, E. H. Miller, Charles Crocker; vice pres., David D. Colton; treasurer, N. T. Smith; secretary, J. L. Willcutt; chief engr., Geo. E. Gray; land agent, Jerome Madden; superintendents, northern div., A. C. Bassett, southern div., A. N. Towne.

Year 1878.—Directors: Charles Crocker, H. M. Newhall, Charles Mayne, J. L. Willcutt, Nicholas T. Smith, Jerome Madden, David D. Colton. Officers: President, Charles Crocker; vice pres., D. D. Colton; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo. E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1879.—Directors: Charles Crocker, Chas. F. Crocker, W. V. Huntington, H. M. Newhall, Charles Mayne, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo. E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1880.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, H. M. Newhall, Charles Mayne, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo.

Jr.; land agent, B. B. Redding; chief engr., S. S. Montague; genl. supt., A. N. Towne.

231 Year 1881.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, Leland Stanford, E. H. Miller, Jr., E. W. Hopkins, C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, E. W. Hopkins; secretary, E. H. Miller, Jr.; gen. mgr., A. N. Towne; land agent, B. B. Redding; chief engr., S. S. Montague.

232 Year 1882.—Directors: Charles Crocker, C. F. Crocker, W. V. Huntington, Leland Stanford, E. H. Miller, Jr., Timothy Hopkins, C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; gen. mgr., A. N. Towne; land agent, Wm. H. Mills; chief engr., S. S. Montague.

233 Year 1883.—Directors: Charles Crocker, C. F. Crocker, W. V. Huntington, Timothy Hopkins, C. P. Huntington, Leland Stanford, E. H. Miller, Jr. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; gen. mgr., A. N. Towne; land agent, Wm. H. Mills; chief engr., Wm. Hood.

E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1881.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, H. M. Newhall, Charles Mayne, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo. E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1882.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, Moses Hopkins, Charles Mayne, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo. E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1883.—Directors: Charles Crocker, Charles F. Crocker, W. V. Huntington, Timothy Hopkins, Charles Mayne, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engr., Geo. E. Gray; superintendent, Northern Div., A. C. Bassett.

Year 1884.—Directors: Charles Crocker, Timothy Hopkins, C. F. Crocker, W. V. Huntington, Leland Stanford, E. H. Miller, Jr., C. P. Huntington. Officers: President, Leland Stanford; vice pres., C. P. Huntington; 2nd vice pres., Charles Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; gen. mgr., A. N. Towne; land agent, W. H. Mills; chief engr., Wm. Hood.

Year 1884.—Directors: Charles Crocker, Timothy Hopkins, Charles F. Crocker, W. V. Huntington, Charles Mayne, N. T. Smith, J. L. Willcutt. Officers: President, Charles Crocker; vice pres., Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; superintendent, northern div., A. C. Bassett; chief engr., Geo. E. Gray.

Southern Pacific Company.

Year 1885 (April 8).—Directors: Timothy Hopkins, Charles F. Crocker, Charles Crocker, Leland Stanford, E. H. Miller, Jr., C. P. Huntington, T. W. Pierce, W. E. Brown, A. Lathrop, S. T. Gage, S. Douty. Officers: President, Leland Stanford; vice presidents, C. P. Huntington, Charles Crocker, Charles F. Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.

Central Pacific Railroad Company.

Year 1885.—Directors: Timothy Hopkins, W. V. Huntington, Charles F. Crocker, Charles Crocker, Leland Stanford, E. H. Miller, Jr., C. P. Huntington. Officers: President, Leland Stanford; vice president, C. P. Huntington; 2nd vice president, Charles Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; land agent, Wm. H. Mills; chief engineer, Wm. Hood.

Southern Pacific Railroad Company.

Year 1885.—Directors: Timothy Hopkins, W. V. Huntington, Charles F. Crocker, Charles Crocker, Charles Mayne, N. T. Smith, J. L. Willcutt. Officers: President, Charles Crocker; vice president, Charles F. Crocker; treasurer, N. T. Smith; Secretary, J. L. Willcutt; land agent, Jerome Madden; chief engineer, Geo. E. Gray.

Southern Pacific Company.

Year 1886 (April 7).—Directors: Leland Stanford, Timothy Hopkins, W. V. Huntington, Charles Crocker, Charles F. Crocker, C. P. Huntington, E. H. Miller, Jr., W. E. Brown, A. Lathrop, S. T. Gage, S. Douty. Officers: President, Leland Stanford; vice presidents,

C. P. Huntington, Charles Crocker, C. F. Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; genl. manager, A. N. Towne.

239 Central Pacific Railroad Company.

Year 1886.—Directors: Leland Stanford, Timothy Hopkins, W. V. Huntington, Charles Crocker, Charles F. Crocker, C. P. Huntington, E. H. Miller, Jr. Officers: President, Leland Stanford; vice president, C. P. Huntington; 2nd vice president, Charles Crocker; 3rd vice president, Charles F. Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; land agent, Wm. H. Mills; chief engineer, Wm. Hood.

240 Southern Pacific Railroad Company.

Year 1886.—Directors: Charles Mayne, Timothy Hopkins, W. V. Huntington, Charles Crocker, Charles F. Crocker, J. L. Willcutt, Nicholas T. Smith. Officers: President, Charles Crocker; vice president, Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engineer, Wm. Hood.

241 Southern Pacific Company.

Year 1887 (April 13).—Directors: Charles Crocker, Timothy Hopkins, W. V. Huntington, Charles F. Crocker, Leland Stanford, E. H. Miller, Jr., C. P. Huntington, W. E. Brown, A. Lathrop, S. T. Gage, F. S. Douty. Officers: President, Leland Stanford; vice presidents, C. P. Huntington, Charles Crocker, Charles F. Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; genl. manager, A. N. Towne.

242 Central Pacific Railroad Company.

Year 1887.—Directors: Charles Crocker, Timothy Hopkins, W. V. Huntington, Charles F. Crocker, Leland Stanford, E. H. Miller, Jr., C. P. Huntington. Officers: President, Leland Stanford; vice president, C. P. Huntington; 2nd vice pres., Charles Crocker; 3rd vice pres., Charles F. Crocker; treasurer, Timothy Hopkins; secretary, E. H. Miller, Jr.; land agent, Wm. H. Mills.

243 Southern Pacific Railroad Company.

Year 1887.—Directors: Charles Crocker, Timothy Hopkins, W. V. Huntington, Charles F. Crocker, Charles Mayne, J. L. Willcutt, Nicholas D. Smith. Officers: President, Charles Crocker; vice president, Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden; chief engineer, Wm. Hood.

Southern Pacific Company.

Year, 1888 (April 4).—Directors: Charles F. Crocker, Timothy pkins, Leland Stanford, C. P. Huntington, E. H. Miller, Jr., arles Crocker, W. V. Huntington, W. E. Brown, A. Lathrop, S. T. ge, F. S. Douty. Officers: President, Leland Stanford; vice pres- nts, C. P. Huntington, Charles Crocker, Charles F. Crocker; asurer, Timothy Hopkins; secretary, G. L. Lansing; genl. man- er, A. N. Towne.

Central Pacific Railroad Company.

Year, 1888.—Directors: Charles F. Crocker, Timothy Hopkins, land Stanford, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, E. Bretherton. Officers: President, Leland Stanford; 1st vice sident, C. P. Huntington; 2nd vice president, Charles F. Crocker; d vice president, A. N. Towne; treasurer, Timothy Hopkins; sec- tary & controller, E. H. Miller, Jr.; land agent, Wm. H. Mills.

Southern Pacific Railroad Company.

Year, 1888.—Directors: Charles F. Crocker, Timothy Hopkins, harles Crocker, W. V. Huntington, N. T. Smith, J. L. Willcutt, harles Mayne. Officers: President, Charles Crocker; vice presi- nt, Charles F. Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt; land agent, Jerome Madden.

Southern Pacific Company.

Year 1889 (April 3).—Directors: Leland Stanford, Charles F. Crocker, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, W. V. Huntington, W. E. Brown, A. Lathrop, S. T. Gage, F. S. Douty, . E. Stillman. Officers: President, Leland Stanford; vice presi- nts, C. P. Huntington, Charles F. Crocker, A. N. Towne, J. C. Stubbs; treasurer, G. L. Lansing; secretary, Timothy Hopkins; nl. manager, A. N. Towne.

Central Pacific Railroad Company.

Year 1889.—Directors: Leland Stanford, Charles F. Crocker, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, Timothy Hopkins, C. E. Bretherton. Officers: President, Leland Stanford; 1st vice sident, C. P. Huntington; 2nd vice president, Charles F. Crocker; d vice president, A. N. Towne; treasurer, Timothy Hopkins; sec- tary & controller, E H. Miller, Jr; land agent, Wm. H. Mills.

249 Southern Pacific Railroad Company.

Year 1889.—Directors: Leland Stanford, Charles F. Crocker, W V. Huntington, Timothy Hopkins, Charles Mayne, N. T. Smith J. L. Willcutt. Officers: President, Charles F. Crocker; vice presi dent, Timothy Hopkins; treasurer, N. T. Smith; secretary, J. L Willcutt.

250 Southern Pacific Company.

Year 1890 (April 9).—Directors: Leland Stanford, Charles F Crocker, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, W. V Huntington, W. E. Brown, T. H. Hubbard, T. E. Stillman, S. T Gage, F. S. Douty. Officers: President, C. P. Huntington; vic presidents, Charles F. Crocker, A. N. Towne, J. C. Stubbs; treas urer, Timothy Hopkins; secretary, G. L. Lansing; genl. manager A. N. Towne. Executive committee: Leland Stanford, C. P. Hunt ington, Charles F. Crocker, T. H. Hubbard.

251 Central Pacific Railroad Company.

Year 1890.—Directors: Leland Stanford, Charles F. Crocker C. P. Huntington, E. H. Miller, Jr., A. N. Towne, Timothy Hopkins C. E. Bretherton. Officers: President, Leland Stanford; vice presi dent, C. P. Huntington; 2nd vice president, Charles F. Crocker; 3rd vice president, A. N. Towne; treasurer, Timothy Hopkins; secretary & controller, E. H. Miller, Jr.; land agent, Wm. H. Mills.

252 Southern Pacific Railroad Company.

Year 1890.—Directors: Leland Stanford, Charles F. Crocker, W V. Huntington, Timothy Hopkins, Charles Mayne, N. T. Smith J. L. Willcutt. Officers: President, Charles F. Crocker; vice presi dent, Timothy Hopkins; treasurer, N. T. Smith; secretary, J. L Willcutt.

253 Southern Pacific Company.

Year 1891 (April 8).—Directors: Leland Stanford, Charles F Crocker, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, W. V Huntington, W. E. Brown, T. H. Hubbard, T. E. Stillman, S. T Gage, F. S. Douty. Officers: President, C. P. Huntington; vic presidents, Charles F. Crocker, A. N. Towne, J. C. Stubbs, I. E Gates; treasurer, Timothy Hopkins; secretary, G. L. Lansing; genl manager, A. N. Towne.

Central Pacific Railroad Company.

Year 1891.—Directors: Leland Stanford, Charles F. Crocker, C. P. Huntington, E. H. Miller, Jr., A. N. Towne, Timothy Hopkins, C. E. Bretherton. Officers: President, Leland Stanford; vice president, C. P. Huntington; 2nd vice president, Charles F. Crocker; 3rd vice president, A. N. Towne; secretary & controller, E. H. Miller, Jr.; treasurer, Timothy Hopkins; land agent, Wm. H. Mills.

Southern Pacific Railroad Company.

Year 1891.—Directors: Leland Stanford, Charles F. Crocker, W. V. Huntington, Timothy Hopkins, Charles Mayne, N. T. Smith, J. L. Willcutt. Officers: President, Charles C. Crocker; vice president, Timothy Hopkins; secretary, J. L. Willcutt; treasurer, N. T. Smith.

Southern Pacific Company.

Year 1892 (April 6).—Directors: C. P. Huntington, Charles F. Crocker, A. N. Towne, Leland Stanford, Thos. H. Hubbard, E. H. Miller, Jr., J. C. Stubbs, T. E. Stillman, S. T. Gage, H. E. Huntington, George Crocker. Officers: President, C. P. Huntington; vice presidents, Charles F. Crocker, A. N. Towne, J. C. Stubbs, I. E. Gates; treasurer, N. T. Smith; secretary, G. L. Lansing; Genl. manager, A. N. Towne. Executive committee: Leland Stanford, Charles F. Crocker, Thos. H. Hubbard, C. P. Huntington.

Central Pacific Railroad Company.

Year 1892.—Directors: C. P. Huntington, Charles F. Crocker, A. N. Towne, Leland Stanford, Thos. H. Hubbard, E. H. Miller, Jr., W. V. Huntington, C. E. Bretherton, E. W. Hopkins. Officers: President, Leland Stanford; vice president, C. P. Huntington; 2nd vice president, Charles F. Crocker; 3rd vice president, A. N. Towne; treasurer, Willard V. Huntington; secretary & controller, E. H. Miller, Jr.; land agent, Wm. H. Mills.

Southern Pacific Railroad Company.

Year 1892.—Directors: C. P. Huntington, Charles F. Crocker, A. N. Towne, W. V. Huntington, Charles Mayne, N. T. Smith, J. L. Willcutt. Officers: President, Charles F. Crocker; vice president, W. V. Huntington; treasurer, N. T. Smith; secretary, J. L. Willcutt.

259 Southern Pacific Company.

Year 1893 (April 5).—Directors: A. N. Towne, Charles F. Crocke H. E. Huntington, Leland Stanford, Thomas H. Hubbard, C. P Huntington, N. T. Smith, S. T. Gage, T. E. Stillman, J. C. Stubb George Crocker. Officers: President, C. P. Huntington; vice pres dents, Charles F. Crocker, A. N. Towne, J. C. Stubbs, E. H. Pardee treasurer, N. T. Smith; secretary, G. L. Lansing; genl. manage A. N. Towne. Executive committee: Leland Stanford, C. P. Hun ington, Charles F. Crocker, Thos. H. Hubbard.

260 Central Pacific Railroad Company.

Year 1893.—Directors: A. N. Towne, Charles F. Crocker, H. E Huntington, Leland Stanford, Thomas H. Hubbard, C. P. Huntin ton, C. E. Bretherton, G. L. Lansing, H. A. Cummings. Officer President, Leland Stanford; vice president, C. P. Huntington; 2n vice president, Charles F. Crocker; 3rd vice president, A. N. Towne treasurer, H. E. Huntington; secretary & auditor, Wm. H. Thomp son; land agent, Wm. H. Mills.

261 Southern Pacific Railroad Company.

Year 1893.—Directors: A. N. Towne, Charles F. Crocker, H. E Huntington, N. T. Smith, J. L. Willcutt, Chas. G. Lathrop, I. E Gates. Officers: President, Charles F. Crocker; vice president, H. E Huntington; 2nd vice pres., I. E. Gates; treasurer, N. T. Smith; se retary, J. L. Willcutt.

262 Southern Pacific Company.

Year 1894 (April 4).—Directors: C. P. Huntington, A. N. Towne Charles F. Crocker, H. E. Huntington, N. T. Smith, R. J. Wilso W. H. Crocker, Thos. H. Hubbard, S. T. Gage, T. E. Stillman J. C. Stubbs. Officers: President, C. P. Huntington; vice president Charles F. Crocker, A. N. Towne, J. C. Stubbs; treasurer, N. T Smith; secretary, G. L. Lansing; genl. manager, A. N. Towne.

263 Central Pacific Railroad Company.

Year 1894.—Directors: C. P. Huntington, Isaac L. Requa, Wm. H Mills, C. E. Bretherton, Charles P. Eells, Jas. O'B. Gunn, F. F Spencer. Officers: President, Isaac L. Requa; vice president, C. P Huntington; 2nd vice president and treasurer, Wm. H. Mills; secre tary-auditor, Wm. M. Thompson.

Southern Pacific Railroad Company.

Year 1894.—Directors: A. N. Towne, Charles F. Crocker, H. E. ntington, N. T. Smith, Charles Mayne, J. L. Willcutt, F. B. uty. Officers: President, Charles F. Crocker; vice president. V. Huntington; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1895 (April 3).—Directors: H. E. Huntington, Charles F. ocker, N. T. Smith, Charles G. Lathrop, C. P. Huntington, A. N. owne, George Crocker, Thos. H. Hubbard, J. C. Stubbs, T. E. illman, R. J. Wilson. Officers: President, C. P. Huntington; vice esidents, Charles N. Crocker, A. N. Towne, J. C. Stubbs; treasurer, T. Smith; secretary, G. L. Lansing; genl. manager, A. N. Towne.

Central Pacific Railroad Company.

Year 1895.—Directors: C. P. Huntington, I. E. Gates, Isaac L. equa, Wm. H. Mills, C. E. Bretherton, Chas. P. Eells, F. E. Spencer. fficers: President, Isaac L. Requa; vice president, C. P. Hunting- n; 2nd vice president & treasurer, Wm. H. Mills; secretary & uditor, Wm. M. Thompson; 3d vice president, I. E. Gates.

Southern Pacific Railroad Company.

Year 1895.—Directors: H. E. Huntington, Charles F. Crocker, . T. Smith, Charles G. Lathrop, I. E. Gates, F. S. Douty, J. L. illcutt. Officers: President, Charles F. Crocker; vice president, . E. Huntington; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1896 (April 8).—Directors: H. E. Huntington, Charles F. rocker, Charles G. Lathrop, N. T. Smith, C. P. Huntington, R. J. ilson, Thos. H. Hubbard, T. E. Stillman, J. C. Stubbs, W. H. rocker, A. L. Tubbs. Officers: President, C. P. Huntington; vice esidents, Charles F. Crocker, Thos. H. Hubbard, J. C. Stubbs; reasurer, N. T. Smith; secretary, E. C. Wright; genl. manager, J. Kruttschnitt.

Central Pacific Railroad Company.

Year 1896.—Directors: C. P. Huntington, I. E. Gates, Isaac L. equa, Wm. H. Mills, C. E. Bretherton, Chas. P. Eells, F. E. Spen- er. Officers: President, Isaac L. Requa; vice president, C. P. Hunt-

ington; 2nd vice president and treasurer, Wm. H. Mills; 3rd vi
president, I. E. Gates; secretary & auditor, Wm. M. Thompson.

270 Southern Pacific Railroad Company.

Year 1896.—Directors: H. E. Huntington, Charles F. Crocke
Charles G. Lathrop, N. T. Smith, I. E. Gates, F. S. Douty, J. L
Willcutt. Officers: President, Charles F. Crocker; vice presiden
H. E. Huntington; treasurer, N. T. Smith; secretary, J. L. Willcut

271 Southern Pacific Company.

Year 1897 (April 7).—Directors: H. E. Huntington, Charles
Crocker, Charles G. Lathrop, N. T. Smith, C. P. Huntington, R.
Wilson, Thos. H. Hubbard, T. E. Stillman, J. C. Stubbs, W. H
Crocker, J. Kruttschnitt. Officers: President, C. P. Huntington
vice presidents, Charles F. Crocker, Thos. H. Hubbard, J. C. Stubbs
treasurer, N. T. Smith; secretary, E. C. Wright; genl. manager, J
Kruttschnitt.

272 Central Pacific Railroad Company.

Year 1897.—Directors: C. P. Huntington, I. E. Gates, Isaac L
Requa, Wm. H. Mills, C. E. Bretherton, Chas. P. Eells, F. E. Spen
cer. Officers: President, Isaac L. Requa; vice president, C. P. Hunt
ington; 2nd vice president & treasurer, Wm. H. Mills; 3rd vic
president, I. E. Gates; secretary & auditor, Wm. M. Thompson.

273 Southern Pacific Railroad Company.

Year 1897.—Directors: H. E. Huntington, Charles F. Crocke
Charles G. Lathrop, N. T. Smith, I. E. Gates, F. S. Douty, J. L
Willcutt. Officers: President, Charles F. Crocker; vice president
H. E. Huntington; treasurer, N. T. Smith; secretary, J. N. Willcut

274 Southern Pacific Company.

Year 1898 (April 6).—Directors: C. P. Huntington, H. E. Hunt
ington, George Crocker, Thos. H. Hubbard, Chas. G. Lathrop, C. F
Green, N. T. Smith, Russell J. Wilson, J. C. Stubbs, J. Kruttschnitt
T. E. Stillman. Officers: President, C. P. Huntington; vice presi
dents, George Crocker, Thos. H. Hubbard, J. C. Stubbs, J. Krutt
schnitt; treasurer, N. T. Smith; secretary, E. C. Wright; gen
manager, J. Kruttschnitt. Executive committee: C. P. Huntington
Thos. H. Hubbard, George Crocker, Chas. G. Lathrop.

Central Pacific Railroad Company.

Year 1898.—Directors: Isaac L. Requa, Wm. H. Mills, Wm. M. Thompson, J. C. Kirkpatrick, C. E. Bretherton, Chas. P. Eells, Joseph D. Grant. Officers: President, Isaac L. Requa; vice president & treasurer, Wm. H. Mills; 2nd vice president, John C. Kirkpatrick; 3rd vice president, Chas. P. Eells; secretary & controller, Wm. M. Thompson.

Southern Pacific Railroad Company.

Year 1898.—Directors: C. P. Huntington, H. E. Huntington, George Crocker, Thos. H. Hubbard, Chas. G. Lathrop, C. E. Green, N. T. Smith, Russell J. Wilson, F. S. Douty. Officers, president, C. P. Huntington; vice president, H. E. Huntington; 2nd vice president, George Crocker; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1899 (April 5).—Directors: C. P. Huntington, H. E. Huntington, George Crocker, Thos. H. Hubbard, Russell J. Wilson, Chas. G. Lathrop, N. T. Smith, J. Kruttschnitt, E. F. Searles, W. H. Crocker, J. C. Stubbs. Officers: President, C. P. Huntington; vice presidents, George Crocker, Thos. H. Hubbard, J. C. Stubbs, J. Kruttschnitt; treasurer, N. T. Smith; secretary, E. C. Wright; genl. manager, J. Kruttschnitt.

Central Pacific Railroad Company.

Year 1899.—Directors: Isaac L. Requa, John C. Kirkpatrick, George F. Schwarz, Charles F. Hunt, George R. Burdick, Eugene E. McShane, Charles H. Trolliet. Officers: President, Isaac L. Requa; vice president, ———; treasurer, John C. Kirkpatrick; controller and secretary, Wm. M. Thompson.

Southern Pacific Railroad Company.

Year 1899.—Directors: C. P. Huntington, H. E. Huntington, George Crocker, Thos. H. Hubbard, Russell J. Wilson, Chas. G. Lathrop, N. T. Smith, C. E. Green, F. S. Douty. Officers: President, C. P. Huntington; vice president, George Crocker; 2nd vice president, Thos. H. Hubbard; treasurer, N. T. Smith; secretary, J. L. Willcutt.

280 Southern Pacific Company.

Year 1900 (April 4).—Directors: H. E. Huntington, C. P. Huntington, Thos. H. Hubbard, D. O. Mills, J. D. Probst, J. B. Haggin, J. W. Mackay, E. F. Searles, A. Belmont, C. H. Tweed, E. Hawley. Officers: President, C. P. Huntington; vice presidents, H. E. Huntington, Thos. H. Hubbard, J. C. Stubbs, J. Kruttschnitt; treasurer, N. T. Smith; secretary, E. C. Wright; genl. manager, J. Kruttschnitt. Executive committee: C. P. Huntington, E. Hawley, D. O. Mills, J. D. Probst, Chas. H. Tweed.

280a Central Pacific Railway Company.

Year 1900.—Directors: H. E. Huntington, Thomas Marshall, D. B. Hempstead, Isaac L. Requa, John F. Merrill, Sidney M. Smith, Chas. H. Tweed, J. C. Kirkpatrick, Homer S. King. Officers: President, Isaac L. Requa; vice president, Chas. H. Tweed; treasurer, N. T. Smith; secretary, J. L. Willcutt.

(NOTE.—Central Pacific Railroad Company, by deed of July 29, 1899, conveyed its railroad and properties to Central Pacific Railway Company.)

281 Southern Pacific Railroad Company.

Year 1900.—Directors: H. E. Huntington, C. P. Huntington, Thos. H. Hubbard, J. L. Willcutt, I. W. Hollman, Jas. K. Wilson, A. Hayward, N. T. Smith, J. S. Slauson. Officers: President, C. P. Huntington; vice president, H. E. Huntington; treasurer, N. T. Smith; secretary, J. L. Willcutt.

282 Southern Pacific Company.

Year 1901 (April 3).—Directors: H. E. Huntington, Chas. H. Tweed, Chas. M. Hays, E. H. Harriman, D. O. Mills, J. Speyer, W. S. Pierce, J. W. Mackay, J. Stillman, G. J. Gould, E. Hawley, J. H. Hyde, T. J. Coolidge, Jr., J. H. Schiff, O. H. Kahn. Officers: President, Charles M. Hays; vice presidents, H. E. Huntington, Chas. H. Tweed, J. C. Stubbs, J. Kruttschnitt; treasurer, N. T. Smith; secretary, A. Millar; genl. manager, J. Kruttschnitt; director of traffic, J. C. Stubbs. Executive committee: E. H. Harriman (chairman), G. J. Gould, E. Hawley, O. H. Kahn, Chas. H. Tweed, J. Speyer, J. H. Schiff, J. Stillman.

283 Central Pacific Railroad Company.

Year 1901.—Directors: H. E. Huntington, Chas. H. Tweed, Thomas Marshall, D. B. Hempstead, Isaac L. Requa, John F. M[illegible]

, Sidney M. Smith, John C. Kirkpatrick, H. S. King. Officers: ident, Isaac L. Requa; vice president, Chas. H. Tweed; treas- r, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Railroad Company.

Year 1901.—Directors: H. E. Huntington, Chas. M. Hays, I. W. llman, Jas. K. Wilson, A. Hayward, I. E. Gates, Thos. H. Hub- d, N. T. Smith, J. S. Slauson. Officers: President, Charles M. ys; vice president, H. E. Huntington; 2nd vice president, I. E. is; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1902 (April 9).—Directors: E. H. Harriman, Chas. H. eed, H. E. Huntington, D. O. Mills, W. D. Cornish, J. Speyer, S. Pierce, J. W. Mackay, J. Stillman, G. J. Gould, E. Hawley, H. Hyde, T. J. Coolidge, Jr., J. H. Schiff, O. H. Kahn. Officers: sident, E. H. Harrison; vice presidents, H. E. Huntington, arles H. Tweed, J. C. Stubbs, J. Kruttschnitt; treasurer, N. T. ith; secretary, A. Millar; genl. manager, J. Kruttschnitt; di- tor of traffic, J. C. Stubbs. Executive committee: E. H. Harri- n (chairman), G. L. Gould, E. Hawley, O. H. Kahn, Chas. H. eed, J. Stillman, J. Speyer, J. H. Schiff.

Central Pacific Railway Company.

Year 1902.—Directors: E. H. Harriman, Chas. H. Tweel, H. E. ntington, W. H. Chevers, David R. Gray, David B. Hempstead, omas Marshall, J. S. Noble, Jonathan C. Royle. Officers: Presi- nt, E. H. Harriman; vice president, Charles H. Tweed; 2nd vice sident, J. Kruttschnitt; treasurer, N. T. Smith; secretary, J. L. illcutt.

Southern Pacific Railroad Company.

Year 1902.—Directors: E. H. Harriman, Chas. H. Tweed, Alvinza ayward, I. W. Hellman, Wm. F. Herrin, Homer S. King, J. Krut- dnitt, J. S. Slauson, N. T. Smith, J. L. Willcutt, Jas. K. Wilson. ficers: President, E. H. Harriman; vice president, Charles H. eed; 2nd vice president, J. Kruttschnitt, treasurer, N. T. Smith; cretary, J. L. Willcutt.

Southern Pacific Company.

Year 1903 (no election).—Directors (as in 1902): E. H. Harri- H. E. Huntington, Chas. H. Tweed, D. O. Mills, W. D. Cor-

nish, J. Speyer, W. S. Pierce, J. W. Mackay, J. Stillman, G. J
Gould, E. Hawley, J. H. Hyde, T. J. Coolidge, Jr., J. H. Schif
O. H. Kahn. Officers: President, E. H. Harriman; vice president
H. E. Huntington, Chas. H. Tweed, J. C. Stubbs, J. Kruttschnitt
treasurer, N. T. Smith; secretary, A. Millar; genl. manager, J
Kruttschnitt; directors of traffic, J. C. Stubbs. Executive committe
(as in 1902): E. H. Harriman (chairman), G. L. Gould, E. Hawley
O. H. Kahn, Chas. H. Tweed, J. Stillman, J. Speyer, J. H. Schif

289 Central Pacific Railway Company.

Year 1903.—Directors: E. H. Harriman, H. E. Huntington, W
H. Cheevers, David R. Gray, David B. Hempstead, F. J. Kiese
Thomas Marshall, J. S. Noble, Jonathan C. Royle. Officers: Presi
dent, E. H. Harriman; vice president, J. Kruttschnitt; 2nd vic
president, C. C. Tegethoff; treasurer, N. T. Smith; secretary, J. L
Willcutt.

290 Southern Pacific Railroad Company.

Year 1903.—Directors: E. H. Harriman, J. L. Willcutt, Jas. K
Wilson, Alvinza Hayward, I. W. Hellman, Wm. F. Herrin, Home
S. King, J. Kruttschnitt, J. S. Slauson, N. T. Smith, Wm. Sproul
Officers: President, E. H. Harriman; vice president, ——; 2n
vice president, J. Kruttschnitt; treasurer, N. T. Smith; secretary
J. L. Willcutt.

291 Southern Pacific Company.

Year 1904 (April 6).—Directors: E. H. Harriman, H. E. Hunting
ton, E. Hawley, Chas. H. Tweed, J. H. Schiff, J. Speyer, D. O. Mill
M. Evarts, G. J. Gould, W. D. Cornish, J. Stillman, W. S. Pierce
A. K. Van Deventer, J. H. Hyde, O. H. Kahn. Officers: President
E. H. Harriman; vice presidents, H. E. Huntington, J. C. Stubbs
C. H. Markham, J. Kruttschnitt; treasurer, N. T. Smith; secretary
A. Millar; manager, C. H. Markham, director of traffic, J. C. Stubbs
directors of maintenance and operation, J. Kruttschnitt. Executiv
committee: E. H. Harriman (chairman), G. L. Gould, Chas. H
Tweed, J. Stillman, J. H. Schiff.

291a Central Pacific Railway Company.

Year 1904.—Directors: E. H. Harriman, H. E. Huntington
Thomas Fitzgerald, David R. Gray, David B. Hempstead, F. J
Kiesel, Thomas Marshall, Jonathan C. Royle, W. R. Scott. Officers
President, E. H. Harriman; vice president, ——; 2nd vice presi
dent, C. C. Tegethoff; treasurer, N. T. Smith; secretary, J. L. Willc

Southern Pacific Railroad Company.

Year 1904.—Directors: E. H. Harriman, F. K. Ainsworth, I. W. Hellman, W. F. Herrin, Homer S. King, C. H. Markham, J. S. Runyon, N. T. Smith, Wm. Sproule, J. L. Willcutt, Jas. K. Wilson. Officers: President, E. H. Harriman; vice president, ———; 2nd vice president, C. H. Markham; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1905 (April 5).—Directors: E. H. Harriman, H. E. Huntington, C. H. Mackay, Chas. H. Tweed, J. H. Schiff, J. Speyer, D. O. Mills, M. Hughitt, G. J. Gould, W. D. Cornish, J. Stillman, W. S. Farce, D. Wilcox, J. H. Hyde, O. H. Kahn. Officers: President, E. H. Harriman; vice presidents, W. D. Cornish, J. C. Stubbs, E. E. Calvin, J. Kruttschnitt; treasurer, N. T. Smith; secretary, A. Millar; gen. manager, E. E. Calvin; director of traffic, J. C. Stubbs; director of maintenance and operation, J. Kruttschnitt. Executive committee: E. H. Harriman (chairman), G. L. Gould, Chas. H. Tweed, J. Stillman, M. L. Schiff.

Central Pacific Railway Company.

Year 1905.—Directors: E. H. Harriman, H. E. Huntington, Geo. J. Downey, Thomas Fitzgerald, David R. Gray, F. J. Kiesel, E. C. Hanson, Thomas Marshall, Jonathan C. Royle. Officers: President, E. H. Harriman; vice president, E. E. Calvin; 2nd vice president, C. C. Tegethoff; 3rd vice president and treasurer, N. T. Smith; secretary, J. L. Willcut.

Southern Pacific Railroad Company.

Year 1905.—Directors: E. H. Harriman, F. K. Ainsworth, E. E. Calvin, I. W. Hellman, Wm. F. Herrin, Homer S. King, J. S. Runyon, N. T. Smith, Wm. Sproule, J. L. Willcutt, Jas. K. Wilson. Officers: President, E. H. Harriman; vice president, ———; 2nd vice president, E. E. Calvin; treasurer, N. T. Smith; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1906 (April 4).—Directors: E. H. Harriman, H. E. Huntington, Wm. D. Cornish, C. H. Mackay, A. K. Van Deventer, R. S. Lovett, W. V. S. Thorne, D. O. Mills, H. Hughitt, H. W. de Forest, J. Stillman, O. Mills, D. Wilcox, M. Evarts, R. Goelet. Officers: President, E. H. Harriman; vice presidents, W. D. Cornish, J. C.

Stubbs, E. E. Calvin, J. Kruttschnitt; treasurer, N. T. Smith; secre
tary, A. Millar, genl. manager, E. E. Calvin; director of traffic, J. C
Stubbs; director of maintenance & operation, J. Kruttschnitt. Execu
tive committee: E. H. Harriman (chairman), H. W. de Forest, R. S
Lovett, D. Wilcox, J. Stillman.

297 Central Pacific Railway Company.

Year 1906.—Directors: E. H. Harriman, H. E. Huntington, Geo
M. Downey, Thomas Fitzgerald, David R. Gray, F. J. Kiesel, E. C
Manson, Thomas Marshall, Jonathan C. Royle. Officers: President
E. H. Harriman; vice president, ———; 2nd vice president, C. C
Tegethoff; 3rd vice president and treasurer, N. T. Smith; secretary
J. L. Willcutt.

298 Southern Pacific Railroad Company.

Year 1906.—Directors: Wm. D. Cornish, M. K. Ainsworth, E. H
Calvin, I. W. Hellman, Wm. F. Herrin, Wm. Hood, Homer S. King
N. T. Smith, Wm. Sproule, J. L. Willcutt, Jas. K. Wilson. Officers
President, Wm. D. Cornish; vice president, E. E. Calvin; 2nd vice
president, N. T. Smith; treasurer, N. T. Smith; secretary, J. L
Willcutt.

299 Southern Pacific Company.

Year 1907 (April 3).—Directors: E. H. Harriman, H. E. Hun
ington, Wm. D. Cornish, C. H. Mackay, A. K. Van Deventer, R. S
Lovett, W. V. S. Thorne, D. O. Mills, M. Hughitt, H. W. de Fores
J. Stillman, O. Mills, D. Willcox, M. Evarts, R. Goelet. Officers
President, E. H. Harriman; vice presidents, Wm. D. Cornish, J. C
Stubbs, E. E. Calvin, J. Kruttschnitt; treasurer, A. K. Van Deven
ter; secretary, A. Millar; genl. manager, E. E. Calvin; director o
traffic, J. C. Stubbs; director of maintenance & operation, J. Krut
schnitt. Executive committee: E. H. Harriman (chairman), H. W
de Forest, R. S. Lovett, D. Willcox, J. Stillman.

300 Central Pacific Railway Company.

Year 1907.—Directors: E. H. Harriman, H. E. Huntington, W. H
Bancroft, Geo. M. Downey, Thomas Fitzgerald, David R. Gra
F. J. Kiesel, E. C. Manson, Jonathan C. Royle. Officers: President
E. H. Harriman; vice president, E. E. Calvin; 2nd vice president
C. C. Tegethoff; 3rd vice president, C. H. Reddington; treasure
A. K. Van Deventer; secretary, J. L. Willcut.

Southern Pacific Railroad Company.

Year 1907.—Directors: Wm. D. Cornish, F. K. Ainsworth, E. E. Calvin, I. W. Hellman, Wm. F. Herrin, Wm. Hood, H. A. Jones, Homer S. King, C. H. Redington, J. L. Willcutt, Jas. K. Wilson. Officers: President, Wm. D. Cornish; vice president, E. E. Calvin; 2nd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1908 (April 8).—Directors: E. H. Harriman, H. E. Huntington, Wm. D. Cornish, C. H. Mackay, A. K. Van Deventer, R. S. Lovett, W. V. S. Thorne, Wm. Mahl, M. Hughitt, H. W. de Forest, F. A. Vanderlip, O. Mills, W. S. Cutting, M. Evarts, R. Goelet. Officers: President, E. H. Harriman; vice presidents, Wm. D. Cornish, J. C. Stubbs, E. E. Calvin, J. Kruttschnitt; treasurer, A. K. Van Deventer; secretary, A. Millar; director of traffic, J. C. Stubbs; general manager, E. E. Calvin; director of maintenance and operation, J. Kruttschnitt. Executive committee: E. H. Harriman (chairman), H. W. de Forest, R. S. Lovett, O. Mills, F. A. Vanderlip.

Central Pacific Railway Company.

Year 1908.—Directors: E. H. Harriman, H. E. Huntington, W. H. Bancroft, Thomas Fitzgerald, David R. Gray, F. J. Kiesel, E. C. Manson, Jonathan C. Royle, P. L. Williams. Officers: President, E. H. Harriman; vice president, E. E. Calvin; 2nd vice president, J. C. Tegethoff; 3rd vice president, ———; treasurer, A. K. Van Deventer; secretary, J. L. Willcutt.

Southern Pacific Railroad Company.

Year 1908.—Directors: Wm. D. Cornish, F. K. Ainsworth, E. E. Calvin, I. W. Hellman, Wm. F. Herrin, Wm. Hood, H. A. Jones, Homer S. King, C. H. Redington, J. L. Willcutt, Jas. K. Wilson. Officers: President, Wm. D. Cornish; vice president, E. E. Calvin; 2nd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, J. L. Willcutt.

Southern Pacific Company.

Year 1909 (April 7).—Directors: R. S. Lovett, E. H. Harriman, H. E. Huntington, R. W. Goelet, C. H. Mackay, A. K. Van Deventer, W. V. S. Thorne, Wm. Mahl, M. Hughitt, H. W. de Forest, F. A.

Vanderlip, O. Mills, W. B. Cutting, C. A. Peabody, R. Goelet. Officers: President, E. H. Harriman; vice presidents, R. S. Lovett, J. C. Stubbs, E. E. Calvin, J. Kruttschnitt; treasurer, A. K. Van Deventer, secretary, A. Millar; genl. manager, E. E. Calvin; director of traffic, J. C. Stubbs; director of maintenance and operation, J. Kruttschnitt. Executive committee: E. H. Harriman (chairman), H. W. de Forest, R. S. Lovett, O. Mills, F. A. Vanderlip.

306 Central Pacific Railway Company.

Year 1909.—Directors: R. S. Lovett, E. E. Calvin, Wm. F. Herrin, Wm. Hood, C. H. Redington, W. R. Scott, W. H. Bancroft, G. L. King, Paul Shoup. Officers: President, R. S. Lovett; vice president, E. E. Calvin; 2nd vice president, C. C. Tegethoff; 3rd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King.

307 Southern Pacific Railroad Company.

Year 1909.—Directors: R. S. Lovett, E. E. Calvin, Wm. F. Herrin, Wm. Hood, C. H. Redington, W. R. Scott, F. K. Ainsworth, I. W. Hellman, H. A. Jones, Homer S. King, Jas. K. Wilson. Officers: President, R. S. Lovett; vice president, E. E. Calvin; 2nd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King.

308 Southern Pacific Company.

Year, 1910 (April 6).—Directors: R. S. Lovett, O. H. Kahn, H. E. Huntington, R. W. Goelet, C. H. Mackay, W. Rockefeller, W. V. S. Thorne, M. L. Schiff, M. Hughitt, H. W. de Forest, F. A. Vanderlip, O. Mills, W. B. Cutting, C. A. Peabody, R. Goelet. Officers: President, R. S. Lovett; vice presidents, Wm. F. Herrin, J. C. Stubbs, E. E. Calvin, J. Kruttschnitt, Wm. Mahl, E. O. McCormick; treasurer, A. K. Van Deventer; secretary, A. Millar; genl. manager, E. E. Calvin; director of traffic, J. C. Stubbs; director of maintenance and operation, J. Kruttschnitt. Executive committee: R. S. Lovett (chairman), O. H. Kahn, H. W. de Forest, O. Mills, F. A. Vanderlip, W. Rockefeller, M. L. Schiff.

309 Central Pacific Railway Company.

Year, 1910.—Directors: R. S. Lovett, Wm. F. Herrin, Wm. Hood, C. H. Redington, W. R. Scott, E. E. Calvin, W. H. Bancroft, G. L. King, Paul Shoup. Officers: President, R. S. Lovett; vice president

n. F. Herrin; vice president, E. E. Calvin; 2nd vice president, m. Mahl; 3rd vice president, C. H. Redington; treasurer, A. K. n Deventer; secretary, G. L. King.

Southern Pacific Railroad Company.

Year, 1910.—Directors: R. S. Lovett, Wm. F. Herrin, Wm. Hood, H. Redington, W. R. Scott, E. E. Calvin, I. W. Hellman, Wm. ahl, Jas. K. Wilson, F. K. Ainsworth, H. A. Jones. Officers: Pres- ent, R. S. Lovett; vice president, Wm. F. Herrin; 2nd vice presi- nt, E. E. Calvin; 3rd vice president, E. O. McCormick; 4th vice esident & comptroller, Wm. Mahl; 5th vice president, C. H. Red- gton; treasurer, A. K. Van Deventer; secretary, G. L. King; audi- r, A. D. McDonald; chief engineer, Wm. Hood.

Southern Pacific Company.

Year 1911 (April 5).—Directors: R. S. Lovett, O. H. Kahn, H. E. ntington, R. W. Goelet, C. H. Mackay, W. Rockefeller, W. V. S. horne, M. L. Schiff, M. Hughitt, H. W. de Forest, F. A. Vanderlip, Mills, W. B. Cutting, C. A. Peabody, R. Goelet. Officers: Presi- nt, R. S. Lovett; vice presidents, Wm. F. Herrin, E. E. Calvin, Kruttschnitt, Wm. Mahl, E. O. McCormick; treasurer, A. K. Van venter; secretary, A. Millar; genl. manager, E. E. Calvin; director traffic, J. C. Stubbs; director of maintenance and operation, J. ruttschnitt. Executive committee: R. S. Lovett (chairman), O. H. ahn, H. W. de Forest, O. Mills, F. A. Vanderlip, W. Rockefeller, L. Schiff.

Central Pacific Railway Company.

Year 1911.—Directors: R. S. Lovett, E. E. Calvin, Wm. F. Herrin, m. Hood, E. O. McCormick, C. H. Redington, W. R. Scott, W. H. ncroft, G. L. King. Officers: President, R. S. Lovett; vice presi- nt, Wm. F. Herrin; vice president, E. E. Calvin; vice president, O. McCormick; 2nd vice president, Wm. Mahl; 3rd vice president, H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. ing.

Southern Pacific Railroad Company.

Year 1911.—Directors: R. S. Lovett, E. E. Calvin, Wm. F. Herrin, m. Hood, E. O. McCormick, C. H. Redington, W. R. Scott, F. K. insworth, I. W. Hellman, J. K. Wilson, Wm. Mahl. Officers: esident, R. S. Lovett; vice president, Wm. F. Herrin; 2nd vice

president, E. E. Calvin; 3rd vice president, E. O. McCormick; 4th vice president, Wm. Mahl; 5th vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King; auditor, A. D. McDonald; chief engineer, Wm. Hood.

314 Southern Pacific Company.

Year 1912 (April 3).—Directors: Wm. Sproule, R. S. Lovett, O. H. Kahn, H. E. Huntington, R. W. Goelet, J. Kruttschnitt, W. Rockefeller, L. J. Spence, M. L. Schiff, M. Hughitt, H. W. de Forest, F. A. Vanderlip, O. Mills, C. A. Peabody, R. Goelet. Officers: President, Wm. Sproule; vice presidents, Wm. F. Herrin, E. E. Calvin, J. Kruttschnitt, Wm. Mahl, E. O. McCormick; treasurer, A. K. Van Deventer; secretary, A. Millar; genl. manager, E. E. Calvin; director of traffic, L. J. Spence; director of maintenance and operation, J. Kruttschnitt. Executive committee: R. S. Lovett (chairman), O. H. Kahn, H. W. de Forest, O. Mills, F. A. Vanderlip, W. Rockefeller, M. L. Schiff.

315 Central Pacific Railway Company.

Year 1912.—Directors. R. S. Lovett, E. E. Calvin, Wm. F. Herrin, Wm. Hood, E. O. McCormick, C. H. Redington, W. R. Scott, W. H. Bancroft, G. L. King. Officers: President, Wm. F. Herrin; vice president, E. E. Calvin; vice president, E. O. McCormick; 2nd vice president, Wm. Mahl; 3rd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King; chief engineer, Wm. Hood; auditor, A. D. McDonald.

316 Southern Pacific Railroad Company.

Year 1912.—Directors: Wm. Sproule, E. E. Calvin, Wm. F. Herrin, Wm. Hood, E. O. McCormick, C. H. Redington, W. R. Scott, B. A. McAllaster, A. D. McDonald, Wm. Mahl, F. K. Ainsworth. Officers: President, Wm. Sproule; vice president, Wm. F. Herrin; 2nd vice president, E. E. Calvin; 3rd vice president, E. O. McCormick; 4th vice president & controller, Wm. Mahl; 5th vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King; chief engineer, Wm. Hood; auditor, A. D. McDonald.

317 Southern Pacific Company.

Year 1913 (April 9).—Directors: Wm. Sproule, L. F. Loree, C. N. Bliss, H. E. Huntington, W. P. Bliss, J. Kruttschnitt, J. N. Wallace, L. J. Spence, J. N. Jarvis, C. W. Harkness, H. W. de Forest, E. P.

…son, O. Mills, J. H. Harding, R. Goelet. Officers: President, …. Sproule; vice presidents, Wm. F. Herrin, W. A. Worthington, …E. Calvin, A. D. McDonald, E. O. McCormick; treasurer, A. K. …n Deventer; secretary, H. Neill; genl. manager, E. E. Calvin; …ctor of traffic, L. J. Spence. Executive committee: J. Krutt…nitt (chairman), H. W. de Forest, R. Goelet, O. Mills, C. W. …rkness, E. P. Swenson, J. N. Wallace.

Central Pacific Railway Company.

…ear 1913.—Directors: Wm. Sproule, Wm. F. Herrin, E. E. Cal…, Wm. Hood, G. L. King, E. O. McCormick, W. R. Scott, C. H. …lington, T. F. Rowlands. Officers: President, Wm. F. Herrin; …president, E. E. Calvin; vice president, E. O. McCormick; 2nd …president, A. D. McDonald; 3rd vice president, C. H. Reding…; treasurer, A. K. Van Deventer; secretary, G. L. King; auditor, …O. Edwards; chief engineer, Wm. Hood.

Southern Pacific Railroad Company.

…ear 1913.—Directors: Wm. Sproule, Wm. F. Herrin, E. E. Cal…, Wm. Hood, G. L. King, E. O. McCormick, W. R. Scott, F. K. …worth, H. A. Jones, B. A. McAllaster, A. D. McDonald. Offi…: President, Wm. Sproule; vice president, Wm. F. Herrin; 2nd …president, E. E. Calvin; 3rd vice president, E. O. McCormick; …vice president & controller, A. D. McDonald; 5th vice president, …H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. …g; auditor, T. O. Edwards; chief engineer, Wm. Hood.

Southern Pacific Company.

…ear 1914 (April 8).—Directors: Wm. Sproule, L. F. Loree, C. …Bliss, H. E. Huntington, W. P. Bliss, J. Kruttschnitt, J. H. …lhce, L. J. Spence, J. N. Jarvis, C. W. Harkness, H. W. de …est, E. P. Swenson, O. Mills, J. H. Harding, R. Goelet. Officers: …sident, Wm. Sproule; vice presidents, Wm. F. Herrin, W. A. …rthington, W. R. Scott, A. D. McDonald, E. O. McCormick; …surer, A. K. Van Deventer; secretary, H. Neill; genl. manager, …R. Scott; director of traffic, L. J. Spence. Executive committee, …Kruttschnitt (chairman), H. W. de Forest, R. Goelet, O. Mills, C. …Harkness, E. P. Swenson, J. N. Wallace.

Central Pacific Railway Company.

…ar 1914.—Directors: Wm. Sproule, Wm. F. Herrin, T. O. Ed…, Wm. Hood, G. L. King, E. O. McCormick, W. R. Scott, C. H.

Redington, T. F. Rowlands. Officers: President, Wm. F. Herrin; vice president, W. R. Scott; vice president, E. O. McCormick; 2nd vice president, A. D. McDonald; 3rd vice president, C. H. Redington; treasurer, A. K. Van Deventer; secretary, G. L. King; auditor, T. O. Edwards; chief engineer, Wm. Hood.

322 Southern Pacific Railroad Company.

Year 1914.—Directors: Wm. Sproule, Wm. F. Herrin, T. O. Edwards, Wm. Hood, G. L. King, E. O. McCormick, W. R. Scott, F. K. Ainsworth, C. S. Fee, G. W. Luce, A. D. McDonald. Officers: President, Wm. Sproule; vice president, Wm. F. Herrin; 2nd vice president, W. R. Scott; 3rd vice president, E. O. McCormick; 4th vice president & controller, A. D. McDonald; treasurer, A. K. Van Deventer; secretary, G. L. King; auditor, T. O. Edwards; chief engineer, Wm. Hood.

323 PETITIONER'S EXHIBIT NO. 15, SEPTEMBER 21, 1914.

(Comprising extracts from photographic copies, certified by the Secretary of the Interior August 31, 1914, of annual reports filed by the Central Pacific Railroad Company from 1864 to 1877.)

(The list of stockholders contained in the copy of the annual report of the Central Pacific Railroad Company dated March 1, 1864, is as follows:)

J. W. Avery, Sacramento City, Cal.
Jacob Arnold, Sacramento City, Cal.
C. W. Adams, Sacramento City, Cal.
J. J. Ayres, San Francisco, Cal.
W. J. Adams, San Francisco, Cal.
B. Brickell, Dutch Flat, Cal.
E. J. Brickell, Dutch Flat, Cal.
L. A. Booth, Sacramento City, Cal.
E. L. Bradley & Co., Dutch Flat, Cal.
F. Elliard Beans, Nevada City, Cal.
Bowstead & Co., Sacramento City, Cal.
N. W. Blanchard, Dutch Flat, Cal.
W. C. Burnham, Sacramento City, Cal.
324 B. Burt, Sacramento City, Cal.
T. Bell, Sacramento City, Cal.
Joseph Bruner, Sacramento City, Cal.
Daniel Brown, Sacramento City, Cal.
H. Bowman, Sacramento City, Cal.
James Buhell, Sacramento City, Cal.
E. Blum, Sacramento City, Cal.

Robert Beck, Sacramento City, Cal.
J. Bellmer & Co., Sacramento City, Cal.
Joseph Banquier, Sacramento City, Cal.
Charles Barnes, Sacramento City, Cal.
R. T. Brown, Sacramento City, Cal.
E. Burke, Mariposa, Cal.
H. W. Bragg & Co., Sacramento City, Cal.
Geo. A. Bassett.
M. D. Borrick, San Francisco, Cal.
Thomas Baker, Sacramento City, Cal.
J. G. Baker, Sacramento City, Cal.
E. P. Bancroft, "trustee," Boston, Mass.
C. D. Bates, Sacramento City, Cal.
Saml. Cross, Sacramento City, Cal.
Cornelius Cole, Sacramento City, Cal.
Charles Crocker, Sacramento City, Cal.
125 C. H. Cummings, Sacramento City, Cal.
J. H. Culver, Sacramento City, Cal.
C. I. Coffin, Sacramento City, Cal.
Mrs. Martha F. Cockran, Sacramento City, Cal.
Hiram Cook, Sacramento City, Cal.
H. Cronkite, Sacramento City, Cal.
A. Chevalier, San Francisco, Cal.
Marie Conrad, Sacramento City, Cal.
C. N. Converse, Sacramento City, Cal.
T. H. Cook, Sacramento City, Cal.
A. Coolot, Sacramento City, Cal.
H. S. Crocker, Sacramento City, Cal.
Wm. Cummings, Sacramento City, Cal.
D. N. Clark, Sacramento City, Cal.
B. R. Crocker, Sacramento City, Cal.
O. L. Chamberlain, Sutter Creek, Cal.
W. Coates, Sacramento City, Cal.
Chas. M. Chase, San Francisco, Cal.
John Conrad, Sacramento City, Cal.
C. Collins, Sacramento City, Cal.
E. B. Crocker, Sacramento City, Cal.
M. L. Drew, Sacramento City, Cal.
126 Geo. B. Dean, Sacramento City, Cal.
J. A. Duffy, Sacramento City, Cal.
E. Davis, Sacramento City, Cal.
W. Dreher, Sacramento City, Cal.
D. K. Drew, Sacramento City, Cal.
M. L. Drew & Co., Sacramento City, Cal.
J. Douglass, Sacramento City, Cal.

Alphonsino Dumant, San Francisco, Cal.
W. G. English, Sacramento City, Cal.
J. R. Evans, Sacramento City, Cal.
C. F. Ebner, Sacramento City, Cal.
A. Egel, Sacramento City, Cal.
D. W. Earl, Sacramento City, Cal.
W. L. Everett, Sacramento City, Cal.
Thos. W. Findley, Grass Valley, Cal.
J. F. H. Forbes, Sacramento City, Cal.
Fredericks & Krebs, Sacramento City, Cal.
W. R. S. Foye, Sacramento City, Cal.
P. Franklin, Sacramento City, Cal.
M. Fitzpatrick, Sacramento City, Cal.
J. S. Floberg, Sacramento City, Cal.
Friend & Terry, Sacramento City, Cal.
327 Jos. F. Frey, Sacramento City, Cal.
L. H. Foote, Sacramento City, Cal.
J. W. Forney, Sacramento City, Cal.
Walter H. French, Virginia City, N. T.
Peter B. Forster, San Francisco, Cal.
John Gillig, Sacramento City, Cal.
Robt. Gardiner, Knights Landing, Cal.
Albert Allatin, Sacramento City, Cal.
A. S. Grunlaw, Sacramento City, Cal.
Gustav Gotthold, Sacramento City, Cal.
Eugene Gaxoet, Sacramento City, Cal.
B. Gosener, Sacramento City, Cal.
Wm. Greenbaum, Sacramento City, Cal.
Christian, Gruhler, Sacramento City, Cal.
Elias Gruhler, Sacramento City, Cal.
J. Gruhler, Sacramento City, Cal.
C. H. Grimm, Sacramento City, Cal.
Godchaux Bros. & Co., Sacramento City, Cal.
Mrs. C. C. Glidden, Boston, Mass.
Ira Goodman.
C. G. Hooker, Sacramento City, Cal.
Mark Hopkins, Sacramento City, Cal.
328 C. P. Huntington, Sacramento City, Cal.
W. H. Hill, Sacramento City, Cal.
J. S. Harbison, Sacramento City, Cal.
Miss A. E. Hurley, Sacramento City, Cal.
G. F. Hartman, Sacramento City, Cal.
J. Hector, Sacramento City, Cal.
A. Heilbron & Bros., Sacramento City, Cal.
W. B. Hunt for Eugene Hunt, Sacramento City, Cal.

Mrs. E. E. Glidden, Boston, Mass.
H. T. Holmes, Sacramento City, Cal.
Wm. Henkel, Sacramento City, Cal.
Chas. Heinrich, Sacramento City, Cal.
A. K. P. Harmon, Sacramento City, Cal.
Jacob Heppe, Sacramento City, Cal.
W. H. Hill for Jane E. Hill, Sacramento City, Cal.
W. H. Hill for Isabella M. Hill, Sacramento City, Cal.
E. Holmes, Sacramento City, Cal.
Hull & Lohman, Sacramento City, Cal.
August Heisch, Sacramento City, Cal.
Geo. Hepburn, Sacramento City, Cal.
Jared Irwin, Sacramento City, Cal.
Saml. Jelly, Sacramento City, Cal.
M. M. Jacobs, Sacramento City, Cal.
Peter Johnson, Sacramento City, Cal.
C. C. Jenks, Sacramento City, Cal.
Elias Jacobs, Sacramento City, Cal.
Enoch Jacobs, Sacramento City, Cal.
T. D. Judah, Sacramento City, Cal.
Joel Johnson, Sacramento City, Cal.
Kelly Mott & Co., Sacramento City, Cal.
W. F. Knox, Sacramento City, Cal.
Klink & Martfield, Sacramento City, Cal.
H. Kohler, Sacramento City, Cal.
J. B. Kohler, Sacramento City, Cal.
L. Krambach, Sacramento City, Cal.
Edward Kraus, Sacramento City, Cal.
E. Kimball, Sacramento City, Cal.
Frank Keller, Sacramento City, Cal.
David Kendall, Sacramento City, Cal.
Tobias Kandell, Sacramento City, Cal.
C. Kellmer, Dutch Flat, Cal.
E. C. Kemble.
Lord Holbrook & Co., Sacramento City, Cal.
W. Lontzenheiser, Grass Valley, Cal.
H. K. Lindsay, Cosumis, Cal.
H. W. Larkin, Sacramento City, Cal.
E. J. Loomis, Sacramento City, Cal.
M. Littleton, Sacramento City, Cal.
Isaac Lewis, Sacramento City, Cal.
C. B. Linton, Sacramento City, Cal.
Lyon & Son, Sacramento City, Cal.
Locke & Lavinson, Sacramento City, Cal.
A. Lecompt, Sacramento City, Cal.

Geo. I. Lytle, Sacramento City, Cal.
Christopher Lages, Sacramento City, Cal.
T. M. Lindley, Sacramento City, Cal.
J. D. Lord, Sacramento City, Cal.
Chas. Sutter, Sacramento City, Cal.
C. A. Lambard, Boston, Mass.
P. Lynch, Forest Hill, Cal.
John A. Lowery, Sacramento City, Cal.
Charles Marsh, Mead City, Cal.
John F. Morse, Sacramento City, Cal.
B. F. Moore, Dutch Flat, Cal.
E. McLaughlin, Grass Valley, Cal.
J. T. Mathewson, Dutch Flat, Cal.
James McGuire, Sacramento City, Cal.
331 F. Mier, Sacramento City, Cal.
Conrad Myer, Sacramento City, Cal.
T. H. Muhlenfels, Sacramento City, Cal.
Saml. Mosier, Sacramento City, Cal.
John Meister, Sacramento City, Cal.
W. W. Marvin, Sacramento City, Cal.
John McNeil, Sacramento City, Cal.
R. H. McDonald, Sacramento City, Cal.
A. Menke, Sacramento City, Cal.
H. Meyers, Sacramento City, Cal.
E. B. Mott, Jr., Sacramento City, Cal.
Geo. R. Moore, Sacramento City, Cal.
P. F. Mangan, Sacramento City, Cal.
D. Z. Moore, Sacramento City, Cal.
D. O. Mills & Co., bank in Sacramento City, Cal.
E. H. Miller, Jr., Sacramento City, Cal.
James McClatchey, Sacramento Bee, Sacramento City, Cal.
D. W. Mahon.
Drury Maloni, Sacramento City, Cal.
N. S. Nichols, Sacramento City, Cal.
A. Newbaur & Co., Sacramento City, Cal.
Leonard Newburg, Sacramento City, Cal.
James O. Neil, Sacramento City, Cal.
332 Ira Oatman, Sacramento City, Cal.
Geo. Ochs, Sacramento City, Cal.
F. Oettl, Sacramento City, Cal.
J. I. Pond, Sacramento City, Cal.
T. J. Pike, Sacramento City, Cal.
Placer County, Cal.
John C. Parks, Dutch Flat, Cal.
Arch C. Powell, Syracuse, N. Y.

P. H. Russell, Sacramento City, Cal.
C. Rice, Iowa Hill, Cal.
Thomas Ross, Sacramento City, Cal.
G. Renaud, Sacramento City, Cal.
John Ryan, Sacramento City, Cal.
W. B. & B. F. Ready, Sacramento City, Cal.
Frank C. Ross, Sacramento City, Cal.
S. B. Robbins, Sacramento City, Cal.
Martin Ransich, Sacramento City, Cal.
J. W. Reeves, Sacramento City, Cal.
B. B. Redding, Sacramento City, Cal.
H. B. Rice, Sacramento City, Cal.
Geo. Rowland, Sacramento City, Cal.
Wm. M. Ratcliffe, Sacramento City, Cal.
333 Rippon & Hill, Sacramento City, Cal.
J. P. Charvierre Rond, San Francisco, Cal.
John E. Robinson.
P. Ryan.
D. M. Strong, Dutch Flat, Cal.
E. Stockton, Folson, Cal.
A. A. Sargent, Nevada, Cal.
E. W. Smith, Grass Valley, Cal.
Leland Stanford, Sacramento City, Cal.
J. A. Seaman, Sacramento City, Cal.
John Smith, Sacramento City, Cal.
Philipp Scheld, Sacramento Bank, Sacramento City, Cal.
T. W. Strowbridge, Sacramento City, Cal.
Mary Scott, Sacramento City, Cal.
E. Soule, Sacramento City, Cal.
Louis Schafer, Sacramento City, Cal.
Charles Sellinger, Sacramento City, Cal.
John Shade, Sacramento City, Cal.
P. Stanton, Sacramento City, Cal.
Joseph Stevens, Sacramento City, Cal.
H. Schroeder, Sacramento City, Cal.
S. H. Schroer, Sacramento City, Cal.
C. Stremming, Sacramento City, Cal.
334 J. Strutz, Sacramento City, Cal.
Geo. W. Stewart, Sacramento City, Cal.
Lee Stanley, Sacramento City, Cal.
W. R. Strong, Sacramento City, Cal.
Geo. Schmeiser, Sacramento City, Cal.
Wm. H. Spaulding, Sacramento City, Cal.
Geo. H. Swinerton, Sacramento City, Cal.
Thos. K. Stewart, Sacramento City, Cal.

Robert Seiger, Sacramento City, Cal.
A. P. Stanford, San Francisco, Cal.
Jacob Shaw, San Francisco, Cal.
Sacramento County.
W. B. Shaw.
E. B. Sturgeon.
R. N. Sherman.
S. D. Smith, Sacramento City, Cal.
J. N. Turner, Nevada City, Cal.
Henry Freichler, Sacramento City, Cal.
S. Tryon, Sacramento City, Cal.
H. Theilbahr, Sacramento City, Cal.
Doris Theilbahr, Sacramento City, Cal.
Turton, Knox & Ryan, Sacramento City, Cal.
335 L. Upson, Sacramento City, Cal.
G. K. Van Heusen, Sacramento City, Cal.
I. S. Van Winkle, Sacramento City, Cal.
John Williams, Nevada City, Cal.
E. G. Waite, Nevada City, Cal.
D. W. Welty, in trust for Mrs. E. Baldwin, Sacramento City, Cal.
O. C. Wheeler, Sacramento City, Cal.
Julius Wetzlar, Sacramento City, Cal.
J. C. Williams, Drytown, Cal.
H. Wachhorst, Sacramento City, Cal.
D. W. Whitmore, Sacramento City, Cal.
C. T. Wheeler, Sacramento City, Cal.
Conrad Weil, Sacramento City, Cal.
D. W. Welty, Sacramento City, Cal.
Mrs. E. L. M. Williams, Boston, Mass.
D. K. Zumwalt, Sacramento City, Cal.
336 (The list of stockholders contained in the copy of the annual report of the Central Pacific Railroad Company for the year ending December 31st, 1864, is as follows:)

Names of stockholders and their residence.

Mark Hopkins, Sacramento, Cal.
C. P. Huntington, Sacramento, Cal.
Charles Marsh, Nevada, Cal.
Leland Standford, Sacramento, Cal.
Charles Crocker, Sacramento, Cal.
O. L. Chamberlain, Sutter Creek, Cal.
John Gellig, Virginia City, Nev.
Placer County, Cal.

C. A. Lambard, Boston, Mass.
S. D. Smith, Sacramento, Cal.
Turton, Knox & Ryan, Sacramento, Cal.
C. D. Bates, Sacramento, Cal.
Richard Franchot, Schenectada, Cal.
D. W. Strong, Doner Lake, Cal.
N. W. Blanchard, Dutch Flat, Cal.
C. Cole, Santa Cruz, Cal.
John F. Morse, San Francisco, Cal.
P. H. Russell, Sacramento, Cal.
N. L. Drew, Sacramento, Cal.
W. G. English, Sacramento, Cal.
C. G. Hooker, Sacramento, Cal.
Lord Holbrook & Co., Sacramento, Cal.
L. A. Booth, Virginia City, Nev.
E. J. Brickell, Illinoistown, Cal.
R. Brickell, Illinoistown, Cal.
R. F. Moore, Dutch Flat, Cal.
J. T. Mathewson, Dutch Flat, Cal.
Bradley & Trim, Dutch Flat, Cal.
E. G. Waite, Nevada, Cal.
John Williams, Nevada, Cal.
T. E. Beans, Nevada, Cal.
I. N. Turner, Nevada, Cal.
E. McLaughlin, Grass Valley, Cal.
W. Loutzenheiser, Grass Valley, Cal.
Samuel Crop, Sacramento, Cal.
D. O. Mills & Co., Sacramento, Cal.
Thos. Findley, Nevada, Cal.
Kelly, Mott & Co., Sacramento, Cal.
W. K. Lindsey, Sacramento, Cal.
Chas. Rice, Illinoistown, Cal.
A. A. Sargent, Nevada, Cal.
Edward Stockton, Folsom, Cal.
C. W. Smith, unknown.
Lauren Upson, San Francisco, Cal.
G. Renaud, Sacramento, Cal.
Thos. Ross, Sacramento, Cal.
N. S. Nichols, Sacramento, Cal.
J. H. Culver, Sacramento, Cal.
N. L. Drew & Co., Sacramento, Cal.
J. F. H. Forbes, Sacramento, Cal.
C. N. Cumings, Sacramento, Cal.
W. R. Strong, Sacramento, Cal.
N. L. Drew for D. K. Drew, Sacramento, Cal.

J. W. Reeves, Sacramento, Cal.
Jared Irwin, Sacramento, Cal.
Chas. Van Heusen, Sacramento, Cal.
E. J. Van Heusen, Sacramento, Cal.
J. A. Seaman, Sacramento, Cal.
D. W. Welty, in trust for Mrs. Elvira Baldwin, Sacramento, C
R. H. McDonalde, Sacramento, Cal.
W. H. Hill, Sacramento, Cal.
Mrs. O. C. Wheeler, Sacramento, Cal.
339 Melvina P. Wheeler, Sacramento, Cal.
O. C. Wheeler, Sacramento, Cal.
C. F. Wheeler, Sacramento, Cal.
H. T. Holmes, Sacramento, Cal.
D. Kendall, Sacramento, Cal.
J. F. Pike, Sacramento, Cal.
J. S. Harbison, Sacramento, Cal.
Jas. McGuire, Sacramento, Cal.
John Ryan, Sacramento, Cal.
Jas. O. Neil, Sacramento, Cal.
M. Littleton, Sacramento, Cal.
Wm. Turton, Sacramento, Cal.
Geo. Rowland, Sacramento, Cal.
W. N. Spaulding, Sacramento, Cal.
Jas. Bithell, Sacramento, Cal.
F. W. Strowbridge, Sacramento, Cal.
H. S. Crocker, Sacramento, Cal.
A. P. Harmon, Sacramento, Cal.
J. S. Van Winkle, Sacramento, Cal.
Robert Gardner, Knights Landing, Cal.
W. C. Burnham, Sacramento, Cal.
Albert Gallatin, Dayton, Nev.
Hiram Cook, Sacramento, Cal.
340 W. R. S. Foye, Sacramento, Cal.
Klink & Hartfield, Sacramento, Cal.
Geo. Hepburn, unknown.
D. W. Mahon, unknown.
Ira Goodman, unknown.
J. R. Robinson, unknown.
E. C. Kemble, unknown.
W. B. Shun, unknown.
R. N. Sherman, unknown.
C. B. Sturgeon, unknown.
Geo. A. Bassett, unknown.
J. W. Forney, unknown.

J. A. Duffy, Sacramento, Cal.
John Smith, Sacramento, Cal.
Miss M. E. Hurley, Sacramento, Cal.
Jacob Gruhler, Sacramento, Cal.
H. Kohler, Sacramento, Cal.
J. D. Lord, Sacramento, Cal.
B. Burt, Sacramento, Cal.
P. Scheld, Sacramento, Cal.
E. Holmes, Sacramento, Cal.
Hill & Lohman, Sacramento, Cal.
341 Ira E. Oatman, Sacramento, Cal.
E. B. Mott, jr., Sacramento, Cal.
H. W. Larkin, Sacramento, Cal.
D. W. Earl, Sacramento, Cal.
W. M. Ratcliff, Sacramento, Cal.
H. Truchler, Sacramento, Cal.
Martha F. Cochran, Sacramento, Cal.
W. B. & B. F. Ready, Sacramento, Cal.
Frank C. Ross, Sacramento, Cal.
J. S. Pond, Sacramento, Cal.
Saml. Jelly, Sacramento, Cal.
N. M. Jacobs, Sacramento, Cal.
Geo. R. Moore, Sacramento, Cal.
F. Mier, Sacramento, Cal.
Locke & Lavinson, Sacramento, Cal.
G. H. Swinerton, Sacramento, Cal.
E. J. Loomis, Sacramento, Cal.
Mary Scott, Sacramento, Cal.
A. S. Greenlaw, Sacramento, Cal.
Friend & Terry, Sacramento, Cal.
E. Soule, Sacramento, Cal.
S. Tryon, Sacramento Cal.
H. Cronkite, Sacramento, Cal.
342 Wm. Cummings, Sacramento, Cal.
W. L. Everett, Sacramento, Cal.
Wm. Greenbaum, Sacramento, Cal.
Joseph Bronner, Sacramento, Cal.
John Schade, Sacramento, Cal.
Robert Beck, Sacramento, Cal.
C. H. Converse, Sacramento, Cal.
J. Wetzlar, Sacramento, Cal.
E. Kraus, Sacramento, Cal.
G. Gotthold, Sacramento, Cal.
P. Franklin, Sacramento, Cal.

J. B. Keohl, Sacramento, Cal.
J. Strutz, Sacramento, Cal.
A. Newbaur, Sacramento, Cal.
C. & F. Ebner, Sacramento, Cal.
Louis Schafer, Sacramento, Cal.
E. Davis, Sacramento, Cal.
G. T. Hartman, Sacramento, Cal.
F. Bell, Sacramento, Cal.
C. Myer, Sacramento, Cal.
F. Muhlenfels, Sacramento, Cal.
Charles Sutter, Sacramento, Cal.
John Conrade, Sacramento, Cal.
343 Marie Conrade, Sacramento, Cal.
L. Kranbach, Sacramento, Cal.
Eugene Gaxoet, Sacramento, Cal.
F. Chevalier, San Francisco, Cal.
Charles Sellinger, Sacramento, Cal.
J. Hector, Sacramento, Cal.
D. W. Clark, Sacramento, Cal.
G. Schmeiser, Sacramento, Cal.
C. H. Grimm, Sacramento, Cal.
Wm. Henkel, Sacramento, Cal.
P. F. Mangan, Sacramento, Cal.
R. T. Brown, Sacramento, Cal.
Frank Keller, Sacramento, Cal.
Daniel Brown, Sacramento, Cal.
Geo. Ochs, Sacramento, Cal.
John Meister, Sacramento, Cal.
Samuel Mosier, Sacramento, Cal.
S. B. Robbins, Sacramento, Cal.
Sarah E. Avery, Sacramento, Cal.
Melissa Avery, Sacramento, Cal.
Ch. Gruhler, Sacramento, Cal.
Elias Gruhler, Sacramento, Cal.
W. W. Marvin, Sacramento, Cal.
344 P. Stanton, Sacramento, Cal.
J. Stevens, Sacramento, Cal.
Aug. Hersch, Sacramento, Cal.
D. Z. Moore, Sacramento, Cal.
John McNeil, Sacramento, Cal.
C. B. Linton, Sacramento, Cal.
J. G. McNeil, Sacramento, Cal.
A. Heilbron & Bro., Sacramento, Cal.
D. K. Zumwalt, Sacramento, Cal.
Peter Johnson, Sacramento, Cal.

T. H. Cook, Sacramento, Cal.
E. Kimball, Sacramento, Cal.
Martin Ransich, Sacramento, Cal.
Michael Lecompt, Sacramento, Cal.
A. Coolot, Sacramento, Cal.
G. W. Stewart, Sacramento, Cal.
S. H. Schwer, Sacramento, Cal.
A. Egl, Sacramento, Cal.
Joseph Bellmer & Co., Sacramento, Cal.
Chas. Heinrich, Sacramento, Cal.
W. J. Douglas, Sacramento, Cal.
Lee Stanley, Sacramento, Cal.
Jos. Bamquir, Sacramento, Cal.
Chas. Barnes, Sacramento, Cal.
Elias Jacobs, Sacramento, Cal.
H. Wachhorst, Sacramento, Cal.
E. B. Crocker, Sacramento, Cal.
Ida Bowman, Sacramento, Cal.
W. J. Bowman, Sacramento, Cal.
H. Schroeder, Sacramento, Cal.
B. Gossner, Sacramento, Cal.
Jacob Heppe, Sacramento, Cal.
B. B. Redding, Sacramento, Cal.
H. B. Rice, Sacramento, Cal.
B. R. Crocker, Sacramento, Cal.
E. Blum, Sacramento, Cal.
Wm. Drecher, Sacramento, Cal.
F. Oettl, Sacramento, Cal.
J. B. Floberg, Sacramento, Cal.
H. Meyers, Sacramento, Cal.
Jacob Arnold, Sacramento, Cal.
C. W. Adams, Sacramento, Cal.
H. Thelbahr, Sacramento, Cal.
Dores Thelbahr, Sacramento, Cal.
Tobias Keadell, Sacramento, Cal.
Lyon & Son, Sacramento, Cal.
J. Domingos, Sacramento, Cal.
Rippon & Hill, Sacramento, Cal.
Geo. J. Lytle, Sacramento, Cal.
Eugene Hunt for W. B. Hunt, Sacramento, Cal.
Wm. Fitzpatrick, Sacramento, Cal.
J. C. Williams, Drytown, Cal.
C. C. Jenks, Sacramento, Cal.
James E. Hill, Sacramento, Cal.

Isabella M. Neill, Sacramento, Cal.
Enoch Jacobs, Sacramento, Cal.
E. Burke, Mariposa, Cal.
C. Neil, Sacramento, Cal.
R. Sieger, Sacramento, Cal.
Leonard Newbourg, Sacramento, Cal.
C. Lages, Sacramento, Cal.
E. H. Miller, jr., Sacramento, Cal.
T. K. Stewart, Sacramento, Cal.
Godchaux Bros. & Co., Sacramento, Cal.
James McClatchy, Sacramento, Cal.
A. P. Stanford, San Francisco, Cal.
Jacob Shew, San Francisco, Cal.
J. P. C. Rond, San Francisco, Cal.
347 Sacramento County, Cal.
L. H. Foote, Sacramento, Cal.
D. W. Welty, Sacramento, Cal.
Jos. M. Frey, Sacramento, Cal.
D. W. Whitmore, Sacramento, Cal.
C. Stremming, Sacramento, Cal.
C. Kellmer, Dutch Flat, Cal.
Drury Melone, Sacramento, Cal.
John C. Parks, Sacramento, Cal.
Thos. Baker, Sacramento, Cal.
J. G. Baker, Sacramento, Cal.
C. M. Chase, Sacramento, Cal.
M. D. Bounk, Sacramento, Cal.
Walter H. French, Virginia City, Nev.
Joel Johnson, Sacramento, Cal.
Mrs. C. C. Glidden, Boston, Mass.
Mrs. E. L. M. Williams, Boston, Mass.
Mrs. E. M. Glidden, Boston, Mass.
Philip Lynch, Forest Hill, Cal.
J. J. Ayres, San Francisco, Cal.
Wm. Coates, Sacramento, Cal.
348 E. P. Bancroft, trustee, Boston, Mass.
Peter B. Forster, San Francisco, Cal.
W. J. Adams, San Francisco, Cal.
J. H. Herrick, in trust for Mary H. McCormick, Sacramento, Cal
C. K. Dougherty, Sacramento, Cal.
Henry Dunn, Sacramento, Cal.
W. C. Gay, Sacramento, Cal.
S. Hussey, jr., Sacramento, Cal.

A. Dumant, San Francisco, Cal.
F. Foster, Sacramento, Cal.
Mason Manufacturing Co., Springfield, Mass.
John Peasley, Sacramento, Cal.
Georgiana Mary Dean, Sacramento, Cal.
C. F. Kelink, Sacramento, Cal.
Wm. Martfield, Sacramento, Cal.
W. S. Watson, Sacramento, Cal.
C. H. Krebs, Sacramento, Cal.
Frank Reed Kimball, Sacramento, Cal.
H. W. Bragg, Sacramento, Cal.
Columbus Waterhouse, Sacramento, Cal.
John W. Lester, New York, N. Y.
Wm. Y. Patch, San Francisco, Cal.
T. T. Davis, unknown.
J. H. Husey, unknown.
John Boyd, unknown.
Geo. McDonald, unknown.
Noah Brooks, unknown.
C. Z. Sherman, unknown.
Geo. T. M. Davis, New York, N. Y.
Samuel Brannan, San Francisco, Cal.
Wm. C. Lynde, Sacramento, Cal.
H. G. Smith, Sacramento, Cal.

(The list of stockholders contained in the copy of the annual report for the Central Pacific Railroad Company for the year ending December 31, 1865, is as follows:)

Names of stockholders and residence.

Mark Hopkins, Sacramento, California.
C. P. Huntington, Sacramento, California.
Charles Marsh, Nevada, California.
Leland Stanford, Sacramento, California.
Charles Crocker, Sacramento, California.
O. L. Chamberlain, Sutler Creek, California.
John Gillig, Sacramento, California.
County of Placer, State of California.
C. A. Lambard, Boston, Mass.
L. D. Smith, Sacramento, California.
Turton, Knox & Ryan, Sacramento, California.
C. D. Bates, Sacramento, California.
Richard Franchot, unknown.
C. P. Huntington, agt., Sacramento, California.
W. Strong, Dutch Flat, California.

N. W. Blanchard, Dutch Flat, California.
Cornelius Cole, Dutch Flat, California.
351 John F. Morse, San Francisco, California.
P. H. Russell, Sacramento, California.
N. L. Drew, Sacramento, California.
W. G. English, Sacramento, California.
C. P. Hooker, San Francisco, California.
Lord Holbrook & Co., Sacramento, California.
L. A. Booth, Sacramento, California.
E. J. Brickell, Illinoistown, California.
B. Brickell, Illinoistown, California.
B. F. Moore, Dutch Flat, California.
J. F. Mathewson, Dutch Flat, California.
Brady and Trim, Dutch Flat, California.
E. G. Waite, Nevada, California.
John Williams, Nevada, California.
T. E. Beans, Nevada, California.
J. N. Turner, Nevada, California.
E. McLaughlin, Grass Valley, California.
W. Loutzheiser, Grass Valley, California.
Samuel Cross, Sacramento, California.
D. O. Mills and Co., Sacramento, California.
Thomas W. Findley, Grass Valley, California.
Kelly, Mott and Co., Sacramento, California.
352 T. M. Lindley, Sacramento, California.
W. K. Lindley, Sacramento, California.
Charles Riel, Mineral Bar, California.
A. A. Sargent, Nevada, California.
Edward Stockton, Folsom, California.
C. W. Smith, Grass Valley, California.
Lauren Upson, San Francisco, California.
G. Renaud, Sacramento, California.
Thomas Ross, Sacramento, California.
N. L. Nichols, Sacramento, California.
J. H. Culver, Sacramento, California.
N. L. Drew and Co., Sacramento, California.
J. F. H. Forbes, Sacramento, California.
C. H. Cummings, Sacramento, California.
W. R. Strong, Sacramento, California.
N. L. Drew for D. H. Drew, Sacramento, California.
J. W. Reeves, Sacramento, California.
Jared Irwin, Sacramento, California.
Charles Van Heusen, Sacramento, California.
E. J. Van Heusen, Sacramento, California.
J. A. Seaman, Sacramento, California.

D. W. Welty, in trust for Mrs. E. Baldwin, Sacramento, California.
R. H. McDonald, Sacramento, California.
Wilbur H. Hill, Sacramento, California.
Mrs. C. C. Wheeler, Sacramento, California.
Miss Melvina P. Wheeler, Sacramento, California.
O. C. Wheeler, Jr., Sacramento, California.
C. T. Wheeler, Sacramento, California.
H. T. Holmes, Sacramento, California.
David Kendall, Sacramento, California.
J. T. Pike, Sacramento, California.
J. S. Harbison, Sacramento, California.
James McGuire, Sacramento, California.
John Ryan, Sacramento, California.
J. O. Neil, Sacramento, California.
M. Littleton, Sacramento, California.
Wm. Turton, Sacramento, California.
Geo. Rowland, Sacramento, California.
Wm. C. Spaulding, Sacramento, California.
James Bethell, Sacramento, California.
F. W. Strowbridge, Sacramento, California.
N. S. Crocker, Sacramento, California.
A. H. P. Nannon, Sacramento, California.
J. S. Van Winkle, Sacramento, California.
Robt. Gardiner, Knights Landing, Yolo Co., Cal'a.
H. C. Burnham, Sacramento, California.
Albert Gallatin, Dayton, Nevada.
Hiram Cook, Sacramento, California.
W. R. S. Foye, Sacramento, California.
Klink and Hartfield, Sacramento, California.
George Hepburn.
D. W. Mahon.
Ira Goodman.
John L. Robinson.
E. C. Kemble.
W. B. Shaw.
R. N. Sherman.
E. B. Sturgeon.
Geo. A. Bassett.
J. W. Forney.
J. A. Duffy, Sacramento, California.
John Smith, Sacramento, California.
Miss M. E. Hurley, Sacramento, California.
Jacob Gruhler, Sacramento, California.
H. Kohler, Sacramento, California.

J. D. Lord, Sacramento, California.
B. Burt, Sacramento, California.
Philip Scheld, Sacramento, California.
E. Holmes, Sacramento, California.
Hull and Lohman, Sacramento, California.
John E. Oatman, Sacramento, California.
E. B. Mott, Jr., Sacramento, California.
H. W. Larkin, Sacramento, California.
D. N. Earl, Sacramento, California.
W. M. Ratcliff, Sacramento, California.
Mrs. Martha T. Cochran, Sacramento, California.
W. B. and B. F. Ready, Sacramento, California.
Frank C. Russ, Sacramento, California.
J. S. Boyd, Sacramento, California.
Samuel Jelly, Sacramento, California.
N. M. Jacobs, Sacramento, California.
George R. Moore, Sacramento, California.
F. Mier, Sacramento, California.
Locke and Lavinson, Sacramento, California.
G. H. Swinerton, Sacramento, California.
E. J. Loomis, Sacramento, California.
356 Mary Scott, Sacramento, California.
N. L. Greenlaw, Sacramento, California.
Friend and Terry, Sacramento, California.
E. Soule, Sacramento, California.
S. Tryon, Sacramento, California.
C. Kronkite, Sacramento, California.
W. L. Everett, Sacramento, California.
Wm. Greenbaum, Sacramento, California.
Joseph Bronner, Sacramento, California.
John Schade, Sacramento, California.
Robert Beck, Sacramento, California.
C. N. Converse, Sacramento, California.
Julius Wetzlar, Sacramento, California.
Edward Kraus, Sacramento, California.
Gustav Gotthold, Sacramento, California.
P. Franklin, Sacramento, California.
P. B. Kohl, Sacramento, California.
Julius Strutz, Sacramento, California.
N. Newbaum, Sacramento, California.
C. and F. Ebner, Sacramento, California.
Louis Schaffer, Sacramento, California.
357 E. Davis, Sacramento, California.
G. T. Hartman, Sacramento, California.
F. Bell, Sacramento, California.

C. Meyer, Sacramento, California.
T. Mahlenfels, Sacramento, California.
Charles Sutter, Sacramento, California.
John Conrad, Sacramento, California.
Marie Conrad, Sacramento, California.
L. Krambach, Sacramento, California.
Eugene Gaxoet, Sacramento, California.
F. Chevalier, Sacramento, California.
C. Sellinger, Sacramento, California.
J. Hector, Sacramento, California.
David W. Clark, Sacramento, California.
George Schmeiser, Sacramento, California.
C. H. Grimm, Sacramento, California.
Wm. Harkell, Sacramento, California.
P. F. Mangan, Sacramento, California.
R. T. Brown, Sacramento, California.
David Brown, Sacramento, California.
Geo. Ochs, Sacramento, California.
John Meister, Sacramento, California.
Samuel Nouer, Sacramento, California.
L. B. Robbins, Sacramento, California.
Sarah E. Avery, Sacramento, California.
Melissa Avery, Sacramento, California.
Christ Gruhler, Sacramento, California.
Elias Gruhler, Sacramento, California.
P. Stanton, Sacramento, California.
Joseph Stevens, Sacramento, California.
August Heish, Sacramento, California.
D. Z. Moore, Sacramento, California.
J. G. McNeil, Sacramento, California.
J. McNeil, Sacramento, California.
C. B. Linton, Sacramento, California.
A. Heilborn and Brother, Sacramento, California.
D. K. Zumwalt, Sacramento, California.
Peter Johnson, Sacramento, California.
T. H. Cook, Sacramento, California.
E. Kimball, Sacramento, California.
Martin Ransich, Sacramento, California.
Michael Lecompt, Sacramento, California.
A. Coolot, Sacramento, California.
George W. Stewart, Sacramento, California.
S. H. Scriver, Sacramento, California.
A. Egl, Sacramento, California.
John Bellmer and Co., Sacramento, California.
Charles Heinrich, Sacramento, California.

W. J. Douglass, Sacramento, California.
Lee Stanley, Sacramento, California.
Joseph Banquier, Sacramento, California.
C. Barnes, Sacramento, California.
Elias Jacobs, Sacramento, California.
Herman Wachhorst, Sacramento, California.
E. B. Crocker, Sacramento, California.
Ida Bowman, Sacramento, California.
W. J. Bowman, Sacramento, California.
N. Schroeder, Sacramento, California.
B. Gossner, Sacramento, California.
Jacob Heppe, Sacramento, California.
B. B. Redding, Sacramento, California.
H. B. Rice, Sacramento, California.
B. R. Crocker, Sacramento, California.
E. Blum, Sacramento, California.
Wm. Drecher, Sacramento, California.
360 Franz Ottl, Sacramento, California.
J. P. Floberg, Sacramento, California.
H. Meyers, Sacramento, California.
Jacob Arnold, Sacramento, California.
H. Thielbaur, Sacramento, California.
Dores Thielbaur, Sacramento, California.
Tobias Keidell, Sacramento, California.
Lyon and Son, Sacramento, California.
J. Domingos, Sacramento, California.
Rippon and Hill, Sacramento, California.
George J. Lytle, Sacramento, California.
Eugene Hunt for W. B. Hunt, Sacramento, California.
Michael Fitzpatrick, Sacramento, California.
J. C. Williams, Drytown, Amado County, California.
C. C. Jenks, Sacramento, California.
James E. Hill, Sacramento, California.
Isabella M. Hill, Sacramento, California.
Enoch Jacobs, Sacramento, California.
Ethelbert Burke, San Francisco, California.
Conrad Wiel, Sacramento, California.
Robert Sieger, Sacramento, California.
361 Leonard Newbury, Sacramento, California.
C. Lages, Sacramento, California.
E. H. Miller, Jr., Sacramento, California.
Thomas K. Stewart, Sacramento, California.
Goodschau Brothers & Co., Sacramento, California.
A. P. Stanford, San Francisco, California.
Jacob Shew, San Francisco, California.

J. P. C. Bond, San Francisco, California.
County of Sacramento, California.
L. H. Foote, Sacramento, California.
D. W. Welty, Sacramento, California.
James M. Frey, Sacramento, California.
D. W. Whitmore, Sacramento, California.
C. Stremming, Sacramento, California.
John C. Parks, Dutch Flat, California.
Drury Malone, Sacramento, California.
Thomas Baker, Sacramento, California.
Charles M. Chase, San Francisco, California.
Marcus D. Boruck, San Francisco, California.
Walter H. French, Virginia City, Nevada.
Joel Johnson, Sacramento, California.
Miss C. C. Glidden, Boston, Mass.
Mrs. E. L. M. Williams, Boston, Mass.
Mrs. E. M. Glidden, Boston, Mass.
Philip Lynch, Forest Hill, California.
J. J. Ayers, San Francisco, California.
Wm. Coates, Sacramento, California.
E. P. Bancroft, trustee, Boston, Mass.
Peter B. Foster, San Francisco, California.
W. J. Adams, San Francisco, California.
James H. Herrick, in trust for Mary H. McCormick Barlow, Sacramento, California.
C. K. Daugherty, Sacramento, California.
Henry Dunn, Sacramento, California.
N. C. Gay, Sacramento, California.
Silas Hussey, Jr., Sacramento, California.
A. Dumont, San Francisco, California.
Foster, F., Sacramento, California.
Wason Manufacturing Company, Springfield, Mass.
John Pearly, Sacramento, California.
Georgianna Mary Dean, Sacramento, California.
G. F. Klink, Sacramento, California.
Wm. Martfield, Sacramento, California.
Wm. S. Watson, Sacramento, California.
C. H. Krebs, Sacramento, California.
Frank Reed Kimball, Boston, Mass.
H. W. Bragg, Sacramento, California.
Cornelius Waterhouse, Sacramento, California.
John W. Lester, New York.
W. Y. Patch, San Francisco, California.
F. T. Davis.
J. H. Heisey.

John Bond.
George McDonald.
Noah Brooks.
C. Z. Sherman.
George T. M. Davis, New York.
James Brannon, San Francisco, California.
J. M. Ripley, Sacramento, California.
Willard A. Seaton, Sacramento, California.
J. D. Russell.
Benjamin Reed, Boston, Mass.
S. Hooper & Co., Boston, Mass.
D. R. Hunt.
364 J. E. Parker, Sacramento, California.
N. W. North.
James Cambell, Sacramento, California.
George E. Barnes, San Francisco, California.
Henry Ames, Sacramento, California.
M. M. Estee, Sacramento, California.
J. B. Ogden.
John Hillhouse.
David Stewart.
William Paton, New York.
Thomas Paton, New York.
E. A. Shelton, New York.
L. B. Crocker, Oswego, New York.
Mrs. Ann E. Crocker, Oswego, New York.
Seth Babson, Sacramento, California.
Robert Robinson, Sacramento, California.

365 (The list of stockholders contained in the copy of the ann
report of the Central Pacific Railroad Company for the y
ending December 31st, 1866, is as follows:)

Names of stockholders and residence.

Avery, Sarah E., Sacramento, California.
Avery, Melissa, Sacramento, California.
Arnold, Jacob, Sacramento, California.
Ames, Henry, Sacramento, California.
Ayres, J. J., San Francisco, California.
Adams, William J., San Francisco, California.
Bates, O. D., Sacramento, California.
Booth, L. A., Sacramento, California.
Brickell, E. J., Illinoistown, California.
Brickell, B., Illinoistown, California.
Bradley & Trim, Dutch Flat, California.

Beans, T. E., Nevada, California.
Bithell, James, Sacramento, California.
Burnham, Wm. C., Sacramento, California.
Burt, B., Sacramento, California.
Brunner, Joseph, Sacramento, California.
Beck, Robert, Sacramento, California.
Bell, T., Sacramento, California.
Brown, R. T., Sacramento, California.
Brown, Daniel, Sacramento, California.
Belmer, John, & Co., Sacramento, California.
Banquier, Joseph, Sacramento, California.
Barnes, C., Sacramento, California.
Bowman, Ida, Sacramento, California.
Bowman, W. J., Sacramento, California.
Blum, E., Sacramento, California.
Baker, Thomas, Sacramento, California.
Bragg, H. W., Sacramento, California.
Babson, Seth, Sacramento, California.
Bassett, Geo. A., Sacramento.
Burke, Ethelbert, San Francisco, California.
Boruck, Marcus D., San Francisco, California.
Brannan, Samuel, San Francisco, California.
Barnes, Geo. E., San Francisco, California.
Barencamp, Mrs. E.
Barling, H. A., et als., trustees.
Baxter, John A.
Bacon, J. S.
Bement & Daugherty.
Boyd, John.
Brooks, Noah.
Bancroft, E. P., trustee, Boston, Mass.
Chamberlain, O. L., Sutter Creek, California.
County of Sacramento, California.
County of Placer, California.
Crocker, L. B., Oswego, New York.
Crocker, Mrs. Anna E., Oswego, New York.
Campbell, D. D., Schenectady, New York.
Chase, Charles M., San Francisco, Cal.
Cole, Cornelius, Cal.
Culver, James H., Sacramento, Cal.
Cummings, C. H., Sacramento, Cal.
Crocker, Charles, Sacramento, Cal.
Crocker, E. B., Sacramento, Cal.
Crocker, H. S., Sacramento, Cal.
Crocker, B. R., Sacramento, Cal.

Cook, Hiram, Sacramento, Cal.
Cochran, Mrs. M. T., Sacramento, Cal.
Converse, Chas. H., Sacramento, Cal.
Conrad, John, Sacramento, Cal.
Conrad, Maria, Sacramento, Cal.
Chevalier, F., Sacramento, Cal.
Clark, D. W., Sacramento, Cal.
368 Cook, T. H., Sacramento, California.
Coolot, A., Sacramento, California.
Campbell, James, Sacramento, California.
Coleman, W. P., Sacramento, California.
Cronkite, H., Sacramento, California.
Drew, N. L., Sacramento, California.
Drew, N. L., & Co., Sacramento, California.
Drew, D. K., Sacramento, California.
Duffy, James A., Sacramento, California.
Davis, E., Sacramento, California.
Douglass, W. J., Sacramento, California.
Dreher, Wm., Sacramento, California.
Domingos, J., Sacramento, California.
Dougherty, C. K., Sacramento, California.
Dunn, Henry, Sacramento, California.
Dean, Georgianna Mary, Sacramento, California.
Dumont, Alphonsine, San Francisco, California.
Doolan, William, San Francisco, California.
Davis, Geo. T. M., New York City, New York.
De Forest, Martin, Schenectady, New York.
Douw, Volkert P.
Douw, Mrs. Helen L.
369 Davis, J. T.
English, W. G., Sacramento, California.
Earl, Daniel W., Sacramento, California.
Everett, W. L., Sacramento, California.
Ebner, C. & T., Sacramento, California.
Egl, A., Sacramento, California.
Estee, M. M., Sacramento, California.
Foye, W. R. S., Sacramento, California.
Friend & Terry, Sacramento, California.
Franklin, P., Sacramento, California.
Floberg, J. P., Sacramento, California.
Fitzpatrick, Michael, Sacramento, California.
Foote, L. H., Sacramento, California.
Frey, Joseph M., Sacramento, California.
Foster, F., Sacramento, California.
Friend, J. S., Sacramento, California.

Forster, Peter B., San Francisco, California.
French, Walter H., Virginia, Nevada.
Franchot, Antoinette, Syracuse, New York.
Franchot, Richard, Syracuse, New York.
Forney, J. W., New York.
Gillig, John, Virginia, Nevada.
70 Gallatin, Albert, Dayton, Nevada.
Gardiner, Robert, Knights Landing, California.
Gruhler, Jacob, Sacramento, California.
Greenlaw, A. S., Sacramento, California.
Greenbaum, Moses, Sacramento, California.
Gotthold, Gustav, Sacramento, California.
Gaxoet, Eugene, Sacramento, California.
Grim, Chas. H., San Francisco, California.
Gruhler, Christ, Sacramento, California.
Gruhler, Elias, Sacramento, California.
Gossner, B., Sacramento, California.
Gay, W. C., Sacramento, California.
Glidden, Mrs. C. C., Boston, Mass.
Glidden, Mrs. E. M., Boston, Mass.
Glidden & Williams, Boston, Mass.
Groot, Simon C., Schenectady, N. Y.
Hopkins, Mark, Sacramento, California.
Huntington, C. P., Sacramento, California.
Huntington, C. P., agent, Sacramento, California.
Hill, William H., Sacramento, California.
Hill, Jane E., Sacramento, California.
Hill, Isabella M., Sacramento, California.
71 Harbison, J. S., Sacramento, California.
Hepburn, George, Sacramento, California.
Hurley, Miss M. E., Sacramento, California.
Holmes, E., Sacramento, California.
Hull & Lohman, Sacramento, California.
Hartman, G. T., Sacramento, California.
Hector, J., Sacramento, California.
Henkel, William, Sacramento, California.
Heisch, August, Sacramento, California.
Heilbron, A., Sacramento, California.
Heinrich, Charles, Sacramento, California.
Heppe, Jacob, Sacramento, California.
Hunt, Eugene, Sacramento, California.
Herrick, Jas. H. (in trust), Sacramento, California.
Hussey, Silas, Jr., Sacramento, California.
Heacock, Mrs. E. H., Sacramento, California.

Hooker, C. A., San Francisco, California.
Hooper, S., & Co., Boston, Mass.
Hersey, John H.
Hunt, D. R.
Hillhouse, John.
372 Irwin, Jared, Sacramento, California.
Jelly, Samuel, Sacramento, California.
Jacobs, N. M., Sacramento, California.
Johnson, Peter, Sacramento, California.
Jacobs, Enoch, Sacramento, California.
Jacobs, Elias, Sacramento, California.
Johnson, Joel, Sacramento, California.
Jobson, C. F., Sacramento, California.
Kendall, David, Sacramento, California.
Klink & Martsfield, Sacramento, California.
Kemble, Edw. C., Sacramento, California.
Kohler, H., Sacramento, California.
Kraus, Edward, Sacramento, California.
Kohl, John B., Sacramento, California.
Krumbach, L., Sacramento, California.
Kadel, Tobias, Sacramento, California.
Klink, G. F., Sacramento, California.
Krebs, C. H., Sacramento, California.
Kimball, Frank Reed, Boston, Mass.
Kimball, Mrs. C. A., Boston, Mass.
Lambard, C. A., Boston, Mass.
373 Lester, J. W., New York, New York.
Lynch, Philip, Gold Hill, Nevada.
Lord, Holbrook & Co., Sacramento, California.
Lindley, T. M., Sacramento, California.
Lindsay, W. K., Sacramento, California.
Littleton, M., Sacramento, California.
Lord, J. D., Sacramento, California.
Larkin, H. W., Sacramento, California.
Locke & Lavenson, Sacramento, California.
Loomis, E. J., Sacramento, California.
Linton, C. B., Sacramento, California.
Lecompt, Michael, Sacramento, California.
Lyon & Son, Sacramento, California.
Lytle, Geo. J., Sacramento, California.
Lager, Christopher, Sacramento, California.
Locke, Geo. D., Sacramento, California.
Lambard, O. D., Sacramento, California.
Lipman & Co., S., Sacramento, California.
Marsh, Charles, Nevada. California.

Morse, John F., San Francisco, California.
Moore, B. F., Dutch Flat, California.
Mills, D. O. & Co., Sacramento, California.
McDonald, R. H., Sacramento, California.
McGuire, James, Sacramento, California.
Mott, E. B. J., Sacramento, California.
Moore, Geo. R., Sacramento, California.
Mier, F., Sacramento, California.
Muhlenfels, T., Sacramento, California.
Myer, C., Sacramento, California.
Managan, P. F., Sacramento, California.
Meister, John, Sacramento, California.
Moore, D. L., Sacramento, California.
McNeil, John, Sacramento, California.
Myers, H., Sacramento, California.
Miller, E. H. T., Sacramento, California.
McClatchy, James, Sacramento, California.
Melone, Drury, Sacramento, California.
Martfield, Wm., Sacramento, California.
McDonald, Geo.
Mahon, D. W.
Mosier, Samuel, Sacramento, California.
Nichols, N. S., Sacramento, California.
Newbaur, A., Sacramento, California.
Newburg, Leonard, Sacramento, California.
North, A. W.
O'Neil, James, Sacramento, California.
Oatman, Ira E., Sacramento, California.
Oettll, Franz, Sacramento, California.
Ogden, J. B., Sacramento, California.
Ogden, J. B., Sacramento, California.
Pike, J. T., Sacramento, California.
Pond, J. S., Sacramento, California.
Peasley, John, Sacramento, California.
Parks, John C., Dutch Flat, California.
Patch, W. Y., San Francisco, California.
Paton, William, New York.
Paton, Thomas, New York.
Potter, James M.
Russell, P. H., Sacramento, California.
Renaud, G., Sacramento, California.
Ross, Thomas, Sacramento, California.
Reeves, J. W., Sacramento, California.
Ryan, John, Sacramento, California.

Rowland, Geo., Sacramento, California.
Robinson, John R., Sacramento, California.
Ratcliff, Wm. M., Sacramento, California.
Ready, W. B. & B. F., Sacramento, California.
Ross, Frank O., Sacramento, California.
376 Robbins, S. B., Sacramento, California.
Rancich, Martin, Sacramento, California.
Redding, B. B., Sacramento, California.
Rice, H. B., Sacramento, California.
Rippon & Hill, Sacramento, California.
Ripley, J. M., Sacramento, California.
Robinson, Robert, Sacramento, California.
Rice, Charles, Mineral Bar, California.
Rond, J. P. C., San Francisco, California.
Reed, B. T., Boston, Mass.
Russell, J. D.
Stanford, Leland, Sacramento, California.
Smith, S. D., Sacramento, California.
Strong, D. W., Dutch Flat, California.
Sargent, A. A., Nevada, California.
Stockton, Edward, Folson, California.
Smith, C. W., Grass Valley, California.
Seaman, J. A., Sacramento, California.
Spaulding, W. H., Austin, Nevada.
Strowbridge, T. W., Sacramento, California.
Smith, John, Sacramento, California.
377 Scheld, Philip, Sacramento, California.
Swinerton, G. W., Sacramento, California.
Scott, Mary, Sacramento, California.
Schade, John, Sacramento, California.
Strutz, Julius, Sacramento, California.
Schafer, Louis, Sacramento, California.
Sutter, Charles, Sacramento, California.
Sellinger, Charles, Sacramento, California.
Schmeiser, Geo., Sacramento, California.
Stanton, P., Sacramento, California.
Stevens, Joseph, Sacramento, California.
Stewart, Geo. W., Sacramento, California.
Schrorer, S. H., Sacramento, California.
Stanley, L., Sacramento, California.
Schroeder, H., Sacramento, California.
Seeger, Robert, Sacramento, California.
Stewart, Thomas K., Sacramento, California.
Stremming, C., Sacramento, California.
Seaton, W. H., Sacramento, California.

Stanford, A. P., San Francisco, California.
Shrew, Jacob, San Francisco, California.
Shelton, E. N., New York.
878 Sherman, R. N.
Sturgeon, E. B.
Sherman, C. Z.
Stewart, David.
Turner, J. N., Nevada, California.
Turton, Knox & Ryan, Sacramento, California.
Turton, William, Sacramento, California.
Tyron, S., Sacramento, California.
Thielbar, H., Sacramento, California.
Thielbar, Dores, Sacramento, California.
Terry, W. E.
Upson, Lauren, San Francisco.
Van Heusen, Charles, Sacramento, California.
Van Heusen, E. J., Sacramento, California.
Van Winkle, J. S., Sacramento, California.
Waite, E. G., Nevada, California.
Wetty, D. W., in trust, Sacramento, California.
Wheeler, O. C., Oakland, California.
Wheeler, C. T., Sacramento, California.
Wetzlar, Julius, Sacramento, California.
Watchhorst, Herman, Sacramento, California.
879 Weil, Conrad, Sacramento, California.
Wetty, D. W., Sacramento, California.
Whitmore, D. W., Sacramento, California.
Watson, W. S., Sacramento, California.
Waterhouse, C., Sacramento, California.
Williams, J. C., Drytown, California.
Williams, Mrs. E. L. M., Boston, Mass.
Wason Manufacturing Co., Springfield, Mass.
Zumalt, David K., Sacramento, California.
Zumalt, Jacob.

880 (The list of stockholders contained in the copy of the annual report of the Central Pacific Railroad Company for the year ending December 31st, 1867, is as follows:)

Names of stockholders and residence.

Avery, Sarah E., Sacramento, California.
Avery, Melissa, Sacramento, California.
Arnold, Jacob, Sacramento, California.
Ayres, J. J., San Francisco, California.
Adams, Wm. J., San Francisco, California.

Aims, Henry, Sacramento, California.
Ah Tong, Sacramento, California.
Aspinwall, W. H., New York City, New York.
Agnew, A. G., New York City, New York.
Austin, Mrs. F. L., Albany, New York.
Bates, C. D., Sacramento, California.
Booth, L. A., Sacramento, California.
Brickell, S. J., Illinoistown, California.
Brickell, B., Illinoistown, California.
Bradley & Trim, Dutch Flat, California.
381 Beans, T. E., Nevada, California.
Bithell, James, Sacramento, California.
Burnham, Wm. C., Sacramento, California.
Burt, B., Sacramento, California.
Brunner, Joseph, Sacramento, California.
Beck, Robert, Sacramento, California.
Bell, T., Sacramento, California.
Brown, R. T., Sacramento, California.
Brown, David, Sacramento, California.
Belmer, John, & Co., Sacramento, California.
Banquier, Joseph, Sacramento, California.
Barnes, C., Sacramento, California.
Bowman, Ida, Sacramento, California.
Bowman, W. J., Sacramento, California.
Blum, E., Sacramento, California.
Burke, E., Sacramento, California.
Baker, Thomas, Sacramento, California.
Boruck, Marcus D., San Francisco, California.
Bancroft, E. P., trustee, Boston, Mass.
Bragg, H. W., Sacramento, Cal.
Boyd, John, Sacramento, Cal.
Brooks, Noah.
382 Brannan, Samuel, San Francisco, California.
Barnes, Geo. E., San Francisco, California.
Babson, Seth, Sacramento, California.
Barrencamp, Mrs. E., Oakland, California.
Barling, H. A., et al., trustees, New York City, N. Y.
Baxter, John A., San Francisco, Cal.
Bacon, J. S., San Francisco, Cal.
Bement & Daugherty, Philadelphia, Penn.
Ball, Marcus, Troy, N. Y.
Bergin, Thomas J., San Francisco, Cal.
Baine, Sarah R.
Crocker, Charles, Sacramento, Cal.
Cole, C., Sacramento, Cal.

Culver, James H., Sacramento, Cal.
Cummings, C. H., Sacramento, Cal.
Crocker, H. S., Sacramento, Cal.
Cook, Hiram, Sacramento, Cal.
Cochrane, Mrs. M. C., Sacramento, Cal.
Converse, Chas. H., Sacramento, Cal.
Conrad, John, Sacramento, Cal.
Conrad, Marie, Sacramento, Cal.
Chevalier, F., Sacramento, Cal.
Clark, D. W., Sacramento, Cal.
Cook, T. H., Sacramento, Cal.
Coolot, A., Sacramento, Cal.
Crocker, E. B., Sacramento, Cal.
Crocker, B. R., Sacramento, Cal.
Campbell, James, Sacramento, Cal.
Coleman, H. P., Sacramento, Cal.
Cronkite, H., Sacramento, Cal.
County of Sacramento, Sacramento, Cal.
County of Placer, Placer Co., Cal.
Chamberlain, O. L., Sutter Creek, Cal.
Chase, Charles M., San Francisco, Cal.
Crocker, L. B., Oswego, N. Y.
Crocker, Mrs. Anna E., Oswego, N. Y.
Campbell, D. D., Schenectady, N. Y.
Cain, Nicholas, Schenectady, N. Y.
Drew, N. L., Sacramento, Cal.
Drew, N. L., & Co., Sacramento, Cal.
Drew, D. K., Sacramento, Cal.
Duffy, James A., Sacramento, Cal.
Davis, E., Sacramento, Cal.
Douglass, W. J., Sacramento, California.
Dreher, Wm., Sacramento, California.
Domingos, J., Sacramento, California.
Dougherty, C. K., Sacramento, California.
Dunn, Henry, Sacramento, California.
Dean, Mrs. G. M., Sacramento, California.
Davis, Mrs. S. A., Sacramento, California.
Dumont, Alphonsine, San Francisco, California.
Doolan, William, San Francisco, California.
Davis, T. T., New York.
De Forest, Martin, Schenectady, New York.
Douw, Volkert P., Schenectady, New York.
Douw, Mrs. Helen L., Schenectady, New York.
English, W. G., Sacramento, Cal.
Earl, Danl. W., Sacramento, Cal.

Everett, W. L., Sacramento, Cal.
Ebner, C. and T., Sacramento, Cal.
Egl, A., Sacramento, Cal.
Foye, W. R. S., Sacramento, Cal.
Friend & Terry, Sacramento, Cal.
Franklin, P., Sacramento, Cal.
Floberg, J. P., Sacramento, Cal.
385 Fitzpatrick, M., Sacramento, Cal.
Foote, L. H., Sacramento, Cal.
Frey, J. M., Sacramento, Cal.
Foster, F., Sacramento, Cal.
Friend, J. S., Sacramento, Cal.
Forney, J. W., Philadelphia, Penn.
Forster, Peter B., San Francisco, Cal.
Franchot, Antoinette, Syracuse, N. Y.
Gillig, John, Sacramento, Cal.
Gallatin, Albert, Sacramento, Cal.
Gruhler, Jacob, Sacramento, Cal.
Greenlaw, A. S., Sacramento, Cal.
Greenbaum, Moses, Sacramento, Cal.
Gotthold, Gustave, Sacramento, Cal.
Gaxoet, Eugene, Sacramento, Cal.
Grim, Charles H., Sacramento, Cal.
Gruhler, Christ, Sacramento, Cal.
Gruhler, Elias, Sacramento, Cal.
Gay, W. C., Sacramento, Cal.
Glidden, Mrs. C. C., Boston, Mass.
Glidden, Mrs. E. M., Boston, Mass.
Glidden & Williams, Boston, Mass.
386 Groot, Simon C., Schenectady, N. Y.
Goodman, Ira, Yonkers, N. Y.
Hopkins, Mark, Sacramento, Cala.
Hill, William H., Sacramento, Cala.
Holmes, H. T. Sacramento, Cala.
Harbison, J. S., Sacramento, Cala.
Hepburn, George, Sacramento, Cala.
Hurley, Mrs. M. E., Sacramento, Cala.
Holmes, E., Sacramento, Cala.
Hartman, G. F., Sacramento, Cala.
Hector, J., Sacramento, Cala.
Heisch, August, Sacramento, Cala.
Heilbron, A., Sacramento, Cala.
Heinrich, Charles, Sacramento, Cala.
Heppe, Jacob, Sacramento, Cala.

Hunt, Eugene, Mrs., Sacramento, Cala.
Hill, Jane E., Sacramento, Cala.
Herrick, James N., Sacramento, Cala.
Hussey, Silas, Jr., Sacramento, Cala.
Heacock, Mrs. E. H., Sacramento, Cala.
Hill, Joseph, Sacramento, Cala.
Hunt, D. R., Sacramento, Cala.
Huntington, C. P., New York, N. Y.
Hillhouse, John, New York, N. Y.
Hooper, S., & Co., Boston, Mass.
Hooker, C. G., San Francisco, Cala.
Irwin, Jared, Sacramento, Cala.
Jelly, Samuel, Sacramento, Cala.
Jacobs, W. M., Sacramento, Cala.
Johnson, Peter, Sacramento, Cala.
Jacobs, Enoch, Sacramento, Cala.
Jacobs, Elias, Sacramento, Cala.
Johnson, Joel, Sacramento, Cala.
Johnson, C. F., San Francisco, Cala.
Kendall, David, San Francisco, Cala.
Klint & Martfield, San Francisco, Cala.
Kemble, E. C., San Francisco, Cala.
Kohler, H., San Francisco, Cala.
Kraus, Edwd., San Francisco, Cala.
Kohl, John B., San Francisco, Cala.
Krumbach, L., San Francisco, Cala.
Kadel, Tobias, San Francisco, Cala.
Krebs, C. H., San Francisco, Cala.
Kimball, Frank Reed, Boston, Mass.
Kimball, Mrs. C. A., Boston, Mass.
Lambard, C. A., Boston, Mass.
Lester, J. W., New York, N. Y.
Lynch, Philip, Forest Hill, Cala.
Lindley, T. M., Sacramento, Cala.
Lindley, Mrs. Isabella V., Sacramento, Cala.
Lindsey, W. K., Sacramento, Cala.
Littleton, M., Sacramento, Cala.
Lord, J. D., Sacramento, Cala.
Lord, Holbrook & Co., Sacramento, Cala.
Larkin, H. W., Sacramento, Cala.
Locke & Lavenson, Sacramento, Cala.
Loomis, E. J., Sacramento, Cala.
Linton, C. B., Sacramento, Cala.
Lecompt, M., Sacramento, Cala.

Lyon & Son, Sacramento, Cala.
Lytle, Geo. J., Sacramento, Cala.
Lages, Christopher, Sacramento, Cala.
Locke, Geo. S., Sacramento, Cala.
Lambard, A. D., Sacramento, Cala.
389 Lipman & Co., Sacramento, Cala.
Mills, D. O. & Co., Sacramento, Cala.
McDonald, R. H., Sacramento, Cala.
McGuire, James, Sacramento, Cala.
Mott, E. B., Jr., Sacramento, Cala.
Mahon, D. W., Sacramento, Cala.
Moore, Edw. R., Sacramento, Cala.
Mier, F., Sacramento, Cala.
Muhlenfels, T., Sacramento, Cala.
Meyer, C., Sacramento, Cala.
Managan, P. F., Sacramento, Cala.
Meister, John, Sacramento, Cala.
Mosier, Samuel, Sacramento, Cala.
Moore, D. Z., Sacramento, Cala.
McNeil, John G., Sacramento, Cala.
McNeil, John, Sacramento, Cala.
Myers, John, Sacramenta, Cala.
Miller, E. H., Jr., Sacramento, Cala.
McClatchy, James, Sacramento, Cala.
Melone, Drury, Sacramento, Cala.
Martfield, William, Sacramento, Cala.
McDonald, George, Sacramento, Cala.
390 Michener, W. P., Sacramento, Cala.
Marsh, Charles, Nevada, Cala.
Moore, B. F., Dutch Flat, Cala.
Morris, William, Utica, N. Y.
Nichols, A. S., Sacramento, Cala.
Neubaur, A., Sacramento, Cala.
Newburg, L., Sacramento, Cala.
North, A. W., Virginia, Nev.
O'Neil, James, Sacramento, Cal.
Oatman, Ira E., Sacramento, Cal.
Ochs, George, Sacramento, Cal.
Oettll, Franz, Sacramento, Cal.
Ogden, J. B., New York, N. Y.
Osborn, D. W., Virginia, Nev.
Pike, J. T., Sacramento, Cala.
Pond, J. S., Sacramento, Cala.
Peasley, John, Sacramento, Cala.
Peake, C. A., Sacramento, Cala.

Parke, John C., Dutch Flat, Cala.
Pierce, Geo. W., Yolo Co., Cala.
Paton, William, New York, N. Y.
Paton, Thomas, New York, N. Y.
Phillips, R. J., New York, N. Y.
Pruyn, John V. L. Y., Albany, N. Y.
Powell, A. C., Syracuse, N. Y.
Russell, P. H., Sacramento, Cal.
Ross, Thomas, Sacramento, Cal.
Reeves, J. W., Sacramento, Cal.
Ryan, John, Sacramento, Cal.
Rowland, George, Sacramento, Cal.
Robinson, John R., Sacramento, Cal.
Ratcliff, Wm. M., Sacramento, Cal.
Ready, H. B. & B. F., Sacramento, Cal.
Ross, Frank C., Sacramento, Cal.
Robbins, S. B., Sacramento, Cal.
Rancich, Martin, Sacramento, Cal.
Redding, B. B., Sacramento, Cal.
Rice, H. B., Sacramento, Cal.
Rippon & Hill, Sacramento, Cal.
Ripley, J. M., Sacramento, Cal.
Robinson, Robert, Sacramento, Cal.
Rippon, William, Sacramento, Cal.
Reed, Charles, Mineral Bar, Cal.
Russell, J. D., New York, N. Y.
Reed, B. T., Boston, Mass.
Rond, J. P. C., San Francisco, Cal.
Stanford, Leland, Sacramento, Cal.
Smith, S. D., Sacramento, Cal.
Seaman, J. A., Sacramento, Cal.
Spaulding, Wm. H., Sacramento, Cal.
Strobridge, T. W., Sacramento, Cal.
Smith, John, Sacramento, Cal.
Scheld, Philip, Sacramento, Cal.
Swinerton, G. H., Sacramento, Cal.
Scott, Mary, Sacramento, Cal.
Soule, E., M. D., Sacramento, Cal.
Schade, John, Sacramento, Cal.
Strutz, Julius, Sacramento, Cal.
Schaffer, Louis, Sacramento, Cal.
Sutter, Charles, Sacramento, Cal.
Sellinger, Charles, Sacramento, Cal.
Stanton, P., Sacramento, Cal.
Stevens, Joseph, Sacramento, Cal.

Stewart, Geo. W., Sacramento, Cal.
Schroer, S. H., Sacramento, Cal.
Stanley, Lee, Sacramento, Cal.
Schroder, H., Sacramento, Cal.
393 Seeger, Robert, Sacramento, Cal.
Stewart, Thomas H., Sacramento, Cal.
Stremming, C., Sacramento, Cal.
Seaton, W. H., Sacramento, Cal.
Strong, D. W., Dutch Flat, Cal.
Sargent, W. A., Nevada, Cal.
Stockton, Edward, Folsom, Cal.
Smith, C. W., Grass Valley, Cal.
Stanford, A. P., San Francisco, Cal.
Shrew, Jacob, San Francisco, Cal.
Selby, T. H., San Francisco, Cal.
Sherman, C. Z., New York, N. Y.
Stewart, David, New York, N. Y.
Schemerhorn, B. J., Schenectady, N. Y.
Story, A. G., Little Falls, N. Y.
Steele, Mrs. A. E., Kingston, N. Y.
Strakle, Jacob, San Francisco, Cal.
Turton, Knox & Ryan, Sacramento, Cal.
Turton, William, Sacramento, Cal.
Tryon, S., Sacramento, Cal.
Thielbaur, H., Sacramento, Cal.
Thielbaur, Dores, Sacramento, Cal.
394 Terry, W. F., Sacramento, Cal.
Turner, J. W., Nevada, Cal.
Townsend, Theodore, Albany, N. Y.
Upson, Lauren, Sacramento, Cal.
Van Heusen, Charles, Sacramento, Cal.
Van Heusen, E. J., Sacramento, Cal.
Van Winkle, John N., Sacramento, Cal.
Van Rensalaer, Mrs. J., Morris.
Waite, E. G., Nevada, Cal.
Welty, D. W. (in trust), Sacramento, Cal.
Wheeler, O. C., Sacramento, Cal.
Wheeler, C. T., Sacramento, Cal.
Wetzlar, Julius, Sacramento, Cal.
Watchhorst, Herman, Sacramento, Cal.
Weil, Conrad, Sacramento, Cal.
Welty, D. W., Sacramento, Cal.
Whitman, D. W., Sacramento, Cal.
Watson, W. S., Sacramento, Cal.
Waterhouse, C., Sacramento, Cal.

Warring, Amos, Sacramento, Cal.
Wallet, C., Sacramento, Cal.
Williams, C., Drytown, Amador Co., Cal.
Williams, Mrs. E. L. M., Boston, Mass.
Zumwalt, Danl. K., Sacramento, Cal.
Zumwalt, Jacob.

(The list of stockholders contained in the report of the Central Pacific Railroad Company for the year ending December 31st, 1867, was as follows:)

Names of stockholders and residence.

Sarah E. Avery, Sacramento.
Melissa Avery, Sacramento.
Jacob Arnold, Sacramento.
J. J. Ayres, San Francisco.
Wm. J. Adams, San Francisco.
Henry Ames, Sacramento.
Ah Tong, Sacramento.
W. H. Aspinwall, New York City.
A. G. Agnew.
Mrs. F. A. Austin, Albany, N. Y.
C. D. Bates, Sacramento.
A. W. Blanchard, Dutch Flat.
L. A. Booth, Sacramento.
E. J. Brickell, Illinoistown.
B. Brickell, Illinoistown.
Bradley & Trim, Dutch Flat.
T. E. Beans, Nevada.
James Bithell, Sacramento, Cal.
Wm. C. Burnham, Sacramento, Cal.
B. Burt, Sacramento, Cal.
Jos. Bronner, Sacramento, Cal.
Robt. Beck, Sacramento, Cal.
T. Bell, Sacramento, Cal.
R. T. Brown, Sacramento, Cal.
Danl. Brown, Sacramento, Cal.
Jno. Bellmer & Co., Sacramento, Cal.
Jos. Banquier, Sacramento, Cal.
C. Barnes, Sacramento, Cal.
Ida Bowman, Sacramento, Cal.
W. J. Bowman, Sacramento, Cal.
E. Blum, Sacramento, Cal.
E. Burk, San Francisco, Cal.
Marcus D. Boruck, San Francisco, Cal.

397 E. P. Bancroft, trustee, Boston, Mass.
H. W. Bragg, Sacramento, Cal.
Jno. Boyd.
Noah Brooks.
Saml. Brannan, San Francisco, Cal.
Geo. E. Barnes, San Francisco, Cal.
Seth Babson, Sacramento, Cal.
Mrs. E. Barrencamp, Oakland, Cal.
H. A. Barking et als., trustee, New York, N. Y.
Jno. A. Baxter.
Bement & Dougherty, Philadelphia, Penn.
Ball, Marcus, Troy, N. Y.
Sarah R. Baine.
Wm. Barringer, Schenectady, N. Y.
Jno. S. Banett, Sacramento, Cal.
Chas. Crocker, Sacramento, Cal.
O. L. Chamberlain, Sutter Creek, Cal.
County of Placer, California.
County of Sacramento, California.
Cornelius Cole, Sacramento, Cal.
Jas. H. Culver, Sacramento, Cal.
398 C. H. Cummings, Sacramento, Cal.
H. S. Crocker, Sacramento, Cal.
Hiram Cook, Sacramento, Cal.
Mrs. M. T. Cochrane, Sacramento, Cal.
Chas. H. Converse, Sacramento, Cal.
Jno. Conrad, Sacramento, Cal.
Marie Conrad, Sacramento, Cal.
F. Chevalier, Sacramento, Cal.
D. W. Clark, Sacramento, Cal.
T. H. Cook, Sacramento, Cal.
A. Goolot, Sacramento, Cal.
E. B. Crocker, Sacramento, Cal.
B. R. Crocker, Sacramento, Cal.
Chas. M. Chase, San Francisco, Cal.
James Campbell, Sacramento, Cal.
L. B. Crocker, Oswego, N. Y.
Mrs. Anna E. Crocker, Oswego, N. Y.
W. P. Coleman, Sacramento, Cal.
H. Cronkite, Sacramento, Cal.
D. D. Campbell, Schenectady, N. Y.
Michs, Cain, Schenectady, N. Y.
Contract and Finance Co.
399 N. S. Drew, Sacramento, Cal.
N. S. Drew & Co., Sacramento, Cal.

D. K. Drew, Sacramento, Cal.
James A. Duffy, Sacramento, Cal.
W. J. Douglass, Sacramento, Cal.
Wm. Dreher, Sacramento, Cal.
Jno. Domingos, Sacramento, Cal.
G. K. Daugherty, Sacramento, Cal.
Henry Dunn, Sacramento, Cal.
Alph. Dumont, San Francisco, Cal.
Georgia M. Dean, Sacramento, Cal.
T. T. Davis.
Wm. Doolan, San Francisco, Cal.
Martin Deforest, Schenectady, N. Y.
Volkert P. Duow, Schenectady, N. Y.
Mrs. Helen L. Duow, Schenectady, N. Y.
Sarah A. Davis.
Abram Doty, Schenectady, N. Y.
Wm. G. English, Sacramento, Cal.
Danl. W. Earl, Sacramento, Cal.
W. L. Everett, Sacramento, Cal.
C. & F. Ebner, Sacramento, Cal.
400 A. Egl, Sacramento, Cal.
W. R. S. Foye, Sacramento, Cal.
J. W. Forney, Philadelphia, Penn.
Friend & Terry, Sacramento, Cal.
P. Franklin, Sacramento, Cal.
J. P. Floberg, Sacramento, Cal.
M. Fitzpatrick, Sacramento, Cal.
L. T. C. Foote, Sacramento, Cal.
Jos. M. Frey, Sacramento, Cal.
P. B. Forster, Sacramento, Cal.
F. Foster, Sacramento, Cal.
J. S. Friend, Sacramento, Cal.
Ant. Franchet, Syracuse, N. Y.
Jno. Gillig, Sacramento, Cal.
Robt. Gardner, Knights Ldg., Cal.
Albert Gallatin, Sacramento, Cal.
Jacob Gruhler, Sacramento, Cal.
A. S. Greenlaw, Sacramento, Cal.
Moses Greenbaum, Sacramento, Cal.
Gustav Gotthold, Sacramento, Cal.
Eugene Gaxeot, Sacramento, Cal.
Chas. H. Grimm, Sacramento, Cal.
401 Chris Gruhler, Sacramento, Cal.
Elias Gruhler, Sacramento, Cal.

Mrs. C. C. Glidden, Boston, Mass.
Mrs. E. M. Glidden, Boston, Mass.
W. C. Gay, Sacramento, Cal.
Glidden & Williams, Boston, Mass.
Simon C. Groot, Schenectady, N. Y.
Saml. C. Gilbert, Butternut, N. Y.
Mark Hopkins, Sacramento, Cal.
C. P. Huntington, Sacramento, Cal.
C. G. Hooker, San Francisco, Cal.
Wm. H. Hill, Sacramento, Cal.
J. S. Harbison, Sacramento, Cal.
Geo. Hepburn, Sacramento, Cal.
Miss M. E. Hurley, Sacramento, Cal.
E. Holmes, Sacramento, Cal.
G. T. Hartman, Sacramento, Cal.
Jno. Hector, Sacramento, Cal.
Aug. Heisch, Sacramento, Cal.
A. Heilbron, Sacramento, Cal.
Chas. Heinrich, Sacramento, Cal.
402 Jacob Heppe, Sacramento, Cal.
Eugenie Hunt, Sacramento, Cal.
James E. Hill, Sacramento, Cal.
Isabella M. Hill, Sacramento, Cal.
Jas. H. Herrick, Sacramento, Cal.
Silas Hussey, Jr., Sacramento, Cal.
S. Hooper & Co., Boston, Mass.
D. R. Hunt.
Jno. Hillhouse, New York, N. Y.
Mrs. E. H. Heacock, Sacramento, Cal.
Jos. Hill, Sacramento, Cal.
Chas. Holbrook, Sacramento, Cal.
Jared Irwin, Sacramento, Cal.
N. M. Jacobs, Sacramento, Cal.
Peter Johnson, Sacramento, Cal.
Elias Jacobs, Sacramento, Cal.
Enoch Jacobs, Sacramento, Cal.
Joel Johnson, Sacramento, Cal.
C. F. Jobson, San Francisco, Cal.
David Kendall, Sacramento, Cal.
Klink & Martfield, Sacramento, Cal.
H. Kohler, Sacramento, Cal.
403 Edw. Kraus, Sacramento, Cal.
Jno. B. Kohl, Sacramento, Cal.
L. Krambach, Sacramento, Cal.
Tobias Kadel, Sacramento, Cal.

E. H. Krebs, Sacramento, Cal.
Frank R. Kimball, Boston, Mass.
C. A. Lambard, Boston, Mass.
T. M. Lindley, Sacramento, Cal.
W. K. Lindsay, Sacramento, Cal.
M. Littleton, Sacramento, Cal.
J. D. Lord, Sacramento, Cal.
H. W. Larkin, Sacramento, Cal.
Locke & Lavenson, Sacramento, Cal.
E. J. Loomis, Sacramento, Cal.
C. B. Linton, Sacramento, Cal.
Lyon & Son, Sacramento, Cal.
Geo. I. Lytle, Sacramento, Cal.
Chris Lages, Sacramento, Cal.
Philip Lynch, Forest Hill, Cal.
Jno. W. Lester, New York, N. Y.
Geo. S. Locke, Lockford, Cal.
O. D. Lambard, Sacramento, Cal.
S. Lipman & Co., Sacramento, Cal.
Mrs. I. V. Lindley, Sacramento, Cal.
Charles Marsh, Nevada, Cal.
Jno. T. Morse, San Francisco, Cal.
R. F. Moore, Dutch Flat, Cal.
D. O. Mills & Co., Sacramento, Cal.
R. H. McDonald, Sacramento, Cal.
Jas. McGuire, Sacramento, Cal.
D. W. Mahon, Sacramento, Cal.
E. B. Mott, Jr., Sacramento, Cal.
F. Mier, Sacramento, Cal.
T. Muhlenfels, Sacramento, Cal.
C. Mayer, Sacramento, Cal.
P. F. Managan, Sacramento, Cal.
Jno. Meister, Sacramento, Cal.
Saml. Mosier, Sacramento, Cal.
D. Z. Moore, Sacramento, Cal.
Jno. G. McNeill, Sacramento, Cal.
Jno. McNeill, Sacramento, Cal.
H. Meyers, Sacramento, Cal.
E. H. Miller, Jr., Sacramento, Cal.
James McClatchey, Sacramento, Cal.
Drury Melone, Sacramento, Cal.
Wm. Martfield, Sacramento, Cal.
Geo. McDonald.
W. P. Michener, Sacramento, Cal.
Wm. Morris, Utica, N. Y.

W. G. Milligan, Little Falls.
Ambrose Merrill, Sacramento, Cal.
C. E. McLane, agt., San Francisco, Cal.
Mrs. Marilla McDougal, New York, N. Y.
Henry Miller, Sacramento, Cal.
N. S. Nichols, Sacramento, Cal.
A. Newbauer, Sacramento, Cal.
Leond. Newbourg, Sacramento, Cal.
A. N. North, Sacramento, Cal.
Jas. O.Neill, Sacramento, Cal.
Ira E. Oatman, Sacramento, Cal.
George Ochs, Sacramento, Cal.
Franz Oettll, Sacramento, Cal.
J. B. Ogden, New York, N. Y.
D. Osborn, Virginia, Nev.
J. T. Pike, Sacramento, Cal.
J. S. Pond, Sacramento, Cal.
406 Jno. C. Park, Dutch Flat, Cal.
Jno. Peasley, Sacramento, Cal.
Wm. Paton, New York, N. Y.
Thos. Paton, New York, N. Y.
Jas. M. Pattee, New York, N. Y.
Jno. V. L. Y. Pruyn, Albany, N. Y.
A. C. Powell, Syracuse, N. Y.
C. A. Peake, Sacramento, Cal.
Geo. W. Pearce, Sacramento, Cal.
R. J. Phillips, New York, N. Y.
F. H. Phillips, Little Falls, N. Y.
P. H. Russell, Sacramento, Cal.
Charles Rice, Mineral Bar, Cal.
Thomas Ross, Sacramento, Cal.
I. W. Reeves, Sacramento, Cal.
Jno. Ryan, Sacramento, Cal.
George Rowland, Sacramento, Cal.
Jno. R. Robinson, Sacramento, Cal.
Wm. M. Ratcliff, Sacramento, Cal.
Wm. B. Ready, Sacramento, Cal.
Frank C. Ross, Sacramento, Cal.
S. B. Robbins, Sacramento, Cal.
407 Martin Rancich, Sacramento, Cal.
B. B. Redding, Sacramento, Cal.
H. B. Rice, Sacramento, Cal.
Robt. Robinson, Sacramento, Cal.
J. P. C. Rond, San Francisco, Cal.
J. M. Ripley, Sacramento, Cal.

I. D. Russell, New York, N. Y.
R. F. Reed, Boston, Mass.
Wm. Rippon, Sacramento, Cal.
Leland Stanford, Sacramento, Cal.
S. D. Smith, Sacramento, Cal.
D. W. Strong, Dutch Flat, Cal.
A. A. Sargent, Nevada, Cal.
Edward Stockton, Folson, Cal.
C. W. Smith, Grass Valley, Cal.
J. A. Seaman, Sacramento, Cal.
Wm. H. Spaulding, Sacramento, Cal.
F. N. Strowbridge, Sacramento, Cal.
E. B. Sturgeon.
Jno. Smith, Sacramento, Cal.
Philip Scheld, Sacramento, Cal.
Geo. H. Swinerton, Sacramento, Cal.
408 Mary Scott, Sacramento, Cal.
Jno. Schade, Sacramento, Cal.
Julius Strutz, Sacramento, Cal.
E. N. Shelton, New York, N. Y.
Louis Schafer, Sacramento, Cal.
Chas. Sutter, Sacramento, Cal.
Chas. Sellinger, Sacramento, Cal.
Geo. Schmeiser, Sacramento, Cal.
P. Stanton, Sacramento, Cal.
Joseph Stevens, Sacramento, Cal.
Geo. W. Stewart, Sacramento, Cal.
S. H. Schwer, Sacramento, Cal.
Lee Stanley, Sacramento, Cal.
H. Schroeder, Sacramento, Cal.
Robt. Seegar, Sacramento, Cal.
Thos. K. Stewart, Sacramento, Cal.
A. P. Stanford, San Francisco, Cal.
Jacob Schrew, San Francisco, Cal.
C. Stremming, Sacramento, Cal.
C. Z. Sherman, New York, N. Y.
W. H. Seaton, Sacramento, Cal.
409 David Stewart, New York, N. Y.
Jacob Strahle, San Francisco, Cal.
T. H. Selby, San Francisco, Cal.
B. J. Schermerhorn, Schenectady, N. Y.
A. G. Story, Little Falls, N. Y.
Mrs. Anna E. Steele, Kingston, N. Y.
Isaac Small, Little Falls, N. Y.

Turton, Knox & Ryan, Sacramento, Cal.
J. N. Turner, Nevada, Cal.
Wm. Turton, Sacramento, Cal.
S. Tryon, Sacramento, Cal.
H. Thielbar, Sacramento, Cal.
Dores Thielbar, Sacramento, Cal.
W. E. Terry, Sacramento, Cal.
Thos. Townsend, Albany, N. Y.
Lauren Upson, Sacramento, Cal.
Chas. Van Heusen, Sacramento, Cal.
I. S. Van Winkle, Sacramento, Cal.
Mrs. Jno. Van Renssalaer, Morris, Cal.
E. J. Van Heusen, Sacramento, Cal.
E. G. Waite, Nevada, Cal.
J. C. Williams, Drytown, Cal.
410 D. W. Welty, Sacramento, Cal.
O. C. Wheeler, Sacramento, Cal.
C. T. Wheeler, Sacramento, Cal.
Julius Wetzlar, Sacramento, Cal.
H. Wachhorst, Sacramento, Cal.
Conrad Weil, Sacramento, Cal.
D. W. Whitmore, Sacramento, Cal.
Mrs. E. L. M. Williams, Boston, Mass.
N. S. Watson, Sacramento, Cal.
C. Waterhouse, Sacramento, Cal.
Amos Waring, Sacramento, Cal.
C. Wollet, Sacramento, Cal.
Danl. Zumwalt, Sacramento, Cal.
Jacob Zumwalt, Sacramento, Cal.

411 (The list of stockholders contained in the annual report of the Central Pacific Railroad Company for the year ending June 30, 1869, is as follows:)

Names of stockholders and residence.

Averay, Sarah E., Sacramento, Cal.
Avery, Mellissa, Sacramento, Cal.
Arnold, Jacob, Sacramento, Cal.
Ayres, J. J. San Francisco, Cal.
Adams, William J., San Francisco, Cal.
Ames, Henry, Sacramento, Cal.
Ah Tong, Sacramento, Cal.
Aspinwall, W. H., New York City, N. Y.
Agnew, A. G.

Austin, Mrs. F. L., Albany, N. Y.
Anderson, Jansen H., New York City, N. Y.
Bates, C. D., Sacramento, Cal.
Booth, L. A. Sacramento, Cal.
Brickell, E. J., Illinoistown, Cal.
Brickell, B., Illinoistown, Cal.
Bradley & Trim, Dutch Flat, Cal.
Beans, T. E., Nevada, Cal.
Bithell, James, Sacramento, Cal.
412 Burnham, Wm. C., Sacramento, Cal.
Burt, B., Sacramento, Cal.
Bronner, Joseph, Sacramento, Cal.
Beck, Robert, Sacramento, Cal.
Bell, T., Sacramento, Cal.
Brown, R. T., Sacramento, Cal.
Brown, Danl., Sacramento, Cal.
Bellmer & Co., Jno., Sacramento, Cal.
Banquier, Jos., Sacramento, Cal.
Barnes, C., Sacramento, Cal.
Bowman, Ida, Sacramento, Cal.
Bowman, W. J., Sacramento, Cal.
Blum, E., Sacramento, Cal.
Burke, E., San Francisco, Cal.
Burkek, M. D., San Francisco, Cal.
Bancroft, E. P., trust, Boston, Mass.
Bragg, H. W., Sacramento, Cal.
Boyd, Jno.
Brooks, Noah.
Brannan, Saml., San Francisco, Cal.
Barnes, Geo. E., San Francisco, Cal.
Babson, Seth, Sacramento, Cal.
413 Barencamp, Mrs. E., Oakland, Cal.
Barking, H. A., et als., trust, New York, N. Y.
Bement & Daugherty, Philadelphia, Pa.
Hall, Marcus, Troy, N. Y.
Baine, Sarah R.
Barringer, Wm., Schenectady, N. Y.
Banett, Jno. S., Sacramento, Cal.
Crocker, Chas., Sacramento, Cal.; dead.
Chamberlain, O. L., Sutter Creek, Cal.
County of Placer, California.
County of Sacramento, California.
Cole, Cornelius, Sacramento, Cal.
Culver, James H., Sacramento, Cal.

Cummings, C. H., Sacramento, Cal.
Croker, H. S., Sacramento, Cal.
Cook, Hiram, Sacramento, Cal.
Cochran, Mrs. M. T., Sacramento, Cal.
Converse, C. H., Sacramento, Cal.
Conrad, Jno., Sacramento, Cal.
Conrad, Marie, Sacramento, Cal.
Chevalier, F., Sacramento, Cal.
Clark, D. W., Sacramento, Cal.
414 Cook, T. H., Sacramento, Cal.
Coolot, A., Sacramento, Cal.
Crocker, E. B., Sacramento, Cal.
Crocker, B. R., Sacramento, Cal.
Chase, Chas. M., San Francisco, Cal.
Campbell, James, Sacramento, Cal.
Crocker, L. B., Oswego, N. Y.
Crocker, Mrs. A. E., Oswego, N. Y.
Coleman, W. P., Sacramento, Cal.
Cronkite, H., Sacramento, Cal.
Campbell, D. D., Schenectady, N. Y.
Cain, Nicholas, Schenectady, N. Y.
Contract & Finance Co.
Colburn, Rich. T., New York, N. Y.
Cheesman, Geo. W., New York, N. Y.
Clark, D. L., New York, N. Y.
Chesley, Geo. W., Sacramento, Cal.
Clark, Rufus W., New York, N. Y.
Crannell, F. F., New York, N. Y.
Drew, N. L. & Co., Sacramento, Cal.
Drew, N. L., Sacramento, Cal.
Drew, D. K., Sacramento, Cal.
415 Douglass, W. J., Sacramento, Cal.
Dreher, Wm., Sacramento, Cal.
Domingos, J., Sacramento, Cal.
Dougherty, C. K., Sacramento, Cal.
Dunn, Henry, Sacramento, Cal.
Dumont, Alp., San Francisco, Cal.
Dean, Georgianna M., Sacramento, Cal.
Davis, T. T.
Doolan, Wm., San Francisco, Cal.
Deforest, Martin, Schenectady, N. Y.
Duow, Volkert P., Schenectady, N. Y.
Duow, Mrs. H. L., Schenectady, N. Y.
Davis, Sarah A.

Doty, Abram, Schenectady, N. Y.
English, W. G., Sacramento, Cal.
Earl, D. W., Sacramento, Cal.
Everett, W. L., Sacramento, Cal.
Ebner, C. & T., Sacramento, Cal.
Egl, A., Sacramento, Cal.
Franchot, R., Syracuse, N. Y.
Foye, W. R. S., Sacramento, Cal.
416 Friend & Terry, Sacramento, Cal.
Franklin, P., Sacramento, Cal.
Floberg, J. P., Sacramento, Cal.
Fitzpatrick, M., Sacramento, Cal.
Foote, L. H., Sacramento, Cal.
Frey, Jos. M., Sacramento, Cal.
Forster, P. B., Sacramento, Cal.
Foster, F., Sacramento, Cal.
Friend, J. S., Sacramento, Cal.
Franchot, Mrs. A., Syracuse, N. Y.
Gillig, Jno., Sacramento, Cal.
Gardner, Robt., Knights Landing, Cal.
Gallatin, Albt., Sacramento, Cal.
Gruhler, Jacob, Sacramento, Cal.
Greenbaum, Wm., Sacramento, Cal.
Gotthold, Gus., Sacramento, Cal.
Gaxeot, Eug., Sacramento, Cal.
Grimm, Chas. H., Sacramento, Cal.
Gruhler, Chris., Sacramento, Cal.
Gruhler, Elias, Sacramento, Cal.
Glidden, Mrs. C. C., Boston, Mass.
Glidden, Mrs. E. M., Boston, Mass.
417 Gay, W. O., Sacramento, Cal.
Glidden & Williams, Boston, Mass.
Groot, Simon C., Schenectady, N. Y.
Gilbert, Saml. C., Butternut, N. Y.
Hopkins, Mark, Sacramento, Cal.
Huntington, C. P., Sacramento, Cal.
Huntington, C. P., agent, New York, N. Y.
Hooker, O. G., San Francisco, Cal.
Hill, Wm. H., Sacramento, Cal.
Harbison, J. S., Sacramento, Cal.
Hepburn, Geo., Sacramento, Cal.
Hurley, Miss M. E., Sacramento, Cal.
Holmes, E., Sacramento, Cal.
Hartman, G. T., Sacramento, Cal.
Hector, J., Sacramento, Cal.

Heisch, Aug., Sacramento, Cal.
Heilbron, A., & Bro., Sacramento, Cal.
Heinrich, Chas., Sacramento, Cal.
Heppe, Jacob, Sacramento, Cal.
Hunt, Eug. M., Sacramento, Cal.
Hill, J. E., Sacramento, Cal.
418 Hill, J. M., Sacramento, Cal.
Herrick, Jas. H., Sacramento, Cal.
Hussey, Silas, Jr., Sacramento, Cal.
Hooper & Co., S., Boston, Mass.
Hunt, D. R.
Hillhouse, Jno., New York, N. Y.
Heacock, Mrs. E. H., Sacramento, Cal.
Hill, Jos., Sacramento, Cal.
Holbrook, Chas., Sacramento, Cal.
Hawley, Nathan.
Irwin, Jared, Sacramento, Cal.
Jacobs, N. M., Sacramento, Cal.
Johnson, Peter, Sacramento, Cal.
Jacobs, Elias, Sacramento, Cal.
Jacobs, Enoch, Sacramento, Cal.
Johnson, Joel, Sacramento, Cal.
Jobson, C. F., San Francisco, Cal.
Kendall, D., Sacramento, Cal.
Kohler, H., Sacramento, Cal.
Kraus, Edw., Sacramento, Cal.
Kohl, Jno. B., Sacramento, Cal.
Krambach, L., Sacramento, Cal.
419 Kadel, Tobias, Sacramento, Cal.
Krebs, C. N., Sacramento, Cal.
Kimball, Frank R., Boston, Mass.
Lambard, C. A., Boston, Mass.
Lindley, T. M., Sacramento, Cal.
Lindsey, M. K., Sacramento, Cal.
Littleton, M., Sacramento, Cal.
Lord, J. D., Sacramento, Cal.
Larkin, H. W., Sacramento, Cal.
Locke & Lavenson, Sacramento, Cal.
Loomis, E. J., Sacramento, Cal.
Linton, C. B., Sacramento, Cal.
Lyon & Son., Sacramento, Cal.
Lages, Christn., Sacramento, Cal.
Lynch, Philip, Sacramento, Cal.
Lester, J. W., New York, N. Y.
Locke, Geo. S., Sacramento, Cal.

Lambard, O. D., Sacramento, Cal.
Lipman, S., & Co., Sacramento, Cal.
Lindley, Mrs. J. V., Sacramento, Cal.
Lipman, S., Sacramento, Cal.
420 Marsh, Chas., Nevada, Cal.
Morse, Jno. F., San Francisco, Cal.
Moore, B. F., Dutch Flat, Cal.
Mills & Co., D. O., Sacramento, Cal.
McDonald, R. H., Sacramento, Cal.
McGuire, Jas., Sacramento, Cal.
Mahon, D. W., Sacramento, Cal.
Mott, J. E. B., Sacramento, Cal.
Mier, F., Sacramento, Cal.
Muhlenfels, T., Sacramento, Cal.
Mayer, C., Sacramento, Cal.
Mangin, P. F., Sacramento, Cal.
Meister, Jno., Sacramento, Cal.
Mosier, Saml., Sacramento, Cal.
Moore, D. Z., Sacramento, Cal.
McNeil, Jno. G., Sacramento, Cal.
McNeil, Jno., Sacramento, Cal.
Myers, H., Sacramento, Cal.
Miller, E. H., Jr., Sacramento, Cal.
McClatchy, J., Sacramento, Cal.
Melone, D., Sacramento, Cal.
Martfeld, Wm., Sacramento, Cal.
421 Michener, W. P., Sacramento, Cal.
Morris, Wm., Utica, N. Y.
Milligan, W. G., Little Falls, N. Y.
Merrill, Amb., Sacramento, Cal.
McLane, C. E., agt., San Francisco, Cal.
McDougal, N. M., New York, N. Y.
Miller, Henry, Sacramento, Cal.
Miles, Fred. R., New York, N. Y.
Nichols, N. S., Sacramento, Cal.
Newbauer, A., Sacramento, Cal.
Newburg, L., Sacramento, Cal.
North, A. W., Sacramento, Cal.
O'Neil, Jas., Sacramento, Cal.
Oatman, Ira E., Sacramento, Cal.
Ochs, George, Sacramento, Cal.
Oettll, Franz, Sacramento, Cal.
Ogden, J. B., New York, N. Y.
Osborn, D. W., Virginia, Nev.
Osborn, Jno. W., Virginia, Nev.

Pike, J. T., Sacramento, Cal.
Pond, J. S.
Parks, Jno. C., Dutch Flat, Cal.
422 Paton, Wm., New York, N. Y.
Paton, Thos., New York, N. Y.
Pattee, James M.
Pruyn, Jno. V. L. Y., Albany, N. Y.
Powell, A. C., Syracuse, N. Y.
Peake, C. A., Sacramento, Cal.
Pierce, Geo. W., Yolo, Cal.
Phillips, R. J., New York, N. Y.
Phillips, F. H., Little Falls, N. Y.
Paton & Co., New York, N. Y.
Russel, P. H., Sacramento, Cal.
Rice, Chas., Mineral Bar, Cal.
Ross, Thomas, Sacramento, Cal.
Reeves, J. W., Sacramento, Cal.
Ryan, Jno., Sacramento, Cal.
Rowland, Geo., Sacramento, Cal.
Robinson, Jno. R., Sacramento, Cal.
Ratcliff, W. M., Sacramento, Cal.
Ready, W. B. & B. F., Sacramento, Cal.
Ross, Frank C., Sacramento, Cal.
Robbins, S. B., Sacramento, Cal.
423 Rancich, M., Sacramento, Cal.
Redding, B. B., Sacramento, Cal.
Rice, H. B., Sacramento, Cal.
Rond, J. P. O., San Francisco, Cal.
Ripley, J. M., Sacramento, Cal.
Russell, J. D., New York, N. Y.
Reed, B. T., Boston, Mass.
Robinson, R., Sacramento, Cal.
Rippon, Wm., Sacramento, Cal.
Stanford, L., Sacramento, Cal.
Strong, D. W., Dutch Flat, Cal.
Sargent, A. H., Nevada, Cal.
Stockton, Edw., Folsom, Cal.
Smith, C. W., Grass Valley, Cal.
Seaman, J. A., Sacramento, Cal.
Spaulding, Wm. K., Sacramento, Cal.
Strowbridge, T. W., Sacramento, Cal.
Sturgeon, E. B., Sacramento, Cal.
Smith, Jno., Sacramento, Cal.
Scheld, Phil., Sacramento, Cal.
Swinerton, Geo. H., Sacramento, Cal.

Scott, Mary, Sacramento, Cal.
494 Schade, Jno., Sacramento, Cal.
Strutz, Juls., Sacramento, Cal.
Shelton, E. N., New York, N. Y.
Shafer, Louis, Sacramento, Cal.
Sutter, Chas., Sacramento, Cal.
Sellinger, Chas., Sacramento, Cal.
Schmeizer, Geo., Sacramento, Cal.
Stanton, D., Sacramento, Cal.
Stevens, Jos., Sacramento, Cal.
Stewart, Geo. W., Sacramento, Cal.
Schroer, L. H., Sacramento, Cal.
Stanley, Lee, Sacramento, Cal.
Schroeder, H., Sacramento, Cal.
Seegar, Robt., Sacramento, Cal.
Stewart, Thos. K., Sacramento, Cal.
Stanford, A. P., San Francisco, Cal.
Shew, Jacob, San Francisco, Cal.
Stremming, C., Sacramento, Cal.
Sherman, C. Z., New York, N. Y.
Seaton, W. H., Sacramento, Cal.
Stewart, David, New York, N. Y.
Strahle, Jacob, San Francisco, Cal.
495 Selby, T. H., San Francisco, Cal.
Schermerhorn, B. I., Schenectady, N. Y.
Story, A. G., Little Falls, N. Y.
Steele, Mrs. A. E., Kingston, N. Y.
Small, Isaac, Little Falls, N. Y.
Scudder, Chas. L., Sacramento, Cal.
Sachs, L. & M., Sacramento, Cal.
Turton, Knox & Ryan, Sacramento, Cal.
Turner, J. M., Nevada, Cal.
Turton, Wm., Sacramento, Cal.
Tryon, S., Sacramento, Cal.
Thielbar, H., Sacramento, Cal.
Thielbar, D., Sacramento, Cal.
Terry, N. E., Sacramento, Cal.
Townsend, Theo., Albany, N. Y.
Upson, Lauren, Sacramento, Cal.
Van Huesen, Chas., Sacramento, Cal.
Van Huesen, E. J., Sacramento, Cal.
Van Winkle, J. S., Sacramento, Cal.
Van Rensalaer, Mrs. J., Morris, N. J.
Waite, E. G., Nevada, Cal.
Welty, D. W., Sacramento, Cal.

426 Wheeler, O. C., Sacramento, Cal.
Wheeler, C. T., Sacramento, Cal.
Wetzlar, Juls., Sacramento, Cal.
Watchhorst, H., Sacramento, Cal.
Williams, J. C., Drytown, Cal.
Weil, Conrad, Sacramento, Cal.
Whittemore, D. W., Sacramento, Cal.
Williams, Mrs. E. L. M., Boston, Mass.
Watson, W. S., Sacramento, Cal.
Waterhouse, C., Sacramento, Cal.
Waring, Amos, Sacramento, Cal.
Wollet, Chas., Sacramento, Cal.
Zumwalt, D. K., Sacramento, Cal.
Zunwalt, Jacob, Sacramento, Cal.

427 (The list of stockholders contained in the annual report of the Central Pacific Railroad for the year ending June 30, 1870, is as follows:)

Names of stockholders and residence.

Ah Tong, Sacramento, Cal.
Austin, Mrs. F. L., Albany, N. Y.
Anderson, J. H., New York, N. Y.
Agnew, A. G.
Bradley & Trim, Dutch Flat, Cal.
Beans, T. E., Nevada, Cal.
Brown, Danl., Sacramento, Cal.
Barnes, C., Sacramento, Cal.
Burt, B., Sacramento, Cal.
Bellmer & Co., Jno., Sacramento, Cal.
Burke, Ethelbert, San Francisco, Cal.
Bancroft, E. P., trustee, Boston, Mass.
Boyd, Jno., New York, N. Y.
Barnes, Geo. E., San Francisco, Cal.
Bement & Dougherty, Philadelphia, Penn.
Barling, Henry A., trustee, New York, N. Y.
Ball, Marcus, Troy, N. Y.
Barringer, Wm., Schenectady, N. Y.
428 Barrett, Jno. S., Sacramento, Cal.
Bawne, Wm. F., San Francisco, Cal.
Crocker, Charles, Sacramento, Cal.; dead.
Cummings, C. H., Sacramento, Cal.
Contract & Finance Co., Sacramento, Cal.
Crocker, E. B., Sacramento, Cal.
Cole, Cornelius.

Culver, J. H., Sacramento, Cal.
Cronkite, H., Sacramento, Cal.
Converse, Chas. H., Sacramento, Cal.
Chevalier, F., Sacramento, Cal.
Coolot, A., Sacramento, Cal.
Crocker, B. R., Sacramento, Cal.
Campbell, Jas., Sacramento, Cal.
Crocker, L. B., Oswego, N. Y.
Crocker, Mrs. A. E., Oswego, N. Y.
Campbell, D. D., Schenectady, N. Y.
Cain, Nicholas, Schenectady, N. Y.
Colburn, R. T., New York, N. Y.
Cheesman, Geo. W.
Clark, D. L.
Crannell, F. F.
Corning, Erastus.
Cook, T. H.
Crocker, H. S., Sacramento, Cal.
Douglass, W. J., Sacramento, Cal.
Dumant, Alphons., San Francisco, Cal.
Domingos, I., Sacramento, Cal.
Dougherty, C. K., Sacramento, Cal.
Davis, T. T., New York, N. Y.
Deforest, Martin, Schenectady, N. Y.
Douw, V. P., Schenectady, N. Y.
Douw, Helen L., Schenectady, N. Y.
Doty, Abram, Schenectady, N. Y.
Danforth, Cook & Co., Paterson, N. J.
English, W. G., Sacramento, Cal.
Egl, A., Sacramento, Cal.
Evertson, E., Albany, N. Y.
Franchot, Richd., Syracuse, N. Y.
Franchot, Mrs. A., Syracuse, N. Y.
Foye, W. R. S., Sacramento, Cal.
Friend & Terry, Sacramento, Cal.
Floberg, J. P., Sacramento, Cal.
Fitzpatrick, M., Sacramento, Cal.
Foote, L. H., Sacramento, Cal.
Frey, J. M., Sacramento, Cal.
Foster, F., Sacramento, Cal.
Friend, J. S., Sacramento, Cal.
Fisk, Harvey, New York, N. Y.
Gillig, John, Sacramento, Cal.
Gallatin, Albt., Sacramento, Cal.
Gotthold, Gustave, Sacramento, Cal.

Grimm, C. H., Sacramento, Cal.
Glidden, Mrs. C. C., Boston, Mass.
Glidden, Mrs. E. M., Boston, Mass.
Groot, Simon C., Schenectady, N. Y.
Gilbert, Saml. C., Butternut, N. Y.
Huntington, C. P., New York, N. Y.; dead.
Huntington, C. P., agt., New York, N. Y.; dead.
Harbison, J. C., Sacramento, Cal.
Holmes, E., Sacramento, Cal.
Hector, J., Sacramento, Cal.
Heisch, Aug., Sacramento, Cal.
Heinrich, Chas., Sacramento, Cal.
Heppe, Jacob, Sacramento, Cal.
Hussey, Silas, Jr., Sacramento, Cal.
431 Hillhouse, John, New York, N. Y.
Heacock, Mrs. E. H., Sacramento, Cal.
Hawley, Nathn., Albany, N. Y.
Holbrook, Chas., Sacramento, Cal.
Hollister, J. E.
Hopkins, Mark, Sacramento, Cal.; dead.
Johnson, Peter, Sacramento, Cal.
Johnson, Joel, Sacramento, Cal.
Jobson, C. F., San Francisco, Cal.
Judson, A. B., Mishawaka, Ind.
Krambach, L., Sacramento, Cal.
Kadel, Tobias, Sacramento, Cal.
Kimball, Frank R., Boston, Mass.
Lambard, C. A., Sacramento, Cal.
Loomis, E. J., Sacramento, Cal.
Linton, C. B., Sacramento, Cal.
Lages, Christopher, Sacramento, Cal.
Locke, Geo. S., Sacramento, Cal.
Landon, Fitch, New York, N. Y.
Lathrop, Dan. S., New York, N. Y.
Marsh, Chas., Nevada, Cal.
Miller, E. H., Jr., Sacramento, Cal.; dead.
432 Moore, B. F., Dutch Flat, Cal.
Mills, D. O., & Co., Sacramento, Cal.
McDonald, R. H., Sacramento, Cal.
Mahon, D. W., New York, N. Y.
Mott, E. B., Jr., Sacramento, Cal.
Mier, F., Sacramento, Cal.
Myer, C., Sacramento, Cal.
Muhlenfels, T., Sacramento, Cal.
Meister, Jno., Sacramento, Cal.

Mosier, Saml., Sacramento, Cal.
Malone, Drury, Sacramento, Cal.
Michener, W. P., Sacramento, Cal.
Morris, Wm., Utica, N. Y.
Milligan, Wm. G., Little Falls, N. Y.
Merrill, Ambrose, Sacramento, Cal.
McLane, Charles E., agt., San Francisco, Cal.
McDougall, Mrs. M., New York, N. Y.
Miles, Fredk., Connecticut.
North, A. W., New York, N. Y.
Oatman, Ira E., Sacramento, Cal.
Oettll, Franz, Sacramento, Cal.
Ogden, J. B., New York, N. Y.,
33 Osborn, Dwight W., Virginia, Nev.
Osborn, John M., New York, N. Y.
Prevost, Mrs. Emma C. M., San Francisco, Cal.
Parks, Jno. C., Dutch Flat, Cal.
Paton, Wm., New York, N. Y.
Paton, Thos., New York, N. Y.
Powell, A. C., Syracuse, N. Y.
Phillips, R. J., New York, N. Y.
Phillips, F. H., Little Falls, N. Y.
Perry, Eli, New York, N. Y.
Painter, U. N., New York, N. Y.
Robinson, Jno. E., New York, N. Y.
Robbins, S. B., Sacramento, Cal.
Rice, H. B., Sacramento, Cal.
Rond, J. S. C., San Francisco, Cal.
Russell, J. D., New York, N. Y.
Robinson, Robt., Sacramento, Cal.
Robinson, Chas. J., Sacramento, Cal.
Stanford, A. P., San Francisco, Cal.
Santa Clara County, California.
Stanford, Chas.
Sargent, A. A., Nevada, Cal.; dead.
34 Smith, C. W., Grass Valley, Cal.
Sturgeon, E. B., New York, Cal.
Smith, Jno., Sacramento, Cal.
Scheld, Philip, Sacramento, Cal.
Sutter, Chas., Sacramento, Cal.
Schroeder, H., Sacramento, Cal.
Stewart, Thos. K., Sacramento, Cal.
Shew, Jacob, San Francisco, Cal.
Sherman, Chas. Z., New York, N. Y.

Seaton, Will H., Sacramento, Cal.
Stewart, David, New York, N. Y.
Shelton, E. N., New York, N. Y.
Strahle, Jacob, San Francisco, Cal.
Schermerhorn, B. J., Schenectady, N. Y.
Story, A. G., Little Falls, N. Y.
Small, Isaac, Little Falls, N. Y.
Sherrill, Chas. H., New York, N. Y.
Stanford, Leland, Sacramento, Cal.; dead.
Turner, J. H., Nevada, Cal.
Terry, M. E., Sacramento, Cal.
Tillinghast, M. H., San Francisco, Cal.
Turton, Wm., Sacramento, Cal.
435 Van Heusen, W. K., Sacramento, Cal.
Van Rensaellaer, Mrs. I., Morris, Pa.
Waite, E. G., Nevada, Cal.
Wetzlar, Julius, Sacramento, Cal.
Weil, Conrad, Sacramento, Cal.
Whitman, D. W., Sacramento, Cal.
Williams, Mrs. E. L. M., Boston, Mass.
Wycoff, Mrs. C. R., Albany, N. Y.
Weisel, Christian, Sacramento, Cal.
Wooster, Benj. W., Albany, N. Y.
Zumwalt, D. K., Sacramento, Cal.

(The list of stockholders contained in the report of the Cen Pacific Railroad Company for the year ending June 30th, 187 as follows:)

Names of stockholders and residence.

Bradley & Trim, Dutch Flat.
Beans, T. E., Nevada.
Brown, Daniel, Sacramento.
Barnes, C., Sacramento.
Burt, B., Sacramento.
Bellmer & Co., John, Sacramento.
Burke, Ethelbert, San Francisco.
436 Barrett, John L., Sacramento.
Bowne, Wm. F., San Francisco.
Bender, D. A., Sacramento.
Brown, William E., Sacramento.
Blake, G. H.
Blackwood, William.
Brooks, T. W.
Browne, J. M.

Brayton, Mrs. J. H.
Brown, Thomas, San Francisco.
Contract & Finance Co., Sacramento.
Crocker, Charles, Sacramento.
Crocker, E. B., Sacramento.
Cummings, C. H., Sacramento.
Cronkite, H., Sacramento.
Converse, Chas. H., Sacramento.
Chevalier, F., Sacramento.
Coolot, A., Sacramento.
Crocker, B. R., Sacramento.
Campbell, James, Sacramento.
Cook, T. H., Sacramento.
Cotton, D. D., San Francisco.
Douglas, W. J., Sacramento.
Dougherty, C. K., Sacramento.
Dumont, Alphonsine, San Francisco.
Dana, Charles.
English, W. J., Sacramento.
Egl, A., Sacramento.
Foye, W. A. L., Sacramento.
Friend & Terry, Sacramento.
Floberg, J. P., Sacramento.
Fitzpatrick, M., Sacramento.
Foote, L. H., Sacramento.
Frey, J. M., Sacramento.
Foster, F., Sacramento.
Friend, J. L., Sacramento.
Flint, J. P.
Gillig, John, Sacramento.
Gallatin, Albert, Sacramento.
Gotthold, Gustave, Sacramento.
Grimm, C. H., Sacramento.
Garratt, W. F.
Huntington, C. P., New York.
Hopkins, Mark, Sacramento.
Holmes, E., Sacramento.
Hector, J., Sacramento.
Heinrich, Charles, Sacramento.
Heisch, August, Sacramento.
Harbison, J. L., Sacramento.
Heppe, Jacob, Sacramento.
Hussey, Silas, Jr., Sacramento.
Heacock, E. H., Sacramento.
Holbrook, Charles, Sacramento.

Hardy, M. C.
Hollister, H. H.
Johnson, Joel, Sacramento.
Krambach, L., Sacramento.
Kadel, Tobias, Sacramento.
Kimball, Frank Reed, Boston, Mass.
Lambard, C. A., Boston, Mass.
Larkin, H. W., Sacramento.
Locke, George L., Sacramento.
Loomis, E. J., Sacramento.
Linton, C. B., Sacramento.
439 Lages, Christopher, Sacramento.
Lander, P. C.
Miller, E. H., Jr., Sacramento.
Marsh, Charles, Nevada.
Moore, B. F., Dutch Flat.
Mills, D. O. & Co., Sacramento.
McDonald, R. H., Sacramento.
Muhlenfels, T., Sacramento.
Meister, John, Sacramento.
Myer, C., Sacramento.
Mosier, Samuel, Sacramento.
Mahon, D. W., New York.
Mott, E. B., Jr., Sacramento.
Melone, Drury, Sacramento.
Michener, W. P., Sacramento.
Merrill, Ambrose, Sacramento.
McLane, C. E., San Francisco.
Madden, Jerome, Sacramento.
Muller, H.
Macken, James.
North, A. W., New York.
Newhall, H. M., P. Donahue, and Chas. Mayne, San F
cisco.
440 Oatman, Ira E., Sacramento.
Oettll, Franz, Sacramento.
Osborn, Dwight W., Virginia, Nev.
Parks, John C., Dutch Flat.
Provost, Mrs. Emme C. Morse, San Francisco.
Robinson, John E., New York.
Russell, J. D., New York.
Robinson, Robert, Sacramento.
Robbins, S. B., Sacramento.
Rice, H. B., Sacramento.

Bond, J. P. C., San Francisco.
Redding, B. B., Sacramento.
Rudovich, L.
Stanford, Leland, Sacramento.
Stanford, A. P., San Francisco.
Stanford, Charles.
Sturgeon, E. B., New York.
Scheld, Philip, Sacramento.
Stewart, Thomas K., Sacramento.
Sherman, C. Z., New York.
Seaton, Willard H., Sacramento.
Strahle, Jacob, San Francisco.
441 Sargent, A. A., Nevada.
Smith, C. W., Grass Valley.
Smith, John, Sacramento.
Sutter, Charles, Sacramento.
Schroeder, H., Sacramento.
Shew, Jacob, San Francisco.
Santa Clara County, California.
Scudder, C. L., Sacramento.
Scotchler, J. B.
Sachs, L. & M., San Francisco.
Turner, J. N., Nevada.
Terry, W. E., Sacramento.
Turton, William, Sacramento.
Taylor, C.
Tubbs, Hiram.
Van Heusen, W. K., Sacramento.
Waite, E. G., Nevada.
Wetzlar, Julius, Sacramento.
Weil, Conrad, Sacramento.
Whitmore, D. W., Sacramento.
Woods, Samuel.
Zumwalt, D. K., Sacramento.

442 (The list of stockholders contained in the annual report of the Central Pacific Railroad Company for the year ending June 30th, 1872, is as follows:)

Names of stockholders and residence.

Bradley & Trim, Dutch Flat.
Beans, T. E., Nevada.
Brown, Daniel, Sacramento.
Barnes, C., Sacramento.
Burt, B., Sacramento.

Bellmer & Co., John, Sacramento.
Burke, Ethelbert, San Francisco.
Barrett, John L., Sacramento.
Browne, Wm. F., San Francisco.
Bender, D. W., Sacramento.
Brown, William E., Sacramento.
Blake, G. M.
Blackwood, William.
Brooks, T. W.
Browne, J. N.
Brayton, Mrs. J. H.
Brown, Thomas, San Francisco.
Contract & Finance Co., Sacramento.
Crocker, Charles, Sacramento.
443 Crocker, E. B., Sacramento.
Cummings, C. H., Sacramento.
Culver, J. H., Sacramento.
Cronkite, H., Sacramento.
Converse, Chas. H., Sacramento.
Chevalier, F., Sacramento.
Coolot, A., Sacramento.
Crocker, B. R., Sacramento.
Campbell, James, Sacramento.
Cook, T. H., Sacramento.
Cotton, D. D., San Francisco.
Douglas, W. J., Sacramento.
Dougherty, C. K., Sacramento.
Dumant, Alphonsine, San Francisco.
Dana, Charles.
English, W. G., Sacramento.
Egl, A., Sacramento.
Foye, W. R. S., Sacramento.
Friend & Terry, Sacramento.
Floberg, J. P., Sacramento.
Fitzpatrick, M., Sacramento.
Foote, L. H., Sacramento.
Frey, J. M., Sacramento.
444 Foster, F., Sacramento.
Friend, J. L., Sacramento.
Flint, J. P.
Gillig, John, Sacramento.
Gallatin, Albert, Sacramento.
Gotthold, Gustave, Sacramento.
Grimm, C. H., Sacramento.
Garratt, W. F.

Huntington, C. P., New York.
Hopkins, Mark, Sacramento.
Holmes, E., Sacramento.
Hector, J., Sacramento.
Heinrich, Charles, Sacramento.
Heisch, August, Sacramento.
Harbison, J. L., Sacramento.
Heppe, Jacob, Sacramento.
Hussey, Silas, Jr., Sacramento.
Heacock, E. H., Sacramento.
Holbrook, Charles, Sacramento.
Hardy, M. C.
Hollister, H. H.
Johnson, Joel, Sacramento.
Krambach, L., Sacramento.
445 Kadel, Tobias, Sacramento.
Kimball, Frank Reed, Boston, Mass.
Lambard, C. A., Boston, Mass.
Larken, H. W., Sacramento.
Locke, George S., Sacramento.
Loomis, E. J., Sacramento.
Linton, C. B., Sacramento.
Lages, Christopher, Sacramento.
Lander, P. C.
Miller, E. H., Jr., Sacramento.
Marsh, Charles, Nevada.
Moore, B. F., Dutch Flat.
Mills, D. O., & Co., Sacramento.
McDonald, R. H., Sacramento.
Muhlenfels, T., Sacramento.
Meister, John, Sacramento.
Myer, C., Sacramento.
Mosier, Samuel, Sacramento.
Mahon, D. W., New York.
Mott, E. B., Jr., Sacramento.
Melone, Drury, Sacramento.
Marshall, Thomas, Sacramento.
446 Merrill, Ambrose, Sacramento.
McLane, C. E., San Francisco.
Madden, Jerome, Sacramento.
Muller, H.
Macken, James.
North, A. W., New York.
Newhall, H., M. P. Donahue, and Chas. Mayne, San Francisco.

Oatman, Ira E., Sacramento.
Oettll, Franz, Sacramento.
Osborn, Dwight W., Viriginia, Nev.
Parks, John C., Dutch Flat.
Provost, Mrs. Emma C. Morse, San Francisco.
Robinson, J. E., New York.
Russell, J. D., New York.
Robinson, Robert, Sacramento.
Robbins, S. B., Sacramento.
Rice, H. B., Sacramento.
Rond, J. P. C., San Francisco.
Redding, B. B., Sacramento.
Rudovich, L.
Stanford, Leland, Sacramento.
Stanford, A. P., San Francisco.
Stanford, Charles.
447 Sturgeon, E. B., New York.
Scheld, Philip, Sacramento.
Stewart, Thomas K., Sacramento.
Sherman, C. P., New York.
Seaton, Willard H., Sacramento.
Strahle, Jacob, San Francisco.
Sargent, A. A., Nevada.
Smith, C. W., Grass Valley.
Smith, John, Sacramento.
Sutter, Charles, Sacramento.
Schroeder, H., Sacramento.
Shew, Jacob, San Francisco.
Santa Clara County, California.
Scudder, C. L., Sacramento.
Scotchler, J. B.
Sachs, L. & M., San Francisco.
Turner, J. N., Nevada.
Terry, W. E., Sacramento.
Turton, William, Sacramento.
Taylor, C.
Tubbs, Hiram.
Van Heusen, W. K., Sacramento.
Waite, E. G., Nevada.
448 Wetzlar, Julius, Sacramento.
Weil, Conrad, Sacramento.
Whitmore, D. W., Sacramento.
Woods, Samuel.
Zumwalt, D. K., Sacramento.

The list of stockholders contained in the annual report of the tral Pacific Railroad Company, for the year ending June 30th, , is as follows:)

Names of stockholders and residence.

urt, B., Sacramento.
ellmer & Co., John, Sacramento.
urke, Ethelbert, San Francisco.
arrett, John S., Sacramento.
rowne, Wm. F., San Francisco.
ender, D. A., Sacramento.
rown, William E., Sacramento.
lake, G. M.
lackwood, William.
rooks, T. W.
rowne, J. W.
rayton, Mrs. J. H.
Brown, Thomas, San Francisco.
Contract & Finance Co., Sacramento.
Crocker, Charles, Sacramento.
rocker, E. B., Sacramento.
ummings. C. H., Sacramento.
hevalier, F., Sacramento.
oolot, A., Sacramento.
rocker, B. R., Sacramento.
ampbell, James, Sacramento.
ook, J. H., Sacramento.
otton, D. D., San Francisco.
ongherty, C. K., Sacramento.
gl, A., Sacramento.
oye, W. R. T., Sacramento.
riend & Terry, Sacramento.
rey, J. M., Sacramento.
oster, F., Sacramento.
riend, J. L., Sacramento.
illig, John, Sacramento.
allatin, Albert, Sacramento.
arratt, W. T.
ates, Isaac E., New York.
untington, C. P., New York.
Hopkins, Mark, Sacramento.
Heinrich, Charles, Sacramento.
Harbison, J. S., Sacramento.
ussey, Silas, Jr., Sacramento.

Heacock, E. H., Sacramento.
Holbrook, Charles, Sacramento.
Hardy, M. C.
Hollister, H. H.
Johnson, Joel, Sacramento.
Kimball, Frank Reed, Boston, Mass.
Lambard, C. A., Boston, Mass.
Larkin, H. W., Sacramento.
Locke, George S., Sacramento.
Miller, E. H., Jr., Sacramento.
Mills, D. O., & Co., Sacramento.
McDonald, R. H., Sacramento.
Mahon, D. W., New York.
Mott, E. B., Jr., Sacramento.
Melone, Drury, Sacramento.
Marshall, Thomas, Sacramento.
Merrill, Ambrose, Sacramento.
McLane, E. E., agent, San Francisco.
Madden, Jerome, Sacramento.
Muller, H.
Macken, James.
451 North, A. W., New York.
Newhall, H., M. P. Donahue, and Chas. Mayne, San Francisco.
Osborn, Dwight W., Virginia City.
Parks, John C., Dutch Flat.
Provost, Mrs. Emma C. Morse, San Francisco.
Robinson, J. E., New York.
Russell, J. D., New York.
Robinson, Robert, Sacramento.
Redding, B. B., Sacramento.
Rudovich, L.
Stanford, Leland, Sacramento.
Stanford, A. P., San Francisco.
Stanford, Charles.
Sturgeon, E. B., New York.
Scheld, Philip, Sacramento.
Stewart, Thomas K., Sacramento.
Sherman, C. Z., New York.
Seaton, Willard H., Sacramento.
Strahle, Jacob, San Francisco.
Scotchler, J. B.
Sachs, L. & M., San Francisco.
Terry, W. E., Sacramento.
Turton, William, Sacramento.

Taylor, C.
Tubbs, Hiram.
Weil, Conard, Sacramento.
Whitmore, D. W., Sacramento.
Woods, Samuel.
Zumwalt, D. K., Sacramento.

(The list of stockholders contained in the copy of the annual report of the Central Pacific Railroad for the year ending June 30, 1874, is as follows:)

Names of stockholders and residence.

Alderson, F. S., Sacramento.
Adams, E. E., New York.
Ahrueiler, Leopold, New York.
Burt, B., Sacramento.
Brown, W. E., San Francisco.
Blake, G. M.
Blackwood, Wm.
Brayton, Mrs. J. H.
Bailey, Chas. A., Sacramento.
Contract & Finance Co., San Francisco.
Crooker, Charles, San Francisco.
Crocker, E. B., Sacramento.
Cummings, C. H., Sacramento.
Chevalier, F., San Francisco, 246 Mission.
Coolot, A., Sacramento.
Corning, John, San Francisco, Underwood Bldg.
Cheeney, Ansel B., Sacramento.
Curtis, W. R., New York.
Dougherty, C. K., Sacramento.
Dunworth, Thomas, Sacramento.
Egl, A., Sacramento.
Foye, W. R. S., Sacramento.
Friend & Terry, Sacramento.
Foster, F., Sacramento.
Friend, J. S., Sacramento.
Folsom, L. D., Sacramento.
Gillig, John, Sacramento.
Gallatin, Albert, Sacramento.
Gates, Isaac E., New York.
Gage, S. T., San Francisco.
Huntington, C. P., New York.
Hopkins, Mark, San Francisco.
Hopkins, Moses.

Hopkins, E. W., San Francisco.
Hall, R. H., Sacramento.
454 Harbison, J. S., Sacramento.
Holbrook, Charles, Sacramento.
Huntington, C. P., agent, New York.
Hollister, H. H.
Ingram, Wm. Jr., Sacramento.
Kimball, Frank Reed, Boston.
Knickerbocker & Co., New York.
Miller, E. H., Jr., San Francisco.
McDonald, R. H., New York.
Mahon, D. W., New York.
McLane, E. E., agt.
Merrill, Ambrose, Sacramento.
Madden, Jerome, San Francisco.
Muller, H.
Macken, James.
Miller, E. S., San Francisco.
Miller, John, San Francisco.
McCullough, A. D. W., San Francisco.
McKeon, W. C., New York.
North, A. W., New York.
Philips, R. J., New York.
Parks, John C.
Preece, A. R., San Francisco.
455 Porter, William, New York.
Pardee, E. H., New York.
Robinson, J. E., San Francisco.
Robinson, Robert, San Francisco.
Redding, B. B., San Francisco.
Russell, J. D., estate of, New York.
Stanford, Leland, San Francisco.
Stanford, A. P., San Francisco.
Stanford, Charles.
Sturgeon, E. B.
Scheld, Philip, Sacramento.
Stewart, Thomas K., Sacramento.
Sherman, C. Z.
Seaton, Williard H., San Francisco (M. & S.), 531 Clayton.
Scotcher, J. B.
Sachs, L. & M., San Francisco.
Safford, G. W., Sacramento.
Seaman, J. A., Sacramento.
Seaton, H. H., San Francisco.
Scudder, Mrs. Mary, Sacramento.

St. John, E., New York.
Terry, W. E., Sacramento.
Turton, William, Sacramento.
456 Towne, A. W., San Francisco.
Tracy, James J., New York.
Torbert, Chas. J., San Francisco.
Tompkins, W. A., New York.
Van Doren, C. A.
Weil, Conrad, Sacramento.
Woods, Samuel, San Francisco.
Watson, J. R., Sacramento.
Welch, Benjamin, Sacramento.
Zumwalt, D. K., Sacramento.
Zeitler, Charles, Sacramento.
Lambard, C. A., Boston.
Osborn, D. W., Virginia, Nev.
Schaw, Wm., Sacramento.

457 (The list of stockholders contained in the copy of the annual report of the Central Pacific Railroad Company for the year ending June 30th, 1875, is as follows:)

Names of stockholders and residence.

Alderson, F. S., Sacramento.
Adams, E. E., New York.
Ahrueiler, Leopold, New York.
Brown, Wm. E.
Blake, G. M.
Blockwood, Wm.
Brayton, Mrs. J. H.
Bown, Mrs. E. L., San Francisco.
Dod, S. B., trustee, New York.
Bailey, Chas. A., Sacramento.
Contract and Finance Co., San Francisco.
Crocker, Charles, Sacramento.
Crocker, E. B., Sacramento.
Cummings, C. H., Sacramento.
Chevalier, F., San Francisco, The Co., 246 Mission.
Coolot, A., Sacramento.
Corning, John, San Francisco.
Cheeney, A. B. Sacramento.
458 Curtis, W. R., New York.
Dougherty, C. H., Sacramento.
Dunworth, Thomas, Sacramento.
Egl, A., Sacramento.

Foye, W. R. S., Sacramento.
Foster, F., Sacramento.
Folsom, L. D., Sacramento.
Gallatin, Albert, Sacramento.
Gates, Isaac E., New York.
Gage, S. T., Sacramento.
Huntington, C. P., New York.
Hopkins, Mark, San Francisco.
Hopkins, Moses.
Hopkins, E. W., San Francisco, 354 Pine.
Hall, R. H., Sacramento.
Harbison, J. S., Sacramento.
Holbrook, Charles, Sacramento.
Huntington, C. P., agent, New York.
Hollister, H. H.
Ingram, Wm., Jr., Sacramento.
Kimball, F. R., Boston.
Knickerbocker and Co., New York.
459 Lambard, C. A., Boston.
Miller, E. H., Jr., San Francisco.
McDonald, R. H., New York.
Mahon, D. W., New York.
McLane, O. E., agent.
Murill, Ambrose.
Madden, Jerome, San Francisco.
Miller, H.
Macken, James.
Miller, E. S., San Francisco.
McCullough, A. D. W., San Francisco.
McKeon, W. C., New York.
North, A. W., New York.
Osborn, D., Virginia City, Nev.
Phillips, R. J., New York.
Parks, Jno. C., New York.
Preece, A. R., San Francisco.
Porter, Wm., New York.
Pardee, E. H., New York.
Robinson, J. E., San Francisco.
Robinson, Robt., San Francisco.
Russell, J. D., estate of, New York.
460 Stanford, Leland, trustee.
Stanford, A. P.
Stanford, Charles.
Sturgeon, E. B.
Scheld, Philip, Sacramento.

Stewart, F. H., Sacramento,
Sherman, F. Z.
Seaton, W. H., San Francisco.
Scotcher, J. B.
Sachs, L. and W., San Francisco.
Safford, G. W., Sacramento.
Seaman, J. A., Sacramento.
Seaton, H. H., San Francisco.
Schaw, Wm., Sacramento.
Scudder, Mrs. Mary, Sacramento.
St. John, E., New York.
Turton, Wm., Sacramento.
Towne, A. N., San Francisco.
Tracy, J. J., New York.
Torbert, C. J., San Francisco.
Tompkins, W. A., New York.
Van Doren, C. A.
Weil, Conrad, Sacramento.
Woods, Samuel, Sacramento.
Watson, J. B., Sacramento.
Welch, Benjamin, Sacramento.
Zumwalt, D. K., Sacramento.
Zeitler, Charles, Sacramento.

(The list of stockholders contained in the annual report of the Central Pacific Railroad Company for the year ending June 30th, 1876, is as follows:)

Names of stockholders and residence.

Alderson, F. S., Sacramento.
Adams, E. E., New York.
Ahrweiler, Leopold, New York.
Brown, Wm. E.
Blake, G. M.
Blackwood, Wm.
Brayton, Mrs. J. H.
Bowne, Mrs. E. L., San Francisco.
Bailey, Chas. A., Sacramento.
Crocker, Charles, San Francisco.
Crocker, E. B.
Cummings, C. H., Sacramento.
Chevalier, F., San Francisco.
Coolot, A., Sacramento.

Corning, John, San Francisco.
Cheeney, A. B., Sacramento.
Colton, David D., San Francisco.
Curtis, W. A., New York.
Dougherty, C. K., Sacramento.
Dod, S. B., trustee, New York.
Dunworth, Thomas, Sacramento.
Egl, A., Sacramento.
Evertsen, E., Albany, N. Y.
Foye, W. R. S., Sacramento.
Foster, F., Sacramento.
Folsom, L. D., Sacramento.
Gallatin, Albert, Sacramento.
Gates, Isaac E., New York, 15 W. 81st St.
Gage, S. T., San Francisco, asst. to prest. S. P., Oakland.
Gallier, John.
Huntington, C. P., New York.
Hopkins, Mark, San Francisco.
Hopkins, Moses.
Hopkins, E. W., San Francisco, 354 Pine.
463 Harbison, J. S., Sacramento.
Holbrook, Charles, Sacramento.
Huntington, C. P., agent, New York.
Hollister, H. H.
Ingram, Wm., Jr., Sacramento.
Kimball, F. R., Boston.
Knickerbocker & Co., New York.
Lambard, C. A., Boston.
Miller, E. M., Jr., San Francisco.
McDonald, R. N., New York.
Mahon, D. W., New York.
McLane, C. E., agt.
Merrill, Ambrose.
Madden, Jerome, San Francisco.
Muller, H.
Macken, James, 73 Sanchez.
Miller, E. S., San Francisco.
McCullough, A. D. W., San Francisco.
McKeon, W. C., New York.
Moody, William.
North, A. W., New York.
Osborn, D., Virginia City, Nev.
Phillips, R. J., New York.
464 Parker, Jno. C., New York.
Preece, A. R., San Francisco.

Porter, Wm., New York.
Pardee, E. H., New York.
Phillips, D. F.
Robinson, J. E., San Francisco.
Robinson, Robt., San Francisco.
Russell, J. D., estate of, New York.
Stanford, Leland, San Francisco.
Stanford, Leland, trustee, San Francisco.
Stanford, A. P.
Stanford, Charles.
Sturgeon, E. B.
Scheld, Philip, Sacto Bank, Sacramento.
Stewart, F. K., Sacramento.
Sherman, F. Z.
Seaton, W. N., San Francisco.
Scotchler, J. B.
Sachs, L. and M., San Francisco.
Safford, G. W., Sacramento.
Seaman, J. A., Sacramento.
Seaton, H. H., San Francisco, M. & S., 531 Clayton.
Schaw, Wm., Sacramento.
Scudder, Mrs. Mary, Sacramento.
St. John, E., New York.
Turton, Wm., Sacramento.
Towne, A. N., San Francisco.
Tracy, J. J., New York.
Torbert, C. J., San Francisco.
Tompkins, W. H.; New York.
Van Doren, C. A.
Veil, Conrad, Sacramento.
Woods, Samuel, San Francisco.
Watson, J. R., Sacramento.
Welch, Benjamin, Sacramento.
Zumwalt, D. K., Sacramento.
Zeitler, Charles, Sacramento.

The list of stockholders contained in the copy of the annual report the Central Pacific Railroad Company for the year ending June 1877, is as follows:)

Names of stockholders and residence.

Alderson, F. S., Sacramento.
Adams, E. E., New York.
Ahweiler, Leopold, New York.
Brown, Wm. E., dir. S. P., '88.

Blake, G. M.
Brown, Mrs. E. L., San Francisco.
Bailey, Chas. A., Sacramento.
Crocker, Charles, San Francisco.
Crocker, E. B.
Crocker, Charles F., San Francisco.
Cummings, C. H., Sacramento.
Chevalier, F., San Francisco.
Coolot, A., Sacramento.
Corning, John, San Francisco.
Cheney, A. B., Sacramento.
Colton, David D., San Francisco.
Curtis, W. R., New York.
Dougherty, C. K., Sacramento.
Dod, S. B., trustee, New York.
Dunworth, Thomas, Sacramento.
Egl, A., Sacramento.
Evertsen, E., Albany, N. Y.
Foye, W. R. S., Sacramento.
Forster, F., Sacramento.
Folsom, L. D., Sacramento.
467 Gallatin, Albert, Sacramento.
Gates, Isaac E., New York.
Gage, S. T., San Francisco.
Gallatin, John.
Huntington, C. P., New York.
Hopkins, Mark, San Francisco.
Hopkins, Moses.
Hopkins, E. W., San Francisco.
Hall, R. H., Sacramento.
Harbison, J. S., Sacramento.
Holbrook, Charles, Sacramento.
Ingram, Wm., Jr., Sacramento.
Kimball, F. R., Boston.
Knickerbocker & Co., New York.
Miller, E. H., Jr., San Francisco.
McDonald, R. H., New York.
McLane, C. E., agt.
Merrill, Ambrose.
Madden, Jerome, San Francisco.
Muller, H., 89 Broadway.

Macken, James.
Miller, E. S., San Francisco.
McCullough, A. D. W., San Francisco.
468 McKeon, W. C., New York.
Moody, William.
North, A. W., New York.
Osborn, D., Virginia City, Nev.
Phillips, R. J., New York.
Parkes, Jno. C., New York.
Preece, A. R., San Francisco.
Porter, Wm., New York.
Pardee, E. H., New York.
Phillips, D. T.
Robinson, J. E., San Francisco.
Robinson, Robt., San Francisco.
Russel, J. D., estate of, New York.
Stanford, Leland, San Francisco.
Stanford, Leland, trustee, San Francisco.
Stanford, A. P.
Sturgeon, E. B.
Scheld, Philip, Sacramento.
Stewart, T. K., Sacramento.
Seaton, H. H., San Francisco.
Scotchler, J. B.
Sachs, L. & M., San Francisco.
469 Safford, G. W., Sacramento.
Seaman, J. A., Sacramento.
Seaton, H. H., San Francisco.
Schaw, Wm., Sacramento.
Scudder, Mrs. Mary, Sacramento.
St. John, E., New York.
Turton, Wm., Sacramento.
Towne, A. N., San Francisco.
Tracy, J. J., New York.
Torbert, C. J., San Francisco.
Tompkins, W. A., New York.
Van Doren, C. A.
Weil, Conrad, Sacramento.
Watson, J. R., Sacramento.
Welch, Benjamin, Sacramento.
Zumwalt, D. K., Sacramento.
Zeitler, Charles, Sacramento.

470 PETITIONER'S EXHIBIT No. 16. SEPTEMBER 21, 1914.

(Comprising extracts from photographic copies certified by t Secretary of the Interior August 31, 1914, of annual reports filed the Southern Pacific Railroad Company from 1868 to 1877.)

(The list of stockholders contained in the copy of the annual r port of the Southern Pacific Railroad Company, dated Septemb 11, 1868, is as follows:)

Names and residence.

Lloyd Tevis, San Francisco, California; dead.
C. I. Hutchinson, San Francisco, California.
B. G. Lathrop, San Francisco, California.
J. B. Cox, San Francisco, California.
John F. Sears, San Francisco, California.
L. Upson, San Francisco, California.
W. B. Carr, San Francisco, California.
T. B. Shannon, San Francisco, California.
Charles Mayne, San Francisco, California.
Lewis Cunningham, San Francisco, California.
Estate of B. W. Hathaway (deceased), late of San Francisc California.
T. G. Phelps, San Mateo, California.
W. S. Rosecrans, Cincinnati, Ohio.
471 Wm. T. Coleman, New York, New York.
B. D. Murphy, Santa Clara Co., California.
James P. Luce, New Albany, Indiana.
Edgar Mills, Sacramento, California.
Charles F. Reed, Yolo County, California.

(The list of stockholders contained in the copy of the annual re port of the Southern Pacific Railroad Company, dated November 1 1869, is as follows:)

Names and residence.

Lloyd Tevis, San Francisco, California.
Henry E. Robinson, San Francisco, California.
Wm. E. Barron, San Francisco, California.
D. O. Mills, San Francisco, California.
Thomas Bell, San Francisco, California.
Lewis Cunningham, San Francisco, California.
William B. Carr, San Francisco, California.
A. E. Head, San Francisco, California.
B. B. Minor, San Francisco, California.
Edgar Mills, Sacramento, California.

472 (The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company, dated September 30, 1870, is as follows:)

Names and residence.

Lloyd Tevis, San Francisco, California.
J. B. Haggin, San Francisco, California.
Wm. E. Barron, San Francisco, California.
D. O. Mills, San Francisco, California.
Thomas Bell, San Francisco, California.
Wm. B. Carr, San Francisco, California.
A. E. Head, San Francisco, California.
B. B. Minor, San Francisco, California.
Edgar Mills, Sacramento, California.

(The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1871, is as follows:)

Names and residence.

Leland Stanford, Sacramento, California.
Chas. Crocker, Sacramento, California.
C. P. Huntington, New York, N. Y.
Mark Hopkins, Sacramento, California.
473 Charles Mayne, San Francisco, California.
Peter Donahue, San Francisco, California.
A. E. Head, San Francisco, California.
Lloyd Tevis, San Francisco, California.
H. M. Newhall, San Francisco, California.
County of San Mateo, California.

(The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1872, is as follows:)

County of San Mateo, California.
Contract & Finance Co., Sacramento, Cal.
Charles Crocker, Sacramento, Cal.
Peter Donahue, San Francisco, Cal.
C. P. Huntington, New York, N. Y.
Mark Hopkins, Sacramento, Cal.
A. E. Head, San Francisco, Cal.
Charles Mayne, San Francisco, Cal.

H. M. Newhall, San Francisco, Cal.
Leland Stanford, Sacramento, Cal.
Lloyd Tevis, San Francisco, Cal.
J. L. Willcutt, San Francisco, Cal.

474 (The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1873, is as follows:)

County of San Mateo, California.
Contract & Finance Co., Sacramento, Cal.
Chas. Crocker, Sacramento, Cal.
Peter Donahue, San Francisco, Cal.
C. P. Huntington, New York.
Mark Hopkins, Sacramento, Cal.
A. E. Head, San Francisco, Cal.
Chas. Mayne, San Francisco, Cal.
H. M. Newhall, San Francisco, Cal.
Leland Stanford, Sacramento, Cal.
Lloyd Tevis, San Francisco, Cal.
J. L. Willcutt, San Francisco, Cal.

474a (The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1874, is as follows:)

County of San Mateo, California.
Contract & Finance Compy., San Francisco, Cal.
Chas. Crocker, San Francisco, Cal.
D. D. Colton, San Francisco, Cal.
B. R. Crocker, Sacramento, Cal.
W. R. S. Foye, Sacramento.
S. T. Gage, Virginia City, Nevada.
Albert Gallatin, Sacramento, Cala.
C. P. Huntington, New York, N. Y.
Mark Hopkins, Sacramento, Cala.
A. E. Head, San Francisco, Cala.
E. W. Hopkins, Sacramento, Cala.
E. H. Miller, Jr., San Francisco, Cala.
Chas. Mayne, San Francisco, Cala.
Robert Robinson, Sacramento, Cala.
E. I. Robinson, Sacramento, Cala.

475 B. B. Redding, San Francisco, Cala.
Leland Stanford, Sacramento, Cala.
Lloyd Tevis, San Francisco, Cala.
J. L. Willcutt, San Francisco, Cal.

(The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1875, is as follows:)

County of San Mateo, California.
Contract & Finance Compy., San Francisco, Cal.
Chas. Crocker, San Francisco, Cal.
David D. Colton, San Francisco, Cal.
B. R. Crocker, Sacramento, Cal.
C. H. Cummings, Sacramento, Cal.
W. B. S. Foye, Sacramento, Cal.
S. T. Gage, San Francisco, Cala.
Albert Gallatin, Sacramento, Cala.
C. P. Huntington, New York, N. Y.
Mark Hopkins, San Francisco, Cala.
A. E. Head, San Francisco, Cala.
E. W. Hopkins, San Francisco, Cal.
E. H. Miller, Jr., San Francisco, Cala.
476 Jos. Huber, Jr., Los Angeles, Cal.
J. A. Hayward.
Robert Robinson, San Francisco, Cala.
E. I. Robinson, San Francisco, Cala.
B. B. Redding, San Francisco, Cala.
N. T. Smith, San Francisco, Cala.
Leland Stanford, San Francisco, Cala.
Lloyd Tevis, San Francisco, Cala.
J. L. Willcutt, San Francisco, Cala.
W. Woodworth, Los Angeles, Cala.

(The list of stockholders contained in the copy of the annual report of the Southern Pacific Railroad Company for the year ending June 30, 1876, is as follows:)

Charles Crocker, San Francisco, Cala.
David D. Colton, San Francisco, Cala.
Edward M. Dunbar, Connecticut.
S. T. Gage, San Francisco, Cala.
Isaac E. Gates, New York.
C. P. Huntington, New York.
Mark Hopkins, San Francisco, Cala.
E. H. Miller, Jr., San Francisco, Cala.
477 H. M. Newhall, San Francisco, Cala.
E. H. Pardee, New York.
Wm. Porter, Connecticut.
Robert Robinson, San Francisco, Cala.
N. T. Smith, San Francisco, Cala.
Leland Stanford, San Francisco, Cala.

J. L. Willcutt, San Francisco, Cala.
Western Development Co., San Francisco, Cala.
(The list of stockholders contained in the copy of the annual
port of the Southern Pacific Railroad Company for the year end
June 30, 1877, is as follows:)
Charles Crocker, California.
Chas. F. Crocker, California.
David D. Colton, California.
Edward M. Dunbar, Connecticut.
Issac E. Gates, New York.
S. T. Gage, California.
C. P. Huntington, New York.
Mark Hopkins, California.
E. H. Miller, Jr., California.
H. M. Newhall, California.
478 E. H. Pardee, New York.
Wm. Porter, Connecticut.
Robert Robinson, California.
N. T. Smith, California.
Leland Stanford, California.
J. L. Willcutt, California.
Western Development Co., California.

479 PETITIONER'S EXHIBIT No. 17, SEPTEMBER 21, 1914.

Central Pacific Railroad Company, stockholders' meeting he
April 12, 1898.

SAN FRANCISCO, CAL., *April 12, 1898.*

The annual meeting of the stockholders of the Central Pacific Ra
road Company was held this day in the office of the company, pu
suant to the by-laws and notices duly published.

Mr. Isaac L. Requa, president, took the chair and called the me
ing to order.

Messrs. William H. Mills, Charles P. Eells, and Stephen T. Gag
having been duly elected judges of election at a meeting of the boa
of directors held March 10, 1898, opened the polls and received th
ballots for directors of the following named persons for the numb
of shares of stock set opposite the names of each, respectively:

480 Banburg 332,5
Stanford 32,5
Huntington 92,5
Bretherton 32,5
Lansing, Est. & Misc .....
P. J. Co. .....

490,7

Name.	Authority.	Number of shares.
Central Pacific Railroad Shareholding Company (Limited).	W. Steel, proxy	332,509
L. Stanford, dead	Jane L. Stanford, extx	4,983
Jane L. Stanford, executrix	Self (32973)	27,990
C. H. Adams, 144 Eddy	C. P. Huntington, proxy	1,600
S. A. Blend, clerk Huntington's office	do	4,680
J. F. Clinch	do	4,120
Vaughn M. Coyne	do	1,340
J. J. Coyne	do	11,930
F. H. Davis, broker, New York	do	610
John H. Davis, 1940 Van Ness	do	2,170
George E. Dimock	do	100
George E. Downs	do	470
I. E. Gates, 15 W. 81st St., New York	do	500
H. M. Hoyt	do	140
C. P. Huntington, dead	Self	100
H. E. Huntington, defendant	do	360
E. D. Lacy	C. P. Huntington, proxy	2,340
E. H. Pardee, clerk to Huntington	do	5,250
D. A. Rose, clerk to Huntington	do	21,130
Wm. Shillaber	do	5,520
41 A. K. Vandeventer, treas., N. York	do	11,650
S. A. Vanderveer	do	14,459
W. A. Weber, musician, 3294 (?) 26th	do	4,040
H. V. Allen	Charles P. Eells, proxy	10
James Arnold	do	20
Joseph Boyle	do	20
C. E. Bretherton, dead (?)	do	31,383
E. J. McCutchen, McCutcheon, Olney & Willard	do	10
Percy M. Burton	do	20
Alexander Cleland, 772 Clementina	do	300
James Dalrymple	do	40
Charles H. Krohne	do	30
Charles Page, 312 Mason	do	10
Patterson, Newlands & Co	do	10
Jos. Robinson	do	100
Alfred Robson	do	30
H. T. Scott, chm'n of b'd, Merc. Nat. B'k, P. T. & T. Co.	do	10
Horace W. Snow	do	70
Thomas W. Sorby	do	160
Ed. Stevens, Edw. D., engr., 25 (?) San Carlos Ave.	do	20
H. B. Thomas & Co., C. H. brokers, 510 Battery	do	90
E. L. Griffiths	do	10
John W. H. Greene, Jno. W., 231 Gough	do	10
42 J. H. Freeman	do	60
W. H. Forster	do	100
Jane Fearnaides	do	50
Charles P. Eells, atty. Ins. Ex. Bldg	Self	10
Isaac L. Requa, prest. C. P	do	1
Wm. H. Mills, Mrs. Elizabeth, 306 Laurel land agent C. P. & director.	do	1
W. M. Thompson, secy. S. P. Co	do	1
N. T. Smith, treas. S. P. Co., dead	do	14
G. L. Lansing, secy. & controller S. P. Co., dead.	E. C. Wright, extr	3
Pacific Improvement Company	F. S. Douty, secretary, dir. S. P. Co., dead.	203
Total		490,787

At three (3) o'clock p. m. the polls were closed, the judges of ele
tion counted and canvassed the votes and declared the result, a
follows:

STATE OF CALIFORNIA,

City and county of San Francisco, ss:

We, the undersigned, judges of election at the election held at th
annual meeting of the stockholders of the Central Pacific Railroa
Company, in the city and county of San Francisco, on the 12th da
of April, 1898, hereby certify that we have received, counted, an
canvassed the votes cast; that the whole number of votes cas
483 was 490,787; that the following-named persons received th
number of votes set opposite the name of each for director o
said company, to wit:

1. Isaac L. Requa received 490,787 votes. Dead.
2. Wm. H. Mills received 490,787 votes. Dead.
3. C. E. Bretherton received 490,787 votes. Dead.
4. F. E. Spencer received 490,787 votes. Dead.
5. Charles P. Eells received 490,787 votes. San Fran.
6. J. C. Kirkpatrick received 490,787 votes. Dead.
7. W. M. Thompson received 490,787 votes. (?)

And we further certify that the above-named persons having
received all the votes cast, the same being a majority of all the
capital stock of the company, were duly elected directors for the
ensuing year.

[Corporate seal.]

WM. H. MILLS,
Judge of Election.
CHAS. P. EELLS,
Judge of Election.
S. T. GAGE,
Judge of Election.

Attest:

W. M. THOMPSON, *Secretary.*

There being no further business, the minutes were read and ap-
proved and the meeting adjourned.

484 I, W. M. Thompson, secretary of the Central Pacific Rail-
road Company, do hereby certify that the foregoing is a full,
true, and correct copy of the minutes of the annual meeting of the
stockholders of said company held in the office of the company on the
twelfth (12) day of April, 1898, as appears by the record of the pro-
ceedings of the board of directors of said company in my custody
as said secretary.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said Central Pacific Railroad Company this twenty-first (21) day of January, A. D. 1899.

W. M. THOMPSON, *Secretary.*

[Central Pacific Railroad Company. Seal.]

485 PETITIONER'S EXHIBIT No. 18, SEPTEMBER 21, 1914.

[Extract from the executive documents of the Senate of the United States for the first session of the Fiftieth Congress, 1887–88, volume 5, pages 4258 and 4259.]

Agreement of the Transcontinental Association.

Resolved: (1) San Francisco and Portland shall be regarded as common points in the matter of rates to and from eastern common or competitive points.

(2) The through rates via all routes to and from Portland via San Francisco and to and from San Francisco via Portland shall be the same upon business exchanged with eastern common or competitive points in the United States or Canadas.

(3) All business passing through San Francisco to or from points north of the Oregon-California State line shall be delivered to the line of the Oregon Railway and Navigation Company, Pacific Coast Steamship Company, or Oregon Improvement Company, in consideration of which the companies named will give to the southern routes a rebate of 20 per cent from the tariff rate—which shall not be increased—between San Francisco or Portland and points north.

It is further agreed that in the event of ocean competition be-
486 tween San Francisco and said northern points the steamship lines of the above-named companies will guarantee protection against rates made by other steamships not controlled, subsidized, or chartered by any of the lines parties to this agreement.

Rates on business to and from points north of the Oregon and California State line, when carried via San Francisco, except the business of Portland and the canned-salmon business of Astoria, shall be made by adding to the Portland or San Francisco rates a charge which shall not be less than the local charge of the Northern Pacific Railroad between Portland and such points nor more than the present established rates between San Francisco and such points less the 20 per cent rebate hereinbefore guaranteed.

(4) The through rates between eastern through or competitive points and points in California other than San Francisco for business forwarded via Portland shall be made by adding to the through rates between said eastern points and San Francisco the current local rates of the regular established transportation lines which may carry the business between said California points and San Francisco.

487 (5) All lines here represented solemnly agree to maintain the rates now in force, or which may hereafter be mutually agreed upon, between San Francisco and Portland, on the one hand, and eastern through or competitive points in the United States or Canadas on the other hand, without cut, rebate, or deviation in any manner, it being the understanding that the giving of passes or reduced fares to, or upon request of, or for account of shippers or consignees or their families, or to any person, for the purpose of influencing business, or the payment of any ticket commissions, shall be regarded as a violation of this agreement, subjecting the offender to the penalties hereinafter provided.

(6) From and after the date of this agreement no street commission or ticket rebate on eastbound overland tickets will be paid by the companies parties hereto; and connecting eastern lines shall be requested by the commission hereafter to be appointed to discontinue the payment of street commissions and rebates to passengers, and the making of any cuts whatever from established through rates; and should any such railroad company fail or refuse to comply with such requests, it shall be the duty of the com-
488 missioner to notify the Pacific coast terminal companies, which shall then suspend the sale of all tickets over the lines so failing or refusing for so long a time as the commissioner may direct.

And further, the Pacific coast terminal companies shall, through the commissioner, redeem (within five days from date of issue), at the full amount received by them therefor, any and all through tickets of their respective issues, purchased by or for passengers, at such times and under such circumstances as may be deemed best by the commissioner.

(7) All special contracts binding shippers to one or more of the parties hereto shall be immediately thrown open to each and every other party to this agreement, and contracting shippers shall be notified to that effect.

(8) A commissioner shall be appointed whose salary and expenses shall be paid jointly by the parties hereto in proportion as the earnings from the business subject to this agreement are shared by each.

(9) Said commissioner shall arbitrate all disputes arising under this agreement between the parties thereto, and his decision shall be final and binding upon all. Complaints by one or more parties against other parties hereto shall be made in writing to the
489 commissioner, who shall promptly investigate and give judgment according to the facts, within thirty days, unless more time shall seem to be necessary for full inquiry and consideration upon the part of the commissioner.

(10) If any party hereto is adjudged by the commissioner to have deviated from the established rates, said party shall be fined for each offense three times the amount of earnings which would have accrued from the business had it been taken at the regularly established rates, but not less in any case than $500.

(11) Each party hereto shall deposit with some solvent bank, to the order of the commissioner, the sum of $5,000, and shall keep that sum so deposited. From said sum all fines shall be collected by the commissioner.

(12) The fines collected by the commissioner shall be distributed among the nonoffending parties hereto in proportion to their earnings from the business, subject to this agreement.

(13) The commissioner shall have access to all books and papers of the parties hereto which have a bearing upon the Pacific coast traffic, which is the subject of this agreement.

490 (14) It is also agreed that, so far as practicable, the parties to this agreement will protect the through rates and carry out all instructions that may be issued by the commissioner in order to protect the through rates, so that one line may not have any advantage over any other line.

(15) Said commissioner shall be promptly supplied at the close of each day's business with a legible impression copy of the waybills for all freight covered by this agreement, and shall be supplied by each of the parties hereto with such other statistics and statements, as he may desire, as to the business done by them and covered by this agreement.

(16) It is agreed that a new passenger tariff will be issued as soon as practicable, and in case the lines can not agree on rates the commissioner will settle all the differences that may come up, such as giving side rides and other matters. His action will be final.

(17) It is agreed that the subsidy now paid the Pacific Mail Steamship Company for its steamers between San Francisco and New York shall be borne by the several companies here represented in the proportions of their revenue from the San Francisco business covered by this agreement.

491 (18) It is understood and agreed that the Pacific mail business between New York and San Francisco shall be managed fairly and impartially in the interests of all lines concerned and shall not be used as a means of securing business for any one or more of these lines as against others, and that any complaints upon this subject shall be referred to and decided by the commissioner, subject to the same fine that is provided for the cutting of rates, it being understood that the commissioner's relations to the Pacific mail business between New York and San Francisco shall be the same as

his relations to the other business which is the subject of this agreement.

(19) This agreement shall take effect October 1, 1883, and continue in force until December 31, 1884, or until ninety days' written notice shall have been given to the commissioner, by one or more parties hereto, of a desire or intention to withdraw therefrom.

Done at San Francisco, California, this 28th day of September, 1883.

For the Atchison, Topeka and Santa Fe Railroad Company, J. F. Goddard, traffic manager.

Burlington and Missouri River Railroad, by T. J. Potter, vice-president.

492 Central Pacific Railroad Company, by A. N. Towne, general manager.

Denver and Rio Grande Railway, by B. C. Dodge, vice-president and general manager.

Galveston, Harrisburg and San Antonio Railway Company, by A. N. Towne, general manager.

Northern Pacific Railroad Company, by John Muir, superintendent of traffic.

Southern Pacific Railway Company, by A. N. Towne, general manager.

The Texas and Pacific Railway Company, by H. M. Hoxie, third vice-president.

Union Pacific Railway Company, by S. H. H. Clark, general manager.

493 PETITIONER'S EXHIBIT No. 19, SEPTEMBER 21, 1914.

[Extract from the executive documents of the Senate of the United States for the first session of the Fiftieth Congress, 1887–1888, volume 5, pages 4260-4261.]

AGREEMENT OF THE TRANS-CONTINENTAL ASSOCIATION.

TOPEKA, KANS., *November 8, 1883.*

The agreement of the Trans-Continental Association, dated September 28, 1883, is hereby altered and amended to read as follows:

Section 4 is amended by substituting the word "Portland" for the word San Francisco in the last two places in said section in which the word San Francisco occurs.

Sections 1, 2, and 3 are cancelled, and the following classes substituted therefor:

Rates between San Francisco, on the one hand, and Galveston, Council Bluffs, Omaha, Kansas City, and intermediate points on the

Missouri River and points common therewith, on the other, shall be the same as the rates between Portland, on the one hand, and Saint Paul, Minneapolis, Minnesota Transfer, Duluth, and Superior, and points common therewith, on the other.

Rates between San Francisco and the Northern Pacific Rail-
494 road's eastern terminals and points east thereof via Portland shall be made by adding to the agreed Portland rates as herein provided for, the established ocean tariff.

Rates between points north of the Oregon and California State line and eastern points via San Francisco shall be made by adding to the agreed San Francisco rates, herein provided for, the established ocean tariff.

In consideration of the foregoing the Northern Pacific and the Oregon Railroad and Navigation Company shall be paid by the other lines, parties hereto, in the manner hereinafter provided, 6 per cent of the gross earnings accruing to the said other lines on business between or passing through eastern points herein named and San Francisco, except business received from or delivered to the Occidental and Oriental Steamship Company or the Pacific Mail Steamship Company, it being understood that the Northern Pacific Railroad and the Oregon Railroad and Navigation Company share in the subsidy to be paid the Pacific Mail Steamship Company in accordance with section seventeenth.

Settlements to be made monthly on receipt of the commissioner's statement of the net balance.

It being understood that the Trans-Continental agreement,
495 as now modified, shall not in any way affect the rights of the Oregon Short Line Railway Company or the Utah and Northern Railway Company under their contracts with the Northern Pacific Railroad Company and the Oregon Railway and Navigation Company.

Provided, That the Utah and Northern Railway shall not make lower rates to or from San Francisco via Portland, than the rates made to and from San Francisco direct by the parties hereto.

Provided, That whenever the percentages of any of the members of this association are hereafter changed, or whenever any new members are admitted to this association, the percentages of all the members shall be revised according to the rules of this association.

4. The through rates between eastern through or competitive points and points in California other than San Francisco, for business forwarded via Portland, shall be made by adding to the through rates between said eastern points and Portland the current local rates of the regular established transportation lines, which may carry the business between said California points and Portland.

496 5. All lines here represented solemnly agree to maintain the rates now in force, or which may hereafter be mutually agreed upon, between San Francisco and Portland, on the one hand, and eastern through or competitive points in the United States or Canadas, on the other hand, without cut, rebate, or deviation in any manner; it being the understanding that the giving of passes or reduced fares to, or upon request of, or for the account of, shippers or consignees or their families, or to any person for the purpose of influencing business, or the payment of any ticket commissions, shall be regarded as violation of this agreement, subjecting the offender to the penalties hereinafter provided.

6. From and after the date of this agreement no street commission or ticket rebate on eastbound overland tickets will be paid by the companies parties hereto; and connecting eastern lines shall be requested by the commissioner hereafter to be appointed to discontinue the payment of street commissions and rebates to passengers, and the making of any cuts whatever from established through rates; and should any such railroad company fail or refuse to comply with such requests, it shall be the duty of the commissioner to notify the Pacific Coast Terminal Companies, which shall then suspend the sale of all tickets over the lines so failing or refusing, for so long a time as the commissioner may direct.

497 And, further, the Pacific Coast Terminal Companies shall, through the commissioner, redeem within five (5) days from the date of issue, at the full amount received by them therefor, any and all through tickets of their respective issues, purchased by or for passengers, at such times and under such circumstances as may be deemed best by the commissioner.

7. All special contracts binding shippers to one or more of the parties hereto shall be immediately thrown open to each and every other party to this agreement, and contracting shippers shall be notified to that effect.

8. A commissioner shall be appointed, whose salary and expenses shall be paid jointly by the parties hereto in proportion as the earnings from the business subject to this agreement are shared by each.

9. Said commissioner shall arbitrate all disputes arising under this agreement between the parties hereto, and his decision shall be final and binding upon all. Complaints by one or more parties against other parties hereto shall be made in writing to the commissioner, who shall promptly investigate and give judgment according to the facts within thirty days, unless more time shall seem to be necessary for full inquiry and consideration on the part
498 of the commissioner.

10. If any party hereto is adjudged by the commissioner to have deviated from the established rates, said party shall be fined

for each offense three times the amount of earnings which would have accrued from the business had it been taken at the regularly established rates, but not less, in any case, than $500.

11. Each party hereto shall deposit with some solvent bank, to the order of the commissioner, the sum of $5,000, and shall keep that sum so deposited. From said sum all fines shall be collected by the commissioner.

12. The fines collected by the commissioner shall be distributed among the nonoffending parties hereto in proportion to their earnings from the business, subject to this agreement.

13. The commissioner shall have access to all books and papers of the parties hereto which have a bearing upon the Pacific coast traffic, which is the subject of this agreement.

14. It is also agreed that, so far as practicable, the parties to this agreement will protect the through rates and carry out all
499 instructions that may be issued by the commissioner in order to protect the through rates, so that one line may not have any advantage over any other line.

15. Said commissioner shall be promptly supplied at the close of each day's business with a legible impression copy of the waybills for all freight covered by this agreement and shall be supplied by each of the parties hereto with such other statistics and statements as he may desire as to the business done by them and covered by this agreement.

16. It is agreed that a new passenger tariff will be issued as soon as practicable, and in case the lines can not agree on rates the commissioner will settle all the differences that may come up, such as giving side rides, and other matters. His action will be final.

17. It is agreed that the subsidy not paid the Pacific Mail Steamship Company for its steamers between San Francisco and New York shall be borne by the several companies here represented in the proportions of their revenue from the San Francisco business covered by this agreement.

18. It is understood and agreed that the Pacific Mail business between New York and San Francisco shall be managed fairly and impartially, in the interests of all lines concerned, and shall not be used as a means of securing business for any one or more of
500 these lines as against others, and that any complaints upon this subject shall be referred to and decided by the commissioner, subject to the same fine that is provided for the cutting of rates.

It being understood that the commissioner's relations to the Pacific Mail business between New York and San Francisco shall be the same as his relations to the other business which is the subject of this agreement.

19. This agreement shall take effect October 1, 1883, and continue in force until December 31, 1884, or until ninety days' written notice shall have been given to the commissioner by one or more parties hereto of a desire or intention to withdraw therefrom.

Done at San Francisco, Cal., this 28th day of September, 1883.

For the Atchison, Topeka and Santa Fe Railroad Company, J. F. Goddard, traffic manager.

For the Burlington and Missouri River Railroad, T. J. Potter, vice president.

For the Central Pacific Railroad Company, A. N. Towne, general manager.

For the Denver and Rio Grande Railway, D. C. Dodge, vice president and general manager.

501 For the Galveston, Harrisburg and San Antonio Railroad Company, A. N. Towne, general manager.

For the Northern Pacific Railroad Company, John Muir, superintendent of traffic.

For the Southern Pacific Railroad Company, A. N. Towne, general manager.

For the Texas and Pacific Railway, H. M. Hoxie, third vice president.

For the Union Pacific Railway Company, S. H. H. Clark, general manager.

502 PETITIONER'S EXHIBIT No. 20, SEPTEMBER 21, 1914.

Union Pacific Railroad Company, Southern Pacific Company, Central Pacific Railway Company, Southern Pacific Railroad Company, and Oregon Short Line Railroad Company.

Agreement dated February 8, 1913.

503 Agreement, made this eighth day of February, 1913, by and between Union Pacific Railroad Company, a corporation of the State of Utah; Southern Pacific Company, a corporation of the State of Kentucky; Central Pacific Railway Company, a corporation of the State of Utah; Southern Pacific Railroad Company, a corporation of the States of California, Arizona, and New Mexico; and Oregon Short Line Railroad Company, a corporation of the State of Utah.

Whereas the Union Pacific Railroad Company has, from time to time, acquired, in its own name or in the name of the Oregon Short Line Railroad Company, shares of the capital stock of the Southern Pacific Company to the aggregate amount of one hundred twenty-six million six hundred fifty thousand dollars ($126,650,000), par

ue, and said entire amount is now held by the Oregon Short
e Railroad Company. The Supreme Court of the United States
an opinion rendered on the 2d day of December, 1912, on the
peal of the United States of America from a decree entered by
Circuit Court of the United States in and for the District of
ah in a suit in which the United States of America was com-
inant and the Union Pacific Railroad Company, Southern
Pacific Company, and others were respondents (hereinafter
designated as the "merger suit"), held that the acquisition
and ownership by the Union Pacific Railroad Company and
Oregon Short Line Railroad Company of said capital stock of
Southern Pacific Company constituted an unlawful combina-
n, and directed that said capital stock of the Southern Pacific
mpany be disposed of, subject to the approval of the District
urt of the United States in and for the District of Utah, in such
nner as to effectually dissolve said combination. The Southern Pa-
c Company owns the entire outstanding capital stock, common and
ferred, of the Central Pacific Railway Company, except qualifying
res held by the directors of said company. Since the aforesaid
ision of the Supreme Court of the United States in the merger
t the Union Pacific Railroad Company has surrendered all con-
l of the management of the Southern Pacific Company, and di-
tors and other officers of the Southern Pacific Company have
n elected and appointed who have no official relation with the
ion Pacific Railroad Company. The Attorney General of the
ited States, as counsel for the complainant in the merger suit,
l the parties hereto, desire that, as an incident of the proceedings
for the dissolution of the combination held illegal in that suit,
the control of the railroads and appurtenant property of the
Central Pacific Railway Company, with certain exceptions,
ll be transferred from the Southern Pacific Company to the
ion Pacific Railroad Company. The Southern Pacific Company,
ough its reconstituted board of directors, has offered to sell to
Union Pacific Railroad Company, and the Union Pacific Rail-
d Company is willing to purchase, all the right, title, and interest
the Southern Pacific Company in and to the capital stock of the
ntral Pacific Railway Company and in and to the capital stock of
Central Pacific Railroad Company (held by the Southern Pa-
c Company as a muniment of title), for the consideration and
on the terms expressed in the following agreement, in the event
t the amount necessary to pay such consideration can be realized
the sale, in the manner hereinafter set forth, of the capital stock
the Southern Pacific Company now held by the Oregon Short
e Railroad Company. It is proposed by the Oregon Short Line
ilroad Company, subject to the approval of the District Court of

the United States for the District of Utah, to offer the entire amou
of its holdings of the capital stock of the Southern Pacific Compa
for sale to the stockholders of the Union Pacific Railro
506 Company and the stockholders (other than the Union P
cific Railroad Company and the Oregon Short Line Railro
Company) of the Southern Pacific Company, in the manner here
after in this agreement indicated. The aforesaid capital stock
said Central Pacific Railway Company to the amount of sixty-sev
million two hundred seventy-four thousand two hundred dolla
($67,274,200), par value, of common capital stock, and seventee
million four hundred thousand dollars ($17,400,000), par value,
preferred capital stock, being the entire outstanding capital sto
of said company, except thirteen hundred dollars ($1,300), par valu
is now pledged with the Union Trust Company of New York,
trustee, under a mortgage executed by said Southern Pacific Co
pany, dated August 1, 1899, to secure an issue of bonds of said Sout
ern Pacific Company, known as its "four per cent gold bonds (Centr
Pacific stock collateral)," now outstanding to the amount of thirt
four million two hundred eighteen thousand five hundred dolla
($34,218,500), par value, of which five million four hundred fort
nine thousand dollars ($5,449,000), par value, are now owned
the Union Pacific Railroad Company.

Now, therefore, the parties hereto agree as follows:

507 FIRST.

1. The Southern Pacific Company hereby agrees to sell, assign, a
transfer to Union Pacific Railroad Company, and the Union Paci
Railroad Company hereby agrees to purchase, upon the terms here
after expressed, all the right, title, and interest of the South
Pacific Company in and to sixty-seven million two hundred seven
five thousand five hundred dollars ($67,275,500), par value, of
common capital stock, and seventeen million four hundred thous
dollars ($17,400,000), par value, of the preferred capital stock, of
Central Pacific Railway Company, being the entire capital stock
said company outstanding; and all the right, title, and interest of
Southern Pacific Company in and to sixty-seven million two hund
thirty-five thousand eight hundred dollars ($67,235,800), par va
of the capital stock of the Central Pacific Railroad Company, be
the entire amount of the capital stock of said company owned or h
by the Southern Pacific Company.

2. The Southern Pacific Company hereby agrees, immediately u
the effective date of this agreement, to secure the resignation of
then existing directors of the Central Pacific Railway C
508 pany and the due and regular election in their stead, as s

directors, of such persons as the Union Pacific Railroad Company shall have nominated for election as such directors, and to cause the shares to the amount of thirteen hundred dollars ($1,300), par value, of the common capital stock of the Central Pacific Railway Company, now registered in the names of the existing directors of the Central Pacific Railway Company, to be transferred to and registered on the books of said company in the names of the aforesaid nominees of the Union Pacific Railroad Company, and to cause the certificates for said shares to be duly delivered to such nominees.

3. The Southern Pacific Company hereby agrees, immediately upon the effective date of this agreement, to cause to be transferred to and registered on the books of the Central Pacific Railway Company and the Central Pacific Railroad Company, respectively, in the name of the Union Pacific Railroad Company all the certificates representing the sixty-seven million two hundred seventy-four thousand two hundred dollars ($67,274,200), par value, of common capital stock, and seventeen million four hundred thousand dollars ($17,400,000), par value, of preferred capital stock of the Central Pacific Railway Company, now pledged with the Union Trust Company of New York, as trustee, as security for the Southern Pacific Company's four per cent gold bonds (Central Pacific stock collateral), and sixty-seven million six thousand three hundred dollars ($67,006,300), par value, of the capital stock of the Central Pacific Railroad Company pledged with said Union Trust Company of New York, as trustee, under a supplemental mortgage, dated December 29, 1899, as a further assurance for the payment of said bonds, and to cause the new certificates therefor, endorsed in blank by the Union Pacific Railroad Company, to be redeposited with said Union Trust Company of New York, subject, however, to a lien in favor of the Southern Pacific Company upon said stock certificates, if and when the same shall be released from the lien of said mortgages, to secure the payment of any and all instalments of the consideration expressed in section 7 hereof then remaining unpaid.

4. The Southern Pacific Company hereby agrees, immediately upon the effective date of this agreement, to assign and deliver to Union Pacific Railroad Company the certificates representing two hundred seventeen thousand dollars ($217,000), par value, of the capital stock of the Central Pacific Railroad Company now held in its treasury, and all letters of indemnity and other papers evidencing the ownership of an additional twelve thousand five hundred dollars ($12,500), par value, of said Central Pacific Railroad Company capital stock, and whenever requested by the Union Pacific Railroad Company to secure the resignation of the then existing directors of the Central Pacific Railroad Company

and the due and regular election in their stead, as such directors, of such persons as the Union Pacific Railroad Company shall have nominated therefor.

5. The Southern Pacific Company hereby agrees, immediately upon the effective date of this agreement, to execute and deliver to the Central Pacific Railway Company as an instrument releasing, cancelling, and surrendering the indentures of lease, dated February 17, 1885, and December 7, 1893, by and between the Central Pacific Railroad Company and the Southern Pacific Company, and the supplemental lease, dated March 1, 1912, by and between the Central Pacific Railway Company and the Southern Pacific Company, and all other agreements supplementary to or in modification of said instruments, under and by virtue of which the Southern Pacific Company now holds and operates the railroads and other properties of the Central Pacific Railway Company.

511 6. The Union Pacific Railroad Company and the Oregon Short Line Railroad Company hereby agree to offer to all stockholders, common and preferred, of the Union Pacific Railroad Company and to all stockholders of the Southern Pacific Company (except the Union Pacific Railroad Company and the Oregon Short Line Railroad Company), registered on the stock books of said companies, respectively, on a date specified in such offer, the right to subscribe for and purchase the entire amount of one hundred twenty-six million six hundred fifty thousand dollars ($126,650,000), par value, of the capital stock of the Southern Pacific Company now held by the Oregon Short Line Railroad Company, in the proportions and upon the terms hereinafter specified. Each such stockholders of the Union Pacific Railroad Company shall be offered the right to subscribe for and purchase one share of said capital stock of the Southern Pacific Company for each four shares of capital stock of the Union Pacific Railroad Company, common or preferred, registered in his name on the stock books of said Union Pacific Railroad Company; and each such stockholder of the Southern Pacific Company shall be offered the right to subscribe for and purchase one share of said capital stock of the Southern Pacific Company for

512 each three shares of capital stock of the Southern Pacific Company registered in his name on the stock books of said Southern Pacific Company. Such offer shall specify, as the date on or before which all subscriptions shall be made (hereinafter called the "subscription date"), a date not exceeding thirty days after the effective date of this agreement. The subscription and purchase right offered shall be a right to purchase at the subscription price of $80 per share, and accrued dividend, payable as follows, viz: Twenty-five per cent thereof to accompany the subscription; twenty-five per cent

thereof to be paid substantially three months after the subscription date; twenty-five per cent thereof to be paid substantially six months after the subscription date; and the remaining twenty-five per cent thereof to be paid substantially nine months after the subscription date; with interest on the deferred instalments of such subscription price from the subscription date at a rate per cent per annum equal to the accrued dividend, with an option, however, to each subscriber to anticipate the maturity of any deferred instalment of the subscription price, at any time upon the payment of the amount of such instalment and the accrued interest thereon to the date of payment. The terms of said subscription rights shall provide that all voting and dividend rights incident to the stock so purchased shall vest in the subscribers upon the acceptance of their subscriptions, but that the stock certificates to which the subscribers shall be entitled by virtue of their subscriptions shall be held as collateral security for the payment of the deferred instalments of the subscription price, with full power to sell said stock at public or private sale, and without notice, upon default in the payment of any instalment of such subscription price. The Southern Pacific Company hereby agrees to furnish a certified list of its stockholders entitled to participate in such subscription rights, to issue promptly all stock certificates requested by the Union Pacific Railroad Company for delivery to subscribers, upon surrender by the Union Pacific Railroad Company or the depositary, in due form for transfer, of certificates for a equal amount of stock, and to take all such other action as may be necessary to facilitate the initiation and accomplishment of the plan herein provided for.

7. The Union Pacific Railroad Company hereby agrees to pay and render, and the Southern Pacific Company hereby agrees to accept, as the full consideration and purchase price of the capital stock of the Central Pacific Railway Company and the capital stock of the Central Pacific Railroad Company to be purchased by it as hereinbefore provided and as the full consideration for the performance by the Southern Pacific Company of the obligations expressed in the foregoing sections 2, 3, 4, and 5, as follows:

(a) Fourteen million sixty-five thousand four hundred forty-one dollars ($14,065,441) in cash, with interest thereon at the rate of five per cent per annum from the first day of January, 1913, immediately upon the performance by the Southern Pacific Company of the obligations expressed in the foregoing sections 3 and 5.

(b) To surrender and deliver to the Southern Pacific Company, duly cancelled, immediately upon the performance by the Southern Pacific Company of the obligations expressed in the foregoing sections 3 and 5, four per cent gold bonds (Central Pacific stock col-

lateral) of the Southern Pacific Company to the principal amoun
five million four hundred and forty-nine thousand dollars ($5,4
000), par value, now held by the Union Pacific Railroad Compa
and to pay an amount equal to interest at the rate of five per cen
the principal amount of said bonds from the first day of J
515 uary, 1913, less the interest accrued on the bonds so surrend
from the first day of December, 1913, to the date of
surrender.

(c) The net proceeds of the sale, made in accordance with
plan contemplated in the foregoing section 6, of 846,755 shares of
capital stock of the Southern Pacific Company of the par valu
eighty-four million six hundred seventy-five thousand five hund
dollars ($84,675,500), now held by the Oregon Short Line Railr
Company, being the gross proceeds of the sale of said 846,755 sh
at ninety-eight dollars and sixty-seven cents ($98.67) per sh
less an underwriters' commission of three per cent and an allow
to said underwriters of not exceeding one-quarter of one per cent
expenses; such payment to be made in instalments as follo
Twenty-five per cent of the gross proceeds of the said sale, less
aforesaid commission and expenses of underwriting assumed by
Southern Pacific Company, to be payable on the subscription d
and the balance to be paid in three equal instalments, each consis
of twenty-five per cent of the gross proceeds of said sale, paya
respectively, substantially three, six and nine months after the
scription date, with interest on each of said four instalments, at
rate of five per cent per annum from the first day of Janu
516 1913, until paid. The Union Pacific Railroad Company s
have the right or option to pay any instalment, or any par
any instalment, of said consideration and purchase price at any
prior to the dates above fixed, and upon the making of any
payment or payments interest shall cease in respect to the sum
sums so paid. All interest due as aforesaid shall be paid by
Union Pacific Railroad Company semiannually on July 1 and J
ary 1, the first payment to be made on July 1, 1913. Provided, h
ever, that, if the Union Pacific Railroad Company prior to the
ment of the consideration and purchase price as aforesaid shall
elected, pursuant to the option hereinafter accorded it, to requir
redemption by the Southern Pacific Company of the Southern
cific Company's four per cent gold bonds (Central Pacific stock
lateral), and shall have notified the Southern Pacific Compan
such election, the Union Pacific Railroad Company shall not b
quired to pay on account of the cash payments aforesaid an am
exceeding, exclusive of interest payments, the sum of forty-e
million five hundred thousand dollars ($48,500,000), unless and

the Southern Pacific Company shall deliver to the Union Pacific Railroad Company or its order the certificates representing all the shares of the capital stock of said Central Pacific Railway
517 Company, and of the Central Pacific Railroad Company, now pledged with the Union Trust Company of New York, as trustee, to secure the Southern Pacific Company's outstanding four per cent gold bonds (Central Pacific stock collateral), released and discharged from the lien of the mortgages securing said bonds and free from all other liens and charges; and that, upon the tender by the Southern Pacific Company of delivery of all the certificates of capital stock of the Central Pacific Railway Company and Central Pacific Railroad Company now pledged with the Union Trust Company of New York, as aforesaid, released, discharged, and free from all liens and charges, as aforesaid, all payments theretofore deferred, because of the inability of the Southern Pacific Company previously to deliver the same, shall immediately be made together with interest thereon at the rate and at the dates herein provided. And provided further, that the Union Pacific Railroad Company shall be entitled to five days of grace in the payment of the four instalments of the cash consideration described in the foregoing subdivision (c) of this section, from and after the receipt by it from the subscribers, or from the underwriters, of the proceeds of sale constituting such instalment.

518 8. The Southern Pacific Company hereby agrees, whenever requested by the Union Pacific Railroad Company, to call for redemption the entire amount of its four per cent gold bonds (Central Pacific stock collateral) then outstanding under the aforesaid mortgage and supplemental mortgage dated August 1, 1899, and December 29, 1899, persuant to the provisions of said mortgage regarding redemption, and to redeem and pay said bonds and to take all action and proceedings necessary to release and completely discharge the lien of said mortgages so that the certificates representing the capital stock pledged thereunder may be surrendered and delivered to the Union Pacific Railroad Company upon its making final payment therefor: Provided, however, That the Union Pacific Railroad Company, in the event of its requesting such redemption, shall lend or cause to be loaned to said Southern Pacific Company the amount necessary to pay the principal of the bonds so called for redemption or so much thereof as the Southern Pacific Company shall request, such loan to be secured by an issue of the bonds of the Southern Pacific Company equal to the principal amount of said loan, payable ten years from the date of issue thereof, with interest thereon at the rate of four per cent per annum, pay-
519 able semiannually, and to be issued under an indenture, in

form approved by counsel for the Union Pacific Railroad Co
pany, and containing the usual provisions for the maturity of pri
cipal in case of default in the payment of any instalment of intere
and for the sale, in the event of default in the payment of the pri
cipal or of any instalment of interest, of any security pledged f
the payment of said bonds. The same bonds shall be secured
collateral satisfactory in amount and character to the Union Paci
Railroad Company. In case there shall then be in the possession a
control of the Southern Pacific Company stocks and bonds no
pledged under the indenture dated March 1, 1911, between the Ce
tral Pacific Railway Company, Southern Pacific Company, a
United States Trust Company of New York, as trustee (hereinaft
designated as the "European loan debenture"), released from th
lien and restrictions of said European loan indenture, to an aggrega
amount equal, at the valuations assigned to them in the Europe
loan indenture, to the principal amount of the loan made by th
Union Pacific Railroad Company to the Southern Pacific Compan
as aforesaid, such stocks and bonds to such aggregate amount sha
be deemed collateral satisfactory in amount and character, an
520 shall be pledged and delivered by the Southern Pacific Co
pany as such security unless and until other collateral satisfa
tory to the Union Pacific Railroad Company shall be pledged.

9. Upon the payment of the Southern Pacific Company's four pe
cent gold bonds (Central Pacific stock collateral) at their maturi
or upon their redemption and payment prior to maturity, the South
ern Pacific Company shall promptly secure the release and discharg
of the mortgage and supplemental mortgage securing said bonds, an
shall thereupon tender to the Union Pacific Railroad Company th
certificates representing the capital stock of the Central Pacific Rail
way Company and the Central Pacific Railroad Company thereto
fore pledged to secure said bonds, and shall deliver the same to th
Union Pacific Railroad Company, or its order, upon its final an
complete payment of the consideration expressed in the foregoin
section 7. In the event that the said four per cent gold bonds (Centra
Pacific stock collateral) shall be redeemed and paid prior to thei
maturity and prior to the due date of the final installment of th
consideration to be paid by the Union Pacific Railroad Compan
as expressed in the foregoing section 7, the certificates representin
the capital stock of the Cenral Pacific Railway Company an
521 the Central Pacific Railroad Company thereupon release
from the lien of the mortgage and supplemental mortgag
securing said bonds shall, unless the Union Pacific Railroad Com
pany desires to anticipate the maturity of said final installment, b
deposited in escrow by the Southern Pacific Company with suc
trust company in the city of New York as shall be designated by

the Union Pacific Railroad Company, to be delivered to the Union Pacific Railroad Company or its order, upon the payment of the final installment of the consideration aforesaid in accordance with the provisions of the foregoing section 7.

10. The Southern Pacific Company hereby agrees duly and punctually to pay all installments of interest on its aforesaid four per cent gold bonds (Central Pacific stock collateral) as such interest shall mature, and to pay the principal of said bonds when the same shall become due, whether upon the maturity of said bonds or otherwise, and at all times to indemnify and save harmless the Union Pacific Railroad Company from an enforcement of the lien of the mortgage securing said bonds against the stocks pledged thereunder. The Southern Pacific Company hereby agrees, immediately upon the effective date of this agreement, to deliver to and pledge with the Union Pacific Railroad Company, as security for the obligations expressed in this section, collateral satisfactory in amount and character to the Union Pacific Railroad Company. In the event of the failure of the Southern Pacific Company to pay the principal of said bonds, or any installment of interest thereon when the same shall become due, the Union Pacific Railroad Company shall have the right to pay the same and to reimburse itself by the sale of said collateral at public or private sale without notice. The Union Pacific Railroad Company agrees to indemnify and save harmless the Southern Pacific Company from the obligations on its part to be performed under the said Central Pacific stock collateral mortgage and the mortgage supplemental thereto, dated December 29, 1899, except the payment of the principal and interest of the bonds issued thereunder and of the compensation of the trustee.

SECOND.

11. It is hereby agreed by all the parties hereto that immediately upon the effective date of this agreement the Central Pacific Railway Company will make, and the Southern Pacific Railroad Company will accept, and the Southern Pacific Company will guarantee on the part of the Southern Pacific Railroad Company, a lease for a term of 999 years of the line of railroad of said Central Pacific Railway Company extending from Tehama, in Tehama County, in the State of California, to a connection with the line of railroad of the Oregon & California Railroad Company at the boundary line between the States of California and Oregon, with all franchises, rights, privileges, immunities, and other property appertaining thereto, except equipment, at an annual rental payable in equal semiannual installments, on the first day of June and the first day of December of each year, equal to a year's interest at the rate of five

per cent per annum on the value of said line of railroad and its fra
chises and appurtenances (other than equipment) to be leased
aforesaid, to be ascertained by arbitration, as hereinafter provide
in the event that the parties hereto shall be unable within twel
months from the effective date hereof to agree upon said valuatio
with an option to the Southern Pacific Railroad Company to pu
chase the said leased line of railroad and its appurtenances at t
valuation fixed as the basis of rental in accordance with this se
tion 11 whenever said line and its appurtenances can be convey
by the Central Pacific Railway Company free from the mortga
liens now existing thereon. The Central Pacific Railw
524 Company hereby agrees that it will create no additional li
upon said line of railroad without the consent of the Southe
Pacific Railroad Company or of the Southern Pacific Compan
and that it will pay the interest upon all bonds now outstandin
secured by mortgage liens upon said line of railroad, as such inter
shall mature, and will pay the principal of said bonds at maturit
and that it will at all times indemnify and hold harmless the Sout
ern Pacific Railroad Company and Southern Pacific Company fro
and against the enforcement upon said line of railroad and its a
purtenances of the lien of any of said mortgages; and the Uni
Pacific Railroad Company hereby guarantees the performance of sa
obligations assumed by the Central Pacific Railway Company. Sa
lease shall be substantially in the form of the draft of lease here
attached and marked Exhibit A, except such changes in said for
as shall be made by agreement of the parties and approved by t
railroad commission of California.

12. It is hereby agreed by all the parties hereto that, immediate
upon the effective date of this agreement, the Central Pacific Ra
way Company will sell and convey to said Southern Pacific Railro
Company and that said Southern Pacific Railroad Compa
525 will purchase the line of railroad of the Central Pacific Ra
way Company, constructed and under construction, extendi
from a connection with the line of railroad described in section
hereof at Weed Station, Siskiyou County, California, to a connecti
with the line of railroad of the Oregon and California Railro
Company at or near Natron Station, Lane County, Oregon, by w
of Klamath Falls, Oregon, with its franchises, rights, privileges, i
munities, and other property appertaining thereto, conveyed by t
Oregon Eastern Railway Company to Central Pacific Railway Co
pany by deed dated February 29, 1912. As the consideration for t
sale aforesaid said Southern Pacific Railroad Company hereby agre
to assume and indemnify said Central Pacific Railway Compa
from and against any expenditures made by the Central Pacific Ra
way Company or for its account for construction, additions, or b

terments in connection with the said railroad and its appurtenances, since the 29th day of February, 1912, and agrees to assume and indemnify and save harmless the Central Pacific Railway Company from and against the California Northeastern Division first mortgage bonds of the Oregon Eastern Railway Company to the amount of $5,000,000, face value, and extensions purchase notes of the Central Pacific Railway Company to the principal amount of
926 $7,055,097.20, together with the interest maturing and payable on said bonds and notes after the date of the purchase provided for in this section, and to reimburse the Central Pacific Railway Company for all interest paid by it on said bonds and notes which accrued subsequently to February 29, 1912, and further hereby assumes and agrees to pay any other indebtedness and liabilities now outstanding of the Oregon Eastern Railway Company heretofore assumed by the Central Pacific Railway Company in and by the deed of February 29, 1912, aforesaid; and the Southern Pacific Company hereby agrees to guarantee the obligations agreed in this section to be assumed by the Southern Pacific Railroad Company, and further agrees to cancel and surrender the aforesaid extensions purchase notes now held by it to the amount aforesaid, and to execute and have duly recorded a release by it, as the holder of the aforesaid bonds issued by the Oregon Eastern Railway Company, of all obligations concerning said bonds assumed by the Central Pacific Railway Company in and by the aforesaid deed dated February 29, 1912.

THIRD.

13. The said Southern Pacific Company and Southern Pacific Railroad Company agree to grant, and hereby do grant, to the
927 Central Pacific Railway Company the equal joint use and possession, from the effective date of this agreement, for a term of 999 years, of all that part of the railway and appurtenant property owned either by the Southern Pacific Company or the Southern Pacific Railroad Company, including telegraph and telephone lines, from the connections thereof with the Central Pacific Railway Company's tracks in Sacramento, California, via Benicia and Port Costa, to connections with the Central Pacific Railway Company's tracks in Oakland, California, including the ferries between Benicia and Port Costa, and ferry slips at Benicia and Port Costa, and any bridge, tube, or tunnel substituted for the ferry between Benicia and Port Costa, and the appurtenances thereof, except rolling stock and supplies. A contract shall be executed and delivered by the parties aforesaid, immediately upon the effective date of this agreement, covering said joint use and possession, which shall contain a provision for the payment by the Central Pacific Railway Company as an annual

rental and consideration for such use and possession, the sum of two and one-half per cent per annum on the value of the property covered by said agreement, in two equal instalments, on the first day of June and the first day of December in each year, to be in-
528 creased by two and one-half per cent per annum upon the actual cost (which shall include transportation and insurance and a just sum to cover the cost of superintendence and management) to the Southern Pacific Company or the Southern Pacific Railroad Company of all improvements, betterments, and additions to the property properly chargeable to capital account, which valuation shall be determined by agreement of the parties or by arbitration hereunder; and a provision for the payment by the Central Pacific Railway Company of a proportion of the expense of maintenance and operation of said line of railroad, with its terminals and other appurtenances. Said contract shall contain substantially the terms expressed in, and shall be substantially in the form of, the draft of contract hereto attached and marked Exhibit B, except such changes in said form as shall be made by the parties and approved by the railroad commission of California.

14. From the effective date hereof the Central Pacific Railway Company shall be entitled to trackage or running rights for a term of 999 years over the line of railroad of the Southern Pacific Railroad Company and Southern Pacific Company between Redwood and San Francisco, for the operation of through freight trains
529 only, without right to do local business—Redwood to be considered local to Southern Pacific Company—with an option, however, to the Central Pacific Railway Company to withdraw from such trackage or running rights at any time within two years from the effective date hereof; the rental to be paid by the Central Pacific Railway Company for such trackage or running rights to be determined by arbitration in the manner hereinafter provided if the parties hereto are unable to agree thereon.

15. Union Pacific Railroad Company and Central Pacific Railway Company hereby agree that the Central Pacific Railway Company shall, and Central Pacific Railway Company does hereby, grant to the said Southern Pacific Company and said Southern Pacific Railroad Company, or either of them, an option for a period of two years from the effective date hereof to acquire the equal joint use and possession, for the term of 999 years, of the railway owned by the Central Pacific Railway Company, from Newark to Redwood, California, and the appurtenances thereof, except rolling stock and supplies, upon the same terms, conditions, and rights provided in the foregoing section with reference to the joint use and possession of the line of railroad between Sacramento and Oakland. Such

use shall extend to the cars or trains of any corporation owned or controlled by the Southern Pacific Company.

16. During the continuance of the option rights in regard to trackage or joint use, or until the parties shall have previously agreed to the contrary, the lines of railway of the Central Pacific Railway Company and the other lines of railway operated by the Southern Pacific Company or controlled by it are to continue to interchange traffic, and either of said lines will continue to handle through trains (but with its own engines and crews) delivered to it by the other lines, upon the rates, terms, and conditions now in force, the intent and purpose hereof being that there shall be no interruption of through trains, or change in rates, or of the terms upon which through traffic is handled, by reason of this agreement or by reason of any sales, transfers, or leases herein provided for; but, at any time, upon the demand of either party hereto, in the event of the failure of the parties to agree upon the division of revenue upon joint business, such question shall be submitted to arbitration. The agreement of the parties, or determination by arbitration, first made, as to such division shall be retroactive to and from the date of the surrender of possession of the properties of the Central Pacific Railway Company by the Southern Pacific Company. Divisions now or heretofore in force between the Southern Pacific Company and the Western Pacific Railway Company, or between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railroad Company, on traffic between points in California and points east of California, or between the Southern Pacific Company and the Central Pacific Railway Company, are not to be regarded as precedents, or otherwise taken into account, in dividing rates on traffic interchanged between the Central Pacific Railway Company and the Southern Pacific Company, whether such division be by agreement or by arbitration. Any division of such rates, whether by agreement or by arbitration, may be reopened for a new agreement or arbitration at any time after having been in effect for one year, upon the demand of either party, and in the same way from year to year thereafter.

FOURTH.

17. From the effective date hereof the terminals of the Southern Pacific Railroad Company (or the Central Pacific Company) and the Central Pacific Railway Company at all junctions of their respective lines within city limits, including industry tracks, shall become and be subject to the joint and equal use of both parties, their lessees or assigns, for a term of 999 years, with the option to either party to withdraw from its use of any of the terminals of the other at any time within two years from the effective

date hereof, and the maintenance and operating expenses and ta
thereof shall be apportioned by agreement or by arbitration. T
value of such terminals when owned exclusively by one party, a
the difference in the value when jointly owned by several parti
shall be ascertained by arbitration if the parties hereto are unab
to agree thereon, and a rental upon the value, or the excess value,
the case may be, at the rate of two and one-half per cent, shall
paid for the use of such terminals by the tenant company. The for
going grant and provisions contained in this section shall extend
all respects, in favor of the Central Pacific Railway Company, to t
freight terminals of the Southern Pacific Railroad Company and
the Southern Pacific Company, including roundhouses and sh
facilities for light and temporary repairs, in the city and county
San Francisco, but not including shops or roundhouses at oth
points; and, in favor of either the Southern Pacific Company a
Southern Pacific Railroad Company on the one part or t
533 Central Pacific Railway Company on the other part, to
freight and passenger terminals at Oakland, Oakland Mo
Alameda, and Alameda Mole, and all ferries between Oakland a
San Francisco and Oakland Mole and San Francisco and Alame
Mole and San Francisco, and ferry slips and landings in San Fra
cisco, and the passenger buildings adjacent thereto, owned or lea
by the other of said parties. But the ownership and operation
electric lines and stations and terminals thereon are to remain as
present until otherwise disposed of, with an equitable apportionme
of the earnings and expenses in the meantime.

18. The Central Pacific Railway Company agrees that it will u
and employ its shops and shop facilities, roundhouses, and oth
appurtenances at Sacramento, Oakland, and other points in Ca
fornia for the repair and maintenance of the engines and cars a
for other shopwork of the Southern Pacific Company and the Sout
ern Pacific Railroad Company in the same manner as it uses a
employs the same for the repair and maintenance of its own equi
ment and for its own other shop work, without discrimination, f
five years from the effective date hereof, the compensation of s
Central Pacific Railway Company for the repair and sh
534 work and shop facilities to be fixed upon some equitable bas
including a return upon the value of the plant; and if t
parties are unable to agree upon such compensation, the same sh
be determined by arbitration as hereinafter provided.

FIFTH.

19. The Southern Pacific Company hereby agrees to sell, assig
and transfer to the Union Pacific Railroad Company, and the Uni

Pacific Railroad Company hereby agrees to purchase, immediately upon the effective date of this agreement, $3,000,000, face value, of first mortgage bonds of the Central California Railway Company; $1,000,000, face value, of first mortgage bonds of the Chico and Northern Railroad Company; $8,500,000, face value, of first mortgage bonds of the Nevada and California Railway Company; $2,500,000, face value, of the first mortgage bonds of the Sacramento Southern Railroad Company, and $3,084,252.33, face value, of extensions purchase notes of the Central Pacific Railway Company, dated March 1, 1912, now held by the Southern Pacific Company, for and in consideration of the payment by the Union Pacific Railroad Company of a sum equal to the aggregate principal amount of said bonds and notes, together with the accrued interest thereon (except
535 that the consideration for the purchase of said first mortgage bonds of the Chico and Northern Railroad Company shall be the book cost thereof to the Southern Pacific Company), and the Southern Pacific Company agrees to deliver to the Union Pacific Railroad Company the bonds and notes aforesaid; and the Southern Pacific Company further agrees to sell, assign, and transfer to the Union Pacific Railroad Company, and the Union Pacific Railroad Company agrees to purchase, at the face value thereof and accrued interest, all other indebtedness of the Central Pacific Railway Company to the Southern Pacific Company, on account of advances or otherwise, representing expenditures for construction and betterments made since the 29th day of February, 1912, and on account of materials and supplies not paid for out of earnings, in connection with the lines of railroad formerly owned, respectively, by the Central California Railway Company, Chico and Northern Railroad Company, Nevada and California Railway Company, Sacramento Southern Railroad Company, Goose Lake and Southern Railway Company, Fernley and Lassen Railway Company, and Modoc Northern Railway Company, acquired by the Central Pacific Railway Company by deeds of the seven companies aforesaid, each dated February 29, 1912.

536 20. The Central Pacific Railway Company hereby assumes and undertakes to perform all the obligations assumed by the Southern Pacific Company in that certain contract with the Red River Lumber Company, dated the 29th day of January, 1912, except as to rates on traffic destined to points on lines which will be operated by the Southern Pacific Company subsequently to the effective date of this contract and their connections, and as to such rates the Central Pacific Railway Company agrees to cooperate with the Southern Pacific Company in granting the same.

21. The Central Pacific Railway Company and the Southern Pacific Railroad Company (or the Southern Pacific Company) hereby

mutually agree each to assume any expenditures for surveys of lin made as connections and branches of its lines or otherwise for its u or account which are now outstanding and carried in suspense b the other of said parties.

22. All indebtedness and accounts (including expenditures on a count of material and supplies not paid for out of earnings, whic material and supplies the Central Pacific Railway Company hereb agrees to buy at an agreed or arbitrated price) existing between th Central Pacific Railway Company and Southern Pacific Com-
537 pany, for which provision is not otherwise made in this agree- ment (except such as may be evidenced by unmatured bond of the Central Pacific Railway Company guaranteed by the Southern Pacific Company) shall be adjusted as of the effective date hereof and the balance due after offsetting the mutual indebtedness an accounts, and the purchase price of the notes, securities, and in debtedness which the Union Pacific Railroad Company agrees t buy under section 19 hereof, may be paid by the debtor party o the effective date of this agreement, or payment may be postponed in whole or in part, at the option of said party, to the date of th last payment by the Union Pacific Railroad Company of the con sideration and purchase price of the capital stock of the Centra Pacific Railway Company. In case of such postponement interest a the rate of five per cent shall be paid from the effective date of thi agreement on any and all amounts so postponed, and such settlemen shall be subject to such future adjustments, from time to time, a may be necessary to correct the balance first struck and paid a aforesaid.

23. The Union Pacific Railroad Company hereby agrees to in- demnify and save harmless said Southern Pacific Compan
538 from and against all liability existing, or which may hereafte arise, by reason of the guaranty by said Southern Pacif Company of bonds of said Central Pacific Railway Company no issued and outstanding, or which shall hereafter be issued under:

(*a*) The first refunding mortgage of said Central Pacific Railwa Company to Central Trust Company of New York, as trustee, date the 1st day of August, 1899.

(*b*) The three and one-half per cent mortgage of said Centra Pacific Railway Company to the United States Trust Company o New York, as trustee, dated the 1st day of August, 1899.

(*c*) The Through Short Line mortgage of said Central Pacific Rai way Company to the Guaranty Trust Company of New York, as tru tee, dated the 1st day of October, 1904.

(*d*) The European loan indenture.

Said Southern Pacific Company, however, agrees that it will co tinue to execute its guaranty of all bonds which shall hereafter

ued by the Central Pacific Railway Company, under any of the ree mortgages described in the foregoing subdivisions (a), (b), and c) of this section, pursuant to the provisions of said mortgages for the interchange of registered bonds and coupon bonds, or for g the issue of bonds in lieu of or in substitution for mutilated or destroyed bonds. And the said Central Pacific Railway Com- ny agrees that it will not permit the issue of any additional bonds der its Through Short Line mortgage, except pursuant to the pro- ions of said mortgage for the interchange of registered and coupon nds or for the issue of bonds in lieu of or in substitution for muti- ted or destroyed bonds.

4. The Union Pacific Railroad Company hereby agrees to assume d perform all existing obligations now imposed upon the Southern cific Company in respect of the lines of the Central Pacific Rail- y Company (except the line of the railroad from Tehama to the undary line between the States of Oregon and California) under egraph, Pullman, mail, express, and all other contracts; and all owances and other compensation and benefits accruing to the uthern Pacific Company under such contracts shall be equitably ap- rtioned. The existing hospital arrangements of the parties are to continued until otherwise agreed by the parties, with an interest owance on some proper basis for the hospital improvements in favor of the company owning the same. It is understood that) some adjustment shall be made with reference to the pension rules and regulations of the parties and a proper adjustment d apportionment of pension payments.

5. The Union Pacific Railroad Company and the Central Pacific ilway Company hereby agree to proceed with reasonable diligence er the surrender of the possession of the railways and other prop- ies of the Central Pacific Railway Company now operated by said uthern Pacific Company to effect, as far as such substitution shall permitted under the European loan indenture, a substitution of lateral of said Central Pacific Railway Company or of said Union cific Railroad Company for collateral of the Southern Pacific mpany heretofore pledged and now held under the provisions of d European loan indenture, and also to use their best endeavors, so far as the same shall not involve expense or cost to Central cific Railway Company and Union Pacific Railroad Company, to ure a release or rescission of the covenants and agreements con- ned in section 3 of article three of said indenture, and as to any lateral owned by the Southern Pacific Company so pledged and d (and which it covenants in said indenture not to sell or pledge) which shall not have been released and surrendered to said Southern Pacific Company within a reasonable period, or any shares of stock which the Southern Pacific Company is pro-

hibited from selling or pledging under the covenants and agreement aforesaid, the Union Pacific Railroad Company will deliver to sai Southern Pacific Company, under a suitable agreement for the pro tection of the same, other collateral equal in value to the collateral o the Southern Pacific Company then remaining so pledged and held or so prohibited from sale or pledge. If the parties fail to agre respecting the relative value of such collateral, the matter in dispu shall be determined by arbitration as hereinafter provided.

26. The Southern Pacific Company hereby agrees duly and faith fully to observe and perform all the terms, covenants, conditions, an requirements contained in the European loan indenture to be ob served and performed on its part, and not to permit or suffer any act matter, or thing whereby any default shall be created or incurred i accordance with the terms of said European loan indenture o account of the breach of any of the terms, covenants, conditions, an requirements on its part to be observed or performed; and that i the event that the bonds outstanding under said European loa
542 indenture shall become or be declared due and payable prior t the maturity thereof on account of any act, matter or thin done or suffered by the Southern Pacific Company contrary to th provisions of this section 26, the Southern Pacific Company will pa upon demand to the Central Pacific Railway Company as liquidate damages a sum equal to such proportion of the amount of the aggre gate discount, commissions and expenses incurred by the Centra Pacific Railway Company upon and in connection with the bond issued under said European loan indenture as the period then remain ing prior to the first day of March, 1946, shall bear to the entir period of 35 years during which said bonds were by their terms t have remained outstanding.

SIXTH.

27. The Southern Pacific Company hereby agrees that, except i the regular course of carrying on and conducting the ordinary bus ness and operations of the Central Pacific Railway Company, no of the property and assets of said Central Pacific Railway Compan has been since the 2nd day of December, 1912, or shall be, assigne transferred, conveyed, or otherwise disposed of, before the surrend to said Central Pacific Railway Company of the possession of th properties of that company now held and operated by th
543 Southern Pacific Company, and before the reconstitution the board of directors of said Central Pacific Railway Co pany, as provided in section 2, article first, hereof; and that, with th exception aforesaid, no obligations of the Central Pacific Railw Company have been incurred or released since the said 2d day

December, 1912, or shall be incurred or released before the surrender of the said property to the Central Pacific Railway Company and the reconstitution of the board of directors of the Central Pacific Railway Company as aforesaid; and that since said date no dividend on the capital stock of the Central Pacific Railway Company has been declared, and that none shall be declared before the surrender of the possession of said property to the Central Pacific Railway Company and the reconstitution of the board of directors of said company as aforesaid, except dividends at the rate of six per cent per annum on the common capital stock from June 1, 1912, to January 1, 1913, and dividends at the rate of four per cent per annum on the preferred capital stock from August 1, 1912, to January 1, 1913. The Southern Pacific Company hereby agrees to pay to Union Pacific Railroad Company, upon demand after the effective date of this agree-
544 ment, the proportionate part of any dividend received by or credited to it, on account of its holding of capital stock of the Central Pacific Railway Company, for any period subsequent to January 1, 1913, with interest thereon at the rate of five per cent from January 1, 1913. The Oregon Short Line Railroad Company shall be entitled to retain the dividend payable to stockholders of the Southern Pacific Company registered on the books of that company on December 2, 1912, and received by said Oregon Short Line Railroad Company on January 2, 1913.

28. The Southern Pacific Company hereby undertakes and agrees that in the interval between December 2, 1912, and the surrender of the lease and property of the Central Pacific Railway Company to the Central Pacific Railway Company no changes have been or will be made in rates, divisions, revenue, or service on the Central Pacific Railway that will prejudice the interests of the Union Pacific Railroad Company or discriminate against the Central Pacific Railway Company in favor of the Southern Pacific Company.

29. The Southern Pacific Company hereby agrees that all interest or other obligations of the Central Pacific Railway Company and all taxes maturing and becoming payable before the surrender of
545 the possession of the properties of the said Central Pacific Railway Company now operated by said Southern Pacific Company shall be paid for account of the Central Pacific Railway Company, and that said Southern Pacific Company will advance any funds necessary for that purpose if the said Central Pacific Railway Company shall not have the same readily available, and further agrees that the roadway and structures and the equipment and other properties and facilities of the Central Pacific Railway Company shall be maintained and the operation of the properties of the said Central Pacific Railway Company shall be carried on and conducted by the

said Southern Pacific Company in strict accordance with the ar-
rangements and practices heretofore existing, until the surrender of
said properties to the possession of said Central Pacific Railway
Company.

30. It is mutually agreed by all the parties hereto that all leases,
deeds, or other instruments either necessary or proper to carry out
any of the provisions of this agreement shall be executed and deliv-
ered immediately upon the effective date of this agreement or as soon
thereafter as practicable, and in each case with such evidence of
corporate action, the regularity of meetings and otherwise, as
shall be reasonably required by counsel for any party in inter-
546 est in order to establish the validity of the title to any prop-
erty acquired as contemplated by the terms hereof; and that
each party hereto will do, execute, acknowledge, and deliver, or will
cause to be done, executed, acknowledged, and delivered, all and every
such further acts, transfers, and assurances for the better assuring,
conveying, and confirming unto any other party the benefits intended
hereby to be conferred and for more completely effecting and accom-
plishing the purposes of this agreement.

31. The Southern Pacific Company and the Southern Pacific Rail-
road Company hereby agree, from time to time, to convey and transfer
or cause to be conveyed and transferred to the Central Pacific Rail-
way Company, upon the payment of the cost and carrying charges
which the Central Pacific Railway Company agrees to pay, the title
to any property, except equipment, which has been acquired by the
Southern Pacific Company or by any person or corporation at its
request for the uses and purposes of the Central Pacific Railway
Company; and the Central Pacific Railway Company hereby agrees
in like manner and upon the same terms to convey or transfer, or
cause to be conveyed or transferred, to the Southern Pacific
547 Company or the Southern Pacific Railroad Company any
property, except equipment, which has been acquired by the
Central Pacific Railway Company or by any person or corporation at
its request for the uses and purposes of said other companies, or either
of them; but the obligation herein contained as to property standing
in the name of either the Southern Pacific Railroad Company or
the Central Pacific Railway Company shall not apply to any such
property to which the mortgages of said companies have attached.

32. The said Southern Pacific Company will cause to be executed
and delivered to the Central Pacific Railway Company immediately
upon the effective date hereof all instruments necessary or appro-
priate to cancel all leases or other instruments whereby any property
of the Central Pacific Railway Company has been leased to or is
held by the Southern Pacific Railroad Company or any other com-
pany controlled by the Southern Pacific Company or by any person

for the Southern Pacific Company; and in like manner the Central Pacific Railway Company will at the same time cause to be executed and delivered all instruments necessary or appropriate to cancel all leases whereby any property of the Southern Pacific Railroad
548 Company or of the Southern Pacific Company has been leased to or is held by the Central Pacific Railway Company or by any person for it.

SEVENTH.

33. If at any time a question shall arise under this agreement as to which the parties cannot agree and which by the express terms of this agreement is to be determined by arbitration, such question shall be submitted to the arbitrament of five persons. The party demanding such submission shall give to the other party notice of such demand stating specifically the question to be submitted for decision and nominating a person to act as one referee. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the reference of its nomination of a second referee, the party making the demand may make such selection. The first and second referees chosen shall select three disinterested persons familiar with business and experienced in railway management and affairs, and when the board is complete it shall fix a date and place for the hearing, of which the parties shall be severally notified. If the first and second referees chosen shall be unable to agree upon the other referees, or any
549 of them, such other referee or referees as to which they shall fail to agree shall be appointed upon ten days' notice, upon motion of either party, by the then senior circuit judge of the United States in and for the Second Judicial Circuit, or in his absence from the circuit or inability to act then by the circuit judge of said circuit holding the next oldest commission. After hearing the testimony and arguments which may be submitted by each party the referees, or a majority of them, if they agree upon an award, shall state the same in writing, which when delivered to both parties shall be binding and conclusive upon each, and each party hereby expressly agrees to be bound conclusively thereby. For the purposes of an arbitration under the provisions of this section the Southern Pacific Company and the Southern Pacific Railroad Company jointly shall be deemed one party, and the Union Pacific Railroad Company and Central Pacific Railway Company jointly shall be deemed one party, and action hereunder by, or service hereunder upon, either the Southern Pacific Company or the Southern Pacific Railroad Company shall be deemed binding upon both, and in like manner any action hereunder by, or service hereunder upon, either the Union
550 Pacific Railroad Company or the Central Pacific Railway

Company shall be deemed binding upon both. The board referees making any final award hereunder shall determine in discretion by which party the fees and expenses of the arbitrati shall be paid or shall apportion such fees and expenses between t parties, and such fees and expenses shall be forthwith paid by t party or parties liable therefor in accordance with such adjudicati of the arbitrators. If either party shall refuse to keep and perfor any award made as aforesaid, the adverse party may enforce t same by proper proceedings in any court of law or equity.

EIGHTH.

34. This agreement is made and signed by the parties hereto subje to the conditions hereinafter expressed and shall not become bindi or effective for any purpose, or as to any of its provisions, unless until each and all of said conditiones shall have been satisfied, to wi

(1) That a decree of the District Court of the United States f the District of Utah in the merger suit shall be entered, approvi the plan hereinbefore recited for the disposition of the capital stock the Southern Pacific Company held by the Oregon Short Line Rai road Company, and approving this agreement.

551 (2) That the Railroad Commission of the State of Califo nia shall consent to and approve (a) the lease of the line railroad between Tehama and the Oregon-California boundary pr vided in section 11 of this agreement; (b) the sale and conveyance so much of the line of railroad between Weed Station, California, a Natron Station, Oregon, provided in section 12 of this agreement, lies within the State of California; (c) the contract for the equ joint use and possession of the line of railroad between Sacrament and Oakland, California, provided in section 13 of this agreement (d) the provision contained in section 14 for trackage or runnin rights between Redwood and San Francisco, California; and (e) t provisions of section 17 as to joint use of terminals, etc.

(3) That the French banks named in the European loan indentu shall consent to the sale of the capital stock of the Central Paci Railway Company and to the surrender and cancellation by t Southern Pacific Company of its lease of the property of the Centr Pacific Railway Company herein provided.

(4) That an agreement shall be made with an underwritin 552 syndicate approved by the executive committee of the Souther Pacific Company for the purchase of the entire amount of o hundred and twenty-six million six hundred fifty thousand dolla ($126,650,000), par value, of capital stock of the Southern Paci Company, which shall not be subscribed for by the stockholders of t Union Pacific Railroad Company and Southern Pacific Company pu

suant to the offer of subscription rights contemplated in the foregoing section 6.

Upon the satisfaction of each and all of the conditions hereinbefore in this section 34 expressed, this agreement shall immediately become effective and operative, and that date shall be deemed the "effective date of this agreement" as that term is used in this agreement.

35. This agreement shall inure to, and be binding upon, the successors and assigns of the parties hereto, and all the rights, privileges, and options hereinbefore conferred upon, or granted to, the parties hereto, shall inure to the benefit of, and the use by, any companies now or hereafter leased, owned or controlled through ownership of a majority of the capital stock by said parties, either, or any of them.

In witness whereof each of the parties hereto has caused this agreement to be executed in its behalf, by its officers thereunto
553 duly authorized, and its corporate seal to be hereto affixed and duly attested, the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,
[SEAL.] By ROBERT S. LOVETT,
Chairman Executive Committee.

Attest:
THOMAS PRICE, *Assistant Secretary.*

SOUTHERN PACIFIC COMPANY,
[SEAL.] By J. KRUTTSCHNITT,
Chairman Executive Committee.

Attest:
HUGH NEILL, *Secretary.*

CENTRAL PACIFIC RAILWAY COMPANY,
[SEAL.] By WM. F. HERRIN, *President.*

Attest:
JOS. HELLEN, *Assistant Secretary.*

554 SOUTHERN PACIFIC RAILROAD COMPANY,
[SEAL.] By WM. SPROULE, *President.*

Attest:
JOS. HELLEN, *Assistant Secretary.*

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL.] By ROBERT S. LOVETT,
Chairman Executive Committee.

Attest:
ALEX. MILLER, *Secretary.*

555 *Exhibit A.*

Agreement of lease entered into this day of , A. D. 1913, between the Central Pacific Railway Company, a corporation of the State of Utah, hereinafter called the "Central Company," the Southern Pacific Railroad Company, a corporation of the States of California, Arizona, and New Mexico, hereinafter called the "Pacific Company," and the Southern Pacific Company, a corporation of the State of Kentucky, hereinafter called the "Southern Company," witnesseth: That

Whereas, The Central Company owns a line of railroad extending from Tehama, in Tehama County, California, to a connection with the line of railroad of the Oregon and California Railroad Company, at the boundary line between the States of Oregon and California; and

Whereas, the Central Company heretofore executed its certain first refunding mortgage to Central Trust Company of New York, as trustee, dated the 1st day of August, 1899, to secure the payment of bonds issued by the Central Company to the amount of one hundred million (100,000,000) dollars, and which bonds to the amount of ninety-nine million six hundred and ninety-eight
556 thousand (99,698,000) dollars are outstanding and unpaid, and did heretofore execute its three and one-half per cent mortgage to the United States Trust Company of New York, as trustee, dated the 1st day of August, 1899, to secure the payment of bonds issued by the Central Company to the amount of twenty-five million (25,000,000) dollars, and which bonds to the amount of thirteen million, one hundred and twenty-three thousand (13,123,000) dollars are now outstanding and unpaid; and

Whereas, the Southern Company did heretofore execute its certain four per cent. mortgage (Central Pacific stock collateral), to the Union Trust Company of New York, as trustee, dated the 1st day of August, 1899, to secure the payment of certain bonds, and did deposit with the said Union Trust Company of New York, as collateral under said mortgage, certain shares of the capital stock of the Central Company, then owned by the Southern Company, and the Southern Company did afterwards execute its certain supplemental mortgage (Central Pacific stock collateral), to the Union Trust Company of New York, as trustee, dated the 29th day of December, 1899, and did deposit with the said Union Trust Company of New York, as collateral under the said mortgages, certain shares of the
557 capital stock of the Central Company, then owned by the Southern Company, and it is provided in each of said mortgages that in case the stock of the Central Company, so pledged with the Union Trust Company of New York, shall be sold under

provisions of said mortgages in reference to the sale of such pledged stocks, in consequence of a default of the Southern Company thereunder, any lease of the property of the Central Company shall terminate; and

Whereas the Pacific Company desires to lease the property of the Central Company hereinbefore described; and

Whereas the property now owned by the Central Company is operated by the Southern Company under lease;

Now, therefore, the parties hereto for themselves, their successors and assigns, have mutually agreed as follows:

First. The Central Company, in consideration of the premises and of the rents and covenants herein reserved and contained on the part of the Pacific Company to be paid and performed, does by these presents grant, demise, let, and lease unto the Pacific Company, its successors and assigns, all and singular the railroad and telegraph lines of the Central Company extending from Tehama, in Tehama County, California, to the connection with the line of railroad of the Oregon and California Railroad Company at the boundary line between the States of California and Oregon, the rights of way for said railroad and telegraph line, and all lands used for any and all purposes in connection with the working, maintenance, and operation of the same, and all easements and appurtenances, except equipment, belonging or in anywise appertaining thereto, and also all rights, powers, privileges, and franchises now owned or possessed by the Central Company in connection with said railroad and telegraph line, together with the rents, issues, and profits of all of said property hereby demised, and each and every part thereof.

To have and to hold the said railroad, telegraph line, appurtenances, rights, privileges, and franchises, together with the rents, issues, and profits thereof unto the said Pacific Company, its successors and assigns, for its and their own proper use and benefit for a term of nine hundred and ninety-nine years from and after the day of , 1913, subject, however, to termination upon the happening of the events herein stated. And the said Pacific Company during the said term shall have the sole and exclusive right, power, and authority to hold, occupy, use, enjoy, control, and manage, and operate the same, and to regulate, fix, vary, collect, demand, receive, and dispose of all the rates, tolls, revenues, and charges to accrue thereon or therefrom subject, however, to the lien of the mortgages hereinbefore referred to, it being intended hereby to place and put the said Pacific Company in the lieu and stead of the Central Company, and with all the rights of the Central Company in respect to said property, the said Pacific Company, its successors and assigns, yielding and paying therefor, to the Central Company, its successors and assigns, at the times and in the

manner hereinafter provided, the yearly rents hereinafter speci
and keeping and performing all and singular the covenants h
inafter set forth to be kept and performed by the said Pa
Company.

Second. The Central Company will pay principal and interest
upon its bonds now outstanding and will indemnify, protect
keep harmless the said Pacific Company, from any and all liabil
damage, or expense on account of any indebtedness, liability, or o
gation, heretofore or hereafter contracted or incurred by the Cen
Company, and the Pacific Company may and shall deduct and re
from any amounts becoming due and payable to the Cen
560 Company under the terms hereof such sums of money as it
be obliged to pay for the protection of its rights under
indenture by reason of the default of the Central Company in k
ing or performing the covenants or agreements herein contained.

Third. The Pacific Company will make to the Central Compa
at San Francisco, California, as the Central Company may design
a payment of dollars ($) per annum, in two equal
stallments on the first day of June and the first day of Decembe
each year.

Fourth. The Pacific Company will operate said railways and
purtenant property in such manner as to impose no liability upon
Central Company, and will at all times during the existence of
lease keep and preserve the said railway and appurtenances th
unto belonging in good repair, ordinary wear and tear and destr
tion by the elements excepted, and will make from time to time s
repairs, replacements, and betterments as may be necessary, and
preserve all the rights, privileges, and franchises connected with
said railway and telegraph line, or any part thereof; and the Cen
Company shall at all times during the continuance of this lease h
a right to examine and inspect the property hereby demis
561 and the property shall at all times be open to the inspect
of the president of the Central Company and such person
persons as he may designate.

Fifth. The Pacific Company will pay and discharge all expen
cost, damages, demands, or liens whatsoever which, without defa
of the Central Company, now exist or shall hereafter arise dur
the continuance of this lease upon the property hereby demised,
will at all times during such period save and keep harmless and
demnify the Central Company therefrom, and will defend all acti
and suits which shall or may be brought against the Central Co
pany during said period arising out of the operation of said r
road and other properties, and will pay all taxes and assessme
which may be lawfully levied and assessed for the year ,

all subsequent years during the said period, upon the said railroad or other property hereby demised, and upon the business or income of the same, and upon the Central Company in respect to the property hereby demised.

Sixth. Should the Pacific Company at any time or times hereafter during the existence of this lease fail to make any payment when due which it is obligated to make by this contract, or fail in any other respect to perform this agreement and such default continue for ninety days after notice in writing of intention to terminate this lease, given by the Central Company to the Pacific Company, then and in every such case it shall be lawful for the Central Company, its successors and assigns, at their option, to enter without process of law into and upon the said railroads and other property hereby demised and every part thereof, and to have and to hold all such property, together with all the additions and improvements which shall have been made to the same, and all right, title, and interest whatever of the Pacific Company in and to the said property shall thereupon wholly cease and terminate; but such reentry shall not waive or prejudice any claim or right of the Central Company to or for damages against the Pacific Company, or the Southern Company, on account of such nonpayment or on account of nonperformance or breach of the terms of this lease; provided, however, that nothing contained in this paragraph sixth shall require the Pacific Company to pay any tax, assessment, charge, or lien so long as the Pacific Company in good faith and by appropriate proceedings shall contest the validity thereof.

This lease shall also terminate, and all rights of the Pacific Company or the Southern Company herein shall terminate, and the Central Company shall be entitled to enter into possession of the property to the extent and with the effect as above provided in case the stocks pledged with the Union Trust Company of New York, as trustee, under the four per cent mortgage (Central Pacific stock collateral), dated the 1st day of August, 1899, and under the Southern Company's supplemental mortgage (Central Pacific stock collateral), dated the 29th day of December, 1899, as security for the Southern Company's four per cent gold bonds (Central Pacific stock collateral), shall be sold under the provisions of said mortgages, or either of them, in reference to the sale of such pledged stock in consequence of a default of the Southern Company under said mortgages.

Seventh. Whenever said railroad and other property can be conveyed by the Central Company free from the mortgage liens now existing thereon, the Pacific Company shall be entitled, for two years thereafter, to purchase, at its option, evidenced by a notice in writing

given to the Central Company, the railroads and other property hereby demised, at and for the value of dollars, to be paid to the Central Company.

564 Eighth. If at any time a question shall arise touching the construction of this contract or concerning the observance or performance of any of its covenants or provisions, upon which question the parties can not agree, such question shall be submitted to the arbitrament of five persons. The party demanding such reference shall give to the other party notice of such demand stating specifically the question to be submitted for decision and nominating a person to act as one referee. If at the expiration of twenty days from the receipt of such notice the party receiving it has not notified the party demanding the reference of its nomination of a second referee, the party making the demand may make such selection. The first and second referees chosen shall select three disinterested persons familiar with business and experienced in railway management and affairs, and when the board is complete the referees shall fix a day and place for the hearing of which the parties shall be severally notified. If the first and second referees chosen shall be unable to agree upon the other referees or any of them, such referee or referees may be appointed upon ten days' notice upon motion of either party by the judge of any court of the United States within
565 the State of California, holding the senior commission, and in his absence by the judge holding the next oldest commission. After hearing the testimony and arguments which may be submitted by each party, the referees, or a majority of them, if they agree upon an award, shall state it in writing, which when delivered to both parties shall be binding and conclusive upon each, and each party hereby expressly agrees to be bound conclusively thereby.

The board of referees making any final award hereunder shall determine, in its discretion, by which of the parties the fees and expenses of the arbitration shall be paid, or shall apportion such fees and expenses between the parties, and such fees and expenses shall be forthwith paid by the party or parties liable therefor, in accordance with such adjudication of the referees.

Immediately after any award, each party will comply with and fully perform said award, and will make such payments and restitutions as may be in and by such award required of it to be made. If either party shall refuse to keep and perform any award, the adverse party may enforce the same by apt proceedings in any court of law or equity.

566 The books and papers of both parties, as far as they relate to any matter submitted to arbitration, shall be open to the examination of the arbitrators; and until the arbitrators shall make their award upon any question submitted to them, the business, settle-

ents, and payments to be transacted and made under the terms of is agreement shall continue to be transacted and made in the man- r and form existing prior to the arising of such question.

Eighth. It is agreed that this lease and all rights thereunder may e assigned to the Southern Pacific Company; and the Southern acific Company hereby guarantees the performance of this contract y the Pacific Company, and executes this contract in pursuance of at obligation.

In witness whereof, the Central Pacific Company, the Southern acific Railroad Company, and the Southern Pacific Company have used this instrument to be executed under the corporate seals and nder the hands of their respective presidents and secretaries, or vice residents and assistant secretaries, the day and year above written.

CENTRAL PACIFIC RAILWAY COMPANY,

By

President.

In the presence of, as to Central Pacific Railway Company—

Attest:

Secretary.

SOUTHERN PACIFIC COMPANY,

By

President.

In the presence of, as to Southern Pacific Company—

Attest:

Secretary.

SOUTHERN PACIFIC RAILROAD COMPANY,

By

President.

In the presence of, as to Southern Pacific Railroad Company—

Attest:

Secretary.

STATE OF ,

County of , ss:

On this day of , in the year 1913, before me, ———, a notary public in and for the State and county aforesaid, rsonally appeared ——— ———, known to me to be the ——— of ntral Pacific Railway Company, the corporation that executed e within instrument, and acknowledged to me that such corpora- n executed the same.

In witness whereof I have hereunto set my hand and official seal e day and year first above written.

STATE OF ,
County of , ss:

On this day of , in the year 1913, before me, ——, a notary public in and for the State and county aforesaid, personally appeared ——, known to me to be the —— of Southern Pacific Railroad Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and official seal the day and year first above written.

569 *Exhibit B.*

Contract made the day of , A. D. 1913, between the Southern Pacific Company, hereinafter called the "Southern Company", a corporation of the State of Kentucky; Southern Pacific Railroad Company, hereinafter called the "Pacific Company", a corporation of the States of California, Arizona, and New Mexico; and the Central Pacific Railway Company, hereinafter called the "Central Company", a corporation of the State of Utah.

Whereas the Pacific Company owns a line of railroad in the State of California between Sacramento and Oakland via Benicia and Port Costa, together with terminal property at Sacramento and Oakland and intermediate points; and the Southern Company now operates the property of the Pacific Company, above mentioned, under an agreement of lease between the Pacific Company and the Southern Company; and the Southern Company and the Pacific Company have agreed to grant to the Central Company the use of said railroad and other property of the Pacific Company at the rental for the term and on the conditions hereinafter stated:

Now, therefore, in consideration of the premises and of the mutual dependent promises stated in this contract, the parties agree:

570 ARTICLE I.

SEC. 1. The Pacific Company and the Southern Company grant to the Central Company the equal joint possession and use, together with the Southern Company, of all that part of the railway and appurtenant property, owned neither by the Pacific Company or the Southern Company, including telegraph and telephone lines, from the connections with the Central Company's tracks in Sacramento, California, via Benicia and Port Costa, to connections with the Central Company's tracks in Oakland, California, including the ferries between Benicia and Port Costa, and ferry slips at Benicia and Port Costa, and any bridge, tube, or tunnel substituted for the ferry

ween Benicia and Port Costa, and also all main tracks, spur and
e tracks, depots, fences, stations, tanks, warehouses, freight houses,
ndhouses, machine shops, and all other buildings, fixtures, im-
rements, additions, and betterments, of whatever kind or de-
iption now owned or held, or which may hereafter be owned or
d for the use of said railways, telegraph and telephone lines, or
connection with the working, maintenance, and operation of the
same, and also all lands, tenements, hereditaments, ways, and
rights of way now owned or held, or which may hereafter be
owned, held, or possessed for said railways, telegraph and
ephone lines, and for any and all purposes in connection with the
struction, working, maintenance, and operation of the same, or
or all of them, and all the easements, privileges, and appurte-
nces of every kind and nature, except rolling stock and supplies
reunto belonging or in anywise appertaining.

The Central Company, by its own employees and equipment, may
and transact over, upon, and by means of such railway and
urtenances, and all additions, improvements, and betterments
reto, all such business as is or hereafter may be, carried on by rail-
and common carrier, including mail and express, subject only
the terms and conditions hereinafter stated

Sec. 2. The Southern Company will have the general control, man-
ment, and administration of said railway and appurtenances, and
maintain and at all times keep the same in good condition and
air, and suitable for the business of all users of the property. It
pay the taxes thereon, except taxes based on earnings, and com-
ply with all the regulations prescribed by law with respect
thereto. Assessments and property taxes shall be borne half
and half by the Central Company and the Southern Company.
ch party will pay any assessments or taxes based on its gross earn-
s. The Southern Company will furnish water and other supplies,
ident to the maintenance and operation of the property jointly
d. It shall not be bound to furnish any fuel or other supplies, ex-
t water, for the trains or equipment of the Central Company, nor
the special or exclusive use in any manner of the Central Com-
y, or the officers or employees thereof. The Southern Company
ll have unrestricted power to change, add to, better, and repair
property as it may deem advisable, including the right to pro-
e such additional main and other tracks as it shall deem neces-
y, not, however, so as by such changes, additions, betterments, and
airs, permanently to impair its usefulness to the Central Com-
y. If the Central Company shall, at any time, deem the con-
ction of additional main track or tracks, or other tracks, neces-
y to the proper conduct of its business, and the Southern Com-

pany be unwilling to construct any such additional main or other track, then the Central Company shall have the right to submit the question of the reasonable necessity of such track or tracks, to arbitration as hereinafter provided. Should the Southern
573 Company change the character of its motive power, and use some form of power other than steam, and for the purpose of such change add to the leased property facilities of which the Central Company makes no use and obtains no benefit, or should the Central Company create its own roundhouses and oil tanks, or other fueling or coaling facilities, which it is given the right to do under reasonable conditions as to connections with the line, then the Central Company will not be required to pay any share of the interest charge or the expense of maintenance and operation of the said facilities created by the Southern Company, or to pay any share of the interest charge or expense of maintenance and operation of roundhouses and oil tanks, or other fueling or coaling facilities, created by the Southern Company subsequent to the date that the Central Company creates its own facilities, unless the Central Company should use such added facilities, in which case the Central Company will join in paying interest charge, and other expenses, on the basis hereinafter stated in this contract. In case the Central Company creates its own roundhouses and fueling or coaling facilities on the property of the Southern Company, the Southern Company shall have the
574 right to purchase them on reasonable notice at a fair price, for the benefit of all the users of the property, in which case all users of the property shall pay on the basis hereinafter stated their share of interest on cost and expense of maintenance and operation of the facilities so purchased. Should the Central Company desire to use the special facilities created for the purpose of change in motive power the Southern Company will permit the use of such facilities on the basis of a pro rata share of interest at five per cent per annum on their value, and of maintenance and operation cost based on use.

Should the Central Company change the nature of its motive power and use some form of power other than steam, then for the purpose of such change the Central Company, at its own expense, can add to the leased property the necessary facilities for such change of power, and shall be allowed to exclusively use the same; but the Southern Company shall have the right to purchase them on reasonable notice, at a fair price, for joint benefit, in which case the parties shall pay on the basis hereinafter stated their share of interest on cost and the expense of maintenance and operation of the facilities so purchased.

575 SEC. 3. The Southern Company will order and direct the movement of engines, cars, and trains under such reasonable rules and regulations customary among railways as it may adopt

from time to time. All regulations and train schedules shall be equal, just, and fair, and shall not unjustly discriminate against either party. All passenger trains shall be given preference over other trains, and the trains of each of the parties shall be given equal despatch according to their class.

The Central Company shall have in every respect the same rights and privileges in the transaction of its business that the Southern Company has as to its business.

SEC. 4. All agents and employees engaged upon said railway by the Southern Company shall do the business of the Central Company without discrimination. Such agents and employees shall not solicit business or recommend the routing thereof, but in all respects shall act with entire impartiality between the parties using the property. All agents collecting or receiving money shall be, in so far as concerns the business and revenues of the Central Company, the agents and employees of that company, and shall report and remit to directly to it, and shall keep the Central Company's accounts and records and make such reports to the Central Company as to its business and settle with and account to the Central Company as often and as fully as may be required by it, and the Central Company may bond such agents or employees, or require them to furnish bond, and the Southern Company shall not be liable to the Central Company for their acts, neglects, or defaults. Any joint employee shall be removed from service on the property on the request in writing of the Central Company. Any employee engaged in the service of the Central Company upon or about trains, coal bunkers, oil tanks, or roundhouses shall be withdrawn from service on the property on request of the Southern Company in writing, giving reasonable grounds for such withdrawal.

SEC. 5. The Southern Company will maintain at all stations, other than Sacramento, facilities adequate and suitable for the business. Failing so to do, the Central Company may create its own station facilities under reasonable conditions as to connection with the leased premises. The Southern Company shall have the right to purchase at a fair price such facilities, when built on its property, in which case the facilities will be for joint use of the parties, and the price paid therefor added to the basis of rental like other improvements, betterments, and additions.

SEC. 6. Branch lines of either party shall be allowed to make connection with the railway at suitable and convenient points. Industry spurs are to be created when necessary, and the cost thereof shall be added as basis of rental, as herein provided in the case of improvements, betterments, and additions, and if any user of the property objects to the creation of any such spur it shall not be charged on account of the cost or maintenance thereof, and shall not use the same,

but at any time it may elect to use the same and from that time on shall be charged rental for its proportion of the cost, including interest at five (5) per cent per annum to that date, and for the future maintenance thereof. If the Central Company deems the construction of side tracks (other than passing or yard tracks) necessary to the proper conduct of its business, the Central Company may request the Southern Company, in writing, to put in such tracks, and if the Southern Company shall fail to commence work thereon within a period of ninety (90) days and complete the same within a reasonable time thereafter, the Central Company may put such tracks in at its own cost and expense, including the expense of connections,
578 such connections to be made in such manner and at such points as the chief engineer of the Central Company may designate. The Central Company shall have the exclusive use of the tracks, and shall put in and maintain the same, but the Southern Company shall have the right to purchase them on reasonable notice and at a fair price, in which event the Central Company shall pay, on the basis herein stated, its share of interest on cost and the expense of maintenance and operation of the facilities so purchased.

SEC. 7. Whenever commercial or industry leases are desired by third parties upon any part of the property covered by this agreement, each of such leases shall be made upon agreement of the parties hereto. In case the Southern Company and the Central Company shall fail to agree as to the making of such lease, either of them shall be entitled to submit to arbitration as to the demand herein for the purpose of determining whether or not such commercial or industry lease may be granted without interfering with the use of the property for railroad purposes.

All sums received from third parties, other than railway companies, users of the joint property, derived from the use or
579 occupation of any part of the property covered by this agreement or for any building or improvement directed thereon shall be accounted for by the Southern Company in the monthly bills rendered for maintenance and operation.

ARTICLE II.

SEC. 8. The Central Company will pay for the rights and privileges herein granted the sum of two and one-half (2½%) per cent per annum on the value of the property covered by this agreement, in two equal instalments, on the first day of June and the first day of December in each year, and this rental will be increased by two and one-half (2½) per cent per annum upon the actual cost (which shall include transportation and insurance and a just sum to cover the cost of superintendence and management) to the Southern Company

or the Pacific Company of all improvements, betterments, and additions to the property properly chargeable to capital account. The rentals herein agreed to be paid are based upon the use of the property by the Central Company and by the Southern Company as lessee of the Pacific Company, and if another railway company, or other railway companies, are admitted to run trains upon the said railway, or any part thereof, one-half of the rental payment of such tenant or tenants shall be credited to the Central Company.

580 SEC. 9. The Central Company will also pay such pro rata proportion of the cost actually incurred by the Southern Company in the maintenance and operation of the property (which shall include transportation and insurance, and a just sum to cover the cost of superintendence and management) as the number of miles on said railway, or any part thereof, run by the engines and cars in its trains bears to the whole number of miles run by engines and cars of all the parties using the same or any part thereof. Each engine and tender shall be counted as two cars. All movements of engines and cars shall be considered as trains within the meaning of this paragraph; but the switching of cars within actual yard limits, or the movement of work trains engaged in working upon the joint line, shall not be counted.

Transportation of supplies, materials, and other freights originating at competitive points off the joint property, and necessary for the maintenance or repair of the property or additions or betterments thereto, shall be routed between the Central Company and the Southern Company so that the service performed beyond Sacramento and Oakland may be equitably divided between the two companies, and as nearly equal as may be.

581 SEC. 10. The Central Company will make all payments to the Southern Company at the city of San Francisco. At the option of the Southern Company payments for the rental shall be made in gold coin of the present standard. Bills for the maintenance and operation of the line shall be rendered monthly by the Southern Company as soon as may be after the close of each month, and shall be paid within thirty (30) days thereafter. Payment of such bills shall not be delayed for errors which are not serious or important, but they shall be paid as rendered, notwithstanding any error of ordinary character likely to occur in railroad accounts, the necessary corrections to be made in subsequent bills.

SEC. 11. The books, records, vouchers, and papers of the Southern Company or the Pacific Company touching or material to the cost of improvements, betterments, or additions to the property, or touching or material to the cost of maintenance or operation, at all times shall be freely open to the examination of the Central Company.

SEC. 12. Should the Central Company fail to make any payment when due, which it is obligated to make by this contract, or
582 fail in any other respect to perform the agreement, and such default continue for six (6) months after notice in writing of intention to terminate the contract, given by the Southern Company to the Central Company, the Southern Company may at its election declare this agreement terminated, and may exclude the Central Company from all use of the property described herein: Provided, That failure to make any payment which is the subject for arbitration or litigation shall not be deemed cause of forfeiture hereunder.

ARTICLE III.

SEC. 13. The Southern Company shall be bound to use only reasonable and customary care, skill, and diligence in maintaining and repairing the roadway, tracks, structures, and appliances of and pertaining to the said railway and in managing and operating the same; and all employees of the Southern Company (except enginemen and trainmen) employed in maintaining, repairing, or operating the railway, or in dispatching, giving orders for or directing movement of trains, or in performing any other service for the common benefit of the railway companies using the property, shall for the purposes of the contract be regarded while engaged in such work as
583 joint employees of all the railway companies using the property. Enginemen and trainmen of any work train engaged in maintaining, repairing, or adding to the property shall likewise be deemed joint employees. The Central Company shall not, by reason of any defect in the property, or by reason of the failure or neglect of the Southern Company to repair such defect, or by reason of the failure or neglect of any joint employee as herein defined, make against the Southern Company any claim or demand for loss, damage, or injury arising from such defect, neglect, or failure; but should the Southern Company fail to repair any such defect within a reasonable time after being notified in writing so to do by the Central Company specifying the defect, then the Central Company may make the necessary repairs at once, which will be paid by the Southern Company and taken over in its bill for maintenance and operation.

Each railway company from time to time using the property will assume, bear, settle, and pay all loss, cost, damage, or injury which the property jointly used, its property or property in its custody or which its employees or passengers may suffer while it is running its engines, cars, or trains upon or over any part of the property no matter how such loss, damage, or injury may occur, pro-
584 vided, however, that in case of collision between the engines cars, or trains of any of the parties from time to time using

the property or in case of other accident caused by negligence of enginemen or trainmen or of other sole employees of either party, the party whose employee is at fault shall be responsible for and pay the entire loss caused thereby. If such collision or other accident is caused by fault of the train employees of two or more companies using the property or by the fault of a joint employee, each party involved shall bear an equal share of all damage to the property jointly used and all the damage to its own property or property in its custody, or which its employees or passengers may suffer in consequence thereof. Loss and damage caused by the negligence of joint employees not covered by some other provision of this contract shall be charged to operating expenses and divided as herein expressly provided.

Except as hereinbefore provided each railway company from time to time using the property will assume and pay all loss or damage which its engines, cars, or trains may do to third persons or to property of third persons, and each indemnifies the other against all claims and demands for any loss or damage which it herein agrees itself to bear.

585 If any injury shall occur to persons or property by the operation of trains in such a way that it cannot be determined what company's trains caused the injury, the compensation, if any is made to the injured party, shall be apportioned as other operating expenses under this contract.

Neither party shall under any circumstances have any cause of action against the other for loss or damage of any kind caused by or resulting from interruption or delay to its business.

In case a suit shall be commenced against any company using the property for damages for which another user is ultimately liable, the party sued may give notice to the other party of such suit and thereupon the company so notified shall assume the defense of the suit and save the company sued harmless.

The parties will settle as between themselves any claim for loss or damage according to the terms of this contract, notwithstanding any judgment or decree of a court or other tribunal in a proceeding brought by third parties.

SEC. 14. If any train of the Central Company shall be wrecked while running upon the tracks covered by this con-
586 tract, the wreck shall be picked up at once and removed by the Southern Company, and the Central Company (except as herein otherwise provided) shall bear the whole cost of such service, including the rental of equipment.

SEC. 15. If at any time a question shall arise touching the construction of this contract, or concerning the business or manner of transacting the business to be carried on under its provisions, or

concerning the observance or performance of any of its covena upon which question the parties can not agree, such question sh be submitted to the arbitrament of five persons. The party dema ing such reference shall give to the other party notice of such mand, stating specifically the question to be submitted for decis and nominating a person to act as one referee. If at the expirat of thirty days from the receipt of such notice the party receiving has not notified the party demanding the reference of its nominati of a second referee, the party making the demand may make s selection. The first and second referees chosen shall select three d interested persons familiar with business and experienced in railw

management and affairs; and when the board is complete
587 shall fix a day and place for the hearing, of which the part shall be severally notified. If the first and second refer chosen shall be unable to agree upon the other referees, or any them, such referee or referees as to which they fail to agree shall appointed upon ten days' notice upon motion of either party by t judge of any court of the United States within the State of Calif nia holding the senior commission, and in his absence by the jud holding the next oldest commission. After hearing the testimo and arguments which may be submitted by each party, the refere or a majority of them, if they agree upon an award, shall state it writing, which, when delivered to both parties, shall be binding a conclusive upon each, and each party hereby expressly agrees to bound conclusively thereby.

The board of referees making any final award hereunder sh determine in its discretion, by which of the parties the fees and e penses of the arbitration shall be paid, or shall apportion such fe and expenses between the parties, and such fees and expenses shall forthwith paid by the party or parties liable therefor, in accordan with such adjudication of the referees.

Immediately after any award each party will make su
588 changes in the conduct of its business, or such payments restitution, as the case may be, as are in and by such awa required of it to be made. If either party shall refuse to keep a perform any award, the adverse party may enforce the same by s proceedings in any court of law or equity.

The books and papers of both parties as far as they relate to a matters submitted to arbitration shall be open to the examination the arbitrators; and until the arbitrators shall make their award upo any question submitted to them the business, settlements, and pa ments to be transacted and made under the terms of this agreeme shall continue to be transacted and made in the manner and for existing prior to the arising of such question.

SEC. 16. As long as any arrangement exists between the Southern Company and the Pacific Company whereby the Southern Company is legally entitled to have the possession, control, and management of the property herein described, the Southern Company and the Pacific Company shall be regarded for all purposes under this agreement, including arbitration, jointly as one company, represented by the Southern Company. Whenever and as soon as the Southern
589 Company is not entitled, as between itself and the Pacific Company, to the possession, control, and management of the property of the Pacific Company described herein, and the Pacific Company enters into the possession of its own property, and the control and management thereof, then the words "Southern Company", as used in secs. 2, 3, 4, 5, 6, and 7, in Article I herein, and in Article II, and in the preceding paragraphs of Article III hereof, shall be construed to mean the Pacific Company in connection with the property herein described then owned by the Pacific Company, and in its possession, and shall be construted to mean the Southern Company in connection with the property herein described, then owned by the Southern Company, and the payments to be made by the Central Company on account of rental and the expense of maintenance and operation shall be divided between the Pacific Company and the Southern Company, as evidenced by agreement in writing made between the Pacific Company and the Southern Company and delivered to the Central Company, and in case the Pacific Company and the Southern Company be unable to agree, then such payment so required to be made by the Central Company shall be divided by arbitration, as provided in this agreement, the Southern Com-
590 pany being regarded as one party and the Pacific Company as another party in such arbitration.

No additional companies shall be admitted to use the property except by the written consent of both the Pacific Company and the Central Company, but the rights of each party hereto shall be deemed appurtenant to and running with its railroad, and it may sell, assign, lease, or mortgage as an entirety the said rights in connection with and as a part of its railroads. Covenants and agreements herein contained shall apply to and bind the parties hereto, their successors, assigns, and lessees, and shall inure in favor of the successors, assigns, and lessees of the parties in whose benefit made.

SEC. 17. This contract shall take effect on the day of , 191 , and rental shall accrue from that date and shall continue from that time, whether the Central Company uses the property or not. It shall continue for a term of nine hundred and ninety-nine years from the time it goes into effect.

SEC. 18. Notices under this contract shall be in writing to the president, vice president, or secretary of the company to be notified.

591 In testimony whereof Southern Pacific Company, Southern Pacific Railroad Company, and Central Pacific Railway Company have caused this instrument to be executed under their respective corporate seals and under the hands of their respective presidents and secretaries or vice presidents and assistant secretaries the day and year above written.

SOUTHERN PACIFIC COMPANY,

By

President.

In the presence of as to Southern Pacific Company—
Attest:

Secretary.

SOUTHERN PACIFIC RAILROAD COMPANY,

By

President.

In the presence of as to Southern Pacific Railroad Company—
Attest:

Secretary.

CENTRAL PACIFIC RAILWAY COMPANY,

By

President.

In the presence of as to Central Pacific Railway Company—
Attest:

Secretary.

592 PETITIONER'S EXHIBIT No. 21, SEPTEMBER 21, 1914.

All communications to be addressed to the Registrar of Joint Stock Companies, Companies Registration Office, Somerset House, London, W. C.

Remittances must be made out in favour of "The Commissioners of Inland Revenue", and be crossed "Bank of England, Inland Revenue a/c." Amounts of 1/— and upwards must not be remitted in stamps.

The following number and letter should be quoted in the reply: 55985.

COMPANIES REGISTRATION OFFICE,
SOMERSET HOUSE,
London, W. C., 18th August, 1914.

Central Pacific Railroad Shareholding Company, Limited.

SIR: I have to acknowledge the receipt of your letter of the 1st instant, enclosing money order for £2, and in compliance with your request I forward herewith copies and extracts from documents on

the file of the above-named company, so far as they appear to furnish the information asked for.

The company was incorporated on the 8th of February, 1898, and was dissolved three months after the filing of the return of final winding-up meeting on the 26th of September, 1899.

Only one annual summary of share capital and shares and list of shareholders was filed, a copy of which is enclosed.

A money order for £1–12–5, the balance of your remittance after deducting poundage and postage and copy charges, is enclosed.

I am, sir, your obedient servant,

P. THOMPSON, *Registrar.*

To EDWARD F. MCCLENNEN, Esq.,
161 Devonshire Street, Boston, Massachusetts, U. S. A.

Memoranda.

The companies (consolidation) act, 1908.

1. A company (other than a "private" company or a company which has allotted any shares or debentures before the 1st July, 1908), which does not issue a prospectus on or with reference to its formation must not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar of joint-stock companies a statement in lieu of prospectus, duly signed, in the form and containing the particulars set out in the second schedule to the act (s. 82).

2. Every company must, before carrying on business, file with the registrar a notice of the situation of its registered office and subsequently of any change therein (s. 62).

3. Every company (except companies registered in pursuance of licenses under s. 20) must file a copy of its register of directors or managers and notify from time to time any change that takes place therein (s. 75).

4. Every company limited by shares must hold its statutory meeting within a period of not less than one month nor more than three months from the date at which it is entitled to commence business. A copy of the statutory report, which must be sent every member at least seven days before the meeting, must be filed with the registrar immediately after it has been sent to the members; but these provisions, so far as regards the forwarding and filing of the statutory report, do not apply in the case of a "private" company (s. 65).

5. Whenever a company limited by shares makes any allotment of shares, it must within a month thereafter file a return of such allotments in the prescribed form (s. 88).

6. Every company must hold a general meeting once at least i every calendar year, and not more than fifteen months after th holding of the last preceding general meeting, and if not so held the company and every director, manager, secretary, and other of cer of the company who is knowingly a party to the default is liabl to a fine not exceeding £50 (s. 64).

7. Every company having a share capital must file annually a sum mary of its capital, together with a list of its members and director in the prescribed form, such summary to be made up to the 14th day after the first ordinary general meeting in each year and regis tered within seven days after such 14th day (s. 26).

596 8. Every mortgage or charge (as defined by s. 93 (1)) created by a company and requiring registration, will, so fa as any security on the company's property or undertaking is thereb conferred, be void against the liquidator and any creditor of the com pany unless the prescribed particulars are registered with the regis trar within twenty-one days after the date of the creation of th mortgage or charge.

9. A copy of every prospectus duly dated and signed must be file on or before the date of its publication (s. 80).

10. A copy of every special and extraordinary resolution passed b a company must be printed and forwarded to the registrar within fifteen days from the date of the confirmation of the special resolu tion or from the passing of the extraordinary resolution (s. 70).

11. Under the provisions of the "public offices fees act, 1879", a applied to the companies registration office by notices in the Londo Gazette, the lords of His Majesty's treasury require all fees payabl in that office, or to the offices thereof, to be collected by means o stamps.

597 12. Documents tendered for registration must be according to the approved forms and bear an impressed companies regis tration fee stamp of 5s., except in the cases of notices of increase o capital or members, and registration of mortgages where ad valore stamps to the amount of the authorized fees must be impressed.

13. Stamped forms for the various notices, returns, &c., under th act may be obtained at the companies registration office, Somers House. The charge is 5s. 2d. for each stamped form when ad valore fees are not payable, except in the case of the statement in lieu o prospectus, and of the annual return (paragraph 7) which are 5s. 2 each. Unstamped continuation forms for lists of members are al at one penny per form.

14. Office copies are charged for at the rate of 4d. per folio of 7 words. Copies of satisfactions of registered mortgages and charg are 5s. each. Certificates of incorporation and of registration o mortgages and charges, after the first, are 5s. each. The inspecti

fee is 1s. for each company searched. Stamps for office copies, &c., and inspection forms bearing the 1s. impressed stamp are sold in the office.

15. Postal orders, money orders, or cheques should be made payable to the commissioners of inland revenue and crossed "Bank of England, inland revenue a/c".

598 No. of certificate, 55985/5. (Price two pence per sheet. Form No. 6.)

Registered, 39023, 20 Aug., 1898.

"The companies' acts, 1862 to 1893."

(25 & 26 Vict., c. 89; 30 & 31 Vict., c. 131; 40 & 41 Vict., c. 26; 42 & 43 Vict., c. 76; 43 Vict., c. 19; 46 & 47 Vict., cc. 28 & 30; 49 Vict., c. 23; 53 & 54 Vict., cc. 62, 63, & 64; and 56 & 57 Vict., c. 58.)

Form E, as altered by the Board of Trade, by notice in the London Gazette of the 14th day of April, 1885, pursuant to s. 71 of companies' act, 1862.

(Stamped:) Companies Registration Office, 18 Aug., 1914.

(One shilling companies registration stamp, cancelled 18 Aug., 1914.)

A 5/- companies registration-fee stamp must be impressed here.

Summary of capital and shares of the ——— ———.

599 Central Pacific Railroad Shareholding Company, Limited, made up to the twenty-first day of June 1898 (being the fourteenth day succeeding the date of the first ordinary general meeting in the year).

Nominal capital, £10,000, divided into * 10,000 shares of £ * 1 each.

Number of shares taken up to the 21st day of June, 190 1898 *----------	7
There has been called up on each of seven shares----------	£ Nil.
There has been called up on each of —— shares----------	£----
Total amount of calls received, including payments on application and allotment ----------	£----
Total amount (if any) agreed to be considered as paid on —— shares---	£----
Total amount of calls unpaid----------	£----
Total amount (if any) paid on [d] —— shares forfeited----------	£----

[a] Where there are shares of different kinds (e. g., A or B, or £100 or £5) state the numbers and nominal values separately.

[b] Specify the existing shares only, as shown in the list.

[c] Where various amounts have been called or there are shares of different kinds (e. g., A or B, or £100 or £5) state them separately.

[d] Include what has been received on forfeited as well as on existing shares.

[e] State the aggregate number of shares forfeited (if any).

The return should be signed, at the end, by the secretary of the company.

Presented for filing by E. W. Cheesman, 6a Austin Friars, London, E. C.

601–602 *List of persons holding shares in the Central Pacific Railroad Shareholding Company, Limited, on the 21st day of June, 1898, and of persons who have held shares therein at any time during the year immediately preceding the said date, showing their names and addresses and an account of the shares so held.*

Folio in register ledger, containing particulars.	Names, addresses, and occupations.				Account of shares.					Remarks.
	Surname.	Christian name.	Address.	Occupation.	Number of shares held by existing members at date of return.	Particulars of shares transferred during the preceding year by persons who are still members.		Particulars of shares transferred during the preceding year by persons who have ceased to be members.		
						Number.	Date of registration of transfer.	Number.	Date of registration of transfer.	
	Banbury	F. G.	23 Old Broad St., London, E. C.	Stockbroker, M. P.	One.					
	Price	Joseph	5 Great Winchester St., London, E. C.	Director of pub. co	One.					
	Marks	Daniel	31 Threadneedle St., London, E. C.	Stockbroker	One.					
	Cheesman	E. W.	26 Old Broad St., London, E. C.	Secretary to pub. co	One.					
	Compton	Alwyne F.	13 Copthall Court, London, E. C.	Stockbroker and M. P.	One.					
	Rolph	R. L.	29 Oxford Rd., Walthamstow	Stationer	One.					
	Summers	E.	23 Old Broad St., London, E. C.	Stockbroker's clerk	One.					

(Stamped) Companies Registration Office, 18 Aug., 1914.

(One shilling companies registration stamp cancelled 18 Aug., 914.)

55985/6. Registered. 34577. 10 Jul., 1899.

Special resolution of the Central Pacific Railroad Shareholding ompany, Limited. Passed 22nd June, 1899. Confirmed 10th July, 99 (pursuant to section 51 of the companies act 1862).

At an extraordinary general meeting of the members of the said mpany duly convened and held at No. 4 Great Winchester Street the city of London on the 22nd day of June, 1899, by adjournent from the 15th day of June, 1899, the following special resolun was duly passed; and at a subsequent extraordinary general eting of the members of the said company also duly convened and ld at the same place on the 10th day of July, 1899, the said special solution was duly confirmed, viz:

Resolved—

1. "That the company be wound up voluntarily.

2. "That Mr. Edward William Cheesman, of 27 Leadenhall reet, in the city of London, be appointed liquidator."

F. G. BANBURY, *Chairman.*

Witness: Thos. W. Hischoff, 4 Great Winchester Street, London, licitor.

(Stamped) Companies' Registration Office, 18 Aug., 1914.

(Three one-shilling companies' registration stamps, each cancelled ug. 18, 1914.

55985/3. Registered. 6622. 8 Feb., 1898.

Extracts from articles of association of the Central Pacific Railad Shareholding Company, Limited. * * *

Preliminary.

2. The directors shall take over and cause the company to be regered as the owner of all shares of the Central Pacific Railroad mpany the certificates of which may now or hereafter be deposd with the London shareholders' committee formed by the shareolders of that company and now consisting of the following perns, viz: Frederick George Banbury, Esq., M. P.; John B. Akroyd, q.; Lord Alwyne Compton, M. P.; Daniel Marks, Esq.; R. D. ebles, Esq.; and Joseph Price, Esq.; and shall affix the seal of the company to a contract and declaration of trust relating to such shares expressed to be made between the said Frederick George Banbury, of the one part, and the company, of

the other part, the draft of which has been prepared and signed for verification by two of the signatories to the memorandum of association. * * *

19. It being the present intention that all the shares of the company shall be held exclusively by the members for the time being of the committee hereinbefore mentioned, if any member of the company die, be adjudicated bankrupt, or cease to be a member of the said committee, the shares held by him shall forthwith, at the request of the directors, be transferred to such person or persons as the directors may nominate, the transferor in such case being paid such sum as he may himself have paid in respect thereof; and in default the share or shares referred to in such request may be forfeited and dealt with by the directors under the provisions herein contained relating to shares forfeited for non-payment of calls. On the appointment of any person to be a member of the said committee, the directors shall allot or cause to be transferred to him at par not less than one share. * * *

608 Directors.

56. The first directors shall be Frederick George Banbury, Esq., M. P.; John Bathurst Akroyd, Esq.; Lord Alwyne Compton, M. P.; Daniel Marks, Esq.; Robert Davie Peebles, Esq.; and Joseph Price, Esq.; and such qualified persons being members of the before-mentioned committee as may be appointed by the directors before the first general meeting.

57. The number of directors shall never be less than three or more than twelve.

58. The qualification of a director, including those hereby appointed, shall be the holding of one share.

59. Except for the purpose of raising the number of directors to the minimum hereby prescribed, no person shall be appointed or elected a director unless he be a member of the committee hereinbefore mentioned, and no person not being a member of the said committee shall under any circumstances be so appointed or elected if there be a member of the committee willing to act. * * *

Names, addresses, and descriptions of subscribers: F. G. Banbury, M. P., 23 Old Broad Street, London, stockbroker; Joseph Price, 5 Gt. Winchester St., London, director of a public company.

609 Daniel Marks, 31 Threadneedle St., London, stockbroker. E. W. Cheesman, 26 Old Broad St., London, secretary to public company. Alwyne Compton, 13 Copthall Court, E. C., London, stockbroker and M. P. R. Rolph, 29 Orford Rd., Walthamstow,

ationer. E. Summers, 23 Old Broad Street, London, E. C., stock-oker's clerk.

Dated the 7th of February, 1898.

Witness to all the above signatures, Thos. W. Bischoff, 4 Great Winchester Street, London, solicitor.

0 (Price, twopence per sheet.) No. of certificate, 55985/7. Registered. 45238. 26 Sep., 1899. Form No. 15.

"The companies' acts, 1862 to 1893."

(Stamped) Companies' registration office, 18 Aug., 1914. (Four nce companies registration stamp cancelled 18 Aug., 1914.) A 5s. mpanies' registration fee stamp must be impressed here.

Return of final winding-up meeting

the ——— ——— Central Pacific Railroad Shareholding Com-ny, Limited, pursuant to sections 142 and 143 of companies' act, 2.

Presented for filing by Bompas, Bischoff, Dodgson, Coxe & Bompas, 4 Great Winchester street, E. C.

To the registrar of joint-stock companies:

I have to inform you that a meeting of the Central Pacific lroad Shareholding Company, Limited, was duly held on the nty-fifth day of September, 1899, for the purpose of having an ount laid before them showing the manner in which the winding of the company has been conducted and the property of the com-y disposed of, and that the same was done accordingly.

(Signature) E. W. CHEESMAN, *Liquidator.*

Dated twenty-fifth day of September, 1899.

PETITIONER'S EXHIBIT NO. 22, SEPTEMBER 21, 1914.

(United States Executive Documents, 1st Session, 50th Congress, 1887–1888, volumes 2 to 6, containing volumes 1 to 9 of report of U. S. Pacific Railway Commission. Pursuant to agreement of counsel, this volume is not to be copied in the record, but from various extracts read in evidence the following was omitted—see page 36 of the record.)

EXHIBIT A.—*Comparative statement showing freight tonnage and charges on through traffic and percentage of same done by each route for periods as noted.*

Period.	Direction.	Via Central Pacific and Union Pacific.		Via Central Pacific and Denver & Rio Grande.		Via South'n Pac. and Atlantic & Pacific.	
		Pounds.	Charges.	Pounds.	Charges.	Pounds.	Charges.
	East	940, 363, 990	$12, 565, 250. 30				
	West	1, 647, 899, 888	29, 991, 892. 90				
Jan. 1, 1874, to Mar. 31, 1881		2, 588, 263, 878	42, 557, 143. 20				
Per cent		100	100				
	East	143, 303, 150	1, 928, 977. 40				
	West	272, 455, 990	4, 234, 726. 90				
Apr. 1, to Dec. 31, 1881		415, 759, 140	6, 163, 704. 30				
Per cent		94. 54	94. 50				
	East	127, 141, 720	1, 650, 253. 30				
	West	358, 452, 510	5, 285, 101. 90				
Jan. 1, 1882, to Jan. 31, 1883		485, 594, 230	6, 935, 355. 20				
Per cent		69. 23	72. 37				
	East	21, 447, 710	281, 229. 20				
	West	107, 563, 550	1, 473, 145. 00	58, 730	$1, 298. 10		
Feb. 1, to May 31, 1883		129, 011, 260	1, 754, 374. 20	58, 730	1, 298. 10		
Per cent		57. 77	57. 45	. 03	. 04		

	East	56,751,140	508,742.50	7,842,280	112,246.10		
	West	79,403,880	1,156,336.70	16,396,820	214,107.00		
June 1 to Sept. 30, 1883		136,155,020	1,965,079.20	24,239,100	326,353.10		
Per cent		48.76	49.71	8.68	8.26		
	East	118,244,380	1,478,543.10	25,158,880	314,268.60	22,695,450	258,794.10
	West	204,365,320	2,827,834.30	33,015,840	440,416.70	43,151,750	577,067.90
Oct. 1, 1883, to Sept. 30, 1884		322,609,700	4,306,377.40	58,174,720	754,685.30	65,847,200	835,862.00
Per cent		42.45	43.23	7.65	7.57	8.66	8.39
	East	160,939,860	1,920,418.10	34,340,150	426,440.70	62,647,870	699,411.80
	West	173,124,650	2,353,273.00	22,632,530	284,530.70	129,909,200	1,559,200.40
Oct. 1, 1884, to Dec. 31, 1885		334,064,510	4,273,691.10	56,972,680	720,971.40	192,557,070	2,258,612.20
Per cent		35.29	35.65	6.02	6.01	20.34	18.84
	East	175,783,490	1,492,955.00	40,745,090	331,624.40	59,254,850	462,541.10
	West	193,450,600	1,338,468.60	52,001,960	319,472.80	99,820,590	989,241.10
Jan. 1 to Dec. 31, 1886		369,234,090	2,831,423.60	92,747,050	651,097.20	159,075,440	1,451,782.20
Per cent		31.18	32.36	7.83	7.44	13.43	16.59
Total, 5 years 9 months		2,192,427,950	28,230,095.00	232,192,280	2,454,405.10	417,479,710	4,546,256.40
Per cent		48.35	52.46	5.12	4.56	9.20	8.45

EXHIBIT A.—*Comparative statement showing freight tonnage and charges on through traffic, etc.*—Continued.

Period.	Direction.	Via South'n Pacific and A. T. & S. F.		Via South'n Pac. and Texas & Pac.		Via South'n Pac. and G. H. & S. A.	
		Pounds.	Charges.	Pounds.	Charges.	Pounds.	Charges.
	East	21,362,350	$305,546.70				
	West	2,663,060	53,068.50				
Apr. 1 to Dec. 31, 1881		24,025,410	358,615.20				
Per cent		5.46	5.50				
	East	56,393,500	721,230.00	91,534,360	$921,285.60	420,360	$4,501.50
	West	54,278,820	766,021.40	13,223,860	234,796.40		
Jan. 1, 1882, to Jan. 31, 1883		110,672,320	1,487,251.40	104,758,220	1,156,082.00	420,360	4,501.50
Per cent		15.78	15.52	14.93	12.06	.06	.05
	East	12,847,600	172,954.70	8,611,810	118,460.80	5,147,610	64,839.40
	West	49,494,060	641,752.20	7,055,760	122,695.60	11,093,760	177,622.20
Feb. 1 to May 31, 1883		62,341,660	814,706.90	15,667,570	241,156.40	16,241,370	242,461.60
Per cent		27.92	26.67	7.01	7.90	7.27	7.94
	East	13,792,950	178,392.90	12,704,710	164,939.40	22,477,880	261,766.40
	West	30,100,000	374,613.40	8,113,380	120,022.10	31,663,130	561,700.70
June 1 to Sept. 30, 1883		43,892,950	553,006.30	20,818,090	284,961.50	54,141,010	823,467.10
Per cent		15.71	13.99	7.46	7.21	19.39	20.82
	East	17,916,560	215,477.30	35,293,160	410,467.10	35,460,850	454,253.40
	West	48,184,820	505,712.10	38,104,060	459,110.80	56,874,990	983,714.00
Oct. 1, 1883, to Sept. 30, 1884		66,101,380	721,189.40	73,397,220	869,577.90	92,335,840	1,437,967.40
Per cent		8.69	7.24	9.66	8.73	12.14	14.43

East	7, 396, 900	93, 884. 50	36, 437, 990	424, 778. 20	62, 363, 790	712, 788. 50
West	254, 730	4, 406. 20	24, 649, 270	287, 921. 10	102, 173, 370	1, 610, 103. 60
Oct. 1, 1884, to Dec. 31, 1885	7, 651, 630	98, 290. 70	61, 087, 260	712, 699. 30	164, 537, 160	2, 322, 862. 10
Per cent	.81	.82	6. 46	5. 95	17. 39	19. 38
East	769, 200	8, 000. 70	34, 625, 300	303, 160. 30	152, 680, 040	895, 459. 20
West	41, 310	586. 50	23, 132, 570	184, 238. 00	191, 969, 440	1, 288, 154. 20
Jan. 1 to Dec. 31, 1886	810, 510	8, 587. 20	57, 757, 870	487, 398. 30	344, 649, 480	2, 183, 613. 40
Per cent	.07	.10	4. 88	5. 58	29. 09	24. 96
Total, 5 yrs. 9 mos	315, 495, 860	4, 041, 647. 10	333, 486, 230	3, 751, 875. 40	672, 325, 220	7, 014, 873. 10
Per cent	6. 95	7. 51	7. 36	6. 97	14. 83	13. 03

620–621

Period.	Direction.	Via North'n Pacific and O. R. and N. Co.		Via Oregon Short Line.		Total via all routes.	
		Pounds.	Charges.	Pounds.	Charges.	Pounds.	Charges.
Jan. 1, 1874, to Mar. 31, 1881						2, 588, 263, 878	$42,557,143.20
Apr. 1 to Dec. 31, 1881						439, 784, 550	6, 522, 319. 50
Jan. 1, 1882, to Jan. 31, 1883						701, 445, 130	9, 583, 190. 10
Feb. 1 to May 31, 1883						223, 320, 590	3, 053, 997. 20
June 1 to Sept. 30, 1883						279, 246, 170	3, 952, 867. 20
Oct. 1, 1883, to Sept. 30, 1884		81, 645, 044	$1, 036, 776. 08			760, 111, 104	9, 962, 435. 48
Per cent		10. 75	10. 41				
Oct. 1, 1884, to Dec. 31, 1885		91, 605, 847	1, 143, 128. 66	38, 513, 114	$458, 160. 71	946, 449, 271	11, 988, 416. 17
Per cent		9. 62	9. 53	4. 07	3. 82		
Jan. 1 to Dec. 31, 1886		90, 666, 960	756, 457. 08	69, 481, 740	378, 222. 80	1, 184, 423, 140	8, 748, 581. 78
Per cent		7. 66	8. 65	5. 86	4. 32		
Total, 5 years, 9 months		263, 377, 851	2, 936, 361. 82	107, 994, 854	836, 383. 51	4, 534, 779, 955	53, 811, 807. 43
Per cent		5. 81	5. 46	2. 38	1. 56		

622 PETITIONER'S EXHIBIT No. 23–A, SEPTEMBER 21, 1914.

(Report of Mr. Morgan from the Committee on Pacific Railroads, March 29, 1897, in the Senate of the United States, 55th Congress, 1st session, Minority Report No. 20, Part 2, and appendix thereto, being Senate Report No. 778, Part 2, 54th Congress, 1st session, April 21, 1896. Pursuant to agreement of counsel, this exhibit is not to be reproduced.)

PETITIONER'S EXHIBIT No. 23–B, SEPTEMBER 21, 1914.

(Volume entitled "Pacific Railroad Debt and Other Senate Documents, 1896", containing Senate Document No. 314, 54th Congress, 1st session, "Government Debt of the Pacific Railroads; Notes of Hearings before the Committee on Pacific Railroads of the Senate of the United States on the Subject of the Indebtedness of the Pacific Railroads to the Government". Pursuant to agreement of counsel this exhibit is not to be reproduced.)

623 PETITIONER'S EXHIBIT No. 24, SEPTEMBER 22, 1914.

[Extract from printed record "United States *v.* The Union Pacific Railroad Company et al", Volume VII, Complainant, pages 3321–3325.]

This agreement between the Trans-Continental Association, an association consisting of the following railroad companies, namely:

The Southern Pacific Company;
The Atchison, Topeka & Santa Fe Railroad Company;
The Atlantic & Pacific Railroad Company;
The California Central Railway Company;
The California Southern Railroad Company;
The Burlington & Missouri River Railroad Company;
The Denver & Rio Grande Railway Company;
The Denver & Rio Grande Western Railway Company;
The Northern Pacific Railroad Company;
The Oregon Railway & Navigation Company;
The Missouri Pacific Railway Company;
The Texas & Pacific Railway Company;
The Oregon Short Line Railway Company;
The Union Pacific Railway Company;
The St. Louis & San Francisco Railroad Company;
624 The Chicago, Kansas & Nebraska Railway;
Denver, Texas & Fort Worth Railroad; and
The St. Paul, Minneapolis & Manitoba Railway Co.,

which association is now represented by James Smith, its chairman, party of the first part, and the Pacific Mail Steamship Co., a cor-

poration created by and existing under the laws of the State of New York, party of the second part, made and entered into this first day of October, 1889.

Witnesseth, First. That the said party of the first part, in consideration of the undertakings and agreements of the said Steamship Company, hereinafter contained, undertakes, promises, and agrees to and with said Steamship Company, to guarantee, and does hereby guarantee that the gross earnings upon through freight and passengers between New York and San Francisco, to be provided to said Steamship Company by said party of the first part, shall be seventy-five thousand ($75,000) dollars per month. All the gross earnings of said steamers from through business between New York and San Francisco each way shall go to and belong and be payable to said party of the first part or credited upon its said guarantee to said Steamship Company.

625 Second. In consideration of said guaranty, of said party of the first part, the said Pacific Mail S. S. Co. covenants, promises, and agrees to and with the said party of the first part that it, the said Steamship Company, will, at its own cost and expense, dispatch and run from the port of New York for Aspinwall, not more than three nor less than two through steamers per month, and not more than three nor less than two steamers connecting therewith from Panama to San Francisco, and from the port of San Francisco for Panama not more than three nor less than two through steamers per month, and not more than three nor less than two steamers connecting therewith from Aspinwall to New York, and that said Steamship Company will permit said party of the first part to fix the rates at which all through freight between New York and San Francisco and all passengers shall be transported by the vessels of the Steamship Company from the Port of New York to the Port of San Francisco and from the Port of San Francisco to the Port of New York, and will furnish room on each of said steamers from New York and San Francisco, respectively, and their connecting steamers for the transportation of, and will transport from New York to San Francisco and from San Francisco to

626 New York all and only such passengers and such freight as may be obtained under rates fixed by said party of the first part to an amount as to freight not exceeding six hundred tons of two thousand pounds each in case it runs two steamers per month, and four hundred tons in case it runs three steamers per month upon any one steamer. It being understood that the deficiency or excess of said six hundred tons or said four hundred tons, respectively, of cargo upon any one steamer may be added to or taken from, as the case may be, the cargo of any other vessel sailing in same direction within the same calendar month, the intent being that the Steamship

Company shall carry monthly an average of six hundred tons p vessel, in case two steamers per month are run, or a monthly avera of four hundred tons per vessel, in case three steamers per mon are run.

All above steamers to be first class and equal to those now mai tained, and in case of the loss of a steamer, or its withdrawal f any cause, the Pacific Mail S. S. Co. shall as soon as possible fu nish a steamer of equal capacity and rating. In the event of failu on the part of said steamship company to furnish proper and ad quate facilities for the transportation of at least one thousand t hundred tons of freight each way per month at the rate of
627 least four hundred tons per vessel—then the guaranty herei provided for shall be reduced pro rata.

The Steamship Company is to bear and pay all the expenses an charges of every kind of transporting such goods passengers an freight from New York to San Francisco and from San Francis to New York, including all charges and expenses of every kind i the ports of New York and San Francisco, and all supplies of pa sengers with food and sleeping accommodation, giving them prope accommodation according to class, and to continue to use all effort to obtain first-class and other passengers as heretofore.

Third. The understanding and intention of this agreement is tha the party of the first part shall, through agents appointed by itself have entire and exclusive control of all the through business of th said steamship company between New York and San Francisco eac way, and that no through freight or passengers shall be taken exce at prices to be fixed by the party of the first part and by its consent it being understood that said control shall be exercised through th established agencies of said steamship company. If the said steam ship company shall have room or capacity for more than si
628 hundred tons, in the event of its running two steamers pe month each way, or for more than four hundred tons, in th event of its running three steamers per month each way of through freight on any steamer and the party of the first part shall desir to fill it, the said party of the first part shall be at liberty to do s at rates fixed jointly by duly authorized representatives of the parties hereto, the party of the first part to have one half of the freights on such excess and the Steamship Company the other half.

Fourth. The Pacific Mail S. S. Co. shall render to the party of the first part an account or statement of the transactions for through business of each month on or before the tenth day of the succeeding month, showing the amount claimed to be due from the party of the first part under this agreement, and on or before the thirteenth day of the succeeding month the chairman of the party of the first

part shall draw his draft in favor of the Pacific Mail S. S. Co. upon each of the railroad companies constituting the party of the first part for the portion payable by it to said steamship company on account of the aggregate amount payable by the party of the first part to the said steamship company according to the fore-
629 going provisions hereof. The portions of such aggegrate amount payable from time to time by the respective companies forming the party of the first part shall be such as has been or may be fixed or prescribed among themselves, and each of the said companies forming the party of the first part shall be liable for its own portion of such aggregate amount, but none of such companies shall be liable for the portion payable by the others or any other of such companies.

Provided, nevertheless, that in the event of default in payment by any one or more of the companies constituting the party of the first part of its proportion herein provided for, it shall be optional with the party of the second part to terminate this agreement on giving ten days' notice to the party of the first part through its chairman.

The party of the first part, or any other companies constituting the same, may at any time, on demand, examine the books and accounts of the said Steamship Company for the purpose of obtaining full details as to freight and passengers transported by said Steamship Company under this agreement and verifying the accounts and statements of the Steamship Company.

Fifth. It is mutually understood and agreed that this con-
630 tract shall be deemed to have commenced on the first day of October, 1889, and to include the earnings from through business on steamers sailing on and after that date, and as to each and all of the foregoing provisions shall continue in force thereafter until ninety days after written notice of the intention to terminate the same shall have been given by either party to the other, with this exception, that if the exclusive contract between the said Steamship Company and the Panama R. R. Co., so far as it refers to the business of the Steamship Company between San Francisco and New York, is broken or changed in any respect, or if any other competing line by rail or vessel shall be established between the waters of the Atlantic and Pacific Oceans, either overland or via the Isthmus of Panama, that shall affect the through business, concerning which this agreement is made, then the said party of the first part may abrogate and terminate this agreement at any time or not as it may elect.

Sixth. In regard to freight and passengers received by the steamship company at San Francisco for transportation to Europe via Panama, it is understood that the class of business to be taken and the rates to be charged thereon shall be the subject of conference

and mutual agreement between the San Francisco agency of
631 the Pacific Mail S. S. Co. and the San Francisco general agent of the party of the first part to the end that the interests of both parties may be fully protected.

In witness whereof the party of the first part has subscribed its name hereto by its chairman and the said steamship company has caused its corporate seal to be hereto annexed, attested by its secretary, and its name to be signed hereto by its president the day and year first above written.

JAMES SMITH,
Chairman Transcontinental Association.

SEAL PACIFIC MAIL S. S. Co.

GEORGE J. GOULD,
President Pacific Mail S. S. Co.

Attest:
JOS. HELLEN,
Secretary pro tem.

632 PETITIONER'S EXHIBIT NO. 25, SEPTEMBER 22, 1914.

"THE PANAMA ROUTE."

(Original.)

Contract between the Panama Railroad Company and the Pacific Mail Steamship Company, dated December 16, 1895.

633 This agreement, made this sixteenth day of December, in the year one thousand eight hundred and ninety-five, between the Panama Railroad Company, duly chartered and organized under the laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also duly chartered and organized under the laws of said State, and hereinafter called the Steamship Company, party of the second part, witnesseth:

Whereas the said Railroad Company is now operating its railroad across the Isthmus of Panama, and running a line of steamers from New York to Colon on the Atlantic Ocean; and

Whereas the said Steamship Company is now running a regular line of steamers on the Pacific Ocean between San Francisco and Panama and intermediate ports on the Central American and Mexican coast; and

Whereas both companies are interested in and desirous of hereby establishing conditions under which they may carry on regularly and without interruption the business of transportation between

San Francisco and New York and the said intermediate ports, with the intent hereby declared by both companies to elop to the fullest possible extent the traffic via the Isthmus of nama, and to prevent the diversion of the legitimate business of Isthmus to other routes.

Now, therefore, in consideration of these premises, and with the ention of so securing to both of the parties hereto the advantages a contract of the general character above set forth for a term of rs, and in consideration of the sum of one dollar by each of the ties hereto to the other paid before the delivery hereof, it is tually covenanted and agreed by and between the respective ties hereto, and their respective successors, assigns, and legal resentatives, as follows, that is to say:

ARTICLE I.

In consideration of the execution of this contract by the Railroad mpany, and in consideration of the sum of one dollar to each in id paid by the other, the receipt of which is hereby acknowledged, is mutually agreed between the parties hereto that the certain reement between them, dated October 1, 1872, which is the subject of a certain suit in equity pending in the Supreme Court of the State of New York, and all rights, privileges, covenants, and interests under said agreement and under any other con-cts between the parties hereto prior to the date of these presents, ll be and are hereby terminated, canceled, and brought to an end the 16th day of December, 1898, subject only to the subsequent forcement of any claims which may arise under said agreement contracts between the date of this contract and the said sixteenth of December, 1898, which claims, if any, are to be enforceable well after as before said last mentioned date; it is the explicit d unqualified understanding and agreement of the parties hereto t the said agreement of October 1, 1872, shall so terminate (sub-t as aforesaid), irrespective of any other provisions of this agree-nt or the fulfillment or nonfulfillment of this agreement by the ilroad Company, and that the Railroad Company only enters into s agreement in consideration of the express and unqualified provi-ns of this article, which are not made dependent upon any other vision of this agreement; and provided that, until said sixteenth of December, 1898, the parties hereto shall be governed, so far as said contract of October 1, 1872, is concerned, by the de-cision of the general term of the Supreme Court of the State of New York, entered in respect of said contract on the fif-nth day of March, 1895, and that until said sixteenth day of cember, 1898, the rights and interests of the said parties under

said agreement of October 1, 1872, shall be as defined by said general term, and not as defined by any previous order or judgment of said court.

And it is for like consideration mutually agreed that on the sixteenth day of December, 1898 (subject only to the subsequent continuance and final determination of proceedings, if any such there should be, instituted before said sixteenth day of December, 1898, for the breach or violation of such judgments or injunctions between the date of this agreement and said sixteenth day of December, 1898), the said judgment of the said general term of the Supreme Court and all and any judgments in said action shall be vacated and said action dismissed, and all injunctions, orders, and directions thereunder vacated, and all bonds and undertakings therein discharged and released; and the appeals to the Court of Appeals vacated, all without costs to either party as against the other.

Simultaneously with the execution of this agreement, the
637 Railroad Company and the Steamship Company have exchanged stipulations postponing until December 16th, 1898, the argument of the appeals taken to the Court of Appeals by each of said companies from the said judgments of the Supreme Court at general term, and then withdrawing and dismissing said appeals without costs to either party as against the other, and the Steamship Company has caused to be executed by its attorneys and delivered to the Railroad Company stipulations in accordance with the preceding paragraph of this article of this agreement.

It is further mutually agreed for like consideration that each party hereby releases the other from any and all claims, demands, losses, damages, and causes of action (not heretofore reduced to judgment) arising prior to the date of these presents, which either has, or may have, for, upon, or by reason of the making of said agreement of October 1, 1872, or any alleged violation thereof by either party thereto.

ARTICLE II.

The Railroad Company hereby concedes to the Steamship Company (so far as its charter and its contract with the Colombian Government permit) the exclusive privilege of through billing at
638 any and all ports on the Pacific Ocean north of Panama, under and during the life of this contract as hereinafter provided, in connection with the Railroad Company, and each and every one of its Atlantic connecting lines.

And the Railroad Company agrees (within the scope of its powers as above defined, and as far as it consistently can with its own safety and protection and its duties as a common carrier) to co-

erate with the Steamship Company in making such rates, and in erally taking such measures as will afford to the Steamship Com- ny protection against interference or competition by other steam- p lines with the traffic hereby conceded to the Steamship Com- ny north of Panama.

ARTICLE III.

ECTION "A." There shall be maintained by the Steamship Com- ny a through line of steamers each way between Panama and n Francisco and such intermediate ports at which the Steamship mpany now calls, as well as any other intermediate ports whose ffic shall develop sufficiently to warrant making them ports of l; the Steamship Company shall, subject to the perils of the seas, make at least three trips each way per month between Panama and San Francisco, and the steamers shall be those now run- ning on the Steamship Company's line between said ports, or ers of approximately equal capacity and speed. In case any of steamers engaged in the above service be lost or destroyed, the amship Company agrees to promptly replace such lost or dis- ed vessel or vessels by another or others of approximately equal acity and speed, so far as necessary to maintain the service as ve prescribed, namely, a through line of steamers between Pan- a and San Francisco and the intermediate ports as aforesaid, and three trips each way per month as aforesaid, by said present amers or others of approximately equal capacity and speed.

ECTION "B." The Railroad Company shall maintain a line of amers each way between New York and Colon, and it shall, sub- t to the perils of the sea, make at least three trips each way per nth between New York and Colon, and the steamers shall be ee now running on the Railroad Company's Colombian Line ween said ports, or others of approximately equal capacity and ed. In case any of the steamers engaged in the above service be t or destroyed, the Railroad Company agrees to promptly replace such lost or disabled vessel or vessels by another or others of approximately equal capacity and speed, so far as necessary to maintain the service as above prescribed, namely, a through e of steamers between New York and Colon, as aforesaid, and the ee trips each way per month, as aforesaid, by said present steam- or others of approximately equal capacity and speed.

ECTION "C." These two steamship lines, connecting, respectively, Panama and Colon with the Panama Railroad, shall constitute, h said railroad, what shall be hereafter called the "Panama ute" between New York and San Francisco.

ARTICLE IV.

The gross earnings of the Panama Route on all freight busine including specie or treasure, between New York and San Francis carried over the Isthmus by the said Panama Route, shall be divide as follows:

Fifty-five (55) per cent to the Railroad Company for the servi at and between New York and Panama, and

Forty-five (45) per cent to the Steamship Company for its servi between Panama and San Francisco.

The earnings of said "Panama Route" from passenger
641 carried between New York and San Francisco shall be divide equally between the two companies—fifty (50) per cent goin to each.

ARTICLE V.

All freight rates on the westbound through traffic of the "Panam Route", i. e., traffic from New York to San Francisco, shall be mad by the Railroad Company, and all freight rates on the eastboun through traffic of said "Panama Route", i. e., traffic from San Fra cisco to New York, shall be made by the Steamship Company.

Changes in the passenger rates at present in force on this rou are to be made only by mutual consent.

This article and the preceding article cover business and traf between San Francisco and New York by the Panama Route, whethe originating at or destined to San Francisco or New York or othe points whatsoever.

ARTICLE VI.

The intention and purpose of this agreement being to obtain fo the said "Panama Route" all the freight business that can b secured at reasonable and remunerative rates and with a vie
642 of carrying out this purpose, it is agreed that either party t this agreement shall, at the request of the other party thereto publish and make operative such through rates between New Yor and San Francisco as will compete with those made operative b the competing transcontinental railroad lines; a failure to compl with such request promptly, and *at most* within twenty days fro the date of its receipt, shall constitute a violation of this contra and subject the offending party to the provisions of Article XI treating of liability or damages incurred by such action.

The Railroad Company, however, hereby agrees that whenev under this provision it puts in operation on westbound traffic or cal upon the Steamship Company to put into operation on eastboun traffic between San Francisco and New York a through rate of $

less per ton, then the Steamship Company is to be allowed $3.60 r ton out of said rate—in lieu of the 45 per cent as stipulated by ticle IV—upon all merchandise thus carried at less than $8 per ; but the Steamship Company is to be subject in respect thereto the lighterage charge of one dollar per ton in Subdivision X eof referred to.

ARTICLE VII.

If during the pendency of this contract occasion arises for the ilroad Company to enter into negotiations with the transconti- tal lines, or any of them, for the making of a rental agreement, of any other similar agreement relating to the freight traffic be- en the United States ports on the Atlantic and the United States ts on the Pacific, or for joining any association of the so-called nscontinental lines, it is hereby agreed that a delegate designated the Railroad Company is to represent the "Panama Route" in such negotiations, or any such association.

The revenue derived from any such agreement or contract with transcontinental lines as is here contemplated to be apportioned follows, to wit:

To the Railroad Company, fifty-five (55) per cent of the total enue, and

To the Steamship Company, forty-five (45) per cent of such enue.

The outlays incurred in the establishment and completion of such eement, which the Railroad Company is hereby empowered to incur, subject to due accounting, are to be apportioned between and borne by the Railroad Company and the Steamship Com- pany in the like proportions, viz., the Railroad Company 55 cent thereof and the Steamship Company 45 per cent thereof.

ARTICLE VIII.

The receipts of the joint traffic of the parties hereto between New rk and the Pacific ports of Central America and Mexico, and *versa*, shall be divided thus:

The Steamship Company to receive for its share of the service on Pacific coast forty (40) per cent of the through rates on freight l fifty (50) per cent of the passenger fares.

The Railroad Company to receive for its share of the service be- en Panama and New York sixty (60) per cent of the through s on freight and fifty (50) per cent of the passenger fares.

In this route, viz., between New York and Central American and xican ports, and *vice versa*, changes in the rates now in force, both

for passengers and freight, shall be made only by mutual consent of the parties hereto.

ARTICLE IX.

During the term of this contract the Railroad Company shall not, directly or indirectly, run any steamers on the Pacific
645 north of Panama, and shall, in so far as its charter and its contract with the Colombian Government may permit, and so far as it can consistently with its own safety and protection under existing treaty stipulations, in every manner lawfully and reasonably within its power, promote and protect the interests of the Steamship Company and the lines of steamships run by it north of Panama in connection with said railroad, and especially against all forms of competition whatsoever, and will, so far as it is practicable, give, turn over to, and direct to the steam lines of the Steamship Company, to the extent that it can lawfully control or influence the same, all business destined to Pacific points north of Panama originating on the Isthmus of Panama and carried upon its railroad, or which may be brought to said Isthmus by other ships or lines, and especially will not, so long as the Steamship Company faithfully performs the stipulations of this agreement, become interested in or divide with any other person or corporation the gross earnings of a through line or of any through business between New York and San Francisco, and upon all such through business the full local tariff rates for the time being in force for transportation across
646 the Isthmus of Panama shall be charged to all competing lines engaged in business between New York and San Francisco.

The Railroad Company is to have the right to appoint and maintain at its own expense agents at Panama and San Francisco.

Further, the parties hereto, each for itself, agree that all freight, passengers, baggage, specie, and mail matter confided to either for transportation, or in any manner brought by the one party to the other for the purpose of being conveyed over and upon the whole or any part of said lines, shall be transported and carried promptly and without undue delay.

During the pendency of this present contract the Steamship Company binds itself not to compete directly or indirectly with the Railroad Company's Columbian line in Atlantic waters, and especially not to run vessels directly or indirectly from the United States ports on the eastern shore of the continent to Colon, or to the eastern terminal of any of the transcontinental routes.

The Steamship Company agrees during the pendency of this contract in every manner lawfully and reasonably within its
647 power to promote and protect the interests of the Railroad Company, and especially against all forms of competition

whatsoever; the Steamship Company further agrees during the pendency of this contract not to divert the traffic to and from any of the Pacific ports North of Panama from the Isthmus route. And for such business the Steamship Company shall not enter into contracts of any kind involving through billing with any person, party, or corporation other than the Panama Railroad Company, nor shall the Steamship Company compete directly or indirectly (by reduced rates or otherwise) with the "Panama Route" on said business.

During the pendency of this contract, the Steamship Company when taking merchandise on its vessels for shipment at any Pacific Coast port situated between San Francisco and Panama (and whether such merchandise be destined to Atlantic or Gulf ports of the United States, or to European points) shall issue its through bills on such merchandise only via the Isthmus of Panama, and it shall not issue such through bills at any of those Pacific ports for any of the above described destinations via San Francisco, or via any other terminal of a transcontinental route.

848 ARTICLE X.

The Railroad Company shall, during the pendency of this agreement and until the extension of the road to deep water, continue to employ its lighters to connect with the Steamship Company's vessels and the shore at Panama. The Railroad Company shall furnish lighters in sufficient numbers to load and unload the ships with dispatch, it being the intent and agreement of the parties hereto that all the lighterage of the Steamship Company at Panama shall be done by the Railroad Company. And for such lighterage the Steamship Company shall pay to the Railroad Company as follows:

$1 in United States currency for each ton of freight or mail matter coming from New York and going to San Francisco, or *vice versa*, by the Panama route, whether originating at or destined to New York or San Francisco or other points.

$1.25 per ton in United States currency for all other freight or mail matter.

1/40 of one per cent for all specie or treasure.

$1 in United States currency for each passenger.

849 It is further agreed that should, during the pendency of this contract, the railroad at Panama be so extended or located as to reach deep water or the islands in the bay, thereby rendering lighterage no longer necessary, the Steamship Company will pay to the Railroad Company, in lieu of lighterage charges as provided above, such wharfage dues as the Railroad Company may fix; but such dues shall not exceed $1 United States currency per ton for freight or mail matter, 1/40 of one per cent for all specie or treasure

and $1 in United States currency for each passenger; nor shall such wharfage dues exceed those paid for the time being by any other steamship lines for similar service, nor shall any other steamship lines using such increased facilities at Panama be in any wise favored over or in preference to said Steamship Company.

ARTICLE XI.

During the continuance of the present agreement the Railroad Company shall have, free of cost, the use of the Steamship Company's wharf at Colon and of any and all of its appurtenances and dependencies for receiving and discharging cargo. The Railroad Company, until the expiration of the present agreement, agrees to keep this wharf and all its appurtenances and dependencies at Colon in
650 as good condition as when turned over to said Railroad Company under this stipulation.

It is agreed further that the above wharf at Colon is to be turned over to the Railroad Company in proper and efficient condition satisfactory to both parties concerned herein, and is thereafter to be maintained in the condition as agreed above by the Railroad Company.

ARTICLE XII.

The Railroad Company agrees to transport coal and other supplies exclusively for the use of the Steamship Company's steamers on the Pacific, from Colon to Panama, at $3 per ton, and to lighter same at Panama at $1 per ton additional.

It is agreed that the above rates shall apply only to a quantity of coal and supplies not exceeding 25,000 tons during one year, from the 16th of December of one year to the 16th of December of the year following, and that on any excess over said quantity of 25,000 tons the regular tariff rates may be demanded by the Railroad Company.

Unless the Railroad Company's consent in writing be previ-
651 ously obtained, no larger quantity than 4,000 tons of coal is to be transported in any one calendar month, and the Steamship Company agrees not to store along the tracks of the railroad at Panama at any one time a quantity of coal greater than 15,000 tons.

The Railroad Company agrees to transport by each steamer from New York to Colon supplies exclusively for the use of the Steamship Company at the rate of $5 per ton.

ARTICLE XIII.

The Railroad Company will do at its shops in Panama and Colon such work and repairs for the Steamship Company as the Steamship

Company from time to time may request and as the Railroad Company can perform without interference with its own business, charging therefor the cost of labor and material on the Isthmus, with ten per cent added thereto.

ARTICLE XIV.

The Railroad Company will furnish to the Steamship Company, in connection with its business, free of all charge, the use of all telegraphic facilities owned or to be owned or controlled by the Railroad Company on the Isthmus, it being agreed that its
632 own use of such telegraph shall, for the management of its road, take precedence of all other business.

ARTICLE XV.

The officers and employees of the Steamship Company shall be carried between Panama and Colon free, and between New York and Panama or Colon at the rate of ten dollars for each passenger. The officers and employees of the Railroad Company shall be carried between Panama and San Francisco at the rate of twenty dollars for each passenger.

ARTICLE XVI.

All damages caused by loss of goods or injury thereto or delay in their transportation or loss of or injuries or delay to passengers shall be paid by the party on whose lines the loss or damage or delay occurred when the same can be located. If the same cannot be located, the Railroad Company and the Steamship Company shall contribute thereto in proportion to the distribution herein established between the Railroad Company and the Steamship Company of the freight on the property or passage money of the passenger concerned.

633 ARTICLE XVII.

The carriage or transportation of salt, coal, and grain (except barley in bags between United States points) is hereby exempted from the operation of this contract, and each of the contracting parties reserves its full liberty as to the carriage or transportation of these articles.

ARTICLE XVIII.

If during the pendency of this contract the Panama Railroad Company shall determine to provide elevators and other plant necessary for the handling and transportation of grain across the Isthmus in bulk, the Steamship Company is to be invited to join in the forming of a transportation route for such grain between San Francisco

and other North Pacific ports and Europe. Should the Steamship Company not avail itself of this offer and elect not to engage in this business, or in case it is found that the Steamship Company's tonnage is inadequate to meet the necessities of this grain traffic, then the Panama Railroad Company shall be at liberty to contract with any other corporation or parties for the carriage of such grain by steam or sailing vessels from San Diego and other Pacific ports north of said port to Panama.

654 And the Panama Railroad Company shall be further authorized to deliver to said vessels engaged in this grain trade return cargo at Panama under the following conditions and limitations: Such cargo is to be obtained outside of the United States, and is to consist only of coarse and rough goods carried at low through rates in competition with the Cape Horn or Magellan route. The articles contemplated by the present clause are: Cement, brick, tiles, and other rough building material, rough castings, tin plate, as well as other articles as may be added after full consultation and with the assent of the Steamship Company, and it is hereby declared the intention of both parties that freight carried under this clause shall be such as could in no case go over the Isthmus route at remunerative rates through the regular channels. And that under this clause there shall not be lodged or exercised any power to compete with or to diminish the regular traffic of the Isthmus route in any way whatever, but that its full scope shall be solely to divert heavy and coarse goods such as are usually carried at low freight rates by sailing vessels around Cape Horn.

And it is hereby expressly provided and agreed that the
655 steamers engaged in this grain trade in connection with the Panama Railroad are not to call or trade at any of the intermediate ports between Panama and San Diego, and the Panama Railroad binds itself to insert a provision to that effect in any charters or contracts that it may make with owners of vessels or with other parties for the carrying on of such grain trade.

ARTICLE XIX.

It is mutually agreed that the term "ton", as used in this agreement, shall mean two thousand two hundred and forty (2,240) pounds avdp., or forty (40) cubic feet measurement when so taken by the ships, unless otherwise expressly provided herein.

ARTICLE XX.

Any and all questions that shall or may arise touching this agreement or the construction thereof, or as to any other matters and things to be done or performed by either of the parties hereto, as to

hich the parties hereto can not agree, shall be submitted to the de-
ision and award of three arbitrators, who shall be disinterested
ersons, having experience in railway and steamship management,
nd who shall be chosen, one by each of the parties hereto, and
the third by the two so chosen. At any time after the giving
56 of notice of violation, as herein prescribed, either party may
name an arbitrator and give written notice thereof to the
ther party; and if either party shall fail or omit to name an arbi-
rator within fifteen days after written notice of the selection of an
rbitrator by the other (which arbitrator, however, shall not be
lected until after the expiration of thirty days' notice next herein
eferred to), the arbitrator named by the party giving such notice
hall name an arbitrator for and on behalf of the party so failing
r omitting, who shall have the same power and authority as though
e had been chosen and named by such party, and the decision and
ward of any two of such arbitrators in respect of the matters so
bmitted to them shall be binding and conclusive upon the parties;
nd each of the parties hereto does bind itself and its successors
ithfully to abide by and carry out any award so made by any two
the arbitrators appointed as above.

The Railroad Company, if it shall consider that any of the above
auses have been, as to the spirit or letter, violated by the Steamship
ompany, or the Steamship Company, if it shall consider that any
of the above clauses have been, as to the spirit or letter, vio-
7 lated by the Railroad Company, may notify the other party
to this agreement that it charges such other party with a vio-
ion thereof, specifying the particular charge or charges of viola-
n thereof so made. The company charged with said violation,
case within thirty days after its receipt of such notice it denies
h alleged violation thereof, hereby agrees to have the question
s raised decided by the arbitrators as herein provided. These
itrators shall determine, first, as to the actual fact of the alleged
lation, and, secondly, upon the actual amount of money damages
be paid by the party found guilty of said violation to the party
king the charge, or the particular thing to be done or to be re-
ined from being done by such guilty party; and such amount
ll be paid or such award shall be complied with within ten days
the rendering of such award. The two parties both agree to
nish to the arbitrators any paper, instrument, or book in their
session which said arbitrators may request them to produce.
uld any arbitration fail for any cause, then such proceedings as
ve prescribed may be taken *de novo* by either party to this
eement.

ARTICLE XXI.

The Steamship Company shall make over and deliver to the Railroad Company, charter parties of even date with the present
658 instrument, at the nominal rate of one dollar per month, and unconditional in terms of the following steamers belonging to said company and now running or to be run between Panama and San Francisco under this contract, to wit, the *Acapulco*, the *San Jose*, the *City of Sydney*, the *Colon*, the *San Blas*, and the *San Juan*, and agrees to likewise make over and deliver to the Railroad Company like charters of any other steamers placed upon said service under the provisions of section "A" of Article III of this contract simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the Steamship Company performs punctually and regularly three trips per month in each direction under and according to the provisions of section "A", Article III of this contract, then these charters are to remain unenforceable.

But if the Steamship Company, from any cause except the act of God or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Railroad Company's option, to become enforceable, and the Railroad Company shall have, and is
659 hereby given, the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service, calling at all ports between Panama and San Francisco, and *vice versa*, for the account and risk of and at the expense of said Steamship Company during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable and that breach thereof can not be adequately compensated in damages.

The Steamship Company agrees, in the contingency aforesaid, peacefully to surrender to the Railroad Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever, the Steamship Company hereby irrevocably giving the Railroad Company all the power and authority needful in the premises, in order that the Railroad Company may take possession of said steamers or of any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by
660 the judgment and decree of a competent court, or by arbitra-

tion in the manner hereinbefore provided, the Steamship Company or its successors will not, in the contingency herein contemplated, hold said ships as against any demand of said Railroad Company, and will not prevent or hinder the use of the same by the Railroad Company in the manner or in the business contemplated by this agreement.

ARTICLE XXII.

The Railroad Company shall make over and deliver to the Steamship Company, charter parties of even date with the present instrument, at the nominal rate of one dollar per month and unconditional in terms, of the following steamers belonging to said Railroad Company and now running or to be run between New York and Colon under this contract, to wit, the *Allianca*, the *Advance*, and the *Finance*, and agrees to likewise make over and deliver to the Steamship Company like charters of any other steamers placed upon said service under the provisions of section "B" of Article III of this contract simultaneously with the placing of the same upon said service.

It is hereby further agreed that as long as the Railroad Com-
661 pany's Columbian line performs punctually and regularly at least three trips per month in each direction, under and according to the provisions of section "B" of Article III of this contract, then these charters are to remain unenforceable.

But if the Railroad Company from any cause except the act of God, or the public enemy, or arising from the perils of the sea, omits two sailings in any one calendar month during the continuance of this contract, then the above charters are, as to all or any one or more of said steamers, at the Steamship Company's option, to become enforceable, and the Steamship Company shall have and is hereby given the absolute right and power to run said vessels, or any of them, on the aforesaid described route and service between New York and Colon, and *vice versa*, for the account and risk of, and at the expense of said Railroad Company, during the unexpired portion of this contract, it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable and that breach thereof can not be adequately compensated in damages.

The Railroad Company agrees in the contingency aforesaid peace-
662 fully to surrender to the Steamship Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings of any kind whatsoever; the Railroad Company hereby irrevocably giving the Steamship Company all the power and authority needful in the premises, in order that the Steamship Company may take possession

of said steamers, or any one or more of them, and operate them, or any one or more of them, under the provisions and terms of the charter-parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinbefore provided, the Railroad Company, or its successors, will not, in the contingency herein contemplated, hold said ships as against any demand of said Steamship Company, and will not prevent or hinder the use of the same by the Steamship Company in the manner or in the business contemplated by this agreement.

ARTICLE XXIII.

For all joint business transacted under this contract, or for all services or material furnished by the parties thereto to each
663 other, there shall, except as herein otherwise expressly provided for, be rendered at New York a monthly account on the 25th day of each month for the business of the preceding month, such statement to cover all business of the preceding month, cleared during said month, and the sums due shall be paid on that date to the creditor company.

ARTICLE XXIV.

It is understood that the Steamship Company, notwithstanding anything in this agreement contained, is to be at liberty to run and load the steamships *City of Para* and *Columbia* for their return voyages to New York from Colon on the round voyages now pending.

It is understood and agreed that the Railroad Company, anything herein contained to the contrary notwithstanding, is to be at liberty to load and run steamers as follows:

Allianca to sail from New York on December 20th; *Advance* to sail from New York December 30th; these ships to take cargo from San Francisco, to be delivered to the Railroad Company's steamer *Washtenaw*, sailing from Panama on or about January 12th, 1896. The *Finance* to complete her round voyage now pending.

The Railroad Company's steamer *City of Everett*, now at sea, to arrive at Panama on or about December 16th, to load
664 and return to San Francisco with the San Francisco cargoes out from New York, brought to the Isthmus by Columbian Line steamers of November 30th and December 10th, 1895, the New York cargo brought by said steamer *City of Everett* to be delivered at Colon to the Columbian Line ships, to be taken by them to New York.

The Railroad Company's steamer *Washtenaw* to sail from San Francisco for Panama on or about December 17th, taking San Francisco cargo for New York, to be delivered at Colon to the Columbian

Line ships, to be taken by them to New York; said steamer *Washington* to sail on her return voyage to San Francisco on or about January 12th, 1896, taking New York cargo bound for San Francisco brought to Colon by the Columbian Line steamers *Allianca*, from New York December 20th, and *Advance*, from New York December 30th, 1895.

ARTICLE XXV.

This contract, except as herein otherwise expressly prescribed, shall remain in force for three years from the 16th day of December, 1895, and for the further period of two years after the expiration of such period of three years, if the Steamship Company should so elect, and if it shall have given written notice of such election to the Railroad Company at least ninety days before the expiration of the first three years' term.

In witness whereof the said parties hereto have caused this instrument to be signed in their corporate names by their respective presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries, all thereunto duly authorized by resolutions of their respective boards of directors, the day and year first hereinabove written.

[SEAL.] PANAMA RAILROAD COMPANY,
By J. EDWARD SIMMONS,
President.
By E. A. DRAKE,
Secretary.

Witness as to the Panama Railroad Company:
WM. NELSON CROMWELL.

[SEAL.] THE PACIFIC MAIL STEAMSHIP COMPANY,
By C. P. HUNTINGTON,
President.
By W. H. LANE,
Secretary.

Witness as to the Pacific Mail Steamship Company:
EDWARD T. MCLAUGHLIN, Jr.

STATE OF NEW YORK,
County of New York, ss:

On this 16th day of December, 1895, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and

sealed in behalf of the said corporation by authority of its board of directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
Notary Public, New York County.

(Notarial seal.)

667 STATE OF NEW YORK,
County of New York, ss.:

On this 16th day of December, 1895, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Railroad Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal; and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said E. A. Drake acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
Notary Public, New York County.

(Notarial seal.)

668 STATE OF NEW YORK,
County of New York, ss.:

On this 16th day of December, 1895, before me personally appeared C. P. Huntington, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said C. P. Huntington acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
Notary Public, New York County.

(Notarial seal.)

669 STATE OF NEW YORK,
County of New York, ss.:

On this 16th day of December, 1895, before me personally appeared W. H. Lane, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal; and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said W. H. Lane acknowledged the said instrument to be the act and deed of the said corporation; and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

EDWARD T. McLAUGHLIN, Jr.,
Notary Public, New York County.

(Notarial seal.)

670 EXTRACT FROM MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE PANAMA RAILROAD COMPANY, HELD IN THE CITY OF NEW YORK, DECEMBER 12, 1895.

Resolved, That the proposed agreement between the Panama Railroad Company and the Panama Mail Steamship Company, as initialed and approved by the respective counsel of the companies, Messrs. Cromwell and Tweed, is hereby ratified, approved, and adopted, said agreement being as follows:

And the president and secretary of this company are hereby fully authorized and empowered to execute, acknowledge, and deliver, for and in behalf of this company, and under its corporate seal, the agreement aforesaid, together with the several charter parties and stipulations provided by said agreement to be made and delivered at this time, or any time hereafter, by this company; such charter parties and stipulations to be in such form and terms as to the executive committee may seem proper in order to carry out said agreement; and said officers are also fully authorized and em-
671 powered to do all acts and things which they may deem necessary or proper to effectuate the completion of said agreement and the full establishment of the same.

I hereby certify the foregoing to be a true and correct copy of the resolution adopted by the board of directors of the Panama Railroad Company at a meeting thereof held on December 12, 1895, duly called

and held, and that the agreement therein referred to is as here annexed.

Witness my hand and official seal this 16th day of December, 189

E. A. DRAKE, *Secretary.*

(Corporate seal.)

EXTRACT FROM THE MINUTES OF A SPECIAL MEETING OF THE BOARD O DIRECTORS OF THE PACIFIC MAIL STEAMSHIP COMPANY, HELD AT NO 35 WALL STREET, IN THE CITY OF NEW YORK, SATURDAY, DECEMBER 14 1895, AT 12 O'CLOCK NOON, A QUORUM BEING PRESENT AND ASSENTING

Resolved, That the agreement between the Panama Railroad Com-
pany and this company, which has been prepared by counse
672 and is now submitted to this board, be and the same is hereby
approved, and that the president and secretary of this com-
pany be, and they are hereby, authorized to execute said agreement under the corporate seal of this company and to acknowledge and deliver the same, and to execute, acknowledge, and deliver charter parties as prescribed in said agreement, and to do such other acts and things as they may deem necessary or proper to carry out said agreement.

Attest:

A true copy.

W. H. LANE, *Secretary.*

(Seal of Pacific Mail Steamship Company.)

673 PETITIONER'S EXHIBIT NO. 26, SEPTEMBER 22, 1914.

Original (executed in quadruplicate).

"THE PANAMA ROUTE."

Contract between the Panama Rail Road Company and the Pacific Mail Steamship Company, dated June 11, 1902.

(See supplemental contract of same date.)

674 This agreement, made this eleventh day of June, 1902, in the year one thousand nine hundred and two, between the Panama Railroad Company, duly chartered and organized under the laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also duly chartered and organized under the laws of the said State, and hereinafter called the Steamship Company, party of the second part, witnesseth:

Whereas the said Railroad Company is now operating its railroad across the Isthmus of Panama, and running a line of steamers from New York to Colon, on the Atlantic Ocean; and

Whereas the said Steamship Company is now running a regular
e of steamers on the Pacific Ocean between San Francisco and
anama and intermediate ports on the Central American and Mexi-
n coast; and

Whereas both companies are interested in and desirous of hereby
tablishing conditions under which they may carry on regularly
d without interruption the business of transportation between
San Francisco and New York and the said intermediate ports,
with the intent hereby declared by both parties to develop to
the fullest possible extent traffic by the Isthmus of Panama
d to prevent the diversion of the business of said Isthmus to other
utes;

Now, therefore, in consideration of these premises and with the
tention of so securing to both of the parties hereto the advantages of
contract of the general character above set forth for a term of
ars, and in consideration of the sum of one dollar by each of the
rties hereto to the other paid before the delivery hereof, it is
tually covenanted and agreed by and between the respective par-
s hereto, and their respective successors, assigns, and legal repre-
tatives, as follows, that is to say:

ARTICLE I.

The Railroad Company hereby concedes to the Steamship Com-
ny (so far as its charter and its contract with the Colombian Gov-
nment permit) the exclusive privilege of through billing to and
om any and all ports of Central America, Mexico, the United
ates, and British Columbia, on the Pacific Ocean, under and during
the life of this contract as hereinafter provided, in connection
with the Railroad Company and each and every one of its At-
lantic connecting lines.

During the pendency of this contract the Steamship Company,
en taking on its vessels, for shipment at San Francisco or at any
cific Coast port situated between San Francisco and Panama, mer-
ndise destined to Atlantic or Gulf ports of the United States or
European points, shall issue its through bills on such merchandise
ly via the Isthmus of Panama.

At New York and San Francisco business transported or to be
nsported by the Panama route is to be delivered to and received
m connecting lines, the rates on such business so delivered to or
eived from connecting lines to be made by adding to the charges
such connecting lines and all transfer charges, the rates prescribed
der this agreement for transportation between New York and San
ancisco.

And both parties agree, respectively (within the scope of their
wers and as far as they can consistently with their own safety and

protection and with their duties as common carriers) to coop
677 ate with each other in making such rates and in genera
taking such measures as will afford to both parties protecti
against interference or competition by other steamship lines with
traffic hereby conceded by each to the other.

ARTICLE II.

SECTION "A". There shall be maintained by the Steamship Co
pany a through line of steamers each way between Panama and S
Francisco, and such intermediate ports at which the Steamship Co
pany now calls, as well as any other intermediate ports on the Paci
coast as above recited whose traffic shall develop sufficiently to w
rant making them ports of call; the Steamship Company shall, s
ject to the perils of the seas, make at least three trips each way p
month between Panama and San Francisco, and the steamers shall
those now running on the Steamship Company's line between s
ports, or others of approximately equal capacity and speed. In c
any of the steamers engaged in the above service be lost or destroy
the Steamship Company agrees to promptly replace such lost
disabled vessel or vessels by another or others of approx
678 mately equal capacity and speed, so far as necessary to mai
tain the service as above prescribed, namely, a through line
steamers between Panama and San Francisco and the intermedi
ports as aforesaid, and the three trips each way per month as afo
said by said present steamers or others of approximately equal cap
ity and speed.

SECTION "B." The Railroad Company shall maintain a line
steamers each way between New York and Colon, and it shall, s
ject to the perils of the sea, make at least three trips each way p
month between New York and Colon, and the steamers shall be th
now running on the Railroad Company's line between said ports
others of approximately equal capacity and speed. In case any
the steamers engaged in the above service be lost or destroyed, t
Railroad Company agrees promptly to replace such lost or disabl
vessel or vessels by another or others of approximately equal capac
and speed, so far as necessary to maintain the service as above p
scribed, namely, a through line of steamers between New York a
Colon as aforesaid, and the three trips each way per month as afo
said by said present steamers or others of approximately eq
capacity and speed.

679 SECTION "C." These two steamship lines connecting,
spectively, at Panama and Colon with the Panama Railro
shall constitute, with said railroad, what shall be hereafter call
the "Panama route" between New York and San Francisco.

ARTICLE III.

The intention and purpose of this agreement being to obtain for the said "Panama route" all the freight business that can be secured at reasonable and remunerative rates, it is agreed that either party to this agreement shall, at the request of the other party thereto, publish and make operative such through rates between New York and San Francisco as will compete with those made operative by the competing transcontinental railroad lines; and failure to comply with such request within twenty days from the date of its receipt shall constitute a violation of this contract and subject the offending party to the provisions of Article XIX of this contract.

Both parties, however, agree that whenever either party, without request from the other, puts in operation on east or west bound traffic between San Francisco and New York, or requests the other to put in operation on such traffic, a through rate of less than forty cents (40c.) per hundred pounds, or ten cents (10c.) per cubic foot, then the party so putting into effect such rate, without request from the other, or the party making such request agrees to bear itself whatever difference there may be between the minimum rate above stated and the rate so put in operation or requested below such minimum rate.

ARTICLE IV.

During the term of this contract the Railroad Company shall not, directly or indirectly, run any steamers on the Pacific north of Panama, and shall (in so far as its charter and its contract with the Colombian Government may permit, and so far as it can consistently with its own safety and protection under existing treaty stipulations), in every manner lawfully and reasonably within its power, promote and protect the interests of the Steamship Company in all traffic north of Panama in connection with said railroad and its Atlantic connecting lines, and especially against all forms of competition whatsoever, and will (so far as it is practicable) give, turn over to, and direct to the vessels of the Steamship Company, to the extent that it can lawfully control or influence the same, all business destined to Pacific points north of Panama originating on the Isthmus of Panama and carried upon its railroad, or which may be brought to said Isthmus by its own ships or by other ships or lines, and especially will not, so long as the Steamship Company faithfully performs the stipulations of this agreement, become interested in or divide with any other person or persons, or corporation or corporations, the earnings of a through line, or any through business, to or from points on the Pacific coast north of Panama, and upon all such through business the full local tariff

rates for the time being in force for transportation across the Isth
mus of Panama shall be charged to all competing lines, and the Rail
road Company will pay to the Steamship Company the amount o
the share of the through rate to which the Steamship Compan
would have been entitled if such through business had been carri
over its line.

Further, the parties hereto, each for itself, agree that all freight
passengers, baggage, specie, and mail matter confided to either fo
transportation or brought by the one party to the other for the pur
pose of being conveyed in either direction over and upon the whol
or any part of said Panama route, shall be transported and carri
promptly and without undue delay.

682 During the pendency of this contract the Steamship Com
pany binds itself not to run vessels directly or indirectly fro
any port of the eastern shore of the North American Continent t
Colon or to the eastern terminal of any of the transcontinenta
routes.

The Steamship Company agrees during the pendency of this con
tract (in so far as its charter may permit, and so far as it can con
sistently with its own safety and protection under existing treat
stipulations) in every manner lawfully and reasonably within it
power to promote and protect the interests of the Railroad Compan
in the traffic of the Panama route, and especially against all forms o
competition whatsoever; the Steamship Company further agrees dur
ing the pendency of this contract not to divert from the Panam
route the traffic to or from any of the Pacific ports between San
Francisco and Panama originating at or destined to Atlantic or Gul
ports of the United States or European ports. And for such busi
ness the Steamship Company shall not enter into contracts of an
kind involving through billing with any person, party, or corpora
tion other than the Panama Railroad Company, nor shall the Steam
ship Company compete directly or indirectly (by reduced rates o
otherwise) with the "Panama route" on said business, and

683 on any business so diverted directly or indirectly by it the
Steamship Company shall pay to the Railroad Company the
freight it would have been entitled to receive if such business ha
been carried across the Isthmus on its railroad.

ARTICLE V.

It is agreed that through freight rates, so far as the same accrue t
the Railroad Company and Steamship Company, shall be divide
between them as follows:

On freight between United States Atlantic coast ports and Unite
States Pacific coast ports: To the Railroad Company, fifty per ce

50%); to the Steamship Company, fifty per cent (50%). Minimum rate, forty cents (40c.) per hundred pounds, or ten cents (10c.) per cubic foot.

On freight between United States Atlantic coast ports and Mexican or Central American ports: To the Railroad Company, sixty per cent (60%); to the Steamship Company, forty per cent (40%). Minimum rate to or from Mexican ports, sixty cents (60c.) per hundred pounds, or thirty cents (30c.) per cubic foot ship's option.

Minimum rate to or from Central American ports, fifty cents (50c.) per hundred pounds, or twenty-five (25c.) per cubic foot ship's option.

On foreign freight between European ports and Mexican or Central American ports: To the Railroad Company, forty per cent (40%); to the Steamship Company, sixty per cent (60%). Minimum rate, thirty-five shillings (35/) per ton of twenty-two hundred and forty (2,240) pounds, or forty (40) cubic feet.

On foreign freight between European ports and United States Pacific coast ports: To the Railroad Company, thirty-seven and one-half per cent (37½ %); to the Steamship Company, sixty-two and one-half per cent (62½ %). Minimum rate, forty cents (40c.) per 100 pounds, or ten cents (10c.) per cubic foot.

The above prescribed divisions between the Railroad and Steamship Company shall apply to the portion of the through freight rates accruing to said companies on business and traffic whether originating at or destined to the ports above mentioned or points prior or subsequent thereto.

Subject to above agreed minima, the freight rates between United States Atlantic and United States Pacific coast ports, and between United States Atlantic coast ports and Mexican or Central American ports, and between Mexican, Central American, or United States Pacific coast ports and European ports, are to be fixed by the initial carriers. All tariffs naming rates and commodities are to be made by mutual consent and become effective with the date of this agreement.

It is further agreed that if, during the pendency of this contract, it becomes necessary, on account of quarantine or revolutions, or the order of any government, to hold and warehouse freight, mail, specie, etc., at any point on the Railroad or Steamship Company's lines, the charges thereon are to be considered as line charges, and are to be prorated between the lines in interest according to the divisions of the through rates, it being understood that the charges for handling and warehousing by the Railroad or Steamship Company are to be at cost.

ARTICLE VI.

It is mutually agreed that the term "ton", as used in this agreement, shall mean two thousand two hundred and forty (2,240) pounds avdp., or forty (40) cubic feet measurement when so taken by the ships, unless otherwise expressly provided herein.

686 ARTICLE VII.

Passenger rates accruing to the Railroad and Steamship Company between New York and Pacific coast ports, Panama to San Francisco, both included, shall be divided as follows:

To the Railroad Company—fifty per cent. (50%).

To the Steamship Company—fifty per cent. (50%).

Through passenger rates effective under terms of this contract are those which were in effect December 1, 1899, and any change therefrom is to be made only by mutual consent in writing; but either party to this contract is at liberty to diminish any agreed rate, but at its own cost, by the amount of the proportion accruing to it under the above divisions.

Any commissions paid agents for soliciting and obtaining passenger business covering service of Panama route are to be divided between the Railroad Company and the Steamship Company *pro rata* according to the divisions of the through rate.

Both parties shall have the right to appoint and maintain agents at any point they may select.

ARTICLE VIII.

687 The steamers of the Pacific Mail Steamship Company shall make use of the La Boca wharf provided by the Panama Railroad Company whenever, in the judgment of the Pacific Mail Steamship Company, it is safe and prudent so to do; but in the event of the steamers not being able to get alongside said wharf without delay, then the cargo, etc., shall be lightered in the Bay of Panama.

When steamers load or discharge alongside La Boca wharf no charge shall be made on passengers, mails, specie, baggage, etc., but the Railroad Company shall be paid as wharfage on all other cargo (when same is taken from or landed on the wharf direct) a maximum rate of eighty cents (80c.) American gold per ton, it being understood that the Railroad Company is to provide at its wharf at La Boca the necessary equipment for the efficient operation thereof and for the prompt loading and unloading by the Steamship Company of its vessels, compensation for all which is included in above wharfage.

If the Railroad Company furnishes cranes, there shall be an additional charge of ten cents (10c.) per ton on cargo for the use of

ch cranes, such usage, however, of cranes being optional with the Steamship Company.

8 When lighterage is performed by the Railroad Company and the lighters are loaded or discharged at La Boca, no charge her than the lighterage charged is to be made the Steamship Company for the use of La Boca wharf, or cranes, or loading or unloading the lighters at the wharf.

If the Steamship Company elects to enter service between Panama d Chiriqui, such service is to form part of this contract, and the eamship Company is to have the right to land all cattle it may ry on the beach at Panama free of any charge.

ARTICLE IX.

The Railroad Company shall, during the pendency of this contract, continue to employ its lighters when reasonably necessary to nect with the Steamship Company's vessels and the shore at nama, the Railroad Company agreeing to furnish lighters in icient number to load and unload such vessels with dispatch.

When lighters are used the following shall be the lighterage rges:

For each ton of freight delivered by the Steamship Company to Railroad Company, or by the Railroad Company to the Steam- Company—ninety cents (90c.) per ton United States currency.

For all specie or treasure, one-fortieth of one per cent (1/40%).

or each passenger one dollar ($1.00) United States currency.

o charge for extra baggage or mails.

nama local cargo to be received and delivered by the party he first part as agent for the party of the second part, in that the receipt or delivery thereof and transfer to and from steamer ding the lighterage, wharfage, and cranage, to be performed by y of the first part, and party of the second part will pay for services rendered $1.25 per ton, whether lightered or received or delivered to steamers at La Boca.

ARTICLE X.

e Railroad Company agrees to transport from Colon to Pan- supplies, excepting coal, exclusively for the use of the Steam- Company's steamers on the Pacific at three dollars ($3) per ton, to lighter same at Panama at one dollar ($1) per ton additional, it being hereby agreed that the Steamship Company shall have the right to perform lighterage on its own coal and other supplies in its own lighters.

The Railroad Company agrees to transport by each steamer from New York to Colon, supplies exclusively for the use of the Steamship Company, at the rate of $5 per ton.

ARTICLE XI.

The officers and employees of the Steamship Company shall be carried between Panama and Colon free, and between New York and Panama or Colon at the rate of ten dollars for each passenger.

The officers and employees of the Railroad Company shall be carried between Panama and San Francisco at the rate of twenty dollars for each passenger.

ARTICLE XII.

The Railroad Company agrees, so long as its wires are in working order, to obtain and furnish the Steamship Company all telegraphic and telephonic information through its agents that may be necessary to properly conduct the business of the Panama route.

ARTICLE XIII.

691 Each party hereto shall be responsible for cargo, specie, and mail while under its care and until delivered to its cocarrier.

Any responsibility accruing in regard to passengers or their baggage is to be assumed in like manner as cargo.

Whenever any loss or injury occurs, or damage from delay in transportation, the loss or injury or damage from delay, whether accruing with respect to cargo, specie, mail, passengers, or their baggage, shall, when the same can not be located, be pro rated between the Railroad Company and the Steamship Company according to the divisions of the through rate that may apply in each case.

In case any actions, suits, or claims shall be brought against any cocarrier, the carrier responsible, as above stipulated, shall bear and discharge any loss, damage, or expense incident thereto; provided the carrier sued shall at once give notice to the other cocarrier to the end that each may have opportunity to defend its interests.

ARTICLE XIV.

The carriage or transportation of salt, coal, and grain (except barley in bags between United States points) is hereby exempted from the operation of this contract, and each of the 692 contracting parties reserves its full liberty as to the carriage or transportation of these articles.

ARTICLE XV.

The Railroad Company will do, at its shops in Panama and Colon, ch work and repairs for the Steamship Company as the Steamship ompany from time to time may request and as the Railroad Com- ny can perform without interference with its own business, charg- g therefor the cost of labor and material on the Isthmus, with ten r cent added thereto.

ARTICLE XVI.

The Steamship Company shall make over and deliver to the Rail- ad Company charter parties of even date with the present instru- ent at the nominal rate of one dollar per month, and unconditional terms, of the following steamers belonging to said company and w running or to be run between Panama and San Francisco under is contract, to wit, the *Acapulco*, the *San Jose*, the *City of dney*, the *Colon*, the *City of Para*, and the *San Juan*, and rees to likewise make over and deliver to the Railroad Com- pany like charters of any other steamers placed upon said service under the provisions of section "A", Article II, of this contract, simultaneously with the placing of the same upon d service.

t is hereby further agreed that as long as the Steamship Com- y performs punctually and regularly three trips per month in h direction under and according to the provisions of section "A", icle II, of this contract, then these charters are to remain unen- ceable.

f the Steamship Company, from any cause except the act of God the public enemy, or arising from the perils of the sea, omits two lings in any one calendar month during the continuance of this tract, then the above charters are, as to all or any one or more of l steamers, at the Railroad Company's option, to become enforce- e and the Railroad Company shall have, and is hereby given, the olute right and power to run said vessels, or any of them, on the resaid described route and service, calling at all ports between nama and San Francisco, and *vice versa*, for the account and risk nd at the expense of said Steamship Company during the unex- pired portion of this contract; it being the express intent and agreement of the parties hereto that the covenants of this article shall be specifically enforceable and that breach thereof not be adequately compensated in damages.

he Steamship Company agrees, in the contingency aforesaid, cefully to surrender to the Railroad Company, upon its demand in ting, the said steamers, or any of them, without the intervention ny court or legal proceedings of any kind whatsoever; the Steam-

ship Company hereby irrevocably giving the Railroad Company the power and authority needful in the premises in order that Railroad Company may take possession of said steamers, or of one or more of them, and operate them, or any one or more of th under the provisions and terms of the charter parties hereto annex and it is expressly agreed that in case of any conflict of opinion doubt as to the respective rights of the parties hereto under t clause, until such rights are finally established by the judgment decree of a competent court or by arbitration in the manner here after provided, the Steamship Company or its successors will not, the contingency herein contemplated, hold said ships as against demand of said Railroad Company and will not prevent or hin the use of the same by the Railroad Company in the manner
695 in the business contemplated by this agreement.

ARTICLE XVII.

The Railroad Company shall make over and deliver to the Ste ship Company, charter parties of even date with the present inst ment, at the nominal rate of one dollar per month, and unconditio in terms, of the following steamers belonging to said Railroad Co pany and now running or to be run between New York and Co under this contract, to wit, the *Allianca*, the *Advance*, and *Finance*, and agrees to likewise make over and deliver to Steamship Company like charters of any other steamers placed u said service under the provisions of section "B" of Article II of t contract simultaneously with the placing of the same upon s service.

It is hereby further agreed that as long as the Railroad Compan steamship line performs punctually and regularly at least three tr per month in each direction under and according to the provisions section "B" of Article II of this contract, then these charters ar remain unenforceable.

If the Railroad Company, from any cause except the act
696 God or the public enemy or arising from the perils of the s omits two sailings in any one calendar month during the c tinuance of this contract, then the above charters are, as to all or one or more of said steamers, at the Steamship Company's option become enforceable, and the Steamship Company shall have and hereby given the absolute right and power to run said vessels, any of them, on the aforesaid described route and service betw New York and Colon, and *vice versa*, for the account and risk of at the expense of said Railroad Company during the unexpired p tion of this contract, it being the express intent and agreement the parties hereto that the covenants of this article shall be s

cifically enforceable and that breach thereof can not be adequately compensated in damages.

The Railroad Company agrees in the contingency aforesaid, peacefully to surrender to the Steamship Company, upon its demand in writing, the said steamers, or any of them, without the intervention of any court or legal proceedings, of any kind whatsoever; the Railroad Company hereby irrevocably giving the Steamship Company all the power and authority needful in the premises, in order that the Steamship Company may take possession of said steamers, or any one or more of them, and operate them, or any one or
697 more of them, under the provisions and terms of the charter parties hereto annexed; and it is expressly agreed that in case of any conflict of opinion or doubt as to the respective rights of the parties hereto under this clause, until such rights are finally established by the judgment and decree of a competent court, or by arbitration in the manner hereinafter provided, the Railroad Company, or its successors, will not, in the contingency herein contemplated, hold said ships as against any demand of said Steamship Company and will not prevent or hinder the use of the same by the Steamship Company in the manner or in the business contemplated by this agreement.

ARTICLE XVIII.

For all joint business transacted under this contract and for all services or material furnished by the parties thereto to each other, there shall, except as herein otherwise expressly provided for, be rendered at New York a monthly account on the 25th day of each month for the business of the preceding month, such statement to cover all business of the preceding month cleared during said month, and the sums due shall be paid on that date to the creditor company.

698 ARTICLE XIX.

Any and all questions that shall or may arise touching this agreement, or the construction thereof, or any matters or things to be done or performed by either of the parties hereunder, shall be submitted to the decision and award of three arbitrators, who shall be disinterested persons, and who shall be chosen, one by each of the parties hereto, and the third by the two so chosen. Either party hereto may, at any time, notify the other, in writing, that it elects to submit any such matter of difference to arbitration hereunder and name an arbitrator, and if the other party shall fail or omit to name an arbitrator within fifteen days after written notice of such selection of an arbitrator by the other party and written request to name an arbitrator, the arbitrator named by the party giving such notice shall name an

arbitrator for and on behalf of the party so failing or omitting, wh
shall have the same power and authority as though he had bee
chosen and nominated by such party. And the decision and award
of any two of such arbitrators with respect to the matters so sub
mitted to them, shall be binding and conclusive upon the parties; and
each of the parties hereto does bind itself and its successors
699 faithfully to abide by and carry out any award so made by any
two of the arbitrators appointed as aforesaid. Any question
of violation or failure to observe this agreement by either party, or
any other question arising between them hereunder, may be submitted
to such arbitrators, and they shall determine, first, as to the fact, and
secondly, as to the amount of money damages to be paid by the party
found guilty, to the party making the charge, or the particular thing
to be done or to be refrained from being done by such guilty party,
and such amount shall be paid, and such award shall be complied with
within ten days of the rendering of such award. The two parties
both agree to furnish to the arbitrators any paper, instrument, or
book in their possession which such arbitrators may request them to
produce. Should any arbitration fail for any cause, then such pro
ceedings as above prescribed may be taken *de novo* by either party to
this agreement. All hearings by said arbitrators shall be held in
New York, or on the Isthmus of Panama, or in San Francisco, or such
other place where witnesses necessary to appear before the arbitrators
may be obtained with the least expense to the parties to this
700 contract, and all fees and expenses of such arbitrators shall be
borne by the party against whom the award of the arbitrators
shall be made, and shall be assessed by said arbitrators and made part
of their award.

This article shall be considered of the essence of this agreement,
and any breach of or failure to observe any of the terms thereof
shall be deemed to be a material breach of the entire contract.

ARTICLE XX.

Any of the conditions of Articles V, VII, VIII, IX, X, and XI of
this agreement may be altered by consent in writing of the parties
hereto, signed by their respective presidents or vice presidents, with
out affecting any of the other conditions of this agreement.

ARTICLE XXI.

Subject to the provisions of a contemporaneous agreement between
the parties hereto of even date herewith, this contract, except as
herein otherwise expressly prescribed, shall remain in force for three
years from the eleventh day of June, 1902, and for the further period
of two years, if either party shall so elect, and if such party

shall have given notice of such election to the other party
701 hereto at least ninety (90) days before the expiration of the first term of three years.

In witness whereof the said parties hereto have caused this instrument to be signed in their corporate names by their respective presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries, the day and year first hereinabove written.

[SEAL.] PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS,
President.

Attest:
E. A. DRAKE,
Secretary.

[SEAL.] PACIFIC MAIL STEAMSHIP COMPANY,
By C—— H. TWEED,
President.

Attest:
JOS. HELLEN,
Secretary.

702 STATE OF NEW YORK,
County of New York, ss.:

On this 11th day of June, 1902, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Panama Rail Road Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said J. Edward Simmons acknowledges the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*

(Certf. filed in New York County.)

703 STATE OF NEW YORK,
County of New York, ss.:

On this 11th day of June, 1902, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Panama Rail Road Company, who, being by me duly sworn, did

depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said E. A. Drake acknowledges the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*

(Certf. filed in New York County.)

704 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared C. H. Tweed, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said C. H. Tweed acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[NOTARIAL SEAL.] JOHN J. TIERNEY,
Notary Public, Kings Co.

(Certf. filed in New York County, N. Y.)

705 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared Joseph Hellen, personally known to me to be the individual who subscribed the within instrument for and in behalf of The Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said Joseph Hellen acknowledged the said in-

trument to be the act and deed of the said corporation, and that the ame was executed by said corporation freely and voluntarily for the urposes therein mentioned.

[NOTARIAL SEAL.] JOHN J. TIERNEY,
Notary Public, Kings Co.

(Certf. filed in New York County, N. Y.)

706 PETITIONER'S EXHIBIT No. 27. SEPTEMBER 22, 1914.

Original (executed in quadruplicate).

"THE PANAMA ROUTE."

Supplemental contract between the Panama Rail Road Company and the Pacific Mail Steamship Company. Dated June 11, 1902.

707 This memorandum of agreement, made and entered into this eleventh day of June, 1902, by and between the Panama Rail Road Company, a corporation duly chartered by and organized under the laws of the State of New York, and hereinafter called the Railroad Company, party of the first part, and the Pacific Mail Steamship Company, also a corporation duly chartered by and organized under the laws of said State, and hereinafter called the Steamship Company, party of the second part, witnesseth: That

Whereas the parties hereto have entered into another agreement, bearing even date herewith, for the purpose of regulating the traffic arrangements between them, and hereinafter called the traffic agreement; and

Whereas a suit is now pending before the Supreme Court of the Republic of Colombia, brought by the attorney general of said Republic against the Railroad Company, to compel the Railroad Company to grant to all carriers the privilege of issuing through bills of lading over its line of railroad and to forbid it to give to any carrier special privileges or advantages in respect of transportation of goods over said railroad; and

Whereas carriers of goods and passengers from Panama 708 to points upon the Pacific, north of said city, may enter into competition with the Panama route, and may embarrass the operations of said route, and it may be necessary for the proper conduct of the business that other independent means of transportation from Panama to points on the Pacific, south of said city, should be provided.

Now, therefore, in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid,

and of other good and valuable considerations, the receipt whereof is hereby acknowledged, and of the making of said traffic agreement, and of the various covenants of the respective parties hereinafter contained, the parties aforesaid have covenanted and agreed, and do hereby covenant and agree, to and with each other as follows:

First. The Railroad Company and the Steamship Company will cooperate in defending or procuring the dismissal of the said suit now pending before the Supreme Court of the Republic of Colombia, and will contribute in the proportion of 55 per cent by the Railroad Company and 45 per cent by the Steamship Company to the expenses hereafter and during the operation of said traffic agreement
709 incurred for counsel in connection with the defense of said suit or with such efforts to procure the dismissal thereof.

Second. If the Railroad Company should not, on account of its inability to do so, or for any other reason, give to the Steamship Company the exclusive privilege of issuing through bills of lading over its line of railroad to and from the ports referred to in the first paragraph of Art. 1 of said traffic agreement, in connection with the Railroad Company and each and every one of its Atlantic connecting lines, then the Steamship Company shall be entitled, at its option, to terminate said traffic agreement upon giving written notice to the Railroad Company of its election so to terminate the same.

Third. Upon the execution of the said traffic agreement by the parties hereto the Railroad Company is to forthwith give notice to all steamship lines running steamers between Panama and ports on the Pacific coast north thereof other than the Pacific Mail Steamship Company that upon the expiration of ninety days from the giving of such notice the Railroad Company will cease to through-bill with the steamship lines so notified, or either or any of them, in
710 respect the transportation of merchandise on the Pacific coast north of Panama, and the parties hereto shall endeavor to procure arrangements between such other steamship lines so notified and the parties hereto for a division of territory under which the transportation of merchandise on the Pacific coast north of Panama shall be conducted by the Pacific Mail Steamship Company only, and the transportation of merchandise on the Pacific coast south of Panama shall be conducted by such other lines and for a mutual interchange of business at Panama between said Pacific Mail Steamship Company and such other steamship lines.

If on or before the expiration of ninety days from the giving of such notice such other steamship lines shall not have agreed to such division of territory and to such mutual interchange of business at Panama as above prescribed, but shall conduct the transportation of merchandise north of Panama, the Pacific Mail Steamship Com-

pany may, at its own expense, but otherwise in cooperation with the Panama Railroad Company inaugurate a steamship line extending as far south as Valparaiso, and the Panama Railroad Company will extend to the Pacific Mail Steamship Company in respect of such line facilities in all respects equal to those which the
711 Railroad Company may accord to any other line operating steamers south of Panama.

If, in consequence of the notification to be given as above prescribed from the Railroad Company to the other steamship lines, or such efforts to secure a division of territory as above provided, such other steamship lines shall withdraw their existing lines connecting Panama with points on the Pacific coast south thereof, then the Pacific Mail Steamship Company will, if the Railroad Company shall so request, forthwith make arrangements for providing a line of steamers running south from Panama as far as Valparaiso, and shall within at most 120 days after the making of such request establish and begin the actual operation of such line; and in that event the Railroad Company will thereafter and so long as such line shall be maintained and operated in a regular and efficient manner so as to accommodate properly the traffic between said points and Panama in connection with the railroad refuse and continue to refuse to through-bill with other steamship lines in respect of business south of Panama, and will through-bill exclusively with the Pacific Mail Steamship Company for such business, and will extend to the Pacific Mail Steam-
712 ship Company facilities for such business in all respects equal to those which by the said traffic agreement are extended to the business conducted by the Pacific Mail Steamship Company north of Panama. Provided, however, that the running of such line of steamers south from Panama by the Pacific Mail Steamship Company and such exclusive through-billing privilege may be terminated upon one year's notice from the Pacific Mail Steamship Company to the Panama Railroad Company of its election to terminate the running of such line, or upon one year's notice from the Panama Railroad Company to the Pacific Mail Steamship Company of its election to terminate such exclusive through-billing privileges.

Fourth. It is mutually and expressly understood and agreed that if at any time during the continuance of said traffic agreement a majority of the shares of the Railroad Company or its railroad property shall be purchased or acquired by the United States of America, or by any person or persons representing it, or acting on its behalf, then either party hereto may give notice in writing to the other of its intention to terminate said traffic agreement, and at the expira-
713 tion of six months from the giving of such notice the said traffic agreement and the previous articles of this agreement

shall terminate, come to an end, and be utterly null and void thenceforth, anything in said traffic agreement or herein contained to the contrary notwithstanding.

In witness whereof, each of the parties hereto has caused these presents to be signed by its president, attested by its secretary, and sealed with its corporate seal, the day and year first hereinabove written.

[SEAL.] PANAMA RAIL ROAD COMPANY,
By J. EDWARD SIMMONS,
President.

Attest:
E. A. DRAKE,
Secretary.

[SEAL.] PACIFIC MAIL STEAMSHIP COMPANY,
By C—— H. TWEED, *President.*

Attest:
JOS. HELLEN,
Secretary.

714 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared J. Edward Simmons, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Rail Road Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said J. Edward Simmons acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings County, N. Y.*
(Certf. filed in New York County.)

715 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared E. A. Drake, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Panama Rail Road Company, who, being by me duly sworn, did depose and say:

That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said E. A. Drake acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings County, N. Y.*
(Certf. filed in New York County.)

16 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared C. H. Tweed, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the president of said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed by him and sealed in behalf of the said corporation by authority of its board of directors; and the said C. H. Tweed acknowledged the said instrument to be the act and deed of the said corporation, and that the same was executed by said corporation freely and voluntarily for the purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings County, N. Y.*
(Certf. filed in New York County.)

17 STATE OF NEW YORK,
County of New York, ss:

On this 11th day of June, 1902, before me personally appeared Joseph Hellen, personally known to me to be the individual who subscribed the within instrument for and in behalf of the Pacific Mail Steamship Company, who, being by me duly sworn, did depose and say: That he resided in New York City; that he was the secretary of the said corporation; that he knew the corporate seal of the said corporation; that the seal affixed to the said instrument was such corporate seal, and that the said instrument was signed and sealed by him in behalf of the said corporation by authority of its board of directors; and the said Joseph Hellen acknowledged the said instru-

ment to be the act and deed of the said corporation, and that t
same was executed by said corporation freely and voluntarily for t
purposes therein mentioned.

[SEAL.] JOHN J. TIERNEY,
[NOTARIAL SEAL.] *Notary Public, Kings Co., N. Y.*
(Certf. filed in New York County.)

718 PETITIONER'S EXHIBIT (ALLEN) No. 28, SEPTEMBER 22, 191

(Page 223 of the "Travelers' Official Guide of the Railway and Ste
Navigation Lines in the United States and Canada, June, 1885.")

SOUTHERN PACIFIC COMPANY.

(Atlantic system, east of El Paso. Pacific system, west of Ogden and El Pa

CONTROLLING AND OPERATING—

Central Pacific R. R.	1,254.24 mi
Northern Ry.	153.63 "
San Pablo & Tulare R. R.	46.51 "
Berkeley Branch R. R.	3.84 "
California Pacific R. R.	115.44 "
Stockton & Copperopolis R. R.	49.00 "
Amador Branch R. R.	27.20 "
Southern Pacific R. R. of California	552.85 "
Southern Pacific R. R. of Arizona	384.25 "
Southern Pacific R. R. of New Mexico	167.30 "
Galves'n, Harrisburg & San Antonio Ry.	936.74 "
Mexican International R. R.	171.00 "
Texas & New Orleans R. R.	105.10 "
Louisiana Western R. R.	112.00 "
719 Morgan's Louisiana & Texas R. R.	281.00 mi
Sabine & East Texas R. R.	104.00 "
Los Angeles & San Diego R. R.	27.60 "
Los Angeles & Independence R. R.	16.83 "
Southern Pacific R. R. of Cal. (No. Div.)	202.50 "
Total rail lines	4,711.03 mi
Steamer lines	4,205.00 "
Grand total	8,916.03 mi

GENERAL OFFICERS.

Hon. Leland Stanford, president	San Francisco, Cal.
C. P. Huntington, vice president	New York, N. Y.
Charles Crocker, 2nd vice president	San Francisco, Cal.
C. F. Crocker, 3rd vice president	San Francisco, Cal.
E. H. Miller, Jr., secretary and controller	San Francisco, Cal.
Timothy Hopkins, treasurer	San Francisco, Cal.

OFFICIALS OF THE LINE.

A. N. Towne, general manager Pacific system.....San Francisco, Cal.
A. C. Hutchinson, general manager Atlantic system.....New Orleans, La.
J. C. Stubbs, general traffic manager.....San Francisco, Cal.

720 The general traffic manager, under the direction of the general manager of the Pacific system, will be charged with the handling of all through business of the company and that interchanged by or which may be competitive as between the Pacific and the Atlantic systems.

OFFICERS OF THE PACIFIC SYSTEM.

J. A. Fillmore, gen. superintendent.....San Francisco, Cal.
R. H. Pratt, asst. gen. superintendent..... "
Geo. Crocker, asst. superintendent..... "
W. G. Curtis, superintendent of track..... "
S. W. Sanderson, counsel..... "
Creed Haymond, associate counsel..... "
Wm. Hood, chief engineer..... "
W. H. Porter, gen. auditor..... "
A. D. W. McCullough, ticket auditor..... "
C. J. Wilder, freight auditor..... "
C. A. Grow, auditor M. P. & M. Dept..... "
T. H. Goodman, gen. pass'ger & ticket agt..... "
R. A. Donaldson, asst. gen. pass'ger and tkt. agt..... "
Richard Gray, gen. freight agent..... "
C. F. Smurr, 1st asst. gen. freight agent..... "
J. M. Crawley, 2d asst. gen. freight agent..... "
721 O. C. Wheeler, gen. baggage agent.....San Francisco, Cal.
W. H. Mills, land agent C. P. R. R..... "
Jerome Madden, land agent S. P. R. R..... "
A. J. Stevens, gen. master mechanic.....Sacramento, Cal.
Ben. Welch, master car builder..... "
J. R. Watson, purchasing agent..... "

OFFICERS OF THE NORTHERN DIVISION.

(San Francisco, Tres Pinos, Soledad, Monterey, Santa Cruz, and Monte Vista.)

A. C. Bassett, supt. and gen. freight agt.....San Francisco, Cal.
Chas. J. Robinson, auditor..... "
H. R. Judah, asst. pass'ger and ticket agt..... "
E. J. Martin, asst. gen. freight agent..... "

OFFICERS OF THE ATLANTIC SYSTEM.

J. G. Schriever, traffic manager.....New Orleans, La.
J. Kruttschnitt, supt. M. L. & T. R. R..... "
E. M. Underhill, asst. auditor..... "
J. B. Richardson, local treasurer..... "
Jacob E. Fisher, gen. auditor.....Houston, Texas.
P. L. Queyrouze, asst. auditor..... "
E. G. Thompson, supt. G. H. & S. A. Ry..... "
722 T. W. Peirce, Jr., gen. passenger agent.....Houston, Texas.
C. C. Gibbs, gen. freight agent..... "

TRAVELING PASSENGER AGENTS.

W. C. Gregory, traveling passenger agent.....Cincinnati, O.
G. W. Ely, traveling passenger agent.....Montgomery, Ala.
P. Gray Nichols, traveling passenger agt.....Galveston, Tex.
C. E. Miner, traveling passenger agent.....El Paso, Tex.
W. Choupian, traveling passenger agent.....Havana, Cuba.

FOREIGN AGENCIES.

W. G. Kingsbury, gen. western European passenger agent, 41 Finsbury Pavement, London, England.
Rudolph Falck, gen. eastern European passenger agent, 38 Admiralitatstrasse, Hamburg, Germany.
E. Hawley, gen. eastern freight and passenger agent, 339 Broadway, New York, N. Y.
L. H. Nutting, eastern passenger agent, 339 Broadway, New York, N. Y.
E. E. Currier, New England agent, 192 Washington Street, Boston, Mass.

724–725. *Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899.*

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Feb. 24	C. W. Cox c/o R. Winthrop & Co	50	C. 8238, Sept. 10/89	Feb. 24	C. 1001. Asst. pd. Feb. 27/99.
Feb. 25	Wm. B. Hincks, 338 Main St., Bridgeport.	50	C. 9811, Feb. 16/99	Feb. 25	C. 1002. Asst. pd. Feb. 28/99.
Feb. 27	Theodore H. Waterman, 467 Bway, Albany, N. Y.	22	C. 9316, Oct. 4/1895	Mch. 2	C. 1003. Asst. pd. Feb. 27/99.
27	Stanford Marsh, exr., 911 Broadway	10	D. 30774, Nov. 20/83	Mch. 28	C. 1005. Asst. pd. Feb. 27/99.
28	Thomas Vail, Troy, N. Y.	200	E. 12726/25, Aug. 2/89, 2/100	Mch. 28	A. 1/2. Assessment paid Mar. 13, 1899.
28	Stephen O. Potts, Livingston, Columbia Co., N. Y.	10	D. 80335, Apl. 13/98	Mch. 28	C. 1004. Asst. pd. Feb. 28/99.
28	Kean Van Cortland & Co	100	E. 14907, Feb. 24/99	Mch. 28	A. 3.
28	Wood Huestis & Co	40	D. 31314, Jan. 3/84; C. 7952, July 15/89, 1/10, 1/30.	Mch. 28	C. 1006. Assessment paid Feb. 28.
28	William Lounsbery, 62 Crown St., Kingston, N. Y.	40	D. 32488, May 5/84; D. 65346, May 29/89; D. 28177, May 26/83; D. 65347, May 29/89.	Mch. 28	C. 1007. Assessment paid Feb. 28.
28	J. S. Farlee & Bro	60	C. 9786, Feb. 6/99	Mch. 28	C. 1008. Asst. paid Feb. 28.
28	G. A. Morgenroth, c/o William F. Milton.	300	E. 11662/4, Dec. 21/87	Mch. 28	A. 4/6. Asst. paid Feb. 28.
Mch. 1	Amer. Stockholders Committee, through Ctl. Tr. Co.	10,849			C. 1022/97. A. 13/99.
Mch. 1	J. Otto Koch, 16 Beaver St	100	E. 14856, Feb. 21/99	Mch. 1	A. 7. Asst. paid Mch. 1.
1	Jonathan Bulkley	80	C. 6101/2, 6105, Nov. 12/83	Mch. 1	C. 1010.
			C. 7328, Sep. 22/86, 4/20	Mch. 1	
1	Geo. W. Crossman	100	E. 12604, May 14/89	Mch. 1	A. 8. Asst. paid Mch. 1.
2	Wynant Vanderpool, Morristown, N. J	50	C. 7335, Sept. 28/86	Mch. 2	C. 1011. Asst. paid Mch. 2.
3	John B. Peck, c/o Newtown Savings Bk., Conn.	20	D. 67882/83, April 9/92	Mch. 2	C. 1013. Asst. paid Mch. 2.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1898.					
Mch. 3	Thomas E. Stillman	200	E. 11673/4, Jan. 17/98	Mch. 2	A. 9/10. Asst. paid Mch. 2.
		15	C. 9541, June 30/98	Mch. 2	C. 1014. Asst. paid Mch. 2.
3	First National Bank, Norwich, Conn	30	C. 8241, Sept. 11/89	Mch. 3	C. 1015. Assessment paid Mar. 23, 1899.
726-727					
Mch. 3	National Whaling Bank, New London, Conn.	16	C. 9239/40, Aug. 23/94, 2/4	Mch. 3	C. 1016. 3 shs. Asst. paid Mch. 3.
			C. 9242, Aug. 23/94, 3 shs		C. 1017. 6 shs. Asst. paid Mch. 3.
			C. 8014, July 17/89, 3 shs		C. 1018. 7 shs. Asst. paid Mch. 3.
			C. 8015, July 17/89, 2 shs		
3	First National Bank, Meriden, Conn	10	C. 8242, Sept. 12/89; C. 6235, Feb. 4/84.	Mch. 3	C. 1019. Assessment paid Mar. 3, 1899.
3	Edward N. Waterman, 467 Bway, Albany.	21	C. 9317, Oct. 4/95	Mch. 3	C. 1020. Assessment paid Apr. 1, 1899.
3	George Gibson, 1003 Union St., Schenectady.				
3	First National Bank, Norwich, Conn	6	C. 8176, Aug. 17/89	Mch. 3	C. 1021. Assessment paid Mar. 23, 1899.
3	Hollister & Babcock	200	E. 14771, Feb. 10/99; E. 13675, Aug. 3/89.	Mch. 3	A. 11/12. Assessment paid Oct. 17/99.
4	John A. Elmendorf, Hurley, Ulster Co., N. Y.	10	D. 50746, Dec. 23/86	Mch. 6	C. 1098. Assessment paid Mar. 4, 1899.
6	A. Douglas Miller, Box 25, Rockville Center, L. I.	50	C. 7930, July 10/89	Mch. 6	C. 1099. Assessment paid Mar. 6, 1899.
6	L. Heuermann	26	C. 8528, Nov. 25/90	Mch. 6	C. 1100. Assessment paid Mar. 6, 1899.
7	Edward Sweet & Co	26	C. 8149, Aug. 9/89	Mch. 7	C. 1101.
7	Middletown National Bk., Conn	60	C. 6605, May 17/84, 1/15	Mch. 7	C. 1102. Assessment paid Mar. 7, 1899.
7	Wm. H. Burrows, trustee, c/o Middletown Natl. Bk.		C. 8042, July 19/89, 1/35 D. 31346, Jan. 12/84, 1/10	Mch. 7	

	7	E. N. Waterman, 467 Bway, Albany, N. Y.	22	C. 9318, Oct. 4/95	Mch.	7	C. 1104. Assessment paid Mar. 7, 1899.
	7	Frank C. Smith, Middleton, Mass	10	D. 31354, Feb. 4/1884	Mch.	7	C. 1105. Assessment paid Mar. 7, 1899.
	7	Coster Knapp & Co	10	D. 80347, April 18/98	Mch.	7	C. 1106. Assessment paid Mar. 7, 1899.
	7	F. St. Goar	500	E. 13624, Mch. 25/98; E. 14202, Jan. 9/99; E. 14267/8, Jan. 12; E. 14134, Jan. 4/99.	Mch.	7	A. 100/4. Assessment paid Apr. 5, 1899.
	8	Laura T. H. Varick, 40 Main St., Poughkeepsie, N. Y.	20	C. 8053, Aug. 2/89	Mch.	8	C. 1107. Assessment paid Mar. 8, 1899.
728–729							
Mch.	7	Wm. Salomon, city	2,000	D. 80709, 29704, 29321, 9982; D. 80348, 62568, 26224/3, 65422; D. 30574, 24184, 34384, 12/10; C. 9804, 9792, 2/40; C. 9799, 7821, 7612, 9802; C. 9530, 9531, 9603, 9535, 8/50; E. 11915, 14413, 14558, 14690; E. 13797, 14423, 13828, 14131; E. 14595, 14397, 14576/5.	Mch.	7	A. 105/124.
				E. 14032, 14689, 14/100			130.
	8	Anthony Wallach, 12 East 63 St	600	E. 13283/6, 13282, Nov. 21/92..	Mch.	8	A. 125/129.
				E. 13913, Dec. 19/98, 6/100			Assessment paid Mar. 8, 1899.
	8	Theo. H. Waterman, 467 Bway, Albany..	13	C. 9340, Mch. 12/96	Mch.	8	C. 1108. Assessment paid Mar. 8, 1899.
	8	Nat'l Whaling Bank, New London, Conn.	500	E. 12680/84, July 16/89	Mch.	8	A. 131/135. Assessment paid Mar. 8, 1899 (approved by Tweed).
	8	Andrew Kirkpatrick	100	E. 12862, Sept. 19/89	Mch.	8	A. 136. Assessment paid Mar. 8, 1899.
	8	Bk. of Montreal	100	E. 14864, Feb. 20/99	Mch.	8	A. 137. Assessment paid Mar. 8, 1899.
	8	Joseph M. Ward	70	C. 6285/4, Feb. 11/84, 1/20, 1/50.	Mch.	17	C. 1109. Assessment paid Mar. 8, 1899.
	8	F. St. Goar	1,100	E. 12571, 14873, 14875, 14921, 14005, 14277, 14278/80, 14301/2.	Mch.	8	A. 138/148.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 8	Sara Delano Roosevelt	30	C. 9507, Mch. 25/98	Mch. 8	C. 1110. Assessment paid Mar. 20, 1899.
8	Julius Goldman	100	E. 12975, Feb. 19/90	Mch. 8	A. 149. Assessment paid Mar. 8, 1899.
730–731					
Mch 8	Walter S. Miller	1	C. 9234, July 31/94		C. 1153. Assessment paid Apr. 4, 1899.
8	J. S. Burke, 275 Union St., Bklyn, N. Y.	10	C. 8525, Nov. 21/90 C. 8456, July 11/90	Mch. 8	C. 1112. Assessment paid Mar. 8, 1899.
9	Effa C. Dumming, Auburn, N. Y.	15	C. 6277, Feb. 8/84	Mch. 9	C. 1113. Assessment paid Mar. 9, 1899.
9	M. B. Goldschmidt, Ffto/m	300	E. 14981, E. 12063/4	Mch. 9	A. 150/2. Assessment paid Mar. 9, 1899.
9	F. P. Freeman & Co	15	C. 9664, 9163, 9648 3/5	Mch. 9	C. 1111.
9	L. Levy & Co	200	D. 61984, 45486, 41368, 37365, 35323, 11293, 9690, 49136, 44622, 45740, 68510, 68511, 74621, 17628, 22622, 32560, 72728/29, 18282, 75385, 20/10.	Mch. 9	A. 153/4.
9	F. St. Goar	1,000	E. 12917, 14387, 14426, 14523/4, 14872, 14874, 14876, 8/100; D. 80718/19, 59715, 45281, 74802, 80717, 66201, 67681, 8/10; C. 8220, 1/30; C. 9868, 1/50; C. 9867, 1/40.	Mch. 9	A. 155/64.

9	Fifth Ave. Bank	20	D. 65061, Feb. 21/89; D. 32482, May 3/84.	Mch.	9	C. 1114. Assessment paid Mar. 9, 1899.
9	J. S. Bache & Co	20	D. 65458/9, Aug. 2/89	Mch.	9	C. 1115/16. Assessment paid Mar. 9, 1899.
10	Hofmann Bros	20	C. 9860, Mch. 1/99	Mch.	10	C. 1117. Assessment paid Mch. 29/99.
10	Kissam Whitney & Co	100	E. 12832, Aug. 23/89	Mch.	10	A. 165. Assessment paid Apr. 5, 1899.
10	First Nat'l Bk., Norwich, Conn	10	D. 30860, Dec. 12/83	Mch.	10	C. 1118. Assessment paid Mar. 23, 1899.
732-733						
Mch. 10	Geo. Gibson, 1003 Union St., Schenectady	40	C. 8522, Nov. 19/90	Mch.	10	C. 1119. Assessment paid Mar. 10, 1899.
10	Joseph Plant, Norwich, Conn	20	D. 64576, 1/10; C. 6452, 7884, 2/5.	Mch.	10	C. 1120. Assessment paid Mar. 10, 1899.
10	Strong, Sturgis & Co	200	E. 14739, 14249	Mch.	10	A. 166/7.
10	John P. Jones, Box 24, Worcester, Mass	20	C. 8362, Feb. 4/90	Mch.	10	C. 1121. Assessment paid Mar. 10, 1899.
10	P. Edgar Ackert, c/o 1st Natl. Bk., Po'keepsie, N. Y.	10	D. 65583, Aug. 15/99	Mch.	10	C. 1122. Assessment paid Mar. 10, 1899.
10	Lazard Freres	3,050	D. 35722, 77168, 34853, 61307, 38361, 37684, 27176, 9641, 53895/4, 24325. 4 56436/7, 64823/2, 35365/2. 8 56448, 56434/27, 76287. 64555, 29062, 22233, 30484. 5 38642, 64820, 56447/3. 5 5 35447/3, 35370/66, 56435, 8275, 70906, 37804, 59265, 39405, 63763, 63595, 32088, 38033, 50930, 2175, 11350, 44688, 34070, 50972, 16983, 29976, 32637, 40991, 42534.	.....		A. 168/197. Assessment paid Apr. 5, 1899. C. 1123. Assessment paid Apr. 5, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 10	Lazard Freres (continued)		4 4064, 5291, 68700/3, 39229/8, 51812, 49301, 43368, 58835, 14935, 51259, 85/10; C. 9613, 9650, 2/50; C. 9686, 9682, 2/50.		
734–735			E. 11675, 14210, 14232, 14233, 14375/6, 12361, 14157, 10201, 14549, 12016, 14168, 14155, 14170, 14145.		
			4 E. 14169, 14038/41, 20/100.		
Mch. 10	Kissam, Whitney & Co	90	C. 8524, 7543, 2/20. C. 9079/8, 9419, 3/5. C. 9420, 25. D. 78205, 10.	Mch. 10	C. 1125. Assessment paid Apr. 5, 1899.
10	John L. Daniels	12	C. 7786	Mch. 10	C. 1126. Assessment paid Mar. 10, 1899.
10	Lydia P. Mitchell, 5 Milton Road, Brookline, Mass.	12	C. 8559	Mch. 10	C. 1127.
10	Glover, Sanford & Sons	100	E. 12714, July 18/89	Mch. 10	A. 200. Assessment paid Mar. 10, 1899.
10	Speyer & Co	300	E. 15158, 14259, 14266	Mch. 10	A. 201/3.
10	L. Levy & Co	300	E. 14668, 15032/3	Mch. 10	A. 204/6.
10	F. St. Goar	900	E. 15153/4, 14245, 14644, 11677, 14349, 14197, 14273, 8/100. D. 64876/7, 2/10. C. 9609, 1/50; C. 9866, 1/30.	Mch. 10	A. 207/15.

10	Fifth Ave. Bank	200	C. 6533, 6610, 7889, 7153, 4/50.	Mch. 10	A. 216/17. Assessment paid Mar. 10, 1899.
10	Strong, Sturgis & Co	6,200	E. 14975, 14746/7, 13951, 13875, 13952/3, 11708, 14204, 14744, 13830, 13612, 13772.	Mch. 10	A. 218/79.
736-737			E. 13703, 14535/4, 13928.		
			E. 14172, 13792, 14147/50, 14196, 13742, 13857, 13298, 11624, 12310, 13619, 13799, 13715, 14239, 14205, 14324, 13793, 13892, 13646, 14616.		
			E. 14459, 14816, 14748/53.		
			E. 15161/64, 14754, 14728/34.		
			E. 14745, 60/100.		
			C. 9565, 9576, 9511, 9747.		
11	Massasoit Paper Manufacturing Co	150	C. 7382, 7404, 7510, 3/50	Mch. 11	C. 1128, A. 280. Assessment paid Apr. 5, 1899.
11	E. C. Rogers, Springfield, c/o the above Co.				
11	Geo. W. Russell, 13 James St., Albany, N. Y.	70	C. 7785, 1/30; C. 6198, 1/30; D. 64900, 1/10.	Mch. 11	C. 1129/30. Assessment paid Mar.11, 1899.
11	Baring, Magoun & Co	153	E. 14834, 1/100; C. 9837, 1/15; C. 9856, 1/25.	Mch. 11	A. 281, 1/100. Assessment paid Mch. 24/99.
			D. 80619, 1/10		C. 1131, 1/50. Assessment paid Mch. 24/99.
			C. 9841, 1/3		C. 1132, 1/3.
13	Merchants Bank, Newport, R. I	10	D. 66141	Mch. 13	C. 1137. Assessment paid Mar. 29, 1899.
13	Bradbury, Bedell, 1600 Chestnut St., Phila., Pa.	115	C. 6600, 8216; D. 65643	Mch. 13	C. 1138/40, 1/50, 1/55, 1/10. Assessment paid Mar. 13, 1899.
13	Talbot J. Taylor & Co	200	E. 14223, 14618	Mch. 13	A. 407/8.
13	Magoun Bros. & Co	5	C. 9796, Feb. 8/99	Mch. 13	C. 1141. Assessment paid Apr. 3, 1899.
13	Merchants National Bank, Burlington, Vt.	7	C. 7657, April 25/88	Mch. 13	C. 1142. Assessment paid Mar. 13, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 13	L. Levy & Co	500	E. 14224, 14286/5, 14255, 13778, 5/100.	Mch. 13	A. 409/13.
738–739					
Mch. 13	Crocker Estate Co	669	E. 12165/6, 12402/5, 6/100	Mch. 13	A. 414/10. Assessment paid Mar. 13, 1899.
			C. 9127, 1/69	Mch. 13	C. 1143. Assessment paid Mar. 13, 1899.
13	Hofmann Brothers	400	E. 13455, 15048/9, 14417, 4/100.	Mch. 13	A. 420/3.
13	A. Iselin & Co	100	E. 10855	Mch. 13	A. 424.
14	I. E. Gates	75	C. 9880/2, Mch. 9/89	Mch. 14	C. 1144/6. Assessment paid, Apr. 3, 1899.
14	J. B. Simpson, 166 Devonshire St., Boston, Mass.	5	C. 9280, Jan. 25/95	Mch. 14	C. 1147. Assessment paid Mar. 14, 1899.
14	H. W. Knight, Seneca Falls, N. Y	120	E. 12852, Sept. 5/89, 100	Mch. 14	A. 550. Assessment paid Mar. 14, 1899.
			C. 8223, Sept. 5/89, 20	Mch. 14	C. 1148. Assessment paid Mar. 14, 1899.
14	Hoffmann Bros	1,000	E. 14955/4, 12355, 14951, 14388, 14939/42, 14938, 10/100.	Mch. 14	A. 551/60.
14	Wm. E. Edmonds	15	D. 80352, C. 9634	Mch. 14	C. 1149. Assessment paid Mar. 14, 1899.
14	Park Bank	3	C. 9611, Nov. 11/98	Mch. 14	C. 1150. Assessment paid, Mar. 14, 1899.
14	Rogers & Gould	20	C. 8698, May 10/92	Mch. 14	C. 1151.
14	Hofmann Bros	100	E. 14557, Jan. 26/99	Mch. 14	A. 561.

14	L. Levy & Co.	650	E. 10741, 13833, 15034/6, 5/100. C. 8601/2, 8708, 3/50.	Mch. 14 Mch. 14	A. 562/7. C. 1152. Assessment paid Mar. 20, 1899.
14	Sternberger, Fuld & Sinn.	200	E. 14212, 15084. 10 10 10	Mch. 14	A. 568/9.
14	Hofmann Bros.	600	D. 30496, 16147, 11661. 10 10 20 30 50339, 45085, C. 9739, 9731. E. 14248, 14947/6, 14855, 11596, 5/100.	Mch. 14	A. 570/75. Assessment paid, Apr. –, 1899.
14	John R. Caswell.	100	E. 12121, Feb. 8/89. 15 2	Mch. 14	A. 616.
15	S. L. Rockwell & Co., Jordan, N. Y.	17	C. 9658, 9876.		C. 1154. Assessment paid, Mar. 15, 1899.
740–741					
Mch. 14	J. Kennedy Tod & Co.	4,000	E. 13761, 12330, 14912, 14843, 14692/3, 14864, 14322, 13122, 13702, 14340, 14485, 14765/6, 13853. 13 14755, 13988, 14817/29. 4 14988, 15031/28, 14880. 13825, 37/100. 6 4 D. 80328/33, 51264/7, 66750. 61707/8, 52806/7, 51163. 4 76030/3, 10270, 9172, 54368, 7883, 38708, 60569, 20963, 41425, 24063, 23590, 30/10.	Mch. 14	A. 576/615. Assessment paid Apr. 5, 1899.
15	Strong, Sturgis & Co.	550	C. 9862, 1/50; E. 14073. 14178, 14696/5, 14802, 5/100.	Mch. 15 Mch. 15	A. 617/21. C. 1155.
15	Natl. Park Bank.	18	C. 9108 Aug. 28/93.	Mch. 15	C. 1156. Assessment paid Mar. 15, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 15	Hofmnan Bros	600	E. 13959, 12334, 14617 13124, 13498, 13985 100 1	Mch. 15	A. 622/7.
15	Chas. Fairchild & Co	110	D. 80713, E. 14871	Mch. 15	A. 628, A. 1157. Assessment paid Mar. 15, 1899.
15	Conrad Heller	10	D. 65442, July 15/89	Mch. 15	C. 1158. Assessment paid Mar. 15, 1899.
15	First Natl. Bk.	75	25 50 C. 7361, 9008	Mch. 15	C. 1159. Assessment paid Mar. 15, 1899.
15	Spencer Trask	70	C. 9399 Feb. 16/97	Mch. 15	C. 1160. Assessment paid Mar. 15, 1899.
15	F. P. Allen, Tr Y	50	C. 8170 Aug. 16/89	Mch. 15	C. 1161. Assessment paid Mar. 15. 1899.
15	L. Levy & Co	100	E. 13905 Dec. 17/98	Mch. 15	A. 629.
742–743					
Mch. 15	S. V. White & Co	6,850	2 5 E. 14117/18, 14113, 14108/12. 4 3 4 14104/7, 14101/3, 14097/100. 4 13639, 14740/43, 14470/1. 3 10202, 10205, 14305/3, 14125.		

			14119, 14127/8, 14122/4, 11119, 14334, 14297, 13939, 12163, 14477, 14153, 13729, 14390/1, 14129/8, 11916, 13472, 14389, 12211, 13922. 60 50 14046, 56/100, C. 9758, 9729. D. 22183, 16568, 16900, 5594, 28732, 25907, 25541, 25569, 25584, 36997, 47076, 43432. 3 68788, 21456, 53404/2, 59161, 64661, 62061, 43986, 53310, 73528, 53314, 2709, 47557, 61552, 45420, 75268, 19414, 61803, 28638, 63008, 63035. 25 50 1 14 26098, 9777, 9754, 9763, 9773. D. 67671, 49817, 68886, 68855, 70937, 70244, 69142, 33629, 45617, 64672, 70825, 62387, 62080, 28067, 72624, 35113, 16909, 60285, 2186, 8306, 44782, 19385, 71958, 45752, 52477, 72086, 71349, 72010, 36032, 29867.		
744-745			3 34507, 35486/4, 37227, 39230, 33357, 35394, 35449/8, 26861, 32317, 71071, 32866, 70777, 11302, 38739, 41693, 7624, 68327, 73788, 69891, 20704, 47549, 45625, 49408, 48352, 76143, 35106, 80637, 46189, 44609, 34839, 50143, 35406, 35385, 27926, 33376, 36425.	Mch. 15	A. 630/97.
			34293, 105/10.....	Mch. 15	C. 1162.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 15	Goldman, Sachs & Co.	50	C. 8105 Aug. 6/89.	Mch. 15	C. 1163. Assessment paid Mch. 15, 1899.
15	Hoffmann Bros.	200	E. 14957/56.	Mch. 15	A. 698/9. Assessment paid Mch. 29/99.
15	L. Levy & Co.	700	D. 38474, 43091, 46223, 71149, 40314, 41301, 46387, 46872, 54915, 30514, 10/10. E. 13635, 14195, 15156/5, 15097/6, 6/100.	Mch. 1	A. 700/6.
15	Strong, Sturgis & Co.	2,000	E. 12750, 12352, 14708, 14227, 12905/04, 14723, 14774, 10199, 13868, 14331, 14482, 13727, 11713, 14024, 14330, 14216, 13916, 13795, 14798.	Mch. 15	A. 707/25. C. 1164/5.
15	Hoffmann Bros.	1,000	E. 14948/50, 14187, 14669, 13222, 13874, 12344, 14186, 14211, 10/100.	Mch. 15	A. 726/35.
746–747			5 4		
Mch. 16	Miss M. G. Savage, Cromwell, Conn.	9	C. 7597, 7764.	Mch. 16	C. 1166. Assessment paid Mar. 16, 1899.
16	Mrs. Harriet W. Wheelock, Cromwell, Conn.	2	C. 7767.	Mch. 16	C. 1167. Assessment paid Mar. 16, 1899.
16	F. H. Johnson, Monson, Mass.	5	C. 6297.	Mch. 16	C. 1168. Assessment paid Mar. 16, 1899.
16	M. D. Kneeland, 29 Wyoming St., Roxbury, Boston.	15	6 5 4 C. 7812, 6525, 6261.	Mch. 16	C. 1169. Assessment paid Mar. 16,

16	First Nat'l Bank, Morrisville, N. Y.	55	C. 8128, D. 31777, C. 8213	Mch. 16	C. 1170/3, 1/25.
16	Mary J. Hale, 409 Lake Ave., Rochester, N. Y.	25	C. 9357, June 18/96	Mch. 16	C. 1174. Assessment paid Mar. 16, 1899.
16	Carl Krauss, Dusseldorf	10	D. 24536, Feb. 9/83	Mch. 16	C. 1175. Assessment paid Mar. 16, 1899.
16	Fredk. St. John Lockwood, Norwalk, Conn.	50	C. 8038, July 19/89	Mch. 16	C. 1176. Assessment paid Mar. 29, 1899.
		40	C. 8483, Aug. 27/90	Mch. 16	C. 1177. Assessment paid Mar. 29, 1899.
16	I. E. Gates	439	E. 14515/18, 4/100; D. 80358, 76335, 2/10.	Mch. 16	A. 738/41. Assessment paid Mar. 16, 1899.
			C. 9181, 9426, 9182, 9179/80, 5/1; C. 9184, 1/14.	Mch. 16	C. 1178. Assessment paid Mar. 16, 1899.
16	Emma P. Forbes	92	C. 8135, Aug. 8/89	Mch. 16	C. 1179. Assessment paid Mar. 16, 1899.
16	Strong, Sturgis & Co	100	E. 13950, Dec. 20/98	Mch. 16	A. 742.
16	Keeps & Keen	400	E. 15003/6	Mch. 16	A. 743/6. Assessment paid Apr. 4, 1899.
16	L. Levy & Co	1,100	E. 14037, 14094, 14982, 15089, 15091/90, 11608, 14163, 15095/4, 14863.	Mch. 16	A. 747/57.
16	Strong, Sturgis & Co	2,400	D. 36110, 42454, 49078, 51569, 52761, 53133, 62338, 65426, 50 72095, 73068, 10/10; C. 9595, 50 9440.		
748–749			E. 13770, 12594, 13850, 11016, 13754, 13909, 12243, 13861, 13671, 14161, 12212, 10607, 13829, 13912, 13906, 13974, 13995, 13836, 13450, 13973, 13694, 14736.	Mch. 16	A. 758/81.
Mch. 16	Sternberger, Fuld & Sinn	100	E. 13818, Dec. 6/98	Mch. 16	A. 782.
17	Heidelbach, Ickelheimer & Co	700	E. 11894, 11896, 15069, 15050/1 15042/3, 7/100.	Mch. 17	A. 783/789. Assessment paid Apr. 3, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 17	Van Emburg & Atterbury	100	E. 13120, Sept. 30/91	Mch. 17	A. 790.
17	Zimmerman & Forshay	10	D. 36531, July 15/84	Mch. 17	C. 1180. Assessment paid Apr. 4, 1899.
17	American Nat'l Bk., Hartford, Conn	10	D. 65564, Aug. 10/89	Mch. 17	C. 1181. Assessment paid Mar. 17, 1899.
17	John D. Parker, Hartford, Conn	10	D. 32367, Mch. 14/84	Mch. 17	C. 1182. Assessment paid Mar. 17, 1899.
17	First Nat'l Bank, Norwich, Conn	2	C. 6339, Feb. 21/84	Mch. 17	C. 1183. Assessment paid Mar. 23, 1899.
17	Mrs. Henry D. Beman, Augusta, Ga	50	C. 8716, Jan. 20/92	Mch. 17	C. 1184. Assessment paid Mar. 25, 1899.
17	A. Iselin & Co	120	C. 7935, 70 shrs; C. 6808, 6348, 2/20.	Mch. 17	A. 791.
			D. 41039, 1/10	Mch. 17	C. 1185.
17	Thames Nat'l Bank	10	D. 32428, Apl. 10/84	Mch. 17	C. 1186. Assessment paid Mar. 17, 1899.
17	Appleton R. Hillyer	20	C. 8109, Aug. 6/89	Mch. 17	C. 1187. Assessment paid Mar. 17, 1899.
17	Connecticut Trust & Safe Dep. Co., Hartford.	6	C. 8371, Feb. 11/90	Mch. 17	C. 1188. Assessment paid, Mar. 17, 1899.
17	John H. Peck, Troy, N. Y. (for Mary L. L. Thurman).	100	E. 13499, Nov. 19/96	Mch. 17	A. 792. Assessment paid Mar. 17, 1899.
17	Zimmerman & Forshay	100	E. 14072, Dec. 29/98	Mch. 17	A. 808. Assessment paid, Apr. 4, 1899.
750–751					
Mch. 17	I. E. Gates	1,000	E. 10009/11, 11641, 12173/5.	Mch. 17	A. 794/803. Assessment paid Mar.

17	Kissan, Whitney & Co.	300	E. 12646/47, C. 9365/66.	Mch. 17	A. 804/5, C. 1189/90. Assessment paid Apr. 5, 1899.
17	Hofmann Bros.	200	E. 13531/32, July 28/97.	Mch. 17	A. 806/7.
17	F. T. White.	100	C. 7430, 6766, 2/50.	Mch. 17	A. 793. Assessment paid Mar. 17, 1899.
17	Geo. W. Stoddard.	20	C. 8355, Feb. 3/90.	Mch. 17	C. 1191.
17	Alfred E. Austin, Norwalk, Conn.	75	C. 9385, Jan. 5/97.	Mch. 17	C. 1192. Assessment paid Mar. 17, 1899.
17	W. S. Johnson, 83 Leonard St.	25	C. 9879, Mch. 9/99.	Mch. 17	C. 1193.
17	Geo. S. Hart.	100	E. 11883, Jan. 18/88.	Mch. 17	A. 809. Asst. pd. Mch. 24/99.
17	Chas. Minzesheimer.	100	D. 61294, 69407, 53559, 54396, 55051, 55259, 56947, 56948, 58574, 53589, 10/10.	Mch. 17	A. 810. Assessment paid Apr. 4, 1899.
			4		
17	S. V. White & Co.	600	E. 15211/14, 13827, 14351.	Mch. 17	A. 811/16.
			20 20 50 5		
17	John H. Jacquelin & Co.	143	C. 9655, 9417, 9878, 8102.		
			3 15		
			C. 9896, 8319, 113 shs.	Mch. 17	A. 817. Assessment paid Apr. 4, 1899.
			D. 75421, 71343, 68325, 3/10.	Mch. 17	C. 1194. Assessment paid Apr. 4, 1899.
17	Mary E. Gulick, Kingston, New Jersey.	25	C. 7795, Feb. 15/89.	Mch. 17	C. 1195. Assessment paid Mar. 17, 1899.
17	Rob't Winthrop & Co.	30	C. 8153, Aug. 10/89, 15.	Mch. 17	C. 1196. Assessment paid Mar. 17, 1899.
			C. 8154, Aug. 10/89, 15.	Mch. 17	C. 1197. Assessment paid Mar. 17, 1899.
17	Edward Sweet & Co.	10	D. 67000, Dec. 31/90.	Mch. 17	C. 1198.
17	L. Levy & Co.	200	E. 15092/3, Mch. 4/99.	Mch. 17	A. 818/9.
17	P. Harmonys Nephew.	200	E. 14884, 14952.	Mch. 17	A. 820/1. Assessment paid Mar. 20, 1899.
752–753					
Mch. 17	S. D. Paddock, Syracuse.	100	E. 12944, Jan. 20/90.		A. 822. Assessment paid Apr. 3, 1899.
			4		
17	Baring, Magoun & Co.	80	D. 61841/4, 29173, 29314, 29313/12, 8/10.	Mch. 17	C. 1199/1206, 8/10.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 17	Nat'l Bank of N. A.....	3,220	E. 14433/2, 14444, 14437/34, 14174, 12968, 14173, 13765, 13647, 13643, 13545, 13061, 13600, 13140, 11994, 13739, 13626, 13664, 13599, 22/100. C. 9391, 9445, 8459, 9465, 9587, 9578, 6/50. 60 20 C. 9559, 9418. D. 3700, 77174, 48595, 18901, 49062, 69800, 45161, 41399, 43538, 37915, 57431, 28731, 59910, 24235, 46141, 48966, 2945, 31548, 59511, 41385, 78090, 58761, 50782, 37516, 55158, 65833, 80031, 80033, 80035/4, 80036/7, 80302, 80305, 50291, 8853, 71199, 14470, 37904, 58551, 57905, 57816, 56729, 19326, 50919, 53532, 56752, 70652, 6469, 45958, 19255, 45385, 67905, 26034, 68451, 39326, 51542, 51792, 80032, 5749, 63741, 27960, 42892, 69838, 64/10. 20	Mch. 17	A. 823/54. C. 1207/8.
754–755					
Mch. 18	Joseph F. Barton, Waterville, N. Y.....	120	E. 12888, C. 8293.....	Mch. 18	C. 1209. A. 855. Assessment paid Mar. 18, 1899.

	F. Lester).		C. 9265	Mch. 18	C. 1210.	Assessment paid Mar. 18, 1899.
18	E. C. Hovey, Canandaigua, N. Y	18	C. 9656, 9874	Mch. 18	C. 1211.	Assessment paid Mar. 18, 1899.
18	Gilbert K. Rand, Worcester, Mass	10	D. 65562	Mch. 18	C. 1212.	Assessment paid Mar. 25, 1899.
18	W. M. Imbrie & Co	10	D. 80729	Mch. 18	C. 1213.	Assessment paid Apr. 4, 1899.
18	C. Minzesheimer & Co	100	E. 15018	Mch. 18	A. 856.	Assessment paid Apr. 4, 1899.
18	Comfort A. Palmer, Bridgeport, Conn	40	C. 7016, 7832 2/15; D. 80731, 1/10.	Mch. 18	C. 1214.	Assessment paid, Mar. 18, 1899.
18	Jos. F. Dane, Salem, Mass	10	D. 10650	Mch. 18	C. 1215.	Assessment paid Mar. 18, 1899.
18	C. I. Hudson & Co	2,100	E. 15231/40, 14018, 13997, 14048, 13785, 14271, 13731, 14095, 11710, 14484, 19/100; C. 9645, 9632, 9660/1, 4/50.	Mch. 18	A. 857/77.	
18	Wilcox & Co	15	C. 9855	Mch. 18	C. 1216.	Assessment paid Mar. 18, 1899.
18	I. S. Blodgett, Cooperstown, N. Y	100	E. 13046	Mch. 18	A. 878.	Assessment paid Mar. 18, 1899.
18	C. I. Hudson & Co	800	E. 13640, 14453, 14254, 12213, 14665, 13303, 14257, 13982, 8/100.	Mch. 18	A. 879/86.	
756–757						
Mch. 18	Gilbough & Mills	10	D. 80590	Mch. 18	C. 1217.	
18	W. D. Barbour & Co	5	C. 7840	Mch. 18	C. 1218.	Assessment paid Mar. 18, 1899.
18	Geo. Murray Guion, Chicago, Ill	100	E. 12953	Mch. 18	A. 887.	Assessment paid Mar. 18, 1899.
18	L. L. Benedict & Co	400	E. 15203, 14203, 14599, 14319	Mch. 18	A. 888/91.	Assessment paid Apr. 4, 1899.
20	Mrs. H. A. Crego, Box 328, Jordan, N. Y	40	C. 9566	Mch. 20	C. 1219.	Assessment paid Apr. 4, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 20	H. L. Fairchild, Nichols, Conn	40	C. 8328, 9871, 2/20	Mch. 20	C. 1220. Assessment paid Mar. 20, 1899.
20	J. W. Fairbanks, Tr. Amherst College, Amherst, Mass.	100	E. 12870		A. 2037. Assessment paid Mar. 24, 1899.
20	Loon, Hoffmann & Co	40	20 5 15 C. 9749, 9519, 8151	Mch. 20	C. 1221.
20	Merchants Nat'l Bank, New Bedford, Mass.	20	10 2/5 D. 39369, C. 8201/2	Mch. 20	C. 1222. Assessment paid Mar. 20, 1899.
		25	C. 8199, 8200, 6228, 3/5	Mch. 20	C. 1223. Assessment paid Mar. 20, 1899.
			D. 80649, 1/10		
20	Williamson & Squire	100	E. 14578	Mch. 20	A. 892.
20	Sanford & Kelley, New Bedford, Mass	105	75 30 C. 7670, 7848	Mch. 20	C. 1224/5. Assessment paid Apr. 4, 1899.
20	Pacific Imp't Co	203	C. 9342, Mch. 24/96	Mch. 20	C. 1226, A. 893/4. Assessment paid Mar. 20, 1899.
20	Horace B. Burr, Greenfield Hill, Conn	100	5 40 35 C. 9895, 9817, 8552	Mch. 20	A. 895. Assessment paid Mar. 20, 1899.
			D. 67711, 69067, 2/10.		
20	Theodore Wilson	130	C. 9822, 30	Mch. 20	C. 1227. Assessment paid Mar. 20, 1899.
			E. 15216, 100	Mch. 20	A. 896. Assessment paid Mar. 20, 1899.
20	D. H. Tomlinson, Bridgeport, Conn	12	C. 8062	Mch. 20	C. 1228.

20	Mary F. Cahill, 26 Beekman Place	10	C. 9741, 9873, 2/5	Mch. 20	C. 1229. Assessment paid Mar. 20, 1899.
20	Blake Bros. & Co.	100	E. 14429, Jan. 18/99	Mch. 20	A. 898.
758–759					
Mch. 20	Nobles & Mestre	100	D. 43436, 22296, 52516, 38994, 63809, 20652, 46347, 62768, 48197, 25577.	Mch. 20	A. 899.
20	Mortimer C. Addoms	20	C. 7955		C. 1230.
20	Central Trust Co.	1,600	D. 59729, 3898, 25657, 51699, 54781, 53976, 7214, 31471, 28248. 19861, 34336/32, 8827, 8457, 7370, 1988, 1972, 20/10. E. 10200, 14135, 13764, 14010, 13720, 14369, 14441, 14898/900, 13638, 14252, 14655, 13473.		A. 900/15. Assessment paid Mar. 20, 1899.
20	E. C. Benedict & Co.	2,000	E. 13806, 13756, 13094, 14577, 13719, 14361, 14398, 14290, 14419, 14767, 13865, 11709, 13104, 14427, 13123, 12237, 12013, 14985/4, 12329.	Mch. 20	A. 916/35.
20	Willet & Co.	275	D. 65443, E. 12675, 12676	Mch. 20	A. 936/7. Assessment paid Apr. 4, 1899.
			15 50 C. 8071, 8069	Mch. 20	C. 1231/33. Assessment paid Apr. 4, 1899.
20	Mary N. Walker, 337 W. 71st	20	C. 8390, Feb. 27/90	Mch. 20	C. 1234. Assessment paid Mar. 20, 1899.
20	Chemical Nat'l Bank	100	E. 12617 May 24/89	Mch. 20	A. 947. Assessment paid Mar. 20, 1899.
20	Keep & Keen	200	E. 14999, 15000	Mch. 20	A. 948/9. Assessment paid Apr. 4, 1899.
20	C. H. Rosenwald	10	D. 80334 Mch. 28/98	Mch. 20	C. 1236. Assessment paid Mar. 23, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.			5 1 4		
Mch. 20	John Jos. Reedy	10	C. 7221, 9847, 9884	Mch. 20	C. 1237. Assessment paid Mar. 21, 1899.
760–761					
			50 15 25 5		
Mch. 20	Kuhn, Loeb & Co	970	C. 9575, 9808, 9651, 9594 D. 75259/60, 2/10. E. 12868, 14592, 14870, 13932, 11913, 14974, 14164, 7/100.	Mch. 20	C. 1235.
			5		
			C. 9851, D. 25198, 54381, 61478, 77670, 80722, 51797, 52400, 64393, 36292, 35330.	Mch. 20	A. 938/46.
			50		
20	Dommick & Williams	1,100	C. 9848. E. 14832, 14833, 14425, 13971, 14854, 14671/70, 13456, 8/100, D. 31108, 29683, 23338, 36999, 36248, 3072, 24097, 42452, 46254, 74743, 71139, 69298, 69040, 42900, 27977, 12958, 3453, 10878, 32760, 34028, 69563, 30138, 77173, 54837, 51806, 67741, 6853, 64644, 64643/2, 30/10.	Mch. 20	A. 950/60. Assessment paid Apr. 5, 1899.
20	J. Leonard Varick	50	C. 9502/1, 2/25	Mch. 20	C. 1239/40. Assessment paid Apr. 4, 1899.

			E. 13247/51, 15073, 14478, 14943, 14183, 14282/1, 14466, E. 13508, 14066, 14003, 13740, 15224, 14869, 14406, 13679, 25/100, 46682, 55052, 29562, 28592, D. 71992, 29686, 54371/2, 76034/5, 57738, 26082, 72819, 48432, 52752, 47117, 42219, 61993, 13222, 53308, 20/10.	Mch. 25	A. 881/87.
762–763					
Mch. 21	Simon B. Fleisher, 28 So. 6th St., Phila., Pa.	1,000	E. 13468, 14093, 13998, 14080, 13915, 13786, 13876, 13937, 14061, 13942, 10/100.	Mch. 21	A. 988/997. Assessment paid Mar. 21, 1899.
21	Aetna Nat'l Bank, Hartford, Conn.	5	C. 8110, Aug. 6/89.	Mch. 21	C. 1241. Assessment paid Mar. 21 1899.
		20	C. 9803, Feb. 10/99.	Mch. 21	C. 1242. Assessment paid Mar. 21, 1899.
21	Merchants Nat'l Bank, Norwich, Conn.	50	C. 7610, Feb. 10/88.	Mch. 21	C. 1238.
21	Arthur B. Webb, Norwich, Conn.	40	C. 6968. Feb. 5/85.	Mch. 21	C. 1243. Assessment paid Mar. 21, 1899.
		50	C. 6969, Feb. 5/85.	Mch. 21	C. 1244. Assessment paid Mar. 21, 1899.
21	Provost Bros.	20	D. 3767, 64105, 2/10.	Mch. 21	C. 1245/6.
21	M. H. Clarkson.	1,100	E. 13948, 14607, 14138, 14383, 14449, 13938, 14758, 14807/10, 11/100.	Mch. 21	A. 998/1008. Assessment paid Apr. 4, 1899.
21	Bank of No. Amer.	400	E. 15215, 14087, D. 36702, 45753, 40001, 25484, 8806, 12585, 45120, 33849, 16931, 21335, 2510, 32085, 54344, 57993, 58571, 59896, 21179, 30366, 51968, 26265.	Mch. 21	A. 1009/12.
764–765					
Mch. 21	W. K. Clare & Son.	600	E. 13758, 13943. 4 4 D. 19636/33, 18958, 16306/3. 4986, 31833, 31748, 29282/1.	Mch. 21	A. 1013/18. Assessment paid Apr. 5, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899. Mar. 21	W. K. Clare & Son (continued)		3 3 25526/4, 22157/5, 45277, 74455, 80612, 39113, 12843, 39114, 39112, 45308, 39490, 10147, 57165, 56605, 59408, 53886, 54564, 54254, 59723, 45668, 53311/12, 40/10.		
21	F. St. Goar	500	E. 14812, 10184, 14065, 12325, 13936.	Mch. 21	A. 1019/23.
21	J. S. Bache & Co	170	C. 7845, 70	Mch. 21	C. 1247. Assessment paid Mar. 21, 1899.
			E. 12112, 100	Mch. 21	A. 1024. Assessment paid Mar. 21, 1899.
21	Kissam, Whitney & Co	400	D. 43034, 60036, 57168, 57170, 44881, 62567, 7177, 66236, 51594, 32950, 28655, 31835, 30056, 31834, 53724, 23324, 46848, 48937, 68799, 49655, 65420, 55422, 57454. 4 56797/800, 33228, 65419, 10577, 46766, 20600, 70752, 12184, 69509, 12936, 28334, 70334, 28413, 40374.	Mch. 21	A. 1025/8.
766–767					
Mch. 21	Francis T. Lord	100	E. 13246, Aug. 12/92	Mch. 21	A. 1029. Assessment paid Mar. 21, 1899.
21	Wm. Patteson & Co	100	E. 14913, Feb. 25/99	Mch. 21	A. 1030. Assessment paid Mar. 21, 1899.

21	Rob't Goodbody & Co	300	E. 12731/29, Aug. 2/89	Mch.	21	A. 1031/3. Assessment paid Mar. 21, 1899.
21	A. R. Pick & Co	60	D. 51763, 22410, 71022	Mch.	21	C. 1248 (35). Assessment paid Apr. 5, 1899.
			26453, 80716, 5/10	Mch.	21	C. 1249 (15). Assessment paid Apr. 5, 1899.
			C. 9776, 9806, 2/5	Mch.	21	C. 1250 (10). Assessment paid Apr. 5, 1899.
21	H. F. Hutchinson	25	D. 64960, 10	Mch.	21	C. 1251. Assessment paid Mar. 21, 1899.
			C. 7804, 15	Mch.	21	C. 1252. Assessment paid Mar. 21, 1899.
21	Natl. Ulster Co. B'k, Kingston, N. Y.	20	D. 32487, 35781	Mch.	21	C. 1253. Assessment paid Mar. 21 1899.
21	A. L. Webster	60	20 40 C. 7662, C. 7661	Mch.	21	C. 1254/5. Assessment paid Mar. 21, 1899.
21	L. L. Benedict & Co	200	E. 14852/3, Feb. 20/99	Mch.	21	A. 1034/5. Assessment paid Apr. 4, 1899.
21	Est. of Wm. H. Brigham	150	C. 7808, 1/50	Mch.	21	C. 1256.
			E. 12270, 1/100	Mch.	21	A. 1036.
21	Francis Lathrop	100	10 40 30 D. 66523, C. 9893, 9889	Mch.	21	A. 1037. Assessment paid Mar. 23, 1899.
			20 C. 9890			
21	W. E. Glyn	40	D, 43771, 25054, 6844, 3466	Mch.	21	C. 1257.
21	Noble & Mestre	200	D. 30426, 35452, 39580, 39870, 50128/9, 80245/6, 33557/6, 10/10. E. 15185.	Mch.	21	A. 1038/9.
21	S. V. White & Co	100	E. 12796, Aug. 7/89	Mch.	21	A. 1040
21	van Schaick & Co	200	E. 12230, 13902	Mch.	21	A. 1041/2
768–769						
Mch. 21	Herzog & Sichel	500	E. 12279, 14920/18, 14937	Mch.	21	A. 1043/7.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 21	T. H. Powers & Farr	120	E. 14978	Mch. 21	A. 1048. Assessment paid Apr. 5, 1899.
			D. 61779, 19285	Mch. 21	C. 1258. Assessment paid Apr. 5, 1899.
21	Hy. E. Montgomery & Co	50	D. 23825, 11722, 31586, 53317, 4/10, C. 7364, 4494, 2/5.	Mch. 21	C. 1259.
21	Natl. Bk. of Nor. Amer	2,680	E. 13691/90, 12598, 13689	Mch. 21	A. 1049/74.
			14660, 14414, 13826, 13776, 12326, 13461, 13873, 13763, 14067, 13722, 14704/5, 12261, 13845, 13992, 13807, 20/100. 50 50 40 14	Mch. 21	C. 1260/7.
			C. 9619, 9633, 9631, 9549. 6 50		
			9601, 9647, 210.		
			D. 61664, 34022, 25556, 33973, 17030, 10194, 33419, 38858, 9881, 18952, 21803, 50796, 44383, 68525, 65461, 80591, 42698, 41266, 41265, 20816, 21124, 21125, 71987, 48383, 50116, 63068, 16023, 61639, 37437, 73739, 37022, 71944, 42060, 37574, 48211, 42409, 43354, 77858, 21266, 80613, 57026.		
770–771			D. 21389, 57749, 55084, 54380, 66760, 54690, 47/10.		

Mch. 21	van Emburgh & Atterbury.....	1,500	D. 18158, 14496, 14284, 13159, 52074, 52075, 51998, 27062, 23770, 21307, 73857, 11041, 14471, 46048, 20977, 6245, 1175, 77427, 73587, 1823, 60401, 56850, 60235, 46194, 50759, 42998, 40365, 61985, 13967, 45211, 20685, 61536, 23436, 23437, 71367, 52587, 50168, 47449, 49008, 28137, 60897, 55981, 63551, 24043, 57641, 31846, 30528, 59829, 52975, 44710, 43025, 23597, 43558, 10325, 35723, 49207, 10022, 10709, 50348, 23962, 20588, 47748, 49007, 66309, 22634, 61982, 43799, 27894, 38830, 33318, 54001, 37764, 46589, 27220, 10904, 21784, 6073, 42020, 71929, 34189, 75386, 42639, 41877, 4977,	Mch. 21	A. 1075/89.
772–773			23309. 3 51099/100, 32973, 62366, 52187, 52188, 54927, 3464, 32259/60, 48615, 34638, 43412, 46948, 43357, 45953, 56840, 27097, 25619, 42140, 20396, 32178, 16455, 25588, 47971, 6142, 47642, 37396, 62966, 38457, 50695, 50653, 54332, 54269, 11844, 52588/9, 9740, 36645, 40309, 50685, 68896, 68142, 56930, 50443. 70 50 50 C. 9713, 9113, 9114, 170. D. 59145, 62267, 133/10.		

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 21	Sternberger, Fuld & Sinn	100	E. 15070, 1/100	Mch. 21	A. 1090.
21	E. L. Oppenheimer & Co	500	E. 13718, 15147, 15152/50	Mch. 21	A. 1091/5.
21	James Weeks	100	E. 11434	Mch. 21	A. 1096. Assessment paid Apr. 4, 1899.
21	Kean, van Cortland & Co	700	E. 13812, 14494, 13507	21	A. 1097/1103.
			14529, 13837, 14697, 14698	Mch. 21	
21	Flower & Co	3,200	E. 15261/68, 15283	Mch. 21	A. 1104/35.
			13 9		
774–775			15270/82, 15269, 15260/52.		
Mch. 21	R. J. Kimball & Co	1,000	E. 13505, 15204, 15100, 14922/3, 11919, 12004, 14047, 13779, 13822.	Mch. 21	A. 1136/45. Assessment paid Mar. 21, 1899.
21	W. A. Jennings	300	E. 13707, 13513, D. 45862, 69504, 71176, 27907, 14830, 15427, 44831, 71107, 46241, 23988.	Mch. 21	A. 1146/8.
21	Strong, Sturgis & Co	1,000	E. 12406, 13540, 12304, 13975/6, 13979, 12327, 14185, 13526, 12825.	Mch. 21	A. 1149/58. Assessment paid A.
21	Drake, Maston & Co	100	E. 14989	Mch. 21	A. 1159.
21	G. B. Salsbury & Co	500	E. 15285, 14788/90, 13121	Mch. 21	A. 1160/4.
21	Lazard Freres	2,100	E. 13885/6, 14146, 12265, 12151, 14796, 14416, 13771.	Mch. 21	A. 1165/85. Assessment paid Apr. 5, 1899.

			3 14490, 14629, 14626/8, 14625, 13887, 14536, 14430, 14412, 18/100, D. 30615, 7064, 51500, 50297, 30619, 18739, 78399, 28521, 41771, 57934, 50347, 70118, 1997, 2195, 45253, 50105, 44813, 27219, 68324, 60827, 34945, 34085, 978, 963, 33303, 54874.		
776–777						
Mch. 21			D. 35671, 24014, 33974, 19691, 30/10.			
21	U. S. Trust Co	400	E. 13056/59	Mch. 21	A. 1186/9.	Assessment paid Mar. 28, 1899.
21	Baring, Magoun & Co	10	D. 65167	Mch. 21	C. 1268.	
21	Prince & Whitely	250	100 50 50 25 E. 14979, 6562, 9674, 9764	Mch. 21	A. 1190/1.	
			5 10 10 8689, D. 52503, 45732	Mch. 21	C. 1269.	
21	H. G. Campbell	100	E. 15287	Mch. 21	A. 1192.	
21	Ashbel P. Fitch	5	C. 9490	Mch. 21	C. 1270.	Assessment paid Mar. 30, 1899.
21	Baring, Magoun & Co	20	C. 7833	Mch. 21	C. 1271.	
		10	D. 31348	Mch. 21	C. 1272.	
21	Miss G. K. B. Andrews	100	E. 13804	Mch. 21	A. 1193.	Assessment paid Apr. 5, 1899.
21	C. E. Jochum	15	C. 9344	Mch. 21	C. 1273.	Assessment paid Mar. 21, 1899.
		30	10 14 6 D. 68720, 7851, 8727	Mch. 21	C. 1274.	Assessment paid Mar. 21, 1899.
		10	C. 9072/3, 2/5	Mch. 21	C. 1275.	Assessment paid Mar. 21, 1899.
21	Townsend & Shera	125	D. 46407, 36859, 53205, 71134	Mch. 21	A. 1194.	Assessment paid Apr. 4, 1899.
			65 10 C. 9762, 9834, D. 71106	Mch. 21	C. 1276.	

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 21	C. H. Rosenbladt	50	D. 30790, 80630, 10622, 15246..	Mch. 21	C. 1277/80.
		50	4/10.		
			20 75		
		25	C. 9768, 9748.		
		10			
21	Joseph Stern	100	E. 13762	Mch. 21	A. 1195. Assessment paid Apr. 4, 1899.
21	Est. Wm. Jacobs	50	C. 8732	Mch. 21	C. 1281. Assessment paid Mar. 21, 1899.
778–779					
Mch. 21	Jos. H. Sulzbacher	100	5 5 20 20 C. 9297, 9646, 9055, 9864, D. 37814, 37185, 80641, 66940, 56062.	Mch. 21	A. 1196. Assessment paid Mar. 21, 1899.
21	Ulman Bros	1,200	D. 53586, 49164, 41021, 59401, 59399, 80708, 48682, 22036, 71406, 80700, 10/10.	Mch. 21	A. 1197/1208. Assessment paid Mar. 21, 1899.
			5 E. 15044, 14544/8, 15058, 15157, 15186, 15226, 14055.		
21	Lathrop & Smith	1,600	D. 19056, 31913, 35285, 37527, 37902, 42879, 69438, 44321, 44096, 28875, 59683/4, 25700, 60599, 58161, 32522, 22567, 70854, 70773, 3893, 20/10, E. 14526/7, 14362, 14463, 14525, 14012, 14839, 13535, 14606, 14418, 14269, 14775, 13598, 13893, 14/100.	Mch. 21	A. 1209/24.

21	Hornfeld & Co.	477	E. 14609, 100.	Mch. 21	A. 1225/8.
			D. 31460/1, 42001, 19552/7, 54634/5, 31462, 70742, 21074, 24177, 26035, 58003, 47685, 51411, 20609, 61264, 58515, 80724, 10747, 48252, 48361, 61958, 70986, 71180, 72612, 74574, 29777, 69315.	Mch. 21	C. 1282.
780–781			40 7 C. 9900, 9605.		
Mch. 21	Wm. A. New	100	E. 12238	Mch. 21	A. 1229. Assessment paid Apr. 4, 1899.
21	Kissam, Whitney & Co.	1,000	E. 14550, 14554, 14374, 14724, 14805, 14143, 14600, 15007, 15159, 9/100.	Mch. 21	A. 1230/9.
			30 20. C. 9870, 9869, D. 76036/9. 4/10, 10. 80916.		
21	Wm. P. Dixon	300	E. 14931/3	Mch. 21	A. 1240/2. Assessment paid Mar. 21, 1899.
22	Hofmann Bros.	300	E. 15059, 15040, 15026	Mch. 22	A. 1243/5. Assessment paid Apr. 3, 1899.
22	Sarah H. Haskill, Laus.	120	E. 12970, 100 shs	Mch. 22	A. 1246. Assessment paid Mar. 22, 1899.
			C. 9894, 20 shs	Mch. 22	C. 1283. Assessment paid Mar. 22, 1899.
22	E. F. Morris, Monson, Mass.	15	D. 65473, 10 shs	Mch. 22	C. 1284. Assessment paid Mar. 22, 1899.
			C. 8093, 5 shs	Mch. 22	C. 1285. Assessment paid Mar. 22, 1899.
22	M. S. Hovey, Chicago, Ill.	18	16 2 C. 9657, 9875	Mch. 22	C. 1286. Assessment paid Mar. 22, 1899.
22	O. A. Jillson, Providence, R. I.	27	C. 7943	Mch. 22	C. 1287.
22	William Wallace, Springfield, Mass.	5	C. 7849, 5 shs	Mch. 22	C. 1288. Assessment paid Mar. 22, 1899.
		2	C. 7850, 2 shs	Mch. 22	C. 1289. Assessment paid Mar. 22, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 22	D. M. Mitchell, So. Britain, Conn	100	E. 12969	Mch. 22	A. 1247. Assessment paid Mar. 22, 1899.
22	Clark, Dodge & Co	100	E. 12967	Mch. 22	A. 1248. Assessment paid Mar. 22. 1899.
782–783					
Mch. 22	Merch. Nat'l Bk., New Bedford, Mass	75	C. 8477, 50 shs	Mch. 22	C. 1290. Assessment paid Apr. 5, 1899.
		7	C. 6743, 25 shs	Mch. 22	C. 1291. Assessment paid Mar. 22, 1899.
22	Wm. B. Ramsdell, Warren, Mass	55	C. 8521, 50 shs	Mch. 22	C. 1292. Assessment paid Mar. 22, 1899.
			C. 8619, 5 shs	Mch. 22	C. 1293. Assessment paid Mar. 22, 1899.
22	Phenix Ins. Co., 47 Cedar St	1,000	E. 14175, 12197, 13957, 11923, 10836, 13755, 14189, D. 31356, 4376, 7882, 8756, 56617, 60854, 20919, 39569, 27217, 40472, 58898, 10935, 67694, 29805, 44213, 76594, 34026, 50900, 57959, 59144, 50710, 55318, 49852, 47563, 30713, 21637, 31427, 36061, 39074, 19446.	Mch. 22	A. 1249/58. Assessment paid Mar. 22, 1899.
22	D. S. Hubbell, Chicago, Ill	100	E. 12853	Mch. 22	A. 1266.
22	J. S. Bache & Co	10	D. 64789	Mch. 22	C. 1294. Assessment paid Mar. 22, 1899.
22	J. Lee Judson, Rochester, N. Y	25	C. 9356	Mch. 22	C. 1295. Assessment paid Mar. 22, 1899.

22	Walter B. Camp, Sacket Harbor, N. Y.	20	C. 6139	Mch. 22	C. 1297. Assessment paid Mar. 22, 1899.
22	Chas. Minzesheimer				
22	Watson & Brown	100	E. 13743	Mch. 22	A. 1260.
22	J. Forbes Potter	100	E. 14520	Mch. 22	A. 1261.
22	Kingsley & Mabon	200	E. 14555/6	Mch. 22	A. 1262/3.
784–785					
Mch. 22	James H Fay	300	E. 13656/5, 13657	Mch. 22	A(1264/6 A. Assessment paid, Apr. 5, 1899. (1367.
22	Harvey Fisk & Sons	100	E. 15225	Mch. 22	A. 1267.
22	Theo. Wilson	100	E. 15207	Mch. 22	A. 1268. Assessment paid Mar. 22, 1899.
22	Cuyler, Morgan & Co	300	E. 14381, 13954, 13977	Mch. 22	A. 1269/71.
22	Herzog & (Glazier) Sichel	100	E. 14890	Mch. 22	A. 1272.
22	Lloyd & Co	100	E. 12700	Mch. 22	A. 1273. Assessment paid Mar. 29, 1899.
22	Kohn & Co	1,000	E. 15101/2, 13696, 14063, 13990, 14045, 13645, 13667/8, 14326. 11 11 17	Mch. 22	A. 1274/83.
22	John H. Jacquelin	39	C. 8632, 8634, 8631	Mch. 22	C. 1298.
22	Harriet Chase	60	C. 8079	Mch. 22	C. 1299.
22	Laidlaw & Co	4,000	E. 14403/4, 14217/18, 13801, 13803, 14085, 13972, 14401/2, 13945, 12553, 14114, 14166, 14460, 11676, 14050, 14492, 14353, 14633, 14759, 13870, 14428, 12215, 13630, 14350. 9 10183, 14261, 15183/75, 15184. 50 50 C. 9122, 9569, C. 15274, 25447, 37974, 38087, 38066, 28300, 73078, 47205, 50306, 40861.	Mch. 22	A. 1284/1323.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
786–787					
1899.					
Mch. 22	Hemy Bros	200	E. 13781, 14967	Mch. 22	A. 1324/5.
	Lathrop & Smith	1,000	E. 14709/11, 14776/7, 14779, 14782/4, 14797.	Mch. 22	A. 1326/35.
	E. C. Benedict & Co	2,500	E. 13788, 14478, 13824, 14089, 13871, 14321, 14229, 14336, 14618, 14619, 13820, 14803, 14563/4, 14551/3, 14542/3, 14462/1, 21/100. 19 D. 54296, 80309/21, 77322/1, 74516/15, 75256, 38980, 38978, 38076, 76210, 80432, 58544, 56931, 60289, 37975, 31920, 6660, 34830, 49871, 11077, 24010.	Mch. 22	A. 1336/60.
22	P. R. de Florez	350	C. 9821, 50	Mch. 22	C. 1300. Assessment paid Mar. 22, 1899.
			E. 14838, 14959/58	Mch. 22	A. 1361/3. Assessment paid Mar. 22, 1899.
	Julius S. Hawley, Troy, N. Y	200	E. 12745, 10211	Mch. 22	A. 1364/5. Assessment paid Mar. 22, 1899.
	H. Le Roy Randall, New Milford, Conn	50	C. 8143	Mch. 22	C. 1301. Assessment paid Mar. 22, 1899.
	Knickerbocker Trust Co	100	E. 14968	Mch. 22	A. 1366. Assessment paid Apr. 5, 1899.
	Seligman & Van Antwerp	100	E. 15241	Mch. 22	A. 1368.

				10 20 10 31828, C. 8690, D. 29180.			
788–790							
Mch.	22	Leash & Co	100	12 3 10 C. 9887, 9888, D. 80726	Mch.	22	A. 1259. Assessment paid Mar. 22, 1899.
				5 20 50 C. 9883, 8101, 9843.			
	22	James M. Leopold	500	E. 14621, 14639/40, 13095, 14337.	Mch.	22	A. 1371/5.
	22	Nathan T. Beers & Co	300	E. 13842, 11917, 14258	Mch.	22	A. 1376/8. Assessment paid Apr. 5, 1899.
	22	R. J. Kimball & Co	700	E. 13814, 13041, 14791, 14144, 13636, 12911/10.	Mch.	22	A. 1379/85. Assessment paid Apr. 5, 1899.
	22	Strong, Sturgis & Co	300	E. 13930, 13790, 13713	Mch.	22	A. 1386/8. Assessment paid Apr. 3, 1899.
	22	Prince & Whitely	200	E. 14264, 14608	Mch.	22	A. 1389/90.
	22	Amelia Willets	7	C. 7819	Mch.	22	C. 1302. Assessment paid Apr. 4 1899.
	22	Rolston & Bass	150	E. 15148, 100 shs	Mch.	22	A. 1391.
				C. 9684, 50 shs	Mch.	22	C. 1303.
	22	Hy. E. Montgomery	50	5 C. 8542, D. 65487, 69378	Mch.	22	C. 1304.
				25 C. 9858.			
	22	Boody, McClellan & Co	10	D. 80633	Mch.	22	C. 1305. Assessment paid Mar. 22, 1899.
	22	Sutro Bros. & Co	1,100	E. 14862, 14313, 14043, 14630, 14158, 14320, 13881, 14713, 14026, 11477, 14654.	Mch.	22	A. 1392/1402.
	22	T. L. Manson, Jr., & Co	100	C. 9719/20, 2/50	Mch.	22	A. 1403.
	22	H. W. Hawthorne	20	D. 65668, 33823	Mch.	22	C. 1296. Assessment paid Mar. 22, 1899.
	22	Thos. J. O'Donohue	200	E. 14623, 14392	Mch.	22	A. 1404/5. Assessment paid Mar. 22, 1899.
	22	James R. Torrance	50	C. 9555	Mch.	22	C. 1306. Assessement paid Mar. 22, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
790–791					
1899. Mch. 22	Hy. K. McKay.....	2,200	D. 77221, 14319, 7897, 28376, 61992, 8198, 69762, 36548, 48331, 19059, 10593, 3011, 12933, 76610, 21652, 60336, 56846, 56639, 55524, 60399, 47639, 57525 (22/10). 30 50 50 50 C. 9718, 9580, 9577, 9579. 50 50 9472, 9696 (280); E. 14090, 14930, 14785, 14009, 14075, 14831/30, 14806, 14815, 13716, 13966, 14078. 3 12178, 13125, 13967/9, 17/100.	Mch. 22	A. 1406/27.
22	C. I. Hudson & Co.....	1,500	E. 14565, 13503, 14624, 14054, 14343, 14056, 6/100, D. 51240, 23710, 30427, 28957, 21318, 52349, 14890, 39934, 72255, 23054, 9869, 69028, 19174, 38818, 5432, 57319, 57890, 1129, 17773, 34061, 9903, 7925, 69985, 55653, 63546, 25486, 70995, 70714, 71959, 71209, 38445, 57997, 60496, 55285, 57067, 52888, 16977,	Mch. 22	A. 1428/42.
792–793					

			28906, 46176, 57554, 59224, 61512, 72439, 70915, 70489, 68879, 51691, 52960, 59039, 70706, 73909, 77672, 52959, 47014, 44043, 10291, 13782, 22436, 24318, 29446, 30903, 32701, 33965, 38501, 44884, 47214, 52599, 74809, 70822, 69588, 69513, 69497, 74573, 75937, 33747, 32815, 31889, 73530, 41692, 25721, 17579, 36143, 9969, 18844, 71133, 15060, 72327, 87/10; C. 9756, 30 shs.		
Mch. 22	M. C. Bouirer & Co	1,100	E. 14586, 14804, 13949, 14199, 14152, 14976, 12229. 7/100.	Mch. 22	A. 1443/53.
794–795			D. 1327, 4040, 9862, 10532, 27101, 27145, 27702, 33161, 62333, 43465, 39100, 75096, 37518, 38489, 39357, 42421, 15027, 6711, 42089, 67597, D. 59724, 30310, 45423, 24542, 71547, 27098, 75939, 78369, 51982, 80634, 3021, 67904, 40377, 1792, 1977, 42809, 38069, 28648, 14615, 38592, 40/10.		
Mch. 22	John H. Jacquelin	176	50 25 7 C. 9904, C. 9905, 9895		(100). A. 1454. Assessment paid Apr. 5, 1899.
			4 C. 9238, D. 80589, 80736/5		(50). C. 1307.
			D. 28311, 51473, 65719		(25). C. 1308.
			39736, 66167, 80737, 9/10		(1). C. 1309.
22	Geo. E. Dimock	1,000	E. 14121, 14241, 13852, 13608, 13644, 14866, 14120, 13917, 13669, 13670.		A. 1455/64. Assessment paid Mar. 22, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 22	Kissam, Whitney & Co	560	E. 14570/67, 4/100		(4/100). A. 1465/8. Assessment paid Apr. 5, 1899.
			50 15 25 C. 9885, 9598, 9846, D. 80733		(3/50). C. 1310/12.
			80706, 69750, 3249, 17808, 59598, 52816.		(10). C. 1313. Assessment paid Apr. 5, 1899.
22	Knauth, Nachod & Kuhne	1,400	D. 1425, 20775, 43503, 24187, 48433, 42520, 58834, 24042, 70486, 72116, 5098, 18469, 33217, 257, 57014, 21893, 19090, 50318, 28153, 64390, 57920, 43650, 2773, 55977, 63940, 37436, 70567, 50090, 9914, 20176.		A. 1469/82.
796–797			30/10. E. 14835, 14781, 14865, 3/100. D. 51776, 72253, 48935, 45944, 37178, 35873, 41329, 45978, 70837, 31940, 20994, 50689, 40204, 43327, 39231, 56526, 37144, 43000, 7292, 41296, 51729, 70895, 70261, 56519, 54880, 50466, 48447, 42586, 23340, 36242, 46253, 42763, 3101, 18129, 60174, 3727, 19920, 37146, 41795, 49487, 50732, 67185, 2014, 28735, 21638, 57618, 41378, 23321, 36991, 69798, 63009, 36245,		

798–799			37589, 20120, 9631, 50194, 59080, 35232, 14467, 20477, 60826, 60700, 72929, 33986, 72117, 3998, 12924, 20137, 54054, 65429, 10416, 51564, 924, 5969, 6301, 9547/8, 4762, 58340, 751, 80/10. 3		
Mch. 22	Harvey Fisk & Sons	1,683	C. 9742	.....	A. 1483/98.
			D. 61994, 59907, 36320, 64769, 30023, 28643, 35402, 30024/5. 7 64761, 64762/8, 64770, 41360, 70725, 42754, 7850, 18179, 10589, 70093, 21727, 28854, 21648, 35016, 52981, 52984, 66878/9, 47697, 32775, 46369/70, 27498, 56392, 54391, 58005, 31801, 5394, 61589, 26942, 53288, 60364, 49498. 48/10	.....	C. 1314. Cancelled, split up.
			E. 14335, 14162, 14021, 14177.. 3 12015, 14159, 14344/6, 14226, 13858, 13738, 12/100.		
22	Muller, Schall & Co	165	D. 2746, 6620, 9965, 20386, 22682, 56169, 56669, 58841, 59475, 69464, 59220/1, 53319, 37981, 59222, 59067. 16/10	.....	(100). A. 1499. Assessment paid Apr. 5, 1899. (50). C. 1315. Assessment paid Apr. 5, 1899. (15). C. 1316. Assessment paid Apr. 5, 1899.
			C. 8470, 5 shs.		
22 800–801	Kean van Cortland & Co	1,100	E. 14299, 12769, 14454, 12228, 14533, 14604, 14603, 14532, 14411, 13780, 14421. 4	.....	A. 1500/10.
Mch. 22	W. B. B. Imgals	1,400	E. 12879/80, 13142, 13352/5.... 4 13141, 12875/6, 13356/9.	.....	A. 1511/24. Assessment paid Mch. 29/99.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 22	R. H. Thomas & Co.	100	D. 29119, 27047, 24404, 42736, 35603, 37290, 39949, 40474, 41966, 33283.	.....	A. 1525.
22	F. M. Lockwood & Co.	200	E. 14294, D. 52511, 41677, 35906, 27214, 10227, 24158, 6188, 13790, 71937, 33479.	.....	A. 1526/7. Assessment paid Mar. 22, 1899.
22	Strong, Sturgis & Co.	1,210	D. 71407, 54012, 46758, 32200, 76571, 75100, 57523, 50812, 4467, 1785, 28598, E. 14160, 14049, 13590, 12309, 14060, 14191, 13862, 14442, 14735, 14799, 14800.	.....	A. 1528/39. Assessment paid Apr. 3, 1899. C. 1317. Assessment paid Mar. 24, 1899.
22	Knickerbocker Trust Co.	600	E. 15106/11.	.....	A. 1540/5. Assessment paid Apr. 5, 1899.
22	W. K. Clare & Sons.	1,100	E. 14850/49, 13901, 14062, 14325, 14222, 14382, 12244, 12164, 14903/2.	.....	A. 1546/56. Assessment paid Apr. 4/5, 1899.
22	Dick Bros. & Co.	100	E. 14792.	.....	A. 1557.
802–803					
Mch. 22	Nat'l Bk. of Commerce, New London.	15	C. 8044/6, 3/5.	.....	3/5 C. 1318/20. Assessment paid Mar. 22, 1899.
22	F. J. Lovatt.	18,000	E. 14083, 14333, 14022. 4 15196/9, 14181, 14717, 14719, 12086, 13808, 11018, 14882, 14677, 18477.	.....	C. 1321/2.

804–805

14276, 14276/4, 14334/6, 13700,
14363, 13661, 14315, 13620,
13660, 13907, 14071, 14218,
13723, 13641, 14019, 13631,
13687, 14496, 13947, 13744,
13413, 14415, 14300, 13894,
3
14762/4, 12218, 14015, 13944,
14448, 12353, 14447, 14208,
14069, 13069.
5
14635/6, 14650, 14645/9.
3
14651/52, 14661/3, 14637.
4
14031, 15060/3, 15085/8, 13983,
14559, 14242, 14572, 13908,
14042, 14244/3, 12160, 13501,
10857, 11607, 13872, 13883,
13611, 13903, 13947, 13752,
13866, 15849, 13512, 13851,
13714, 13059, 13819, 13899,
13324, 14070, 13518, 12127,
14585, 10022, 14386, 10849,
14522, 13365, 12266, 13607,
13642, 119/100.
11, 900 E. 14772, 14778, 14761, 15201/2,
15112, 15160.
3
14991/3, 12831, 13500, 13221,
14228, 12177, 13603, 13517,
13220, 14020, 13502, 14265,
14272, 14464, 14193, 14474,
14446, 14253, 13909, 11711,
14966, 30/100.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899. Mch.	F. J. Lovatt (continued).....	3,000	D. 68872, 55533, 49860, 33288, 44923, 70952, 37863, 71344, 51680, 62945, 1890, 61522, 70915, 2125, 71173, 10525, 36605, 5398, 23424, 50929, 21567, 65879, 67439, 25138, 3048, 8604, 80427, 57634, 22469, 50426, 45252, 44868, 42643, 73585, 28326, 32922, 37914, 18268, 18176, 11618, 40920, 416, 72275, 45117, 35100, 43528, 65133, 72050.		
806–807			D. 51579, 42142, 33802, 34242, 12003, 69403, 26062, 44838, 32712, 59142, 57549, 60588, 55610, 60785, 59003, 58904, 58495, 57180, 57024, 61961, 51739, 22462, 43992, 42208, 49048, 72054, 75264, 47389, 43987, 47488, 24114, 31951, 4968, 59466, 62089, 71991, 44160, 57453, 54083, 57452, 29915, 80614, 4038, 36306, 37757, 62434, 51066, 46983, 54000, 32326, 54225, 56896. 100/10.		
		1,000	D. 37507, 19661, 50029, 28596, 15337, 75677, 75673, 77480, 5388, 3696, 17025, 44134, 35084, 36015, 47388, 49756,		

71178, 48111, 10373, 51926.
6
59109, 54622, 80170/5, 26749,
26273, 26057, 9507, 8622,
7243, 45738, 45280, 45118.

808–809

D. 43646, 10889, 10876, 30414,
49537, 50447, 55522, 71204,
23619, 69690, 51687, 70287,
62553, 72626, 41423, 62547,
72131, 37634, 41443, 41442,
49036, 23101, 11097.
8
80177/84, 80176, 26661, 42198,
47201, 8881, 51682, 52406,
13985, 14855, 15004, 28556,
29954, 31847, 45675, 53135,
70080, 71362, 33796, 46534,
56549, 12681, 10737, 29288,
69391, 9491, 66140, 23567,
6963, 3819, 34704, 49004,
42641, 5580, 15329, 57537,
34740, 80230, 5559, 9411,
40111, 65876, 57177, 39967,
39902, 38931, 44268, 49319,
6407, 50119, 61433, 80441,
25998, 59446, 50971, 68786,
45955, 22137, 7866, 39207/6,
2610, 11648, 55307, 35322,
42202.

810–811

D. 8248, 34330, 17371, 50783,
12069, 37327, 3129, 2778,
23949, 22998, 21292, 58318,
1,480 61644, 28599, 29798, 148/10.
90 60 70 50
C. 9691, 9701, 7926, 9627.
40 80 25 25
6599, 9751, 9779, 9781.
50 50 50 30
620 9852, 9724, 9793, 9685.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 23	Wm. Russell & Co	200	E. 14877/8		A. 1558/9.
23	Nat'l B'k of Walden	5	C. 9338		C. 1323.
23	Merch. Nat'l B'k, New Bedford, Mass	10	D. 65454		C. 1324. Assessment paid Mar. 23, 1899.
23	F. P. Freeman & Co	200	E. 15220/1		A. 1560/1.
23	De Haven & Townsend	300	E. 14610/11, 14756		A. 1562/4.
23	Kohn & Co	400	E. 14944, 14928/7, 14469		A. 1565/8.
23	First Nat'l B'k, Poughkeepsie, N. Y	10	D. 65485		C. 1325. Assessment paid Mar. 23, 1899.
23	Brown, Bruns & Co	300	E. 14842, 11914, 11020		A. 1569/71.
23	(Agr) Hiram L. Rockwell, Oneida, N. Y	3	C. 9491		C. 1326. Assessment paid, Mar. 23, 1899.
23	Geo. D. Moulson	10	D. 26810		C. 1327. Assessment paid, Mar. 23, 1899.
23	Knauth, N. & K	100	C. 8301, 9898, 9901, 80636 (2 48 40 10)		A. 1572.
23	Vermilye & Co	63	C. 9153, 9154, D. 33609 (15 15 10); 65511, C. 8142, 7395. (10 5 8)		C. 1328.
23	J. F. Greenough	110	E. 11766 100		A. 1573. Assessment paid Mar. 23, 1899.
			D. 77668 10		C. 1329. Assessment paid Mar. 23, 1899.
812-813					
Mch. 23	L. M. Fulton	100	E. 13350		A. 1574. Assessment paid Apr. 3, 1899.

23	Henry Bros.	100	E. 15139.		A. 1575.
23	J. H. Griesel & Co.	150	C. 9877, 8052, 8658 50 40 50		A. 1576. Assessment paid Mar. 23, 1899.
			D. 32421 10		C. 1331. Assessment paid Mar. 23, 1899.
23	C. T. Ausler	3	C. 8393		C. 1332.
23	Schuyler Quakenbush	200	E. 14836/7		A. 1577/8.
23	Hy. Clews & Co.	50	C. 9697 5 6		C. 1333. Assessment paid Mar. 23, 1899.
23	Henry Allen & Co.	11	C. 8380, 6912		C. 1334.
23	Jas. B. Colgate & Co.	300	E. 12090, 14384, 14769		A. 1579/81.
23	Jessup & Lamont	900	E. 15187/95		A. 1582/90. Assessment paid Mar. 23, 1899.
23	Chase Natl. Bk.	2,000	E. 12348, 12150, 12323, 14207, 3 12039, 15135/3, 14953, 14768, 15205/6, 15208, 15210, 14589/8, 14519, 14631, 15218, 14924.		A. 1591/1610. Assessment paid Mar. 23, 1899.
23	Kuhn, Loeb & Co.	50	D. 62544, 51585, 62403		(25) C. 1335.
			35047, 51601		(25) C. 1336.
23	Farmers Loan & Tr. Co.	300	E. 13377/9		A. 1611/13. Assessment paid Mar. 23, 1899.
23	Bell & Co.	300	E. 13708, 12305, 14679		A. 1614/16.
23	Ulman Bros.	400	E. 14328/9, 14307/8		A. 1617/20.
23	F. W. Savin & Co.	100	E. 14358		A. 1621.
814–815					
Mch. 23	Francis L. del Valle	300	E. 13530/29, 13592		A. 1622/4.
	Chas. E. Edey & Son	200	E. 15079, 15073		A. 1625/6.
	Donald Gordon & Co.	600	E. 14352, 14372, 12129 50 14593, C. 8342. 3 D. 33653/5, 40454, 39367, 67398, 44793, 66740, 25749, 25568, 24033, 15940, 59019, 54513, 56582.		A. 1627/32.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mar. 23	Webb & Prall	200	D. 53952, 66305, 6863, 12852, 52759, 10520, 29291, 70265, 51882, 34454, E. 14718.		A. 1633/4.
23	Flower & Co	900	E. 12633, 14023, 13376, 13987, 14044, 13877, 12236, 14848, 14116.		A. 1635/43.
23	J. & W. Seligman & Co	400	E. 13775, 15149, 13904, 14721		A. 1644/7.
23	John Wallace & Co	1,500	E. 12671, 14395, 14601, 13869, 14787, 14236. 5 4 14699/703, 15119/22.		A. 1648/62.
	W. D. Barbour & Co	200	E. 13935, 14795		A. 1663/4. Assessment paid Apr. 4, 1899.
	C. I. Hudson & Co	300	E. 14311, 14445, 13375		A. 1665/7.
	Wittemore & Co	100	E. 15017		A. 1668. Assessment paid Apr. 5, 1899.
816–817					
Mch. 23	Fahnestock & Co	200	E. 15284, 14092		A. 1669/70.
23	Popper & Stern	600	D. 59483, 59476, 58560, 58474, 56864, 54640, 54168, 62301, 52149, 33563. E. 15041, 13895, 14198, 14867, 15286.		A. 1671/6.
23	Russak Bros	400	D. 57415, 52604, 28924, 10785, 7610, 6289, 5979, 49305, 31250, 49905, 34744, 3743, 5563, 61261, 59903, 25961, 69445, 3693, 57404, 57405,		A. 1677/80.

			35093, 48065, 33232, 5736, 70708, 29763, 26309, 38370, 70828, 61640, 70821.		
23	M. C. Bouvier & Co	500	E. 14052, 14250 50 25 25 50 C. 9760, 9775, 8162, 9571. 50 50 9457, 9735, D. 35982, 37895/6, 37898, 31393.		A. 1681/5.
	W. D. Moore & Co	100	E. 13516		A. 1686. Assessment paid Apr. 5, 1899.
818-819					
Mch. 23	Keep & Keen	100	E. 15002		A. 1687. Assessment paid Apr. 4, 1899.
23	Chas. W. Cox	500	E. 14887/5, 14888, 14881		A. 1688/92. Assessment paid Mar. 23, 1899.
23	J. S. Bache & Co	40	D. 28907, 29785, 17713, 23129		C. 1337. Assessment paid Mar. 23, 1899.
23	Imptrs & Traders Natl Bk	45	C. 9827		C. 1338.
		5	C. 9886		C. 1339.
23	Sarah W. Collins	25	C. 7538		C. 1340.
23	Probst, Wetzlar & Co	170	D. 36966, 13205, 2/10		(100) A. 1693.
			E. 14929 (100), C. 9732 (50)		(70) C. 1341. Split up.
23	H. B. Hollins & Co	100	E. 13846		A. 1694.
	G. B. Hopkins	100	E. 14476		A. 1695.
	Adams & Kellogg	100	E. 14541		A. 1696.
	I. & S. Wormser	10	D. 59243		C. 1342.
	Boody, McLellan & Co	100	E. 14813		A. 1697. Assessment paid Mar. 23, 1899.
	E. L. Oppenheimer & Co	100	E. 14722		A. 1698. Assessment paid Apr. 4, 1899.
	R. Chambers & Co	100	E. 15045		A. 1699. Assessment paid Mar. 23, 1899.
	Flower & Co	100	E. 14683		A. 1700.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mar. 23	Robt. Gibson	300	E. 14291, 15137/6		A. 1701/3.
	Ashwell & Co	100	E. 15200		A. 1704.
	John H. Jacquelin & Co	100	C. 9909, 9910, 2/50		A. 1705.
	Spencer, Trask & Co	100	E. 14011		A. 1706. Assessment paid Mar. 23, 1899.
	De Coppet & Co	100	E. 14980		A. 1707.
820–821					
Mch. 23	(Jos. Wallach) L. von Hoffmann	440	D. 36836, 11466, 30562, 64655, 31497, 60557, 55982, 56397, 56859, 58839, 58436, 57615, 8110, 11337, 6813. 20 62281, 80711, C. 9897. D. 28858, 11754, 40574, 33534, 22940, 21821, 50771, 51767, 49614, 25960, 21820, 34815, 67928, 44897, 22018. E. 15015.		(3/100) A. 1708/10. (80) C. 1343. (50) C. 1344. (10) C. 1345.
23	P. J. Goodhart & Co	800	D. 69456, 57481, 59410, 57179, 11299, 31728, 60430, 60653, 11473, 38594. E. 14480, 18897, 15024/5. 50 50 C. 9854, 9810. E. 14901, 14420.		A. 1711/18.
23	Kerr & Co	50	C. 9845		C. 1346.

	Harris & Fuller	50	52411. C. 9849.		C. 1364.
			30 30		
	J. L. Terhune	60	C. 6915, 8252		C. 1349. Assessment paid Apr. 5, 1899.
	Cyrus J. Lawrence & Sons	50	C. 9800		C. 1350.
822–823					
Mch. 23	McIntyre & Wardwell	3,650	E. 15167, 13933, 15165, 14013, 14973/2, 13991, 14841, 15174/3, 15171, 15169/8, 14051, 13994, 14581/80, 14314.		36/100, A. 1719/54.
			50 50 50 50		50 C. 1351.
			C. 9267, 9268, 9269, 9270.		
			50 50		
			9473, 9460.		
			3		
			E. 14306, 15172, 14560/2, E. 12677, 14088, 15166, 14016, 13863, 14084, 14231.		
			50		
			C. 9608, D. 72296, 71952, 69578, 69356, 14536, 55986, 8823, 59400, 53587/8, 56796, 50940, 21181, 29335, 50939, 53561, 34870, 45113, 50705, 47677, 51137, 49320, 76671.		
			50		
			62109, 34277, C. 9771.		
			25		
23	John H. Jacquelin & Co	75	D. 60247, 80650, C. 9759		(50) C. 1352.
			5 25		
			9597, 8078		(25) C. 1353.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 23	Jacquelin & Co	159	C. 7855, 9835, 7856		(100) A. 1755. Assessment paid Apr. 4, 1899.
			9241, 8248, D. 66147		(50) C. 1354.
			C. 9903, 9908, D. 80738		(5) C. 1355.
			C. 7904		(4) C. 1356. Assessment paid Apr. 3, 1899.
824–825					
Mch. 23	Clark, Dodge & Co	600	E. 15027, 15230, 13617		A. 1756/61.
			C. 7072, 9899, D. 37233.		
			35677/4, 39806/5, 47346/7, 47835, 35682, 37232, 80732.		
			80714, 35678/80, 80725, 39943, 49747/8, 35681.		
	Rogers & Gould	500	E. 15067, 15064, 15074, 14256, D. 56991, 54385, 40990, 34234, 5345, 11631, 14941, 17727, 24144, 36018.		A. 1762/6. Assessment paid Apr. 5, 1899.
	Fellowes, Davis & Co	200	E. 14359, D. 51695, 16540, 55289, 80433, 67884, 46188, 70466, 18762, 49467, 42519.		A. 1767/8.
	Prince & Whitely	50	C. 9716		C. 1357.

	Adel & Co.	100	C. 9833, D. 69516/17, D. 70344, 10213, 65870.		A. 1770. Assessment paid Apr. 4, 1898.
	W. S. Lawson & Co.	600	E. 12564, 13923, 14688, 14315/16, 14615.		A. 1771/6.
	Townsend & Shera	10	C. 9836		C. 1359.
826–827					
Mch. 23	Van Emburgh & Atterburg	9,200	E. 13509, 14844, 14295, 13879, 14132, 13805, 14493, 14366, 14457, 14370, 14364, 12354. E. 14184, 12185, 13848, 13725, 13798, 14247, 14246, 14064, 13934, 14156, 13810, 13364, 13811, 10598, 13750, 14036, 14473, 13823, 13832, 13698, 13172, 13171, 12848, 14230, 13773, 14691, 11707, 14582/3, 14491, 14028, 13867, 14213, 12153/2, 12180/79, 14068, 14035, 14130, 14694, 13748, 14225, 11714, 14458, 13695, 13898, 13880, 14653, 14960, 14194, 12198, 13699, 14171, 12227, 15146/5, 14613, 14612, 14468, 15217, 14467, 14179, 14845, 13920, 14566, 13984, 14365, 13918, 14472, 12278, 14310/9, 15144, 14590, 14594, 13747, 14451. 60 C. 8158, D. 72141.		A. 1777/1868.
828–829			D. 52803, 38097, 80626. 9 75688, 75689/97.		

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899. Mch. 23	A. M. Kidder & Co	4,225	25 C. 7773, D. 80715, 21961		A. 1869/1910. Assessment paid Apr. 4, 1899.
			3 21325, 16059, 13575/3		C. 1360. Assessment paid Apr. 4, 1899.
			70 13602 7305, 1700, C. 9823, D. 34949, 44545, 80728, E. 14327, 15008/9, 14347, 11715, 15219, 14983, 14373, 13927, 13751, 14220, 14962, 13815, 14911, 14811, 15016, 14760, 13835, 11966, 13316, 12067, 13475, 13481, 13601, 15008, 15209, 15099, 15037, 15060, 14986/7, 14082, 13737, 14363, 14573, 13816, 14883, 10370, 14990, 14961.		
23	E. C. Benedict & Co	1,800	E. 12315, 14574, 15038/9		A. 1911/28.
			3 14405, 15138, 15055/7.		
			3 14008, 14637/8, 14641/3, 13680, 14487, 14081.		
23	Seventh Nat'l Bk	50	C. 9264		C. 1361. Assessment paid Mar. 27, 1899.
	Welles, Herrick & Hicks	100	E. 13683		A. 1929. Assessment paid Apr. 5, 1899.

850–851					
Mch. 23	J. S. Bache & Co.	600	E. 13774, 15010/13, 4 D. 71397, 70210, 62051, 20792, 16232. 40 42868, C. 9772.	.....	A. 1930/5.
	H. B. Hollins & Co.	1, 625	E. 13878, 13504, 14027, 12351, 14814, 14859, 14622, 14317, 14154, 14528. 4 14407/10, 14571, 14579. 15 10 C. 7685, D. 37882.	.....	(16/100) A. 1936/51. (25) C. 1362.
	Hallgarten & Co.	2, 105	E. 14977, 14757, 14910/09, 14889, 14945, 13794, 13717, 14591, 14521, 14770. 5 14891/5, 14342, 14059, 13445, D. 77719, 78098, 9702, 9915, 35068, 42453, 49881, 50684. 20 5 50833, 48650, C. 9906, 9907, D. 21383, 26388, 41908, 70335, 27473, 44212, 6411, 70762. 4	.....	(21/100) A. 1952/72. (5) C. 1363. Assessment paid Apr. 3, 1899.
23	Telghman, Rowland & Co.	900	E. 14667, 14455/6, 13962/5, 10851, 14605.	.....	A. 1973/81.
23	Laden, Thal & Co.	30	C. 9891.	.....	C. 1365.
23	Ed Sweet & Co.	50	C. 8616.	.....	C. 1366.
23	W. C. Stokes & Co.	50	C. 9828.	.....	C. 1367.
832–833					
Mch. 23	Clark, Dodge & Co.	700	D. 5213, 49967, 31243, 30215/14, 39111, 23346, 57049, 21750, 63692, E. 13926, 14840, 13960, 13911, 13673, 14139.	.....	A. 1982/88.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 23	Hallgarten & Co	100	D. 16661, 32535, 6529, 19970, 36008, 29188, 26911, 24986, 13514, 69365.	.....	A. 1989.
23	Sutro Bros. & Co	600	E. 14706/7, 14906, 15105, 14393, 14141.	.....	A. 1990/5.
	Clark, Dodge & Co	1,500	E. 14077/6, 12618, 14847, 13958, 13993, 13843, 13726, 15229, 12364, 14602, 14934/6, 12881.	.....	A. 1996/2010.
	Whitehouse & Co	290	C. 6403, 9859	.....	A. 2011/12.
			E. 14465, 15001	.....	C. 1368.
	Robt. Goodbody & Co	160	C. 9850, 9839, 9820	.....	(100) A. 2013.
			D. 42012, E. 11918	.....	(50) C. 1369. (10) C. 1370.
	Halle & Stieglitz	1,025	E. 14206, 13856, 15674	.....	A. 2014/23.
			15071, 15118/14, 15113	.....	C. 1371.
			C. 9615, 9053.		
	F. P. Freeman & Co	700	E. 14377/9, 14332, 15222/3, 11615.	.....	A. 2024/30.
834–835					
Mch. 23	White & Blackwell	700	E. 14737, 13421, 13415	.....	(6/100) A. 2031/6.
			13411, 13413/14, C. 9844	.....	(2/50) C. 1372/3.

23	Vermilye & Co	1,536	E. 14091, 14614, 13844, 13784, 14338, 13648, 14086, 14116, 11604. 20 30 4 C. 6337, 6656, C. 9370. D. 66163/4, 30862, 65604. 15 E. 13620/1, 13623, C. 7949. 42 D. 28197, C. 8375, D. 62622. 5 65473, C. 8139, E. 13622. 50 C. 9462.		A. 2038/52. C. 1374.
	Chas. Minzesheimer & Co	1,100	E. 15298/88		A. 2053/63.
	A. R. Pick & Co	100	D. 34108, 39153, 9828, 4026, 28282, 46755, 35750, 26830, 24150, 7232. 50		A. 2064.
	Post & Flagg	500	C. 9740, E. 14727, 14680, D. 47265, 70771, 72087, 37212, 37673, 22485, 26350, 33800, 35839, 36656. 50 E. 14963, C. 9842.		A. 2065/9.
	F. M. Lockwood	500	E. 14292/3, 14057/8, 14140		A.2070/4. Assessment paid Mar. 23, 1899.
	C. D. (Wadsworth) Wainwright	15	C. 9809		C. 1375. Assessment paid Mar. 23, 1899.
836-837					
Mch. 23	Martin & Co	100	D. 15753, 48198, 71246, 38519, 11674, 46304, 31823, 44301, 42162, 27210.		A. 2075. Assessment paid Mar. 23, 1899.
23	Nat'l City B'k				
23	Toler & Halsey	100	D. 21953, 19428, 16383, 8103, 77870, 51275, 44649, 62006, 58007, 58932.		A. 2076. Assessment paid Mar. 23, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 23	Hendricks Bros.	10	D. 15976		C. 1376. Assessment paid Mar. 23, 1899.
23	(De) Haven & Stout	500	E. 14970, 14969, 11021, 14348, C. 9700, 9694.		A. 2077/81. Assessment paid Mar. 23, 1899.
23	Kendal & Whitloch	500	C. 8513, D. 80721, C. 8272, 9761, E. 14288, 15068, 15065, 14964.		A. 2082/6. Assessment paid Mar. 23, 1899.
23	F. M. Lockwood & Co	500	D. 60825, 38442, 67587, 15313, 71925, 80638. C. 9680, E. 15078/75.		A. 2087/91. Assessment paid Mar. 23, 1899.
	do	400	C. 9624, 8197, D. 21107, 23067, 24794, C. 9503, E. 13137, 13884, 12347.		A. 2092/5. Assessment paid Mar. 23, 1899.
	Price, McCormick & Co	550	E. 14431, 14312, C. 8795		(500) A. 2096/2100. Assessment paid Mar. 23, 1899.
			D. 36098, 35186, C. 8533		(50) C. 1377. Assessment paid Mar. 23, 1899.
			D. 36375, 36237, C. 9791.		

838–839			D. 35033, 72090, 2488, 39283. 50 54299, 27049, C. 9818. 19 35		
Mch. 23	Thos. H. Hubbard	1,935	E. 14496/514, C. 9765		1,900 A. 2101/19. Assessment paid Mar. 23, 1899; 35 C. 1378.
24	Prince & Whitely	10	D. 65567		C. 1379. Assessment paid Apr. 3, 1899.
24	J. P. Morgan & Co	52	10 22 20 D. 28835, C. 6619, 8081		C. 1380.
24	Second Nat'l Bank	100	D. 62574, 37313, 16560, 53517, 52849/8, 52679, 44164, 55531, 80704.		A. 2120.
24	Pearmain & Brooks, Boston	250	D. 35988, 77669, 21774		A. 2121/2.
			3 2 15 C. 8381, 8058, 9829		C. 1381.
			E. 12154, 14712.		
	Merchants Nat'l B'k, New Bedford, Mass.	20	C. 6260		C. 1382. Assessment paid Mar. 24, 1899.
	Oneida County Savings Bank	17	C. 6075		C. 1383.
	John H. Doron, New Haven	100	E. 12595		A. 2123.
	Sternberger, Fuld & Sinn	400	D. 59233/1, 53420, 59108		A. 2124/7.
			4 63565/68, 70701, 61295, 59253, 45541, 43607, 41823, 38405, 31909, 28780, 28080, 22468. E. 12360, 13925.		
	Lee, Livingston & Co	100	E. 14851		A. 2128.
840–841					
Mch. 24	Asiel & Co	150	D. 43026, 18851, 22437, 19121, 18527, E. 14394.		A. 2129. Assessment paid Apr. 5, 1899. C. 1384. Assessment paid Apr. 5, 1899.
24	First Nat'l Bank	10	D. 80734		C. 1385. Assessment paid Mch. 29, 1899.
24	Thompson & Mairs	100	E. 14074		A. 2130. Assessment paid Jul. 31, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 24	John H. Jacquelin & Co	20	C. 8018		C. 1386.
24	Pynchon Nat'l Bank, Springfield, Mass	3	8599		C. 1387. Assessment paid Mar. 24, 1899.
		3	7354		C. 1388. Assessment paid Mar. 24, 1899.
24	Lawrence H. Parker, Dorchester, Mass	10	D. 66197		C. 1389.
24	H. L. Collins & Co., Collinsville, Conn	5	C. 8613		C. 1390. Assessment paid Mar. 24, 1899.
		20	C. 8356		C. 1412. Assessment paid Mar. 24, 1899.
24	Dwight W. Tuttle, New Haven, Conn	30	C. 8040/1, D. 29783, 29013		C. 1392/4.
24	Catherine J. Beebee	12	C. 7925		C. 1395. Assessment paid Mar. 24, 1899.
24	Springfield Nat'l Bk, Spgf'd, Mass	35	D. 78355, C. 7209		C. 1396. Assessment paid Mar. 24, 1899.
24	Merchants Nat'l B'k, Burlington, Vt	15	C. 8555		C. 1397. Assessment paid Mar. 24, 1899.
24	Sutro Bros. & Co	1,300	E. 14053, 12128, 14221, 15228/7, 14860/1, 14674, 13882, 13888/9, 11/100. D. 34119, 6140, 3346, 22996, 10121/2, 13601, 36769, 43555, 43852, 25649, 25254, 68513/12, 68506/5, 63087, 45744, 32700, 74196.		A. 2131/43.
24	Baring, Magoun & Co	45	C. 9902		C. 1398.
	Cuyler, Morgan & Co	10	D. 67500		C. 1399. Assessment paid Apr. 8, 1899.

Mch. 24	W. P. Chandler, pres. Chapin Natl. Bk., Spgfd., Mass.	10	D. 85435		C. 1400. Assessment paid Mar. 24, 1899.
24	Poughkeepsie Nat'l Bank, Pokeepsie, N. Y.	5	C. 7916		C. 1401.
		50	C. 7883		C. 1402.
		30	C. 8705		C. 1403.
		86 14			
24	P. B. Pumyea, Allentown, N. J.	100	C. 8297, 8395		A. 2144. Assessment paid Mar. 24, 1899.
24	Fredk. A. Ballard, New Berlin, N. Y.	10	D. 76261		C. 1404. Assessment paid Mar. 24, 1899.
24	Ellingwood & Cunningham	50	C. 9798		C. 1405. Assessment paid Mar. 24, 1899.
24	Williston, Barnes & Co.	100	D. 24090, 24422, 7909, 17183, 13690, 37532, 47592, 6072, 69029, 71366.		A. 2145.
24	McIntyre & Wardwell	850	E. 14908, 14096, 14801, 14341, 15170, 11706, 14793, 14664.		A. 2146/53.
			D. 41294, 80723, 39020, 16352, 80644.		C. 1406.
25	Speyer & Co.	1,398	E. 15129/32, 15103/4, 15123/28, D. 8505, 1766, 80720.		(50). C. 1407.
			3		(48). C. 1408.
			32571/3, 43861/2, 43139/41, 40376, 29594, 30554, 36482, 33521.		(1300). A. 2154/66.
			38		
			C. 9761.		
			20		
25	Farmers Nat'l Bk., Hudson, N. Y.	50	C. 8402, D. 66170, 66457, 28203.		(20). C. 1409. Assessment paid Mar. 25, 1899.
					(30). C. 1410. Assessment paid Mar. 25, 1899.
		33 55			
25	Merch. Natl. Bank, Po'keepsie, N. Y.	88	C. 9028, 8107		C. 1411. Assessment paid Mar. 25, 1899.
	Hatch & Foote	2	C. 7765		C. 1413. Assessment paid Apr. 3, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
844–845					
1899.					
Mch. 25	Geo. Crouch	50	C. 8313		C. 1414. Assessment paid Mar. 25, 1899.
27	Herzfeld & Co	20	D. 80488, 58444		C. 1417/18.
27	Chas. Head & Co	50	C. 8660		C. 1421.
27	Kissam, Whitney & Co	100	E. 12702		A. 2167. Assessment paid Apr. 5, 1899.
27	L. von Hoffman & Co	100	E. 14587		A. 2168.
28	C. D. Leverich & Co	29	C. 8100		C. 1422.
28	Andrew G. Pierce, trustee, New Bedford, Mass.	10	D. 68294		C. 1423. Assessment paid Mar. 28, 1899.
28	Fred H. Perry	200	E. 14905/4, Feb. 24/99. 6 5		A. 2169/70.
28	Thos. B. Williams	11	C. 8367, C. 7356		C. 1424/5.
28	Park Bank	15	C. 9911, Mch. 24/99		C. 1426. Assessment paid Apr. 3, 1899.
28	Baring, Magoun & Co	8	C. 8564		C. 1427. Assessment paid Mar. 28, 1899.
29	Rosamund L. Eccles, Atlantic, Mass	11	C. 8553, 8554 6 5		C. 1430. Assessment paid Mar. 29, 1899.
29	W. F. Stafford	200	E. 12689/90		A. 2171/2. Assessment paid Mar. 29, 1899.
29	R. L. Day & Co	5	C. 9004, Dec. 30/92		C. 1431. Assessment paid Mar. 29, 1899.

29	Edward Sweet & Co.	120	C. 20 9299, E. 100 13437		A. 2173. 1899. C. 1432. 1899.	Assessment paid Apr. 12, Assessment paid Apr. 12,
30	Otis C. White, Worcester, Mass.	70	C. 50 9708, D. 10 80639, C. 2/5 9709/10.		C. 1433. 1899.	Assessment paid Apr. 3,
30	Worcester Safe Dep. & Tr. Co., Worcester.	10	D. 66252		C. 1434. 1899.	Assessment paid Mar. 30,
30	Austin N. Russell	5	C. 8066		C. 1435. 1899.	Assessment paid Mar. 30,
30	H. B. Hollins & Co	100	E. 13757		A. 2174.	
30	F. St. Goar	100	E. 13605		A. 2175. 1899.	Assessment paid Mar. 30,
30	Sutro Bros.	50	C. 7613		C. 1436.	
31	F. Everett, Morris ranch, p. o., Gillespie, Co., Texas.	10	D. 36352		C. 1437. 1899.	Assessment paid Mar. 31,
846–847						
Mch. 31	Mrs. Angeline C. Vandegrift, Port Penn, Delaware.	20	C. 17 8111, C. 3 6385		C. 1438.	
31	J. S. Bache & Co.	50	C. 8194, Aug. 22/89		C. 1439.	
31	Fallkill National Bank, Po'keepsie, N. Y.	30	C. 8649, July 2/92		C. 1440. 1899.	Assessment paid Mar. 31,
31	Willets & Co.	7	C. 7817		C. 1441. 1899.	Assessment paid Apr. 4,
Apr. 1	Worcester Safe Dep. & Trust Co., Worcester, Mass.	139	E. 12776, 100		A. 2176. 1899.	Assessment paid Apr. 1,
			C. 8084, 39		C. 1442. 1899.	Assessment paid Apr. 1,
1	Edward Sweet & Co.	10	D. 65332		C. 1443. 1899.	Assessment paid Apr. 12,
1	Strong, Sturgis & Co.	10	D. 66138		C. 1444. 1899.	Assessment paid Apr. 1,
1	Edw. P. Loomis	100	E. 12599		A. 2177. 1899.	Assessment paid Apr. 1,
1	Henry Roberts Estate, Utica, N. Y.	100	E. 12793		A. 2178. 1899.	Assessment paid Apr. 1,

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 3	City Nat'l Bank, Springfield, Mass.	15	C. 8007		C. 1445. Assessment paid Apr. 3, 1899.
3	Hale & Co., 53 State St., Boston	100	C. 9737, D. 16247 (90 10)		A. 2179.
3	Baring, Magoun & Co	2	C. 7909		C. 1446.
4	C. H. Cummings, Sacramento, Cal	10	C. 8802		C. 1448. Assessment paid Apr. 4, 1899.
4	Duncannon Nat'l Bank, Duncannon, Pa.	10	D. 64958		C. 1449. Assessment paid Apr. 4, 1899.
		7	C. 6473, 8256 (4 3)		C. 1450. Assessment paid Apr. 4, 1899.
		3	C. 8258		C. 1451. Assessment paid Apr. 4, 1899.
		6	C. 6393, 6564 (2 4)		C. 1452. Assessment paid Apr. 4, 1899.
		20	C. 6478		C. 1447. Assessment paid Apr. 4, 1899.
		5	C. 6470		C. 1453. Assessment paid Apr. 4, 1899.
		11	C. 6745, 8461 (3 8)		C. 1454. Assessment paid Apr. 4, 1899.
4	John H. Davis & Co	10	D. 67899		C. 1455.
848–849					
Apr. 4	Moses B. Banks	15	C. 9371, 8231 (4 11)		C. 1456.

4	Wilbur F. Herbert	11	C. 9178		C. 1458. 1899.	Assessment paid Apr. 4,
5	Chapin Nat'l B'k Spgf'd, Mass.	10	D. 65509		C. 1459. 1899.	Assessment paid Apr. 5,
5	Baring, Magoun & Co.	21	20 1 C. 8132, 6682		C. 1460/1.	
5	Stephen T. Willets	25	C. 7539		C. 1462. 1899.	Assessment paid Apr. 5,
5	New London City Nat'l B'k, New London, Conn.	10	D. 66985		C. 1463. 1899.	Assessment paid Apr. 5,
5	A. M. Kidder & Co.	100	2/30 30 10 C. 9505/6, 9509, D. 64589		A. 2180.	
5	Baring, Magoun & Co.	65	30 15 20 C. 6107, 8546, 8370		C. 1464.	
5	Mendham Bros.	50	C. 9819		C. 1465.	
6	Farmers & Mech. B'k, Jamestown, N. Y.	49	C. 9247		C. 1466. 1899.	Assessment paid Apr. 6,
6	De Coppet & Doremus	40	10 30 D. 64585, C. 9510		C. 1467. 1899.	Assessment paid Apr. 6,
6	Silas Poole, box 104, Sharon, Mass.	20	D. 65568/9		C. 1468. 1899.	Assessment paid Apr. 6,
6	Cox & Sharp	20	C. 6279		C. 1469. 1899.	Assessment paid Apr. 6,
6	Chas. Head & Co.	10	D. 80336		C. 1470. 1899.	Assessment paid Apr. 6,
		5	C. 8190		C. 1471. 1899.	Assessment paid Apr. 6,
6	A. M. Kidder & Co.	100	E. 12902		A. 2181. 1899.	Assessment paid Apr. 6,
6	A. C. Doan	100	E. 12777		A. 2182. 1899.	Assessment paid Apr. 6,
6	Kelley, Miller & Co.	100	D. 64640/1, 50800, 41764, 36435, 36099, 24973, 68854, 34220, 6804.		A. 2183. 1899.	Assessment paid Apr. 6,
6	Haven & Stout	5	C. 8629		C. 1472. 1899.	Assessment paid Apr. 6,

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
850–851					
1899.					
Apl. 6	Thomas & Post	30	D. 80730, C. 9668 (10 20)		C. 1473. Assessment paid Apr. 6, 1899.
6	C. H. Van Buren & Co	20	D. 34834, 80169		C. 1474. Assessment paid Apr. 6, 1899.
6	De Coppet & Doremus	41	C. 9707, 9152 (6 35)		(2/20) (1) C. 1475/7. Assessment paid Apr. 6, 1899.
6	Flower & Co	9	C. 7372		C. 1478. Assessment paid Apr. 6, 1899.
7	John Hancock Nat'l Bk., Spgfd., Mass.	5	C. 8163		C. 1479. Assessment paid Apr. 7, 1899.
7	John F. Halsted	300	E. 13075/6, C. 8557/8 (2/50)		A. 2184/6. Assessment paid Apr. 7, 1899.
7	Edward De Voe	100	E. 12890		A. 2038. Assessment paid Apr. 7, 1899.
7	J. Jaffred Butler	100	E. 13490		A. 2039. Assessment paid Apr. 7, 1899.
8	A. M. Kidder & Co	10	D. 80705		C. 1489. Assessment paid Apr. 8, 1899.
8	C. C. Lowell, Adm., Worcester, Mass.	6	C. 8082		C. 1490. Assessment paid Apr. 8, 1899.
10	I. E. Gates	22	C. 8183, D. 27106 (12 10)		C. 1491. Assessment paid Apr. 10, 1899.

	11	Adams, McNeill & Brigham	60	D. 75258/7, C. 30 9062		C. 1494. Assessment paid Apr. 11, 1899.
	13	A. L. Martin	6	C. 8391		C. 1497. Assessment paid Apr. 13, 1899.
	13	S. L. Rockwell & Co., Jordan, N. Y.	20	C. 8029		C. 1498. Assessment paid Apr. 13, 1899.
			15	C. 8030		C. 1499. Assessment paid Apr. 13, 1899.
	13	Provost Bros. & Co	10	D. 67209		C. 1500. Assessment paid Apr. 13, 1899.
	14	City Bank of New Haven	40	C. 7769, C. 6696 (25, 15)		C. 1501. Assessment paid Apr. 14, 1899.
	14	Tilghman, Rowland & Co	10	D. 66177		C. 1502. Assessment paid Apr. 14, 1899.
	14	R. L. Day & Co	16	C. 7222, 5688 (4, 12)		C. 1503. Assessment paid Apr. 14, 1899.
	14	W. C. Spencer	300	C. 8743, 8615, 9361, 8738 (75, 25, 50, 50)		A. 2187/9. Assessment paid Apr. 14, 1899.
				8735, 9143, 9067 (50, 25, 25)		Assessment paid Apr. 14, 1899.
	14	Tom L. Johnson	60	D. 52479, C. 6464, D. 80632 (8)		C. 1504. Assessment paid Apr. 14, 1899.
				C. 7780 (32)		
852–853						
Apl.	14	Jas. H. Oliphant & Co	50	C. 9838		C. 1505. Assessment paid Apr. 14, 1899.
	15	Morton, Bliss & Co	100	D. 32503/12		A. 2190. Assessment paid Apr. 15, 1899.
	15	Edward Sweet & Co	20	C. 7874		C. 1506. Assessment paid Apr. 15, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mch. 15	Barnstable Co., Mutual Fire Ins. Co., Yarmouthport, Mass.	10	D. 27247		C. 1507. Assessment paid Apr. 15, 1899.
17	Donald Gordon & Co	100	E. 13035		A. 2191. Assessment paid Apr. 17, 1899.
18	Chas. W. Stone, c/o Nat'l Revere B'k, Boston, Mass.	5	C. 9692		C. 1508. Assessment paid Apr. 18, 1899.
19	Mechanics Nat'l B'k, New Bedford, Mass.	20	D. 32366, 66198		C. 1509. Assessment paid Apr. 19, 1899.
19	W. D. Barbour & Co	30	C. 7891		C. 1510. Assessment paid Apr. 19, 1899.
22	Edward Sweet & Co	3	C. 6697		C. 1513. Assessment paid Apr. 22, 1899.
24	Vermilye & Co	15	C. 9021, 9022		C. 1517/16. Assessment paid Apr. 24, 1899.
25	Rochester Trust & Safe Dep. Co	25	C. 9359		C. 1518. Assessment paid Apr. 25, 1899.
25	J. A. Blair & Son	18	C. 6871		C. 1519. Assessment paid Apr. 25, 1899.
25	City Nat'l. Bk., Springfield, Mass	10	D. 66165		C. 1520. Assessment paid Apr. 25, 1899.
26	Chas. B. Judson, Rochester, N. Y	25	C. 9356		C. 1521. Assessment paid Apr. 25, 1899.
27	Hammond & Hammond, Seneca Falls, N. Y.	20	C. 8228		C. 1522. Assessment paid Apr. 27, 1899.
27	Wilcox & Co	125	C. 8126/8, 3/25, 6404, 1/50		C. 1523, A. 2192. Assessment paid Apr. 27, 1899.
28	Geo. H. Jones	50	C. 9332		C. 1524. Assessment paid Apr. 28, 1899.

	28	Speyer & Co.	150	E. 12537		A. 2199. Assessment paid Apr. 28, 1899.
				D. 75746, 75535, C. 9128 30		C. 1525. Assessment paid Apr. 28, 1899.
	28	Chase Natl. Bank	550	E. 14634, 14656/9		A. 2194/8. Assessment paid Apr. 28, 1899.
				C. 9630		C. 1526. Assessment paid Apr. 28, 1899.
	29	Chas. I. Townsend	1	C. 8657		C. 1527. Assessment paid Apr. 29, 1899.
854–855						
Apl.	29	Mrs. Emily P. Peirce, Bridgewater, N. Y.	10	D. 67705		C. 1528. Assessment paid Apr. 29, 1899.
	29	Baring, Magoun & Co	50	C. 8275		C. 1529. Assessment paid Apr. 29, 1899.
	29	Fisk & Robinson	300	E. 12946/8		A. 2199/2201. Assessment paid Apr. 29, 1899.
May	1	Edward Sweet & Co	80	C. 8068, 8407 30 50		C. 1532. Assessment paid May 1, 1899.
	1	W. A. Hull, 2135 7th Ave	10	D. 28883		C. 1531. Assessment paid May 1, 1899.
	2	Nellie A. Priest, Wellesley Hills, Mass	1	C. 6888		C. 1533. Assessment paid May 2, 1899.
	2	Augustus T. Post	75	C. 9384		C. 1534. Assessment paid May 2, 1899.
	3	F. H. Prince & Co. a/c George H. Norman	500	E. 1943/4, 1459, 2048/9		A. 2202/6. Assessment paid May 2, 1899.
	4	Henry S. Morse, 244 Broad St., Lynn, Mass.	15	D. 29922, C. 8121		C. 1535. Assessment paid May 4, 1899.
	4	Geo. Finneran, 3189 Washington St., Jamaica Plain, Boston.	5	C. 9441		C. 1536. Assessment paid May 4, 1899.
	4	Joseph A. Norcross & Susan A. Norcross	20	D. 77969/70		C. 1537/8. Assessment paid May 4, 1899.
	4	Spencer Trask & Co., a/c I. S. Hurlbert	15	C. 8377		C. 1539. Assessment paid May 4, 1899.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.					
Mar. 5	Strong & Spear, a/c Cornelia T. Smith....	8	C. 8070.....	.....	C. 1540. Assessment paid May 5, 1899.
6	Third Natl. Bank of Boston.....	10	D. 78365.....	.....	C. 1543. Assessment paid May 6, 1899. Abby B. Andrews.
8	Rasmus & Co.....	400	E. 12809, 11574/5, 11569.....	.....	A. 2207/10. Assessment paid May 8, 1899. 100 W. Rasmus, 200 Louis H. Burkner, 100 Horace L. Hotchkiss & Co.
8	Clark, Dodge & Co.....	20	C. 9738.....	.....	C. 1542. Assessment paid May 8, 1899. John H. Cabot.
8	H. T. Scott & C. E. Green, guardians....	100	C. 9583/5, 3/33-1/3.....	.....	A. 2211. Assessment paid May 8, 1899.
9	Laban B. Fiske, 272 Pleasant St., Worcester, Mass.	10	D. 67927.....	.....	C. 1548. Assessment paid May 9, 1899.
9	Hannah E. Meade, Holmes, Dutchess Co., N. Y.	6	C. 8138.....	.....	C. 1547. Assessment paid May 9, 1899. Nonassented.
9	Stephen Salisbury, prest. Worcester Natl. Bk., Worcester, Mass.	50	C. 8400.....	.....	C. 1544. Assessment paid May 9, 1899.
11	Geo. W. Anderson, 73 Tremont St., Boston.	5	C. 2493.....	.....	C. 1545. Assessment paid May 11, 1899. Alla W. Fo(r)ster.
11	Westerly Savings Bank, Westerly, R. I..	10	D. 65450.....	.....	C. 1546. Assessment paid May 11, 1899. Joseph D. Hewitt.
856–857					
May 12	H. Schwarzwelden, exr., Cumberland, Md.	10	D. 30743.....	.....	C. 1549. Assessment paid May 12, 1899. Anthony Grater.
17	W. V. Huntington, 310 Pine St., San Francisco, Cal.	10	D. 31363.....	.....	C. 1550. Assessment paid May 17, 1899.
17	Isaacmus, Johnson & Co.	100	E. 14371.....	.....	A. 2392. Assessment paid May 17,

	20	James McGovern & Co	20	C. 8239	C. 1554. Assessment paid May 19, 1899. Wm. B. Fisher.
	22	Bank of New York	200	E. 13044/5	A. 2393/4. Assessment paid May 22, 1899. J. M. Hurtado.
	23	Western Nat'l Bk	100	E. 13017	A. 2395. Assessment paid May 23, 1899. Samuel D. Luce.
	25	W. M. Thompson, Cent. Pac. R. R. Co., San Francisco, Cal.	10	D. 80510	C. 1555. Assessment paid May 25, 1899. Joseph D. Grant.
	27	Tillinghast & Benedict	10	D. 65742	C. 1556. Assessment paid May 25, 1899. Hugh Campbell.
	27	Nat'l Bank of New Jersey, New Brunswick.	16	C. 8103	C. 1557. Assessment paid May 25, 1899. M. A. Bassler.
	31	F. C. Penniman, 198 5th Ave., Chicago, Ill.	5	C. 7823	C. 1558. Assessment paid May 25, 1899. F. C. Penniman.
			6	C. 7505	C. 1559. Assessment paid May 25, 1899. Lucius S. Penniman.
June	3	Madison G. Godfrey, Worcester, Mass.	3	C. 8545	C. 1560. Assessment paid June 3, 1899.
	5	Nat'l Bank of Republic	75	C. 7059, 8133 (25 50)	C. 1561. Assessment paid June 5, 1899. Rodolphus Beetle.
			25	C. 7058	C. 1562. Assessment paid June 5, 1899. David B. Kempton.
	5	Mrs. John Edgar, Chambersburg, Pa.	1	C. 6146	C. 1574. Assessment paid June 5, 1899. Rev. John Edgar.
			2	C. 3341	Assessment paid June 5, 1899. Elizabeth Edgar.
			3	C. 4220, 3340 (1 2)	Assessment paid June 5, 1899. John Edgar.
Notify	6	Thos. D. Fish, 68 South St., city	10	D. 66196	C. 1563. Assessment paid June 6, 1899. Abby S. Ferguson.
	6	J. N. Lacey, Danvers Insane Hospital Asylum Station, Mass.	12	C. 8290	C. 1564. Assessment paid June 6, 1899.
	8	Chas. A. Gleason, 925 Main St., Worcester, Mass.	5	C. 8054	C. 1565. Assessment paid June 8, 1899. Wm. P. Gleason.
	8	Wainwright Bros. & Co., 50 Congress St., Boston.	5	C. 8108	C. 1566. Assessment paid June 8, 1899. Esther F. Morrison.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
858-859					
1899.					
June 9	Winslow & Co., Worcester, Mass.....	10	D. 26638.....	.....	C. 1567. Assessment paid 9, 1899. Adelaide H. Gardner.
		6	C. 8257.....	.....	C. 1568. Assessment paid June 9, 1899. Enos A. Gardner.
9	Harriet M. Swasey, Taunton, Mass.....	7	C. 8540.....	.....	C. 1569. Assessment paid June 9, 1899.
12	Catherine Killoran, adm., Dover, N. H..	20	C. 8583.....	.....	C. 1570. Assessment paid June 12, 1899. M. Killorem.
12	Charles H. Beckwith, 5 Elm St., Sp'gfield, Mass.	25	C. 8547.....	.....	C. 1571. Assessment paid June 12, 1899. T. M. Brown.
12	Monson Nat'l B'k., Monson, Mass.....	5	C. 8092.....	.....	C. 1572. Assessment paid June 12, 1899. Charles M. Webber.
13	W. O. Chapman, Salem, Mass.....	10	D. 78364.....	.....	C. 1573. Assessment paid June 12, 1899. William P. Andrews.
14	Nathan T. Beers & Co.....	16	C. 9287.....	.....	C. 1575. Assessment paid June 14, 1899. Martha T. Sands.
15	F. H. Gillett, House of Representatives, Wash., D. C.	50	C. 9335; C. 6334 (20 30).....	.....	C. 1576. Assessment paid June 15, 1899. Alice Byington.
15	Mrs. Eliza Norris, New Lynne, O.....	10	D. 39244.....	.....	C. 1577. Assessment paid June 15, 1899.
15	Charlotte A. Paddock, Watertown, N. Y..	10	D. 50531.....	.....	C. 1578. Assessment paid June 15, 1899.
16	Worcester Safe Dep. & Trust Co., Worcester, Mass.	4	C. 8571.....	.....	C. 1579. Assessment paid June 16, 1899. Elizabeth A. Allen.

	Pettes & Whitney	10	D. 66101		C. 1580. Assessment paid June 16, 1899. Charles E. Hawes.
21	I. E. Gates	1	C. 8800		Assessment paid June 21, 1899. R. P. Schweren.
		1	C. 8799		C. 1581. Assessment paid June 21, 1899. Wm. H. Mills.
		48	C. 7787		Assessment paid June 21, 1899. W. E. Brown.
22	Savings Bank of New London	10	D. 66543		C. 1582. Assessment paid June 23, 1899. Mary A. Parker.
23	Jefferson Co. Nat'l Bank, Watertown, N. Y.	12	C. 7370		C. 1583. Assessment paid June 23, 1899. Charlotte F. Paddock.
26	Winslow & Co., Worcester, Mass	20	C. 9277		C. 1584. Assessment paid June 26, 1899. Laura A. Stone.
26	Manhattan Trust Co	10	D. 46180		C. 1585. Assessment paid June 26, 1899. Wm. M. R. French.
28	C. B. Stoddard, tr., Plymouth, Mass	5	C. 9007		C. 1586. Assessment paid June 28, 1899. C. B. Stoddart et al., trustees.
28	F. B. Strickland, Spgf'd, Mass	10	D. 66390		C. 1587. Assessment paid June 28, 1899. Erasmus F. Strickland.
860–861					
July 5	I. E. Gates	5	C. 8498		C. 1588. Assessment paid July 5, 1899. Albert Gallatin.
5	Mabel C. Lansing, Union Trust Co., San Fran., Cal.	3	C. 9599		C. 1589. Assessment paid July 5, 1899. Mabel C. Lansing.
10	Hatch & Foote	10	C. 9934		C. 1590. Assessment paid July 10, 1899. R. B. Ames.
12	Emma A. Carrick	14	C. 9030		C. 1591. Assessment paid July 12, 1899.
12	Wm. Pierrepont White, Utica, N. Y.	44	C. 8366		C. 1592. Assessment paid July 12, 1899. S. R. Campbell.
12	Samuel Humes	10	D. 66184		C. 1593. Assessment paid July 12, 1899. Ellen E. Smedley.
18	Speyer Brothers	31	C. 7659, D. 63906/8		C. 1594. Assessment paid July 18, 1899. John Norburg.

Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899—Continued.

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	
1899.			2 1 1		
July 18	Rev. I. P. Quimby, Malden, Mass., 5 Dudley Place.	4	C. 8514, 7803, 6578		C. 1595. Assessment paid July 18, 1899. B. R. Seaman, I. P. Quimby, I. P. Quimby.
19	H. H. Smith, Worcester, Mass	9	C. 6815		C. 1596. Assessment paid July 19, 1899. Harvey H. Smith.
24	I. E. Gates	20	C. 8804		C. 1597. Assessment paid July 24, 1899. Philip Scheld.
25	Henry W. King, c/o Rice, King & Rice, 19 Pearl St., Worcester, Mass.	5	C. 9174		C. 1598. Assessment paid July 25, 1899. Diantha Tyler.
			10		
Aug. 3	A. M. Kidder & Co	15	D. 67267, C. 8682		C. 1599. Assessment paid Aug. 3, 1899. Eliza F. Banks.
		10	D. 68240		C. 1600. Assessment paid Aug. 3, 1899. George W. Banks.
3	Blair & Co	50	C. 6270, 8104 2/25		C. 1601. Assessment paid Aug. 3, 1899. Jane O'Neal.
23	Watson & Gibson	20	D. 26806, 66135		C. 1602. Assessment paid Aug. 23, 1899. Franklin Wheeler.
24	Vermilye & Co	10	D. 65741		C. 1603. Assessment paid Aug. 24, 1899. Horace B. Banks, adm.
29	Redmond, Kerr & Co	3	C. 8221		C. 1609. Assessment paid Aug. 29, 1899. Lawson Bigelow.
Sept. 20	Geo. E. Downs	7	C. 9933		C. 1610. Assessment paid Sept. 20, 1899. Geo. E. Downs. Nonassented.
25	A. M. Kidder & Co	25	C. 9936		C. 1611. Assessment paid Sept. 25, 1899. Mary E. Brush.

Oct.	4	Edwin K. Johnson	26	C. 9427		C. 1612. Assessment paid Oct. 4, 1899. Edwin K. Johnson.
	7	Speyer & Co	210	D. 60864 1/10		C. 1613. Assessment paid Oct. 7, 1899. C. E. Bretherton. 5% penalty.
				D. 76000/19 20/10		A. 2396/7. Assessment paid Oct. 7, 1899. M. J. Horgan. 5% penalty.
862–863						
Oct.	10	Sarah E. Bartlett, Middleboro, Mass	4	C. 6100		C. 1614. Ass't pd. Oct. 10/99. B. D. W. Bartlett.
	10	Speyer & Co	196	C. 7501, 7532, 7545, 3/2		C. 1615. Ass't pd. Oct. 10/99. C. E. Bretherton.
				D. 60865/73, 63160, 10/10		A. 2398. Ass't pd. Oct. 10/99. C. E. Bretherton.
				D. 76029/21, 9/10		Ass't pd. Oct. 10/99. M. J. Horgan.
			229,042			

864 (At this point there are 102 blank pages, containing nothing but the printed forms, and upon which no writing appears.)

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	Returned certificates.
1899.					
Mch. 10	A. R. Pick & Co. (brought forward)	201	C. 1124, 1/1		C. 1050, 1/11; C. 1082, 1/50.
			A. 198/9, 2/100		C. 1093, 1/65; C. 1095, 1/75.
11	Baring, Magoun & Co	30	C. 1133, 1/10; C. 1134, 1/6; C. 1135, 1/12; C. 1136, 1/2.		C. 1065, 1/30.
11	Speyer & Co	12,500	A. 282/406, 125/100		C. 3.
13	do	12,500	A. 425/549		C. 4.
27	Harvey Fisk & Sons	83	C. 1415, 50; C. 1416, 33		C. 1314.
27	Probst, Wetzlar & Co	70	C. 1419, 50; C. 1420, 20		C. 1341.
27	John H. Jacquelin & Co	11	C. 1428, 10; C. 1429, 1		C. 1334.
27	Sutro Bros	50	C. 1480		C. 1436.
Apl. 7	Vermilye & Co	299	C. 1481/2, 2/50		C. 1328 (63).
			C. 1483, 44; C. 1484, 25		C. 1374 (36).
			C. 1485, 42; C. 1487/8, 2/10; C. 1486, 68.		A. 2038/9 (2/100). These ctfs. used again.
Apl. 11	Muller, Schall & Co	15	C. 1492 (10); C. 1493 (5)		C. 1316.
11	Watson & Gibson	60	C. 1495 (50); C. 1496, 10		C. 1347.
20	Townsend & Shera	10	C. 1511/12, 2/5		B. 21745.
May 16	F. J. Lovatt	18,000	A. 2212/2391		C. 1321 (15,000); C. 1322 (3,000).
20	Rob't Goodbody & Co	50	C. 1551/2, 2/25		C. 1369.
			25 35		
Aug. 26	Hallgarten & Co	60	C. 1604, 1605		C. 1504.
			15 2 3		
28	De Coppet & Doremus	20	C. 1606, 1607, 1608		C. 1056.

(At this point there are 52 blank pages, containing nothing but the printed forms, and upon which no writing appears.)

868–869 *Central Pacific R. R. Co. stock deposited under readjustment plan dated February 8, 1899, registered.*

Date.	Depositor and address.	Number of shares deposited.	Dates and numbers of the certificates.	Date deposited with Central Trust Co.	In whose name registered.
1899.					
Apl. 6	First Nat'l Bk, Morrisville, N. Y.....	10	C. 1170.....	.....	Regd n/o Ella E. Harwood.
		10	C. 1171.....	.....	" " Henry B. Coman. Apl. 27, transferred to bearer.
		10	C. 1172.....	.....	" " Fred. S. Harwood.
		25	C. 1173.....	.....	" " Henry B. Coman.
1900.					
Mch. 15	Catherine Rockwell.....	17	C. 1154.....	.....	" " Catherine Rockwell.

870

May 6th/99.	Asst. pd. on London ctfs.			45, 780 shs.	
	Asst. pd. on N. Y. ctfs. issued against Ldn. ctfs.			25, 000 shs.	
				70, 780 shs.	
	Rec'd asst. in N. Y.			296, 106 shs.	
	Rec'd asst. on shs. dep. in N. Y.			225, 326 shs.	
	Total shares dep. in N. Y.			226, 696 shs.	
	Shares on which ass't must be p'd.			1, 370 shs.	
	Stubs not stamped "Ass't pd."			1, 420 shs.	
June 28.	Asst. pd. on London ctfs.			45, 780 shs.	
	Asst. pd. on N. Y. ctfs. issued agst. Ldn. ctfs.			25, 000 shs.	
				70, 780 shs.	
	Rec'd asst. in N. Y.			298, 322 shs.	
	Rec'd asst. on shs. depd. in N. Y.			227, 542 shs.	
	Total shs. depd. in N. Y.			228, 312 shs.	
	Shs. on which asst. must be pd.			770 shs.	
	Stubs not stamped asst. paid			820 shs.	
Oct. 16.	Asst. rec'd in N. Y.			$720, 684	
	Coll. on London ctfs.	$91, 960			
	Coll. on N. Y. ctfs. issued agst. Ldn	50, 000			
	Coll. thro' Amsterdam	120, 900			
	Coll. thro' ftf. o/w	40			
			262, 900		
	Coll. on shs. deposited N. Y.			$457, 784	#228, 892 shares.
	Due on shs. deposited N. Y.			458, 084	229, 042 shares.
	Shares on which assess't must be paid			$300	150 shares.

Stubs not stamped ass't paid, 1226, 2120, 2/100.
#1226 asst. paid Oct. 27/99.
2120 asst. paid Nov. 15/99.

Interstate Commerce Commission, Division of Tariffs, May 27, 1914.

Statement showing rates on various commodities from New York, N. Y., to California terminals via water and rail via Gulf routes compared with rates via other routes.

[Rates in cents per 100 pounds, except as noted.]

Commodities, carloads.	Sept. 1, 1888.		(2) May 10, 1893.		June 24, 1897.		Jan. 18, 1900.		Dates as noted.		Jan. 1, 1909.		Oct. 10, 1910.		Apr. 15, 1913.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallary.	Other routes.	
Acid, sulphuric, in iron drums	200	200	97	108	100	100	[b] 110	125	[b] 110	125	.....	.....	.....	.....	.....	.....	.....
Acid, sulphuric, and nitric, mixed, in iron drums	200	200	97	108	100	100	[b] 110	125	[b] 110	125	.....	.....	.....	.....	.....	.....	.....
Harrow teeth	100	100	65	71	75	75	75	85	75	85	85	85	85	85	85	85	.....
Barley pearl	.....	.....	65	117	75	75	80	80	80	80	90	90	90	90	90	90	.....
Beans and peas, dried, split, or whole, in sacks or in barrels	.....	.....	65	130	75	75	75	85	75	85	75	75	85	85	85	85	.....
Blacking, shoe, other than as provided under "Dressing"	100	100	70	108	75	108	[a] 75	80	[a] 75	80	110	110	110	110	110	110	.....
Brass goods, O. R., wet-corrosion:																	
Brass ingots	.....	.....	.....	.....	75	75	120	125	120	125	125	125	125	125	150	150	.....
Plate and sheet completely boxed	.....	.....	65	.....	75	75	115	125	115	125	125	125	125	125	150	150	.....
Rods completely boxed	.....	.....	65	.....	75	75	115	125	115	125	125	125	125	125	150	150	.....
Butchers' blocks	.....	.....	70	112	75	75	[d] 75	80	[d] 75	80	85	85	85	85	85	85	.....
Candles and wax tapers	100	100	70	118	75	75	[d] 95	100	[d] 95	100	100	100	100	100	100	100	.....
Canned goods: Fish, fruits, not preserved meats (including potted or deviled), vegetables, soups, breads, and puddings, in hermetically sealed cans boxed O. R. weather	120	120	50	96	75	75	95	100	95	100	95	100	95	95	110	110	.....
Canned corn	120	120	50	96	75	75	[c] 90	95	[c] 90	95	90	95	90	90	90	90	.....
Canned fish	120	120	50	96	75	75	90	95	90	95	90	95	90	90	95	95	.....
Canned meats, including potted or deviled	120	120	50	96	75	75	90	95	90	95	90	95	90	90	110	110	.....
Cement, building or paving	100	100	30	110	75	75	75	80	75	80	50	.....	50	.....	.....	.....	.....
Flake, malt, in sacks	.....	.....	.....	.....	.....	.....	80	.....	80	.....	.....	.....	.....	.....	.....	.....	.....

[For footnotes see page 1606.]

Statement showing rates on various commodities from New York, N. Y., to California terminals via water and rail via Gulf routes, etc.—Continued.

Commodities, carloads.	Sept. 1, 1888.		(1) May 10, 1893.		June 24, 1897.		Jan. 18, 1900.		Dates as noted.		Jan. 1, 1909.		Oct. 10, 1910.		Apr. 15, 1913.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	
Composition for roofing	100	100	65	100	75	75	75	85	75	85	75	75	75	75	.....	.....	.....
873-874 Conduits, underground, for electric wires: stone, clay, or cement	.....	.....	109	100	75	75	75	80	75	80	125	125	125	125	125	125	.....
Copper goods, O. R., wet-corrosion:																	
Bar, ingot, and cast plate	.....	.....	70	121	75	75	[d] 120	125	[d] 120	125	125	125	125	125	150	150	.....
Bronze ingots	.....	.....	.....	.....	75	75	[d] 120	125	[d] 120	125	125	125	125	125	150	150	.....
Plate and sheet completely boxed	.....	.....	65	.....	75	75	115	125	115	125	125	125	125	125	150	150	.....
Rods completely boxed	.....	.....	65	.....	75	75	115	125	115	125	125	125	125	125	150	150	.....
Copperas or sulphate of iron	100	100	65	120	75	75	60	75	60	75	75	75	80	.....	.....	.....	.....
Drums, iron, empty, returned	.....	.....	.....	.....	.....	.....	[d] 50	.....	[d] 50	.....	.....	.....	.....	.....	.....	.....	.....
Ferromanganese in packages	.....	.....	.....	.....	75	75	50	75	50	75	80	.....	80	.....	80	.....	.....
Fertilizer, including dried blood	100	100	.....	.....	.....	.....	60	.....	60	.....	60	.....	.....	.....	.....	.....	.....
Glucose in barrels, O. R.—*L.*, released, straight carload	100	100	70	130	90	90	75	85	75	85	75	75	75	75	75	75	.....
Grease, axle (including mineral or petroleum axle grease) in packages	100	100	70	85	75	75	[a] 75	85	[a] 75	85	100	100	90	90	90	90	.....
Grease, petrolatum in packages	.....	.....	.....	.....	.....	.....	75	85	75	85	100	100	90	90	90	90	.....
Grindstones, mounted or unmounted	100	100	90	113	100	100	75	100	75	100	80	80	80	80	80	80	.....
Gum, gambier, in packages	.....	.....	.....	.....	.....	.....	[b] 70	75	[b] 70	75	.....	.....	.....	.....	.....	.....	.....
Iron and steel articles, O. R., wet and rust:																	
Billets, blooms, ingots, muck bar, and scrap steel	100	100	30	75	75	75	50	75	50	75	60	.....	60	65	65	65	.....
Pig iron	100	100	60	70	75	75	50	75	50	75	50	.....	50	.....	50	.....	.....
Sheet, No. 17 or higher (black), not bent or punched, released	100	100	60	122	75	75	80	85	80	85	95	95	95	95	95	95	.....
Sheet and plate (galvanized), not bent or punched, released	100	100	60	122	75	75	[c] 80	85	[c] 80	85	95	95	95	95	95	95	.....

Steel, punched for rivets, in crates or in boxes, released			60	122	75	75	e 80	85	e 80	85	100	100	100	100	100	100	
Lithoscope cement in packages							b 75	80	b 75	80							
Milk, condensed, in hermetically sealed cans, boxed, O. R., weather	120	120	109	200	90	90	d 90	95	d 90	95	85	85	85	85	85	85	
875-876 Mincemeat in pails or tubs, when packed in boxes or barrels, in kits or kegs, in glass or in paper boxes, boxed; in bulk in barrels or half barrels	120	120	100	123	105	105	90	95	90	95	90	90	90	90	90	90	
Nails and spikes, cut or wire, n. o. s., in boxes or kegs	100	100	30	70	75	75	60	75	60	75	70	85	70	85	85	85	
Nails, cement coated, in boxes or kegs							60	75	(22)65	80	70	85	70	85	85	85	
Parraffine wax			90	112	90	90	d 95	100	d 95	100	100	100	90	90	90	90	
Plaster, land and adamantine	100	100	70	100	75	75	70	75	70	75	75	75	60				
Pulp, wood			65	120	75	75	65	75	65	75	75	75	75	75	75	75	
Rags, compressed in bales							b 75		b 75		60		60				
Railway supplies for steam or street railways: Car wheels and axles	100	100	85	120	75	75	d 60	75	d 60	75	65		65	80	65	80	
Rails and ties, iron or steel, including fastenings, viz: Splices, tieplates, track bolts, and washers	100	100	30	70	75	75	60	75	60	75							
Rosin, in barrels	100	100	30	86	75	75	50	75	50	75	55		50				
Rice, in packages, straight C. L.	100	100	80	105	75	75	60	75	60	75	85	85	65				
Sad irons, in boxes or barrels			70	112	75	75	b 95	100	b 95	100	85	85	85	85	85	85	
Sand, sand facing, and fire sand	100	100	70	110	75	75	75	80	75	80	50		50				
Sash weights and balance weights for folding beds and lounges	100	100	75	87	75	75	b 70	75	(22)50	75	50		50				
Seed, mustard, in packages							b 75	100	b 75	100	120	125	120	125	152	145	
Sheep dip (liquid), O. R. L.	100	100	75	101	75	75	60	75	60	75	60	85	65	75	75	75	
Ship chandlery, viz: Pitch and tar	100	100	30	106	75	75	50	75	50	75	55		55				
Treenails, in crates or bundles							d 75	80	d 75	80							

Number commodity rates lower via Morgan Line	40	1	53	53	8	6	1	Totals forward by addition.
Number commodity rates lower via other routes	1	0	0	0	0	0	1	
Number commodity rates via Morgan Line only	4	0	4	4	11	11	2	
Number commodity rates via other routes only	0	0	0	0	0	0	0	

[For footnotes see page 1606.]

Statement showing rates on various commodities from New York, N. Y., to California terminals via water and rail via Gulf routes, etc.—Continued.

Commodities, carloads.	Sept. 1, 1888.		(3) May 10, 1893.		June 24, 1897.		Jan. 18, 1900.		Dates as noted.		Jan. 1, 1909.		Oct. 10, 1910.		Apr. 15, 1913.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	
677-678 Shoes, rings, tires, or dies (for quartz mills); also cams and tappets, iron or steel	.....	.....	.....	.....	75	75	[d] 70	75	[d] 70	75	90	90	90	90	90	90	.....
Sledges and wedges, iron and steel, in boxes, barrel, or crates	.....	.....	.....	.....	.....	.....	[d] 70	75	[d] 70	75	85	85	85	85	85	85	.....
Soda ash and soda carbonating compounds (may be shipped in sacks); caustic soda (O. R. sifting, wet, and injury caused by corrosion) and hyposulphate nitrate (may be shipped in stacks), silicate and sulphate of soda, in packages	100	100	75	80	75	75	50	75	50	75	55	.....	55	.....	.....	63	.....
Tin and articles of tin in boxes, barrels, or crates; tin plate in boxes, fully released against wet, rust, and damage to tin or packages	100	100	75	93	75	75	[b] 50	75	(22) [a] 55	75	.....	.....	.....	.....	70	70	.....
Wire and wire goods, O. R., wet and rust; wire (fence), barbed, including staples, steel stay guards, and stretchers	.....	.....	40	85	75	75	60	75	60	75	70	85	70	85	80	85	.....
Brick, enameled	.....	.....	.....	.....	.....	.....	(3) 50	75	(3) 50	75	.....	.....	.....	.....	.....	.....	.....
Pipe, cast-iron, and connections	80	80	30	80	75	75	(4) [i] 50	75	(4) [i] 50	75	65	65	65	65	65	65	.....
Barytes	.....	.....	70	90	75	75	(5) [j] 60	85	(24) 50	.....	50	.....	50	.....	.....	.....	.....
Mattresses, metallic, wire cots, wire and spring beds and bottoms, and canvas cots	.....	.....	100	150	100	100	(6) [b] 100	100	(6) [b] 100	100	110	110	110	110	225	215	.....
Sledges, wedge and mauls, iron, in boxes or crates	.....	.....	.....	.....	.....	.....	(7) [d] 70	75	(7) [d] 70	75	85	85	85	85	85	85	.....
Bash weights	100	100	75	87	75	75	(8) 60	.....	(8) 60	.....	50	.....	50	.....	.....	.....	.....
Barrel stock, viz: Sugar, flour, and lime barrel stock	.....	.....	.....	.....	75	75	(9) [d] 70	75	(9) [d] 70	75	.....	.....	.....	.....	.....	.....	.....
Brick, common or pressed, in packages	(1) 100	100	.....	.....	75	75	(9) 70	75	(9) 70	75	.....	.....	.....	.....	.....	.....	.....

Barley, malt, in packages	(1) 120	120					(5) 65		(5) 65									
Brewer's grain or refuse, in packages							(6) 75		(m) 85									
Pop corn, in packages							(6) 90		(2 100		100	100	100	100	100	100		
879-880 Food, poultry, made from ground bones, grits, etc							(9) 60		(9) 60		60		60					
Insulators, terra cotta or clay (for use in buildings for protection against fire), boxed, crated, or in barrels					90	90	(9)k 75	80	(9)k 75	80	90	90	90	90	90	90		
Washers, iron or steel, straight, C. L	100	100			75	75	60	75	(10) 65	80	80	80	80	80	80	80		
Mining cars or parts thereof, K. D							(9)h125		(9)h125		140	140	140	140	140	140		
Oil, castor, cocoanut, corn rubber, cottonseed, rapeseed, dead, kalon, lard, linseed, neats-foot, red, rosin or "Y," and tallow, in cans, boxed, or in barrels	100	100	75	120	78½	78½	(9)n 78½		(9)n 78½		100	100	90	90	100	100		
Oil, lucol, in barrels, O. R. L					78½	78½	(9)n 78½		(9)n 78½		100	100	90	90	100	100		
Terra cotta, building, O. R. B			90	120	100	100	(9) 75	80	(9) 75	80	75	80	75	75	75	75		
Tin-can tops, packed solid in boxes							(9) 65		(9) 65		85	85	85	85	85	85		
Tin and terne plate, in boxes, fully released against wet, rust, and damage to packages or contents	100	100	75	128	75	75	(9) 50	75	(9) 50	75					70	70		
Brick, common or pressed, ornamental figured, shaped, invoice value not to exceed $5.00 per ton							(11) 70	75	(12) 50	75	50		50					
Iron or steel, corrugated, n. o. s							(12) *80	85	(12) *80	85	95	95	95	95	95	95		
Canned fish, canned clam juice, and canned clam chowder	120	120	70	96	75	75	(12) 90	95	(12) 90	95	95	100	95	95	110	110		
Brick, enameled	(1)100	100			105	105	(12)h 65		(12)h 65									
Lime, acetate of, in barrels, boxes, casks, or iron drums							(12)h 75		(12)h 75		75	75	50					
Iron or steel, sheet No. 12 and lighter (black or galvanized, but exclusive of planished or Russia), not bent or punched, corrugated, n. o. s., including ridge rolls, straight or mixed	100	100	60	122	75	75	(14)d 80	85	(14) d80	85	95	95	95	95	95	95		

[For footnotes see page 1606.]

Statement showing rates on various commodities from New York, N. Y., to California terminals via water and rail via Gulf routes, etc.—Continued.

Commodities, carloads.	Sept. 1, 1888.		(3) May 10, 1893.		June 24, 1897.		Jan. 18, 1900.		Dates as noted.		Jan. 1, 1909.		Oct. 10, 1910.		Apr. 15, 1913.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	
881-882 Nails and spikes (not including railroad spikes), cut or wire, n. o. s., in boxes or kegs; and wire (fence), iron or steel, smooth, annealed, No. 12 or heavier, plain or galvanized; barbed, galvanized, or painted; staples, straight or mixed, C. L.	100	100	30	70	75	75	(14) 60	75	(22) 66	80	70	85	70	85	85	85	.....
Railroad spikes	100	100	60	70	75	75	(15) 60	75	(15) 60	75							.....
Shingle bands, iron or wire					75	75	(16) 65	75	(16) 65	75	80	80	70	80	80	80	.....
Fire brick and fire clay	(1) 100	100			75	75	(17) 50	75	(17) 50	75	50		50				.....
Calcium, chloride of							(18) 50	75	(18) 50	75	75	75	55				.....
Ties, baling					75	75	(12) 65	75	(12) 65	75	80	80	70	80	80	80	.....
Stone, rough, sawed, or cut to dimension, not polished	(1) 100	100					(19) 60		(19) 60		55		55				.....
Silex, in packages							(20) 60		(20) 50	75	75	75	75	75			.....
Canned beans and peas, straight, C. L.	120	120	50	96	75	75	(21) 90	95	(21) 90	95	90	95	90	90	95	95	.....
Canned corn, boxed	120	120	50	96	75	75	(21) 90	95	(21) 90	95	90	95	90	90	95	95	.....
Flake, malt							(21) p85		(21) p85								.....
Oil, creosote, or tar, in barrels, or cans boxed					78½	78½	(21) q50	75	(21) q50	75							.....
Furniture, viz: Sideboards, buffets, combination buffets and sideboards, and chiffoniers, net cost of each piece not to exceed $16.00							(21) 160	175	(21) 160	175	175	175	175	175	225	215	.....
Structural iron, viz: Angles, channels, beams, etc.	100	100	75	122	75	75	(21) r75	85	(21) r75	85	80	80	80	80	80	80	.....
Bridge and wharf material, viz: Iron or steel beams, columns, girders, etc.	100	100	75	122	75	75	(22) r75	85	(22) r75	85	80	80	80	80	80	80	.....
Number commodity rates lower via Morgan line			58		1		86		85		14		10		2	Totals forward by additions.	
Number commodity rates lower via other routes			1		0		0		0		0		0		2		
Number commodity rates via Morgan line only			4		0		12		12		19		21		2		
Number commodity rates via other routes only			0		0		0		0		0		0		1		

Commodities, carloads.	Rates in effect Jan. 15, 1906.		Rates in effect Mar. 15, 1907.		Rates in effect Mar. 15, 1908.		Rates as noted.		Rates as noted.		Rates in effect Jan. 1, 1909.		Rates in effect Oct. 10, 1910.		Rates in effect April 15, 1912.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other lines.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	
Tank or reservoir material, viz: Beams, columns, and circular frames for tops							(21) 75	85	(21) 75	85	80	80	80	80	80	80	
Steel rails	100	100	60	70	75	75	(21) $10 ton 2,240 lbs.	80	(21) $10 ton 2,240 lbs.	80	$11 ton 2,240 lbs.		$11 ton 2,240 lbs.		$11 ton 2,240 lbs.		
Fastenings	100	100	60	70	75	75	(21) $10 ton 2,240 lbs.	80	(21) $10 ton 2,240 lbs.	80	$11 ton 2,240 lbs.		55	67½	55	67½	
Phosphate rock							(22) 60		(22) 60		60	60	60				
Oxide of iron							(22) 60		(22) 60								
Rails (including mining rails) and ties, iron, or steel, including fastenings, viz: Splices, R. R. spikes, tie plates, tie bolts, track bolts, and washers							(23) 165	80	(23) 165	80	(23) 165	80	(23) 165	80	(23) 165	80	
Stoves (cast iron), cooking, heating, etc	(1) 100	100			110	110	(22) 125	135	(23) 125	135	130	130	130	130	130	130	
Syrup (corn, glucose, maple, or rock candy) and molasses	100	100	90	130	100	100	(22) 75	90	(22) 75	90	75	75	75	75	75	75	
Wire (fence), barbed, including staples, steel stay guards, and stretchers	100	100	40	85	75	75	(21) 65	80	(23) 65	80	70	85	70	85	80	85	
Wire, iron, plain, galvanized, etc	100	100	40	85	75	75	65	75	(23) 65	80	70	85	70	85	85	85	
Rice polish (rice dust)									(23) 60	75	65		65				
Rice, brewers									(23) 60	75	65		65				
Cottonseed oil	82½	82½	75	120	78½	78½	90		(23) 90		100	100	90	90	90	90	
Copper, sulphate of (bluestone)									(24) 60	75	75	75	75	75	75	75	
Limestone, ground									(24) 50		50		50				
Rice polish (rice dust), rice bran, and rice hulls									(25) 60	75	65		65				
Sand, moulding									(25) 50								
Strawboard in crates or bundles	100	100	80	93	75	75	75	75	(26) 150		55	75	55				
885-886 Tile, roofing							80	80	(27) 70	80	70	80	70	80	70	80	
Rags, in packages									(28) 160		60		60				
Rice flour	120	120	80	106	80	80	80	80	(29) 70		85	85	75				
Asphaltum	(1) 100	100							(29) 50		50		55				
Limestone and whiting, ground or lump									(21) 50		50		50				

[For footnotes see p. 1606.]

Statement showing rates on various commodities from New York, N. Y., to California terminals via water and rail via Gulf routes, etc.—Contiuued.

Commodities, carloads.	Sept. 1, 1888.		May 19, 1893.		June 34, 1897.		Jan. 18, 1900.		Dates as noted.		Jan. 1, 1909.		Oct. 10, 1910.		April 15, 1913.		To date.
	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan Line.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	
Cement work for building purposes, not including statuary or figures									(21) 75	80	80	80	80	80			
Grape sugar	(1) 100	100			90	90	90	90	(21) 75	80	75	75	75	75	75	75	
Carbon, clinker									(23) 77½		75	75	75	75	75	75	
Hemp, sisal, istle or ixtle	(1) 100	100			75	75	75	75	(22) 60	75	60	75	60	75	60	75	
Flaxseed, whole or ground, in packages									(24) 120	125	120	125	120	125	152	145	
Ore, iron, ground									(25) 60		60		60				
Lower via Morgan Line			66		1		94		102		21		17		7	Grand total.	
Lower via other routes			1		0		0		0		0		0		3		
Via Morgan Line only			4		0		21		30		29		33		3		
Via other routes only			0		0		0		0		0		0		1		

Rates published by Southern Pacific prior to January 18, 1900, applied only via Morgan Line and Sunset route. Effective January 18, 1910, routing was shown via Sunset-Gulf route, New Orleans, or via Santa Fe route via Galveston only.

887

REFERENCES.

(1) Withdrawn June 17, 1893.
(2) All rates from New York to Pacific coast cancelled May 11th, 1893, until June 24, 1897; combinations applying.
(3) Effective Dec. 3, 1900.
(4) Effective Dec. 15, 1900.
(5) Effective Jan. 21, 1901.
(6) Effective Jan. 28, 1901.
(7) Effective Apr. 18, 1901.
(8) Effective May 25, 1901.
(9) Effective July 1, 1902.
(10) Effective Jan. 18, 1904.
(11) Effective Aug. 11, 1902.
(12) Effective Oct. 6, 1902.
(13) Effective Jan. 25, 1903.
(14) Effective Feb. 23, 1903.
(15) Effective Mar. 4, 1903.
(16) Effective Apr. 20, 1903.
(17) Effective July 31, 1903.
(18) Effective Oct. 12, 1903.
(19) Effective May 19, 1903.
(20) Effective Nov. 16, 1903.
(21) Effective Jan. 18, 1904.
(22) Effective Oct. 12, 1905.
(23) Effective Feb. 8, 1904.
(24) Effective Nov. 5, 1904.
(25) Effective Mar. 15, 1905.
(26) Effective June 24, 1905.
(27) Effective Sept. 21, 1905.
(28) Effective Jan. 15, 1906.
(29) Effective Feb. 12, 1906.
(30) Effective Feb. 27, 1906.
(31) Effective Aug. 10, 1906.
(32) Effective Apr. 3, 1907.
(33) Effective Mar. 15, 1908.
(34) Effective Apr. 30, 1908.
(35) Effective May 16, 1908.
a Withdrawn Nov. 12, 1900.
b Withdrawn July 1, 1902.
c Withdrawn Apr. 20, 1903.
d Withdrawn Jan. 18, 1904.
g Withdrawn Apr. 25, 1901.
h Withdrawn Oct. 12, 1903.
i Withdrawn March 10, 1903.
j Withdrawn Nov. 11, 1901.
k Withdrawn Sept. 21, 1905.
n Withdrawn May 20, 1907.
o Withdrawn Feb. 23, 1903.
p Withdrawn Aug. 8, 1904.
r Withdrawn Feb. 25, 1905.
s Withdrawn June 30, 1905.
t Withdrawn Nov. 25, 1905.
u Withdrawn Nov. 20, 1905.
v Withdrawn May 29, 1907.
w Withdrawn Aug. 27, 1906.
x Withdrawn Mar. 5th, 1906.

888

AUGUST 25, 1914.

Memorandum.

"California terminals" include: San Francisco, Sacramento, Marysville, Stockton, Benicia, South Vallejo, Port Costa, Crockett, Richmond, Oakland, San Jose, Los Angeles, San Diego, and National City, Cal., and points in California, in contiguous territory, specifically shown in attached photograph pages 17 and 18, taken from "Trans-Continental Tariff."

Points to which rates named herein apply.

"California terminals."

Rates shown herein as applying to "California terminals" will apply to the points designated below, via the gateways indicated opposite each point. (See Exceptions, page 20.)

	Western gateways.[1]
Alameda, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Alcatraz, Cal.	4, 5, 5A, 17, 18.
*Ambrose, Cal.	4, 5, 5A.
Antioch, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
*Ardmore, Cal.	1, 2, 3, 3B.
Avon, Cal.	1, 2, 3, 3A, 14.
890 Bay Point, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17, 18.
*Bells (Los Angeles Co.), Cal.	4A, 4B, 9.
Benicia, Cal.	1, 2, 3, 3A, 14, 17, 18.
Berkeley, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
Berkeley (Carlton St.), Cal.	1, 2, 3, 3A, 14, 17, 18.
Berkeley (Powell St.), Cal.	1, 2, 3, 3A, 14, 17, 18.
*Bird, Cal.	1, 2, 3, 3B.
*Bixby, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
*Blume, Cal.	4, 5, 5A.
*Brighton Beach, Cal.	4A, 4B, 9.
*Bruce, Cal.	4, 5, 5A.
*Burnett (Los Angeles Co.), Cal.	4A, 4B, 9.
*Centinela, Cal.	4, 5, 8.
Central Avenue, Cal.	4, 5, 8.
*Cerritos Oil Spur, Cal.	4A, 4B, 9.
Christie, Cal.	4, 5, 5A.
Clay Pit, Cal.	4, 5, 5A, 6, 7, 8.
Clearwater, Cal.	4A, 4B, 9.
Compton, Cal.	1, 2, 3, 3B.
*Corbin, Cal.	1, 2, 3, 3A, 14.
Coronado, Cal.	4, 5, 6, 7, 8.
890 Coronado Heights, Cal.	4, 5, 6, 7, 8.
*County Farm, Cal.	4A, 4B, 9.
Crockett, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Cudahay, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
*Dodsworth, Cal.	1, 2, 3, 3B.

[1] For key to numbers see page 19.

	Western gateways.
*Dolanco, Cal.	1, 2, 3, 3B.
*Dolores, Cal.	1, 2, 3, 3B.
Dominguez, Cal.	1, 2, 3, 3B.
Dupont, Cal.	4, 5, 5A, 17, 18.
*Dwight, Cal.	4, 5, 5A.
*Earl, Cal.	1, 2, 3, 3B.
East Oakland, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
East San Pedro, Cal. (see footnote)	4A, 4B, 9.
*E. Wilmington, Cal.	4A, 4B, 9.
*Eckley, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Elftman, Cal.	1, 2, 3, 3B.
Elmhurst, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
El Segundo, Cal.	4, 5, 8.
Emery, Cal.	1, 2, 3, 3A, 14, 17, 18.
891 Fitchburg, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14,
*Fleming, Cal.	1, 2, 3, 3A, 14.
Florence, Cal.	1, 2, 3, 3B.
*Fruitland, Cal.	4A, 4B, 9.
Fruitvale, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Garnsey, Cal.	4, 5, 8.
*Gaspur, Cal.	1, 2, 3, 3B.
*Gateley, Cal.	4, 5, 5A.
Giant, Cal.	1, 2, 3, 3A, 14, 17, 18.
Glen Fraser, Cal.	4, 5, 5A.
*Granger, Cal.	1, 2, 3, 3A, 14, 17, 18.
Hercules, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Hermosa Beach, Cal.	4, 5, 8.
Hobart, Cal.	4, 4A, 4B, 5, 8, 9.
*Hyde Park, Cal.	4, 5, 8.
Hynes, Cal.	4A, 4B, 9.
Inglewood, Cal.	4, 5, 8.
Kohler, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Krieger, Cal.	1, 2, 3, 3A, 14.
892 *Lawn, Cal.	4, 5, 8.
*Livny, Cal.	1, 2, 3, 3A, 14.
Long Beach, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
Los Angeles, Cal.	1, 2, 3, 4, 4A, 9.
*Los Medanos, Cal.	1, 2, 3, 3A, 14.
*Luzon (Contra Costa Co.), Cal.	4, 5, 5A.
*Lynwood, Cal.	1, 2, 3, 3B.
McAvoy, Cal.	1, 2, 3, 3A, 14.
*Mail Dock, Cal.	1, 2, 3, 3A, 14.
Maltby, Cal.	4, 5, 5A.
*Manhattan Beach, Cal.	4, 5, 8.
Marmaroas, Cal.	4, 5, 6, 7, 8.
Martinez, Cal.	1, 2, 3, 3A, 14, 17, 18.
Marysville, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
Melrose (Alameda Co.), Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Mococo, Cal.	1, 2, 3, 3A, 14, 17, 18.
Mountain View, Cal.	1, 2, 3, 3A, 14.
Muir, Cal.	4, 5, 5A.
*Nadeau Park, Cal.	1, 2, 3, 3B, 4, 5, 8.

		Western gateways.
	National City, Cal.	4, 5, 8.
	N. C. & O. Junction, Cal.	4, 5, 6, 7, 8.
893	*Nevada Dock, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Nichols, Cal.	1, 2, 3, 3A, 4, 5, 5A, 5B, 14.
	*Nitro, Cal.	1, 2, 3, 3A, 14.
	*Nobel, Cal.	1, 2, 3, 3A, 14.
	Oakland, Cal.	1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 10, 11, 11A (C. L. only), 12, 12B, 12C (C. L. only), 13, 14, 15, 16, 18 (L. C. L. only).
	Oakland Wharf, Cal.	1, 2, 3, 3A, 14.
	*Ocean Avenue, Cal.	1, 2, 3, 3B.
	*Oleum, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Opaco, Cal.	4, 5, 5A.
	*Ostend, Cal.	4A, 4B, 9.
	Otay Wells, Cal.	4, 5, 6, 7, 8.
	Otay Wells Junction, Cal.	4, 5, 6, 7, 8.
	*Pacheco, Cal.	4, 5, 5A.
	Pacific Siding, Cal.	4, 5, 6, 7, 8.
	Pacsteel, Cal.	1, 2, 3, 3A, 14, 17, 18.
	Paraffin, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Peoco, Cal.	4, 5, 5A.
894	*Peyton, Cal.	1, 2, 3, 3A, 4, 5, 8, 14, 17.
	Pinole, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
	Pittsburg, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
	Port Costa, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Posen, Cal.	1, 2, 3, 3A, 14.
	*Potter, Cal.	1, 2, 3, 3A, 14.
	(R) Power, Cal.	4A, 4B, 9.
	*Prince (Contra Costa Co.), Cal.	1, 2, 3, 3A, 14.
	*Race Track, Cal.	1, 2, 3, 3A, 14.
	*Rodo, Cal.	4, 5, 5A.
	Redondo Beach, Cal.	4, 5, 8.
	Redwood, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Rheem, Cal.	4, 5, 5A.
	Richmond, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
895	Richmond Belt Ry. (all points), Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
	Rodeo, Cal.	1, 2, 3, 3A, 14.
	*Rowley, Cal.	4, 5, 8.
	Sacramento, Cal.	1, 2, 3, 3A, 5A, 9A, 9B, 14.
	Salt Works, Cal.	4, 5, 6, 7, 8.
	San Diego, Cal.	4, 5, 8.
	San Francisco, Cal. (see footnote)	1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 10, 11, 11A, 12, 12A, 12C, 13, 13A, 14, 15.
	San Jose, Cal.	1, 2, 3, 3A, 14.
	San Leandro, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
	San Pablo, Cal.	1, 2, 3, 3A, 4, 5, 5A.
	San Pedro, Cal.	1, 2, 3, 3B.
	Sand Pit, Cal.	4, 5, 6, 7, 8.
	Santa Clara, Cal.	1, 2, 3, 3A, 14.
	*Schindler, Cal.	4, 5, 5A.
	*Schmidt, Cal.	4, 5, 5A.

		Western gateways.
	*Seaside (Los Angeles Co.)	4A, 4B, 9.
	Sedan, Cal.	1, 2, 3, 3A, 14.
	Selby, Cal.	1, 2, 3, 3A, 14, 17, 18.
896	Seminary Park, Cal.	1, 2, 3, 3A, 14.
	*Seventh St., Cal.	4A, 4B, 9.
	*Shellmound, Cal.	1, 2, 3, 3A, 14.
	*Slauson, Cal.	4, 5, 8.
	*Sobrante, Cal.	1, 2, 3, 3A, 14.
	So. San Francisco, Cal.	1, 2, 3, 3A, 14, 17, 18.
	South Vallejo, Cal.	1, 2, 3, 3A, 14, 17, 18.
	Stego, Cal.	1, 2, 3, 3A, 14.
	Stockton, Cal.	1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 14.
	Stockyards, Cal.	1, 2, 3, 3A, 14.
	Sunnyvale, Cal.	1, 2, 3, 3A, 14.
	Tent City, Cal.	4, 5, 6, 7, 8.
	Terminal Island, Cal.	4A, 4B, 9.
	Thenard, Cal.	1, 2, 3, 3B.
	*Thenard, Cal.	4A, 4B, 9.
	*Tomey, Cal.	1, 2, 3, 3A, 14.
	Torrance, Cal.	1, 2, 3, 3B.
	Tillman, Cal.	1, 2, 3, 3A, 14.
	*Tweedy, Cal.	1, 2, 3, 3B.
897	Vallejo Junction, Cal.	1, 2, 3, 3A, 14.
	*Vernondale, Cal.	1, 2, 3, 3B.
	*Vigorit, Cal.	1, 2, 3, 3A, 14.
	*Vine Hill, Cal.	4, 5, 5A.
	*Watson, Cal.	1, 2, 3, 3B.
	West Alameda, Cal.	1, 2, 3, 3A, 14.
	West Berkeley, Cal.	1, 2, 3, 3A, 14.
	Western Pacific Mole, Cal.	5B, 9A, 9B.
	*Western Street, Cal.	1, 2, 3, 3B.
	*Wildasin, Cal.	4, 5, 8.
	Wilmington, Cal.	1, 2, 3, 3B.
	*Wiseburn, Cal.	4, 5, 8.
	Workman, Cal.	4A, 4B, 9.
	*Zinc, Cal.	4A, 4B, 9

FOOTNOTE.—For rates which apply to San Francisco and East San Pedro, Cal., on traffic destined to and consigned through to Alaska and points located on or tributary to Yukon River or to Hawaiian Islands and to East San Pedro, Cal., on traffic destined and consigned through to points in Mexico, Central America, and South America, see page 21.

(R) Reduction in rates.

PETITIONER'S EXHIBIT NO. 31, SEPTEMBER 25, 1914.

Interstate Commerce Commission, Division of Tariffs, May 22, 1914.

Statement showing rates on various commodities from California terminals to New York via Southern Pacific R. R. and Morgan Line compared with rates via other routes.

Rates in cents per 100 pounds.

Commodities, carloads.	June 17, 1895.		Jan. 10, 1898.		July 16, 1898.		Jan. 18, 1900.		Oct. 12, 1903.		Jan. 1, 1909.				
	Via Morgan Line.	Other line.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.			
Asbestos	120	120	120	120					(d)	(d)					
Barley, whole, in sacks			75	100			75	75	50	75	65	75	[b] 70	70	To date.
Beans	80	[a] 100	75	100			75	75			85	85			To date.
Copper cement	120	120	70	100			75	75							To date.
Coffee, green, in sacks	80	[b] 100	75	100			100	100	75	75	80	80			To date.
Canned goods (fish, fruits, meats), vegetables, and preserved fruit			75	75			75	75			85	85			[e] To date.
Honey, strained, in tin, boxed	[c] 75	110					110	110	85	85	100	100			To date.
Seed, alfalfa	75	125					[f] 75	[f] 75			120	125	[b] 125	[b] 125	To date.
Antimony ore			50	100			100	100	75	75	(k)	(k)			
Glue			75	120			75	75			85	85			To date.
Infusorial earth			75	100	60	100	75	75	50	(d)			[b] 60	60	To date.
Lees, wine			75	100			100	100					(l)	(l)	
Matting, china			100	100											To date.
Oil, red			78½	110			78½	78½			100	100	[g] 90	[g] 90	To date.
Quicksilver			75	155	155	155	75	75			85	85			To date.
Rice, in packages			75	100			75	75			60	(k)	(l)		
Seed, mustard			75	100			75	75			85	85			To date.
Shells, sea, n. o. s.			100	150			150	150			100	100	(l)	(l)	
Tallow			75	100			75	75							To date.
900-901 Tea and tea dust			100	150			100	100							To date.
Wheat in sacks			75	100	100	100	75	75	(d)	(d)					
Wool in grease, compressed			80	100			80	(e)	(d)	(d)					
Dyewoods			120	120									(l)	(l)	
Extracts, bark, in packages			135	135							100	100			To date.
Fruits, dried, Pacific coast products, including raisins, prunes, and figs			100	100							110	110			To date.
Nuts, edible			130	130							140	140			To date.

[For footnotes see page 1612.]

Statement showing rates on various commodities from California terminals to New York via Southern Pacific R. R., etc.—Continued.

Commodities, carloads.	June 17, 1895.		January 10, 1898.		July 16, 1898.		January 18, 1900.		Oct. 12, 1903.		Jan. 1, 1909.				
	Via Morgan Line.	Other line.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.	Morgan or Mallory.	Other routes.			
Oil, olive, in packages			175	175			100	100							To date.
Agricultural implements, reapers, etc			135	135									(1)	(1)	
Bags, burlap, and gunny			120	120			75	75			85	85	(1)	(1)	
Chocolate and cocoa, boxed			100	100							75	90	(1)	(1)	
Medicines, patent, proprietary, etc			100	100	125	125					150	150	(1)	(1)	
Oil, cocoanut, fish, foot, red, whale, etc			110	110							115	115	[b] 90	90	To date.
Soap, in packages			100	100			75	75			80	80			To date.
Vinegar, in wood			100	100											To date.
Lower via Morgan Line	4		17		1		1		1		3				
Lower via other routes															
Via Morgan Line only									1		1				
Via other routes only															

REFERENCES:

[a] Effective Oct. 31, 1895.
[b] Effective July 18, 1913.
[c] Withdrawn May 9, 1898.
[d] Withdrawn Oct. 12, 1903.
[e] Withdrawn Jan. 18, 1900.
[f] Withdrawn July 1, 1902.
[g] Effective June 5, 1909.
[h] Effective Aug. 19, 1912.
[i] Withdrawn Aug. 19, 1912.
[k] Withdrawn Jan. 1, 1909.

902 AUGUST 25, 1914.

Memorandum.

"California terminals" include San Francisco, Sacramento, Marysville, Stockton, Benicia, South Vallejo, Port Costa, Crockett, Richmond, Oakland, San Jose, Los Angeles, San Diego, and National City, Cal., and points in California in contiguous territory specifically shown in attached photograph, pages 17 and 18, taken from "Trans-Continental Tariff."

Points to which rates named herein apply.

"California terminals."

Rates shown herein as applying to "California terminals" will apply to the points designated below, via the gateways indicated opposite each point. (See Exceptions, page 20.)

	Western gateways.
Alameda, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Alcatraz, Cal.	4, 5, 5A, 17, 18.
*Ambrose, Cal.	4, 5, 5A.
Antioch, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
*Ardmore, Cal.	1, 2, 3, 3B.
Avon, Cal.	1, 2, 3, 3A, 14.
903 Bay Point, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17, 18.
*Bells (Los Angeles Co.), Cal.	4A, 4B, 9.
Benicia, Cal.	1, 2, 3, 3A, 14, 17, 18.
Berkeley, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
Berkeley (Carlton St.), Cal.	1, 2, 3, 3A, 14, 17, 18.
Berkeley (Powell St.), Cal.	1, 2, 3, 3A, 14, 17, 18.
*Bird, Cal.	1, 2, 3, 3B.
*Bixby, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
*Blume, Cal.	4, 5, 5A.
*Brighton Beach, Cal.	4A, 4B, 9.
*Bruce, Cal.	4, 5, 5A.
*Burnett (Los Angeles Co.), Cal.	4A, 4B, 9.
*Centinela, Cal.	4, 5, 8.
Central Avenue, Cal.	4, 5, 8.
*Cerritos Oil Spur, Cal.	4A, 4B, 9.
Christie, Cal.	4, 5, 5A.
Clay Pit, Cal.	4, 5, 5A, 6, 7, 8.
Clearwater, Cal.	4A, 4B, 9.
Compton, Cal.	1, 2, 3, 3B.
*Corbin, Cal.	1, 2, 3, 3A, 14.
Coronado, Cal.	4, 5, 6, 7, 8.
904 Coronado Heights, Cal.	4, 5, 6, 7, 8.
*County Farm, Cal.	4A, 4B, 9.
Crockett, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Cudahay, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
*Dodsworth, Cal.	1, 2, 3, 3B.

*For key to numbers, see p. 19.

	Western gateways.
*Dolanco, Cal.	1, 2, 3, 3B.
*Dolores, Cal.	1, 2, 3, 3B.
Dominguez, Cal.	1, 2, 3, 3B.
Dupont, Cal.	4, 5, 5A, 17, 18.
*Dwight, Cal.	4, 5, 5A.
*Earl, Cal.	1, 2, 3, 3B.
East Oakland, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
East San Pedro, Cal. (see foot note)	4A, 4B, 9.
*E. Wilmington, Cal.	4A, 4B, 9.
*Eckley, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Elftman, Cal.	1, 2, 3, 3B.
Elmhurst, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
El Segundo, Cal.	4, 5, 8.
Emery, Cal.	1, 2, 3, 3A, 14, 17, 18.
905 Fitchburg, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Fleming, Cal.	1, 2, 3, 3A, 14.
Florence, Cal.	1, 2, 3, 3B.
*Fruitland, Cal.	4A, 4B, 9.
Fruitvale, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Garnsey, Cal.	4, 5, 8.
*Gaspur, Cal.	1, 2, 3, 3B.
*Gateley, Cal.	4, 5, 5A.
Giant, Cal.	1, 2, 3, 3A, 14, 17, 18.
Glen Fraser, Cal.	4, 5, 5A.
*Granger, Cal.	1, 2, 3, 3A, 14, 17, 18.
Hercules, Cal.	1, 2, 3, 3A, 14, 17, 18.
*Hermosa Beach, Cal.	4, 5, 8.
Hobart, Cal.	4, 4A, 4B, 5, 8, 9.
*Hyde Park, Cal.	4, 5, 8.
Hynes, Cal.	4A, 4B, 9.
Inglewood, Cal.	4, 5, 8.
Kohler, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Krieger, Cal.	1, 2, 3, 3A, 14.
906 *Lawn, Cal.	4, 5, 8.
*Livny, Cal.	1, 2, 3, 3A, 14.
Long Beach, Cal.	1, 2, 3, 3B, 4A, 4B, 9.
Los Angeles, Cal.	1, 2, 3, 4, 4A, 9.
*Los Medanos, Cal.	1, 2, 3, 3A, 14.
*Luzon (Contra Costa Co.), Cal.	4, 5, 5A.
*Lynwood, Cal.	1, 2, 3, 3B.
McAvoy, Cal.	1, 2, 3, 3A, 14.
*Mail Dock, Cal.	1, 2, 3, 3A, 14.
Maltby, Cal.	4, 5, 5A.
*Manhattan Beach, Cal.	4, 5, 8.
Marmaroas, Cal.	4, 5, 6, 7, 8.
Martinez, Cal.	1, 2, 3, 3A, 14, 17, 18.
Marysville, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
Melrose (Alameda Co.), Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
*Mococo, Cal.	1, 2, 3, 3A, 14, 17, 18.
Mountain View, Cal.	1, 2, 3, 3A, 14.
Muir, Cal.	4, 5, 5A.
*Nadeau Park, Cal.	1, 2, 3, 3B, 4, 5, 8.
National City, Cal.	4, 5, 8.

* For key to numbers, see p. 19.

Western gateways.

	N. C. & O. Junction, Cal.	4, 5, 6, 7, 8.
907	*Nevada Dock, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Nichols, Cal.	1, 2, 3, 3A, 4, 5, 5A, 5B, 14.
	*Nitro, Cal.	1, 2, 3, 3A, 14.
	*Nobel, Cal.	1, 2, 3, 3A, 14.
	Oakland, Cal.	1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 10, 11, 11A (C. L. only), 12, 12B, 12C (C. L. only), 13, 14, 15, 16, 18 (L. C. L. only).
	Oakland Wharf, Cal.	1, 2, 3, 3A, 14.
	*Ocean Avenue, Cal.	1, 2, 3, 3B.
	*Oleum, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Opaco, Cal.	4, 5, 5A.
	*Ostend, Cal.	4A, 4B, 9.
	Otay Wells, Cal.	4, 5, 6, 7, 8.
	Otay Wells Junction, Cal.	4, 5, 6, 7, 8.
	*Pacheco, Cal.	4, 5, 5A.
	Pacific Siding, Cal.	4, 5, 6, 7, 8.
	Pacsteel, Cal.	1, 2, 3, 3A, 14, 17, 18.
	Paraffin, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Peoco, Cal.	4, 5, 5A.
908	*Peyton, Cal.	1, 2, 3, 3A, 4, 5, 8, 14, 17.
	Pinole, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
	Pittsburg, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
	Port Costa, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Posen, Cal.	1, 2, 3, 3A, 14.
	*Potter, Cal.	1, 2, 3, 3A, 14.
	(R) Power, Cal.	4A, 4B, 9.
	*Prince (Contra Costa Co.), Cal.	1, 2, 3, 3A, 14.
	*Race Track, Cal.	1, 2, 3, 3A, 14.
	*Redo, Cal.	4, 5, 5A.
	Redondo Beach, Cal.	4, 5, 8.
	Redwood, Cal.	1, 2, 3, 3A, 14, 17, 18.
	*Rheem, Cal.	4, 5, 5A.
	Richmond, Cal.	1, 2, 3, 3A, 4, 5, 5A, 14.
909	Richmond Belt Ry. (all points), Cal.	1, 2, 3, 3A, 4, 5, 5A, 14, 17.
	Rodeo, Cal.	1, 2, 3, 3A, 14.
	*Rowley, Cal.	4, 5, 8.
	Sacramento, Cal.	1, 2, 3, 3A, 5A, 9A, 9B, 14.
	Salt Works, Cal.	4, 5, 6, 7, 8.
	San Diego, Cal.	4, 5, 8.
	San Francisco, Cal. (see footnote)	1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 10, 11 11A, 12, 12A, 12C, 13, 13A, 14, 15.
	San Jose, Cal.	1, 2, 3, 3A, 14.
	San Leandro, Cal.	1, 2, 3, 3A, 5B, 9A, 9B, 14.
	San Pablo, Cal.	1, 2, 3, 3A, 4, 5, 5A.
	San Pedro, Cal.	1, 2, 3, 3B.
	Sand Pit, Cal.	4, 5, 6, 7, 8.
	Santa Clara, Cal.	1, 2, 3, 3A, 14.
	Schindler, Cal.	4, 5, 5A.
	Schmidt, Cal.	4, 5, 5A.
	Seaside (Los Angeles Co.) Cal	4A, 4B, 9.
	Sedan, Cal.	1, 2, 3, 3A, 14.
	Selby, Cal.	1, 2, 3, 3A, 14, 17, 18.

* For key to numbers, see p. 19.

		Western gateways.
910	Seminary Park, Cal.	1, 2, 3, 3A, 14.
	*Seventh St., Cal.	4A, 4B, 9.
*Shellmound, Cal.		1, 2, 3, 3A, 14.
*Slauson, Cal.		4, 5, 8.
*Sobrante, Cal.		1, 2, 3, 3A, 14.
So. San Francisco, Cal.		1, 2, 3, 3A, 14, 17, 18.
South Vallejo, Cal.		1, 2, 3, 3A, 14, 17, 18.
Stego, Cal.		1, 2, 3, 3A, 14.
Stockton, Cal.		1, 2, 3, 3A, 4, 5, 5A, 5B, 9A, 9B, 14.
Stockyards, Cal.		1, 2, 3, 3A, 14.
Sunnyvale, Cal.		1, 2, 3, 3A, 14.
Tent City, Cal.		4, 5, 6, 7, 8.
Terminal Island, Cal.		4A, 4B, 9.
Thenard, Cal.		1, 2, 3, 3B.
*Thenard, Cal.		4A, 4B, 9.
*Tomey, Cal.		1, 2, 3, 3A, 14.
Torrance, Cal.		1, 2, 3, 3B.
Tillman, Cal.		1, 2, 3, 3A, 14.
	*Tweedy, Cal.	1, 2, 3, 3B.
911	Vallejo Junction, Cal.	1, 2, 3, 3A, 14.
	*Vernondale, Cal.	1, 2, 3, 3B.
*Vigorit, Cal.		1, 2, 3, 3A, 14.
*Vine Hill, Cal.		4, 5, 5A.
*Watson, Cal.		1, 2, 3, 3B.
West Alameda, Cal.		1, 2, 3, 3A, 14.
West Berkeley, Cal.		1, 2, 3, 3A, 14.
Western Pacific Mole, Cal.		5B, 9A, 9B.
*Western Street, Cal.		1, 2, 3, 3B.
*Wildasin, Cal.		4, 5, 8.
Wilmington, Cal.		1, 2, 3, 3B.
*Wiseburn, Cal.		4, 5, 8.
Workman, Cal.		4A, 4B, 9.
*Zinc, Cal.		4A, 4B, 9.

FOOTNOTE.—For rates which apply to San Francisco and East San Pedro, Cal., traffic destined to and consigned through to Alaska and points located on or tributa to Yukon River or to Hawaiian Islands and to East San Pedro, Cal., on traffic destin and consigned through to points in Mexico, Central America, and South America, page 21.

(R) Reduction in rates.

912 PETITIONER'S EXHIBIT (TOPPING) No. 32, SEPTEMBER 25, 191

Only two supplements to this tariff may be in force at any tim
I. C. C. No. 3088.

[For canceled issues, see page 2.]

Southern Pacific Company (Pacific System) and Arizona & Colora
R. R. Co., Arizona Southern R. R. Co., Boca & Loyalton R. R
Eureka & Palisade Ry. Co., Gila Valley, Globe & Northern R
Co., Nevada & California Ry., Nevada-California-Oregon Ry

Sierra Valleys Ry., in connection with Southern Pacific Company's Atlantic steamship lines, "Morgan Line," and participating carriers named on page 4 (via Galveston, Tex., or New Orleans, La.).

Joint freight tariff No. 426.

[For canceled issues, see page 2.]

913 Naming commodity rates for transportation of freight from points in Arizona, California, Nevada, New Mexico, and Utah to points in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia (as shown herein).

Issued November 20, 1908. Effective January 1, 1909.

Issued by G. W. Luce, general freight agent, San Francisco, Cal.

Approved by H. A. Jones, freight traffic manager, San Francisco, Cal.

Mailed I. C. C. November 20, 1908. (11-14-08-5000). Authy. 13665.

914 (Pages 6 and 7:) Points from which rates named herein apply—Continued. (See pages 18 to 22, inclusive.)

States.	Roads on which located.	Group No.		
ARIZONA—contd.				
Solomon	G. V. G. & N.			
Sonita	S. P. Co.			
Tanque	G. V. G. & N.			
Tucson	S. P. Co.	1		
Vail	S. P. Co.	1		
Washington Camp	Chris. Wilson's team line.			
Wellton	S. P. Co.	1		
Willcox	S. P. Co.	1		
Yuma	S. P. Co.	1		
CALIFORNIA.				
Aberdeen	N. & C. Ry.			
Ager	S. P. Co.			
Alvord	N. & C. Ry.			
Amedee	N. C. O. Ry.			
Beckwith	S. V. Ry.			
915 Benton	N. & C. Ry.			
Bigelow	N. & C. Ry.			
Black Canyon	N. & C. Ry.			
Brockmans	N.-C.-O. Ry.			
Cameron	N.-C.-O. Ry.			
Chalfant	N. & C. Ry.			
Chat	N.-C.-O. Ry.			
Chilcoot	S. V. Ry.			
Citrus	N. & C. Ry.			
Constantia	N.-C.-O. Ry.			

States.	Roads on which located.	Group No.		
CALIFORNIA—contd.				
Dorris	C. N. Ry.			
Doyle	N.-C.-O. Ry.			
Elna	N. & C. Ry.			
Francis	N. & C. Ry.			
Granite	N.-C.-O. Ry.			
Hammil	N. & C. Ry.			
Horse Lake	N.-C.-O. Ry.			
Hot Springs	N.-C.-O. Ry.			
Inyo	N. & C. Ry.			
Italy	N.-C.-O. Ry.			
Keeler	N. & C. Ry.			
916 Laws	N. & C. Ry.			
Likely	N.-C.-O. Ry.			
Liegan	N.-C.-O. Ry.			
Madeline	N.-C.-O. Ry.			
Moffett	N.-C.-O. Ry.			
Mt. Whitney	N. & C. Ry.			
Murray	N.-C.-O. Ry.			
Owenyo	N. & C. Ry.			
Plumas	S. V. Ry.			
Polita	N. & C. Ry.			
Purdy	N.-C.-O. Ry.			
Red Canyon	N.-C.-O. Ry.			
Secret Valley	N.-C.-O. Ry.			
Summit	N.-C.-O. Ry.			
Swansea	N. & C. Ry.			
Termo	N.-C.-O. Ry.			
U. C. Spur	N.-C.-O. Ry.			
Vinton	S. V. Ry.			
Waverly	N.-C.-O. Ry.			
917 NEVADA.				
Akbar	S. P. Co.		2	
Alazon	S. P. Co.		2	
Anthony	S. P. Co.		2	
Argenta	S. P. Co.		2	
Argo	S. P. Co.		2	
Avenel	S. P. Co.		2	
Battle Mountain	S. P. Co.		2	
Banvard	S. P. Co.		2	
Barth	S. P. Co.		2	
Basalt	N. & C. Ry.			
Belleville	N. & C. Ry.			
Benin	S. P. Co.		2	
Beowawe	S. P. Co.		2	
Brown	S. P. Co.		2	
Carlin	S. P. Co.		2	
Cedar	S. P. Co.		2	
Churchill	N. & C. Ry.			
Clark	S. P. Co.		2	
Cluro	S. P. Co.		2	
918 Cobre	S. P. Ry.		2	
Coin	S. P. Ry.		2	
Calvada (Cal.-Nev. line)	S. P. Ry.			
Comus	S. P. Ry.		2	
Cosgrave	S. P. Ry.		2	
C. R. & M. S. Co.'s siding	S. P. Ry.		2	
Deeth	S. P. Ry.		2	
Derby	S. P. Ry.		2	
Desert	S. P. Ry.		2	

States.	Roads on which located.	Group No.		
NEVADA—contd.				
itho	S. P. Ry		2	3
odon	S. P. Ry		2	3
glon	S. P. Ry		2	3
lburz	S. P. Ry		2	3
lko	S. P. Ry		2	3
ssex Ice House	S. P. Ry		2	3
ureka	E. & P. Ry. Co			
ahia	S. P. Co		2	3
arrel	S. P. Co		2	3
enelon	S. P. Co		2	3
ernley	S. P. Co		2	3
Fleish	S. P. Co			
9 Francis	N. C. O. Ry			
Gerald	S. P. Co		2	3
illis	N. & C. Ry			
ilpin	S. P. Co		2	3
olconda	S. P. Co		2	3
anite Point	S. P. Co		2	3
afed	S. P. Co		2	3
alleck	S. P. Co		2	3
arney	S. P. Co		2	3
azen	S. P. Co		2	3
erin	S. P. Co		2	3
olborn	S. P. Co		2	3
umboldt	S. P. Co		2	3
exley	S. P. Co		2	3
arue	S. P. Co		2	3
lay	S. P. Co		2	3
n Point	S. P. Co		2	3
de	S. P. Co		2	3
w	S. P. Co		2	3
Kinkead	N. & C. Ry			
Kodak	S. P. Co		2	3
Ladoga	S. P. Co		2	3
mar	S. P. Co		2	3
rton	S. P. Co		2	3
ray	S. P. Co		2	3
velock	S. P. Co		2	3
ning	N. & C. Ry			
va	S. P. Co		2	3
rmol	S. P. Co		2	3
sie	S. P. Co		2	3
l City	S. P. Co		2	3
iam	S. P. Co		2	3
gul	S. P. Co		2	3
deen	S. P. Co		2	3
ntello	S. P. Co		2	3
or	S. P. Co		2	3
el	S. P. Co		2	3
e	S. P. Co		2	3
di	S. P. Co		2	3
Natchez	S. P. Co		2	3
Noble	S. P. Co		2	3
Ocala	S. P. Co		2	3
ar	S. P. Co		2	3
ana	S. P. Co		2	3
o	S. P. Co		2	3
ade	S. P. Co		2	3
an	S. P. Co		2	3
a	S. P. Co		2	3
uop	S. P. Co		2	3

State.	Roads on which located.	Group No.		
NEVADA—contd.				
Perth	S. P. Co.		2	
Piute	S. P. Co.		2	
Preble	S. P. Co.		2	
Prison track	S. P. Co.		2	
Queen	N. & C. Ry.			
Rasid	S. P. Co.		2	
Reno	S. P. Co.		2	
Rhodes	N. & C. Ry.			
Rio Vista	N. & C. Ry.			
Rose Creek	S. P. Co.		2	
Rosny	S. P. Co.		2	
Rye Patch	S. P. Co.		2	
922 Ryndon	S. P. Co.		2	
Schurz	N. & C. Ry.			
Silex	N. & C. Ry.			
Sparks	S. P. Co.		2	
Stone House	S. P. Co.		2	
Summit	N. C. O. Ry.			
Sunland	N. & C. Ry.			
Tecoma	S. P. Co.		2	
Thisbe	S. P. Co.		2	
Tonka	S. P. Co.		2	
Toulon	S. P. Co.		2	
Tulasco	S. P. Co.		2	
Tule	S. P. Co.		2	
Tyrol	S. P. Co.		2	
Ullin	S. P. Co.		2	
Upsal	S. P. Co.		2	
Valery	S. P. Co.		2	
Valley Pass	S. P. Co.		2	
Valmy	S. P. Co.		2	
Verdi	S. P. Co.		2	
923 Vista	S. P. Co.		2	
Vivian	S. P. Co.		2	
Wabuska	N. & C. Ry.			
Ware	S. P. Co.		2	
Wells	S. P. Co.		2	
Winnemucca	S. P. Co.		2	
Woolsey	S. P. Co.		2	
Wright	S. P. Co.		2	
Zola	S. P. Co.		2	
NEW MEXICO.				
Aden	S. P. Co.	1		
Cambray	S. P. Co.	1		
Deming	S. P. Co.	1		
Gage	S. P. Co.	1		
Lanark	S. P. Co.	1		
Lordsburg	S. P. Co.	1		
Rio Grande	S. P. Co.	1		
Separ	S. P. Co.	1		
Steins	S. P. Co.	1		
924 UTAH.				
Balfour	S. P. Co.			
Blue Creek	S. P. Co.			
Bovine	S. P. Co.			
Corinne	S. P. Co.			
Dathol	S. P. Co.			

States.	Roads on which located.	Group No.		
UTAH—continued.				
artney	S. P. Co.			3
ansen	S. P. Co.			3
elton	S. P. Co.			3
olmar	S. P. Co.			3
alvo	S. P. Co.			3
atlin	S. P. Co.			3
etaurus	S. P. Co.			3
onument	S. P. Co.			3
mbey	S. P. Co.			3
plin	S. P. Co.			3
romontory	S. P. Co.			3
osel	S. P. Co.			3
oke	S. P. Co.			3
rbon	S. P. Co.			3
rrace	S. P. Co.			3
mbria Junction	S. P. Co.			3

5 (Extract from page 17:)

Routes.

Route No. 1: Via Southern Pacific Co., via Rio Grande, N. M., and alveston, Harrisburg & San Antonio Ry Co.; Texas & New Orleans . R. Co.; Louisiana Western R. R. Co.; Morgan's Louisiana & exas R. R. & S. S. Co., via New Orleans, La.; Southern Pacific Co.'s tlantic steamship lines (Morgan Line) and New York pier. Or alveston, Harrisburg & San Antonio Ry. Co., via Galveston, Tex.; outhern Pacific Co.'s Atlantic steamship lines (Morgan Line) and ew York pier.

Route No. 2: Via Southern Pacific Co., via Rio Grande, N. M., and alveston, Harrisburg & San Antonio Ry. Co.; Texas & New Orleans R. Co.; Louisiana Western R. R. Co.; Morgan's Louisiana & Texas R. & S. S. Co., via New Orleans, La.; Southern Pacific Co.'s Atlantic steamship lines (Morgan Line) via New York pier and 6 eastern connections parties to this tariff. Or Galveston, Harrisburg & San Antonio Ry. Co., via Galveston, Tex.; Southern cific Co.'s Atlantic steamship lines (Morgan Line) via New York r and eastern connections parties to this tariff.

(From page 22): Commodity rates—Continued.

Commodity.	From—	To—	Rate in cents per 100 lbs.	Routing.
Wool, in grease, carloads; minimum carload weight, 20,000 lbs.	Corinne, Utah; Marmol, Nev.; and points shown in group 3, pages 6 and 7.	New York, N. Y.; Boston, Mass.; and points shown on pages 8 to 12, inclusive, as taking group 4 rates.	207½	Via route 1 (page 17).

NOTE 1.—The privilege of stopping at Reno, Nev., wool originating at Tecoma, Nev., and points intermediate to Reno, Nev., in transit to destination is extended to shippers for the purpose of pre-
927 paring packages for through shipment; in such cases, in addition to the freight charges from original point of shipment to final destination, there will be assessed for handling to and from the warehouse at Reno, Nev., 30 cents per 100 lbs., which will accrue to So. Pac. Co. (Pac. Sys.).

NOTE 2.—When the minimum carload weight or more is shipped in one day by one consignor to one consignee, covered by one bill of lading, the above carload rate shall apply on the entire lot although it may be less than two or more carload lots. The first car or cars must be loaded to their full capacity, and are subject to minimum weight of 20,000 lbs. The actual weight of the remainder, provided it is loaded in box cars, to be charged for at the carload rate, reference being made on the waybill for the remainder of the lot to the waybill for the full carload or loads.

928 PETITIONER'S EXHIBIT No. 33, SEPTEMBER 30, 1914.

(Memoranda prepared by Mr. J. C. Stubbs, appearing at pages 3397 to 3403 of the printed record in United States versus Union Pacific Railroad Company, volume 7.)

Memoranda

Showing method used to divide (distribute) transcontinental freight rates, namely: Arbitrary allowances for river and bay transfer, and the distribution of the remainder by percentages—illustrated by application to a rate of $1.00 per 100 pounds—from each of several important shipping points (which are representative points for a group) to San Francisco.

Same formulas are applicable to any rate between same points.

1. Omaha to San Francisco via Ogden:
Deduct 5 cents per 100 lbs. (San Francisco Bay) remainder—

Line Omaha to Ogden, 54%----------	51.3
Line Ogden to San Francisco, 46%+5¢----------	48.7
	$1.00

929 2. Council Bluffs to San Francisco via Ogden:
Deduct 10 cents per 100 lbs. (Missouri River bridge 5¢ San Francisco Bay, 5¢) remainder—

Line Council Bluffs to Ogden 54%+5¢----------	53.6
Line Ogden to San Francisco 46%+5¢----------	46.4
	$1.00

3. Kansas City to San Francisco via Ogden:
Same as No. 1.

4. Kansas City to San Francisco via El Paso:
Deduct 5¢ per 100 lbs. (San Francisco Bay) remainder—

Line Kansas City to El Paso, 47.3%	44.9
Line El Paso to San Francisco, 52.7%+5¢	55.1
	$1.00

5. St. Louis to San Francisco via Co. Bluffs and Ogden:

Line St. Louis to Co. Bluffs, 11%	11.
Remainder same as No. 2—	
Co. Bluffs to Ogden	47.7
Ogden to San Francisco	41.3
	$1.00

6. St. Louis to San Francisco via Kansas City and Ogden:

Line St. Louis to Kansas City, 11%	11.
Remainder same as No. 3 and No. 1, viz—	
Line Kansas City to Ogden	45.4
Line Ogden to San Francisco	43.6
	$1.00

7. St. Louis to San Francisco via El Paso:
Deduct 5 cents per 100 lbs.
(San Francisco Bay) remainder—

Line St. Louis to El Paso, 51%	48.45
Line El Paso to San Francisco, 49%+5¢	51.55
	$1.00

8. St. Louis to San Francisco via New Orleans:
Deduct 5 cents per 100 lbs.
(San Francisco Bay) remainder—

Line El Paso to San Francisco, 49%+5¢	51.5
Remainder—	
Line New Orleans to El Paso, 62.5%	30.3
Line St. Louis to New Orleans, 37.5%	18.2
	$1.00

9. Chicago to San Francisco via Co. Bluffs and Ogden:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder—

Line Chicago to Co. Bluffs, 15%	14.2
Remainder plus 5¢ per 100 lbs. same as No. 2—	
Line Co. Bluffs to Ogden	45.9
Line Ogden to San Francisco	39.9
	$1.00

Chicago to San Francisco via Kansas City and Ogden:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder—

Line Chicago to Kansas City, 15%	14.2
Remainder plus 5¢ per 100 lbs. same as No. 1 & 3—	
Line Kansas City to Ogden	43.6
Line Ogden to San Francisco	42.2
	$1.00

11. Chicago to San Francisco via Kansas City and El Paso:
Deduct 5 cents per 100 lbs.
(Missouri River bridge) remainder—
Line Chicago to Kansas City, 15%---- 14.2
932 Remainder plus 5¢ per 100 lbs. same as No. 4—
Line Kansas City to El Paso---- 38.2
Line El Paso to San Francisco---- 47.6
$1.00

12. Chicago to San Francisco via New Orleans:
Deduct 10 cents per 100 lbs.
(Cairo, 2¢; New Orleans, 3¢; San Francisco, 5¢) remainder—
Line Chicago to New Orleans, 24.3%+2¢---- 23.9
Line New Orleans to El Paso, 32.2%+3¢---- 32
Line El Paso to San Francisco, 43.5%+5¢---- 41.1
$1.00

13. Cincinnati to San Francisco via Chicago & Co. Bluffs:
Line Cincinnati to Chicago, 12%---- 12
Remainder same as No. 9, viz—
Line Chicago to Council Bluffs---- 12.4
Line Council Bluffs to Ogden---- 40.4
Line Ogden to San Francisco---- 35.2
$1.00

933 14. Cincinnati to San Francisco via St. Louis & Kansas City:
Line Cincinnati to E. St. Louis, 15.5%---- 15.5
Remainder—deduct (2¢ per 100 lbs. Mississippi River)—
Line E. St. Louis to Kansas City, 11%+2¢---- 11.1
Remainder same as No. 3 and 1, viz—
Line Kansas City to Ogden---- 38.1
Line Ogden to San Francisco---- 36.3
$1.00

15. Cincinnati to San Francisco via St. Louis & El Paso:
Line Cincinnati to St. Louis, 15½%---- 15.5
Deduct 7 cents per 100 lbs. (Mississippi River, 2¢; San Francisco Bay, 5¢), remainder—
Line St. Louis to El Paso, 51%+2¢---- 41.5
Line El Paso to San Francisco, 49%+5¢---- 43
$1.00

16. On traffic from Cincinnati, Pittsburg, and New York to San Francisco via New Orleans, the Southern Pacific Company west of El Paso receives the same revenue as on traffic routed via St. Louis.

934 17. Cincinnati to San Francisco via New Orleans:
Deduct Southern Pacific Company west of El Paso proportion as per No. 15, viz, 43 cents; remaining 57 cents divides—
Deduct 3¢ per 100 lbs. (New Orleans transfer), remainder—
Line Cincinnati to New Orleans, 40½%---- 21.6
Line New Orleans to El Paso, 59½%+3¢---- 35.1
Line El Paso to San Francisco---- 43
$1.00

18. Pittsburg to San Francisco via Chicago & Co. Bluffs:	
Line Pittsburg to Chicago, 15%	15.
Remainder same as No. 9, viz—	
Line Chicago to Council Bluffs	12.
Line Council Bluffs to Ogden	39.
Line Ogden to San Francisco	34.
	$1.00
19. Pittsburg to San Francisco via St. Louis & Kansas City:	
Line Pittsburg to E. St. Louis, 18½%	18.5
Remainder—deduct 2¢ per 100 lbs. (Mississippi River)—	
Line E. St. Louis to Kansas City, 11%+2¢	10.7
Remainder same as No. 3 and 1, viz—	
935 Line Kansas City to Ogden	35.5
Line Ogden to San Francisco	35.3
	$1.00
20. Pittsburg to San Francisco via St. Louis & El Paso:	
Line Pittsburg to St. Louis, 18½%	18.5
Deduct 7 cents per 100 lbs. (Mississippi River, 2¢; San Francisco Bay, 5¢), remainder—	
Line St. Louis to El Paso, 51%+2¢	40.
Line El Paso to San Francisco, 49%+5¢	41.5
	$1.00
21. Pittsburg to San Francisco via Cincinnati & New Orleans:	
Deduct Southern Pacific Company west of El Paso proportion as per No. 20 (see No. 16), viz. 41.5¢; remaining 58.5¢ divides—	
Line Pittsburg to Cincinnati, 13% of gross rate	13.
Remaining 45.5¢ divides—	
Deduct 3¢ per 100 lbs. (New Orleans transfer)—	
Line Cincinnati to New Orleans, 40.5%	17.2
Line New Orleans to El Paso, 59.5%+3¢	28.3
Line El Paso to San Francisco	41.5
	$1.00
936 22. New York to San Francisco via Chicago & Co. Bluffs:	
Line New York to Chicago, 25%	25
Remainder same as No. 9, viz—	
Line Chicago to Council Bluffs	10.5
Line Council Bluffs to Ogden	34.4
Line Ogden to San Francisco	30.1
	$1.00
23. New York to San Francisco via St. Louis & Kansas City:	
Line New York to E. St. Louis, 29%	29
Remainder—deduct 2¢ per 100 lbs. (Mississippi River)—	
Line E. St. Louis to Kansas City, 11%+2¢	3.6
Remainder same as No. 3 & 1, viz—	
Line Kansas City to Ogden	30.5
Line Ogden to San Francisco	30.9
	$1.00

24. New York to San Francisco via St. Louis & El Paso:

Line New York to St. Louis, 29%	29
Deduct 7 cents per 100 lbs. (Mississippi River, 2¢; San Francisco Bay, 5¢), remainder—	
Line St. Louis to El Paso, 51%+2¢	34.6
Line El Paso to San Francisco, 49%+5¢	36.4
	$1.00

937 25. New York to San Francisco via Cincinnati & New Orleans:

Deduct Southern Pacific Company west of El Paso proportion as per No. 24 (see No. 16), viz, 36.4¢; remaining 63.5¢ divides—	
Line New York to Cincinnati, 22% of gross rate	22
Remaining 41.6¢ divides—	
Deduct 3¢ per 100 lbs. (New Orleans transfer). Line Cincinnati to New Orleans, 40.5%	15.6
Line New Orleans to El Paso, 59.5%+3¢	26.
Line El Paso to San Francisco	36.4
	$1.00

Deductions and percentage proportions taken by lines east of Council Bluffs, Kansas City, St. Louis, Chicago, and Cincinnati are the same on traffic to Los Angeles or Portland as to San Francisco.

26. Council Bluffs, Omaha, or Kansas City to Los Angeles, via Ogden (Southern Pacific):

Line Missouri River to Ogden, 47%	47
Line Ogden to Los Angeles, 53%	53
	$1.00

938 27. Council Bluffs, Omaha, or Kansas City to Los Angeles via Salt Lake (San Pedro):

Line Council Bluffs to Ogden, 57.1%+10%	51.4
Line Ogden to Salt Lake, 10% of 57.1%	5.7
Line Salt Lake to Los Angeles, 42.9%	42.9
	$1.00

28. Kansas City to Los Angeles via El Paso:

Line Kansas City to El Paso, 47.3%	47.3
Line El Paso to Los Angeles, 52.7%	52.7
	$1.00

29. St. Louis to Los Angeles via El Paso:

Line St. Louis to El Paso, 51%	51
Line El Paso to Los Angeles, 49%	49
	$1.00

30. St. Louis to Los Angeles via New Orleans:

Line El Paso to Los Angeles, 49%	49
Remainder—	
Line New Orleans to El Paso, 62.5	31.9
Line St. Louis to New Orleans, 37.5	19.1
	$1.00

39 31. Chicago to Los Angeles via New Orleans:
Deduct 5¢ per 100 lbs.
(Cairo, 2¢; New Orleans, 3¢.)
Remainder—

Line Chicago to New Orleans 24.3%+2¢	25.1
Line New Orleans to El Paso 32.2%+3¢	33.6
Line El Paso to Los Angeles 43.5%	41.3
	$1.00

32. Council Bluffs to Portland via Granger (Union Pacific):
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder—

Line Council Bluffs to Granger, 48%+5¢	48.2
Line Granger to Huntington, 27%	24.3
Line Huntington to Portland, 25%+5¢	27.5
	$1.00

33. Council Bluffs to Portland via Salt Lake (D. & R. G.):
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder—

Line Council Bluffs to Denver, 18%+5¢	21.2
Line Denver to Salt Lake, 30%	27
Line Salt Lake to Huntington 27%	24.3
Line Huntington to Portland, 25%+5¢	27.5
	$1.00

040 34. Omaha or Kansas City to Portland:
Same as 32 and 33, except no deduction for Missouri River bridge.

35. Council Bluffs to Portland via Sacramento—canceled:
Deduct 10¢ per 100 lbs.
(5¢ Missouri River bridge, 5¢ Willamette River bridge.)
Remainder—

Line Council Bluffs to Ogden, 42%+5¢	43.8
Line Ogden to Portland, 58%+5¢	57.2
	$1.00

36. Omaha or Kansas City to Portland:
Same as 35, except no deduction for Missouri River bridge.

37. Kansas City to Portland via El Paso:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder—

Line Kansas City to El Paso, 37.45%	35.6
Line El Paso to Portland, 62.55%+5¢	64.4
	$1.00

941 38. St. Louis to Portland via El Paso:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder—
Line St. Louis to El Paso, 40.82%---------- 38.
Line El Paso to Portland, 59.18%+5¢---------- 61.
$1.00

39. St. Louis to Portland via New Orleans:
Deduct 5¢ per 100 lbs.
(Willamette River bridge.)
Remainder—
Line El Paso to Portland, 59.18%+5¢---------- 61.
Remainder—
Line New Orleans to El Paso, 62.5%---------- 24.
Line St. Louis to New Orleans, 37.5%---------- 14.
$1.00

40. Chicago to Portland via New Orleans:
Deduct 10¢ per 100 lbs.
(2¢ Cairo, 3¢ New Orleans, and 5¢ Portland.)
Remainder—
Line Chicago to New Orleans, 19.9%+2¢---------- 19.
Line New Orleans to El Paso, 26.4%+3¢---------- 26.
Line El Paso to Portland, 53.7%+5¢---------- 53.
$1.00

942 ATLANTIC SEABOARD-COLORADO & UTAH TRAFFIC.

41. Atlantic seaboard to Colorado via all rail:
Practically all of these rates base on Mississippi River; Un. Pac. receiving their percentage proportion of the Mississippi River-Colorado rate, viz—
Line Mississippi River to Missouri River, 29.5%---------- 29.5
Line Missouri River to Colorado, 70.5%---------- 70.5
$1.00

42. Atlantic seaboard to Colorado via South Atlantic ports:
Line New York to Mississippi River, 30.8%---------- 30.8
Line Mississippi River to Colorado, 20.41%---------- 20.41
Line Missouri River to Colorado, 48.79%---------- 48.79
$1.00

On traffic from Atlantic seaboard arbitraries to port first deducted. Maximum proportions prescribed east of Mississippi River.

43 Atlantic seaboard to Colorado via Galveston:

Deduct 5% of through rate for marine insurance.

Remainder—

Line Ft. Worth to Colorado, 44%	41.8
Remainder—	
Deduct 5¢ per 100 lbs. terminal arbitrary.	
963 Remainder—	
Line New York to Galveston, 64.29% plus 5¢ (marine insurance)	36
Line Galveston to Ft. Worth, 35.71% plus 5¢ (terminal)	22.2
	$1.00

Cost of lighterage deducted before prorating.

On traffic from Atlantic seaboard territory arbitrary to port deducted before prorating.

44 Atlantic seaboard to Colorado via New Orleans:

Deduct 5% of through rate for marine insurance.

Remainder—

Line New York to New Orleans, 35%+5¢	38.2
Line New Orleans to Ft. Worth, 21%	20.
Line Ft. Worth to Colorado, 44%	41.8
	$1.00

Cost of lighterage deducted before prorating.

On traffic from Atlantic seaboard territory arbitrary to port deducted before prorating.

45 Atlantic seaboard-Utah common points:

In the division of through rates from Atlantic seaboard to Utah common points, the lines west of the Colorado common point line receive 62½% of the current Missouri River-Utah common point rate. The balance east of the Colorado common points divides in 42, 43, and 44.

PETITIONER'S EXHIBIT No. 34, SEPTEMBER 30, 1914.

SOUTHERN PACIFIC COMPANY.

Statement of earnings and expenses of property leased from the Central Pacific Railroad Company from January 1, 1888, to June 30, 1897, inclusive.

	1888	1889	1890	1891	1892	1893	1894	1895	[2] 1897—18 months.
RECEIPTS.									
Freight	$9,708,482.18	$9,636,342.28	$10,050,207.43	$10,395,779.10	$8,701,478.10	$8,226,908.47	$7,710,461.29	$7,724,197.30	
Passenger	4,852,287.89	4,789,441.40	4,680,993.81	5,044,912.67	4,852,162.03	4,650,630.92	3,881,119.70	3,781,010.94	
Mail	455,660.25	432,965.28	499,750.71	548,776.72	553,008.17	556,816.50	583,044.35	661,986.95	
Express	200,149.08	197,183.37	205,273.21	208,305.99	191,162.29	173,393.01	218,932.71	239,043.63	
Other transportation	151,306.33	178,274.71	235,220.77	83,624.98	70,849.07	57,282.13	55,318.08	61,020.90	
Revenue from operations other than transportation	249,906.31	224,055.20	183,197.19	206,718.72	168,909.67	431,193.90	411,456.13	364,111.95	
Revenues from outside operations	131,040.60	71,952.91	82,361.38	140,986.18	75,420.69	164,910.02	162,638.32	131,956.63	
Total transportation receipts	15,838,832.64	15,530,215.15	15,937,004.50	16,629,104.36	14,612,990.02	14,261,224.95	13,022,970.58	12,963,328.30	[3] 18,260,672.06
Trackage and other rentals	6,030.08		12,306.50	21,657.49	22,057.73	16,019.50	31,585.84	82,329.33	139,262.42
Balance of interest on open accounts				23,536.42	111,604.31	42,663.54	63,688.50		
Miscellaneous		379,833.55							
Total receipts	15,844,862.72	15,910,048.70	15,949,311.00	16,674,298.27	14,746,652.06	14,319,907.99	13,118,244.92	13,045,657.63	18,399,934.48
946-947 **EXPENDITURES.**									
Operating expenses (including expenses of outside operations)	9,632,067.81	9,764,271.80	9,875,018.24	9,211,749.46	8,905,411.40	8,521,889.78	8,168,857.93	8,145,584.37	11,451,361.46
Taxes	233,599.20	478,902.85	500,802.67	510,709.13	453,406.80	512,261.27	436,834.14	497,099.44	562,364.91
Trackage and other rentals	23,600.00	20,000.00	63,589.58	122,057.95	121,912.15	121,482.62	117,545.89	117,895.91	199,893.34
Interest on funded debt	3,438,323.34	3,431,583.85	3,414,442.70	3,510,557.50	3,316,365.00	3,293,677.50	3,353,925.55	3,333,102.50	4,911,132.50
Balance of interest on open accounts	20,927.59	64,283.00	21,228.91						
Amount payable to U. S. Government under Thurman Act	467,217.50	458,242.89	523,950.67	613,516.27	577,048.33	584,775.18	599,700.90	648,390.03	969,095.36
Sinking fund contributions	275,000.00	275,000.00	275,000.00	275,000.00	185,000.00	185,000.00	185,000.00	235,000.00	352,500.00
Additions and betterments	562,605.81	344,963.69	234,645.71	221,742.22	279,668.79	267,180.64			
Expenses extending California & Oregon series A bonds	151,375.00								
Miscellaneous	77,316.63	37,382.51	142,021.97	64,540.56	45,966.12	48,923.78			
Total expenditures	14,882,032.88	14,874,630.59	15,050,700.45	14,529,873.09	13,884,778.59	13,535,190.77	12,861,864.41	12,976,982.25	18,446,347.60

S. P. Co. to C. P. R. R. Co. to make guaranteed rental	397,170.16	324,581.89	461,380.45		496,126.58	575,282.78		
Amount payable to Central Pacific Railroad Company as rental	1,360,000.00	1,360,000.00	1,360,000.00	2,144,425.18	1,350,000.00	1,360,000.00	256,380.51	66,675.38	[1] 46,413.12

[1] These figures appear in red on the original exhibit. Deficit from operations—amount was charged to the Central Pacific Railroad Company.

[2] The business year of the Southern Pacific Company was changed in 1897 from December 31st to June 30th; and the receipts and disbursements for this period are for 18 months; i. e., from January 1, 1896, to June 30, 1897, both inclusive.

[3] Detail of these receipts are not available owing to destruction of records by fire.

NEW YORK, N. Y., *September 10, 1914.*

A. D. MCDONALD, *Vice President and Controller.*

Statement of earnings and expenses of property leased from the Central Pacific Railway Company from July 1, 1897, to June 30, 1905, inclusive.[1]

	1898	1899	1900	1901	1902	1903	1904	1905
RECEIPTS.								
Freight	$9,743,037.88	$10,427,593.54	$11,673,728.24	$12,455,150.57	$12,598,484.79	$13,158,910.20	$13,827,043.09	$14,552,338.48
Passenger	4,425,635.82	4,424,341.44	5,367,934.74	5,618,081.71	6,231,412.67	6,388,231.06	7,088,243.62	7,697,858.05
Mail	670,285.82	717,491.74	718,739.29	729,230.67	733,167.49	862,198.33	862,937.91	865,427.95
Express	237,260.45	258,245.00	297,294.41	313,799.15	354,414.86	396,792.19	466,015.87	457,584.60
Other transportation	80,442.19	79,585.75	92,025.34	102,211.52	88,666.68	118,612.38	112,915.61	134,506.82
Revenues from operations other than transportation	460,097.71	350,635.78	252,155.64	109,815.83	184,965.13	196,927.25	87,057.50	153,542.14
Revenues from outside operations	149,588.79	143,133.66	131,927.93					
Total transportation receipts	15,766,348.66	16,401,026.86	18,533,805.59	19,328,289.45	20,191,111.62	21,121,671.41	22,444,213.60	23,861,258.07
Trackage and other rentals	49,662.96	62,682.36	67,682.36	67,682.36			103,482.36	103,482.36
Total receipts	15,816,011.62	16,463,709.22	18,601,487.95	19,395,971.81	20,191,111.62	21,121,671.41	22,547,695.96	23,964,740.43
EXPENDITURES.								
Operating expenses (including expenses of outside operations)	9,221,669.45	10,038,648.78	11,127,777.78	11,673,206.31	12,559,646.53	12,639,476.87	13,925,568.41	13,279,892.17
Taxes	492,746.93	485,733.35	548,473.82	517,633.45	413,363.67	569,987.80	798,280.20	652,505.21
Trackage and other rentals	107,976.04	124,926.87	112,446.80	108,600.04	5,000.00	314,546.28	684,384.80	699,675.81
Interest on funded debt	3,149,087.50	3,064,025.02	3,026,087.21	2,994,237.58	3,042,601.04	3,022,488.90	3,250,548.06	3,787,154.20
Interest on United States Government notes		735,158.94	1,409,712.72	1,275,208.97	1,180,104.48	1,112,386.99	941,003.52	764,565.36
Amount payable to United Government under Thurman Act	885,817.41	595,269.86						
Sinking fund contributions	235,000.00	235,000.00	60,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00
Total expenditures	14,092,297.33	15,278,762.82	16,284,498.33	16,618,886.35	17,250,715.72	17,708,886.84	19,649,784.99	19,233,792.75
Balance payable to Central Pacific Railway Company as rental	1,723,714.29	1,184,946.40	2,316,989.62	2,777,085.46	2,940,395.90	3,412,784.57	2,897,910.97	4,730,947.68

951 [1] The Central Pacific Railway Company was incorporated on July 29, 1899, as successor to the Central Pacific Railroad Company.

NEW YORK, N. Y., *September 10, 1914.*

A. D. McDONALD, *Vice President and Controller.*

Statement of earnings and expenses of property leased from the Central Pacific Railway Company from July 1, 1905, to June 30, 1913, inclusive.

	1906	1907	1908	1909	1910	1911	1912	1913
RECEIPTS.								
Freight	$16,481,422.66	$19,909,872.47	$19,128,906.37	$18,617,725.73	$20,989,155.76	$18,867,166.56	$18,912,252.13	$20,296,976.56
Passenger	8,500,237.23	9,985,104.72	10,219,546.03	9,333,585.38	10,364,322.29	9,998,905.66	9,458,234.91	10,083,519.10
Mail	845,305.16	1,080,763.22	1,013,412.43	1,024,101.25	1,015,572.46	969,613.46	979,063.51	979,051.54
Express	617,450.05	649,748.17	616,498.85	533,468.48	634,543.41	658,737.33	628,936.62	725,729.08
Other transportation	223,475.71	295,909.93	119,032.74	161,185.32	180,638.13	267,337.19	289,939.11	303,658.30
Revenues from operations other than transportation	159,129.65	271,428.82	282,664.76	253,843.97	259,156.56	224,482.55	215,345.66	261,229.59
Revenues from outside operations			1,479,571.38	1,383,074.21	1,577,046.63	1,596,645.66	1,614,650.09	1,720,673.35
Total transportation receipts	26,827,020.46	32,192,827.33	32,859,632.56	31,306,984.34	35,020,435.24	32,572,588.41	32,098,422.03	34,370,837.52
Trackage and other rentals	106,617.85	110,994.52	16,047.02	127,899.49	78,206.71		62,847.78	74,845.34
Total receipts	26,933,638.31	32,303,821.85	32,875,679.58	31,434,883.83	35,098,641.95	32,572,588.41	32,161,269.81	34,445,682.86
EXPENDITURES.								
Operating expenses (including expenses of outside operations)	15,125,337.91	18,282,968.29	21,163,185.32	17,253,512.34	19,806,998.95	19,332,967.51	18,875,764.49	20,520,091.66
Taxes	692,124.64	692,121.07	862,775.00	924,551.78	1,221,330.58	1,195,331.22	1,464,191.59	1,558,291.04
Trackage and other rentals	668,545.40	266,397.02	122,129.25	180,526.25	262,155.35	462,141.55	215,378.34	
Hire of equipment			464,182.11	480,645.88	614,240.97	564,889.37	848,531.96	907,506.87
Interest on funded debt	4,100,850.01	4,126,522.39	4,159,942.31	4,931,283.03	4,942,735.28	5,276,936.40	7,131,969.94	8,152,811.44
Interest on U. S. Government notes	588,127.20	411,689.04	235,260.88					
Sinking-fund contributions	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	51,000.00	51,000.00
One-half of net earnings or income in excess of 6% on C. P. Ry. Co.'s capital stock retained[1] by S. P. Co.	574,061.57	1,952,797.02	617,613.08	1,514,917.28	1,804,325.41	484,896.18		
Total expenditures	21,799,046.73	25,782,494.83	27,675,077.95	25,335,436.56	28,701,786.54	27,367,162.23	28,587,136.32	31,189,701.01
Balance payable to Central Pacific Ry. Co. as rental	5,134,591.58	6,521,327.02	5,200,601.63	6,099,447.27	6,396,855.41	5,205,426.18	3,574,133.49	3,255,981.85

954 [1] Of the proportion of net earnings retained by the Southern Pacific Co. the following amounts were subsequently refunded to the Central Pacific Ry. Co. for the reasons stated below, viz:

In 1909: Account of charges to operating expenses in 1905 and 1906 for the creation of a maintenance reserve which, under rules of I. C. C., could not be used for the purpose for which the fund was created $791,665.24

In 1913: Account adjustment in proportion accruing to S. P. Co. during the fiscal years 1906 to 1911, both inclusive, such proportion having been determined on the basis of the net income in excess of 6% on common stock and 4% on preferred stock, instead of on basis of net income in excess of 6% on both common and preferred stocks 954,018.81

1,745,684.05

NEW YORK, N. Y., *September 10, 1914.*

A. D. McDONALD, *Vice President and Controller.*

PETITIONER'S EXHIBIT NO. 35, SEPTEMBER 30, 1914.

CENTRAL PACIFIC RAILWAY COMPANY.

Statement of gross operating income, operating expenses, and net operating income, for the fiscal years ended December 31, 1880, 1883, 1888, and 1893, and for the fiscal years ended June 30, 1899, 1901, and 1913.[1]

	Fiscal years ended December 31—				Fiscal years ended June 30—		
	1880[2]	1883[2]	1888	1893	1899	1901	1913
Operating income:							
Freight	$13,245,857.79	$14,932,969.94	$9,798,482.18	$8,226,998.47	$10,427,593.54	$12,455,150.57	$20,296,976.56
Passenger	5,874,559.22	8,064,159.45	4,852,287.89	4,650,630.92	4,424,341.44	5,618,081.71	10,083,519.10
Mail	510,979.38	575,387.30	455,660.25	556,816.50	717,491.74	729,230.67	979,051.54
Express	238,939.72	339,901.63	200,149.08	173,393.01	258,245.00	313,799.15	725,729.08
Other transportation revenues	288,908.08	397,906.97	154,075.52	57,282.13	79,585.76	102,211.52	303,658.30
Revenues from operations other than transportation	155,743.37	204,151.75	249,906.31	431,193.90	350,635.78	109,815.83	261,229.59
Revenues from outside operations	193,125.32	230,944.16	128,271.41	164,910.02	143,133.60	.....	1,720,673.35
Total operating income	20,508,112.88	24,744,421.20	15,838,832.64	14,261,224.95	16,401,026.86	19,328,289.45	34,370,837.52
Total operating expenses	[3]12,045,698.89	[3]15,570,600.61	9,632,067.81	8,521,889.78	10,038,648.78	11,673,206.31	20,520,091.66
Net operating income	8,462,443.99	9,173,820.59	6,206,764.83	5,739,335.17	6,362,378.08	7,655,083.14	13,850,745.86

957 [1] The Central Pacific Railway Company was incorporated July 29, 1899, for the purpose of taking over the properties of the Central Pacific *Railroad* Company on the basis of a plan of readjustment dated February 8, 1899. The above returns, therefore, for the years 1880, 1883, 1888, 1893, and 1899 pertain to the period preceding the readjustment, and those for the years 1901 and 1913, to the period subsequent to the readjustment.

[2] The Central Pacific Railroad Company operated, during these years, in addition to its own lines, the following leased lines: Amador Branch R. R.; California Pacific R. R.: G. H. & S. A., from El Paso, Texas, eastward, as constructed; Los Angeles & San Diego R. R.; Los Angeles & Independence R. R.; Northern Railway; San Pablo and Tulare
958 R. R.; Sacramento & Placerville R. R.; Stockton & Copperopolis R. R.; Southern Pacific R. R. of California; Southern Pacific R. R. of Arizona; Southern Pacific R. R. of New Mexico.

The leases covering these lines to the Central Pacific Railroad Company were cancelled at various times during the years 1885, 1886, and 1887, and the lines leased to the Southern Pacific Company.

[3] Includes rentals paid leased lines.

NEW YORK, N. Y., *September 10, 1914.*

A. D. MCDONALD, *Vice President and Controller.*

9-960 PETITIONER'S EXHIBIT NO. 36, SEPTEMBER 30, 1914.

SOUTHERN PACIFIC COMPANY AND PROPRIETARY COMPANIES.

ment of operating income, operating expenses, and net operating income of the South-n Pacific Company and of the proprietary companies, both in respect to lines leased nd not leased, for the year ended December 31, 1893, and for the fiscal years ended June 0, 1899, 1901, and 1913.

	Year ended December 31, 1893.	Fiscal years ended June 30—		
		1899	1901	1913
nting income:				
Freight	$29,268,906.23	$34,869,513.25	$50,231,082.91	$80,141,498.84
Passenger	12,770,023.65	13,327,697.24	19,109,605.47	42,389,837.48
Mail	1,184,064.96	1,569,365.17	1,726,797.92	2,460,309.29
Express	586,659.39	764,850.95	1,072,222.54	2,757,259.88
Other transportation revenues	285,317.93	524,144.84	626,681.95	1,332,463.69
Revenues from operations other than transportation	867,595.62	1,327,975.89	397,167.11	1,272,323.48
Revenues from outside operations	3,086,980.54	3,589,349.97	4,081,340.28	12,421,012.41
Total operating income	48,049,548.32	55,972,897.31	77,244,898.18	142,774,705.07
Operating expenses	30,576,244.06	36,025,014.26	49,098,026.84	92,869,410.07
Net operating income	17,473,304.26	19,947,883.05	28,146,871.34	49,905,295.00

NEW YORK, N. Y.,
September 10, 1914.

A. D. MCDONALD,
Vice President and Controller.

PETITIONER'S EXHIBIT NO. 37, SEPTEMBER 30, 1914.

CENTRAL PACIFIC RAILROAD COMPANY.

nditures for maintenance of way and structures for the years 1887 to 1901, inclusive.

ended—	Amount.
December 31, 1887	$1,169,431.17
1888	1,803,955.46
1889	1,929,469.00
1890	2,457,936.74
1891	1,649,478.54
1892	1,926,678.31
1893	1,630,164.56
1894	1,672,955.52
1895	1,623,257.71
une 30, 1897	[1] 1,404,728.21

[1] For 12 months only, from July 1, 1896, to June 30, 1897, inclusive. The expenditures for the 6 months from January 1, 1896, to June 30, 1896, are not available, owing to destruction of records by ire.

1898	1,676,312.74
1899	1,859,821.55
1900	1,938,922.92
1901	2,379,086.57

:—The expenditures for the years 1900 and 1901 pertain to the operations of the Central Pacific y Company, and for the years 1887 to 1899, inclusive, they pertain to the operations of its predecessor y, the Central Pacific Railroad.

YORK, N. Y., *September 10, 1914.*

A. D. MCDONALD, *Vice President and Controller.*

963 PETITIONER'S EXHIBIT No. 38, SEPTEMBER 30, 1914.

SOUTHERN PACIFIC RAILROAD COMPANY AND CONNECTING LINES TO NEW ORLEANS.

Expenditures for maintenance of way and structures on lines of the Southern Pacific Railroad Company and connecting through lines in Texas and Louisiana to New Orleans, making up the through route (Sunset Route) from San Francisco, for the years 1887 to 1901, inclusive.

Year ended.	Southern Pacific R. R. Co.	Connecting lines in Louisiana and Texas to New Orleans.	Total expenditure.
December 31, 1887	$1,355,637.50	$1,109,079.97	$2,524,777.6
December 31, 1888	2,548,176.86	1,423,191.92	3,971,368.7
December 31, 1889	2,040,970.92	1,670,222.58	3,711,193.5
December 31, 1890	1,906,029.49	1,669,334.10	3,575,363.5
December 31, 1891	1,855,794.01	1,728,795.42	3,584,589.4
December 31, 1892	2,021,503.51	1,718,393.97	3,739,897.4
December 31, 1893	1,900,644.77	1,620,277.76	3,520,922.5
December 31, 1894	1,926,621.82	1,336,044.62	3,262,666.4
December 31, 1895	2,136,220.20	1,394,717.87	3,530,938.0
June 30, 1897	[1] 1,942,602.86	[1] 1,260,651.01	[1] 3,203,253.8
June 30, 1898	2,454,969.98	1,165,689.66	3,620,659.6
June 30, 1899	2,545,567.18	1,578,298.13	4,123,865.3
June 30, 1900	2,853,429.55	1,998,404.93	4,851,834.4
June 30, 1901	3,288,455.43	2,060,031.08	5,348,486.5

[1] For 12 months only from July 1, 1896, to June 30, 1897, inclusive. The expenditures for the six months from January 1, 1896, to June 30, 1896, are not available, owing to destruction of records by fire.

A. D. McDONALD, *Vice President and Controller.*

NEW YORK, N. Y., *September 10, 1914.*

964 PETITIONER'S EXHIBIT No. 39, SEPTEMBER 30, 1914.

CENTRAL PACIFIC RAILWAY COMPANY.[1]

Expenditures for additions and betterments, not including expenditures for construction of new lines, from January 1, 1887, to June 30, 1901, inclusive.

1.	Right of way and station grounds	$31,579.6
2.	Real estate	108,020.2
3.	Widening cuts and fills	8,840.1
5.	Grade reductions and changes of line	70,907.6
7.	Bridges, trestles, and culverts	599,265.7
11.	Ballast	317,871.7
12.	Additional main tracks	30,883.9
13.	Sidings and spur tracks	1,013,519.7
14.	Terminal yards	2,553.6
15.	Fencing right of way	90,473.2
16.	Improvements of crossings under and over grade	51.9
19.	Block and other signal apparatus	31,139.9
20.	Telegraph and telephone lines	27,279.6
21.	Station buildings and fixtures	505,172.1
22.	Roadway machinery and tools	14,565.1
965 23.	Shops, engine houses, and turntables	655,286.5
24.	Shop machinery and tools	219,766.7
25.	Water and fuel stations	246,065.6
27.	Dock and wharf property	167,298.4
31.	Snow and sand fences and snowsheds	22,038.1
33.	Equipment	3,636,661.2
35.	Other additions and betterments	[2] 25,307.2
	Reconstruction	2,494,371.2
	Total	10,268,430.6

[1] The Central Pacific Railway Company was incorporated on July 29, 1899, as successor to the Central Pacific *Railroad* Company.

[2] Red ink.

A. D. McDONALD, *Vice President and Controller.*

NEW YORK, N. Y., *September 10, 1914.*

966 PETITIONER'S EXHIBIT NO. 40, SEPTEMBER 30, 1914.

SOUTHERN PACIFIC RAILROAD COMPANY AND CONNECTING LINES TO NEW ORLEANS.

Expenditures for additions and betterments, not including expenditures for construction of new lines, on the Southern Pacific Railroad Company's lines and on connecting through lines in Texas and Louisiana to New Orleans, making up the through route (Sunset Route) from San Francisco, from March 1, 1885, to June 30, 1901, inclusive.

Character of expenditure.	Southern Pacific R. R. Co.	Connecting lines in Louisiana and Texas to New Orleans.	Total expenditures.
1. Right of way and station grounds	$467,470.82	$309,580.52	$777,051.34
2. Real estate	112,183.14	171,675.61	283,858.75
4. Protection of banks and drainage	7,724.62	1,123.93	8,848.55
5. Grade reductions and changes of line		5,677.26	5,677.26
6. Tunnel improvements	538,699.97	145,623.29	684,323.20
7. Bridges, trestles, and culverts	1,356.81		1,356.81
10. Ballast	842,199.95	1,191,213.30	2,033,413.25
12. Additional main tracks	889,169.32	1,668,960.22	2,558,129.54
13. Sidings and spur tracks	173,993.62	449,294.17	623,287.79
14. Terminal yards	1,614,339.57	1,109,887.95	2,724,227.52
15. Fencing right of way	2,323.42	40,326.42	42,649.84
17. Elimination of grade crossings	207,807.03	277,436.96	485,243.99
18. Block and other signal apparatus		42,307.44	42,307.44
19. Telegraph and telephone lines	121,389.61	765.83	122,155.44
21. Station buildings and fixtures	45,939.56	45,719.58	91,659.14
22. Roadway machinery and tools	685,082.88	807,167.57	1,492,250.45
23. Shops, engine houses, and turntables	19,396.03	821.01	20,217.04
24. Shop machinery and tools	326,476.36	219,005.61	545,481.97
25. Water and fuel stations	5,938.26	96,688.32	102,626.58
27. Dock and wharf property	556,043.56	417,777.82	973,821.38
28. Equipment	35,676.32	138,079.57	173,755.89
31. Other additions and betterments	7,875,188.94	4,602,181.62	12,477,370.56
Reconstruction	88,479.28	199,398.76	287,878.04
Additions and betterments for the years 1885, 1886, and 1887, the detail of which is not available	1,903,735.89	140,042.49	2,043,778.38
	[1] 794,702.66	[1] 950,167.23	[1] 1,744,869.89
	17,315,317.62	13,030,922.48	30,346,240.10

[1] Includes expenditures for 10 months of 1885 only; the expenditures for January and February of that year are not available owing to destruction of records by fire.

NEW YORK, N. Y., *September 10, 1914.*

A. D. MCDONALD, *Vice President and Controller.*

969 PETITIONER'S EXHIBIT NO. 41, SEPTEMBER 30, 1914.

Statement of dividends declared and paid by the Central Pacific Railroad Company and the Central Pacific Railway Company from 1861 to 1913.

[NOTE.—Reference prior to 1888, statement of E. H. Miller, Jr., 5 Pacific Railway Commission Report page 2247. Subsequent to 1887, annual reports to Interstate Commerce Commission.]

Central Pacific R. R. Co.:

	Amount.
Sept. 13, 1873	$1,628,265
Aug. 4, 1874	2,713,775
Apr. 1, 1875	3,256,530
Oct. 1, 1875	2,171,020
Apr. 3, 1876	2,171,020
Oct. 2, 1876	2,171,020
Apr. 2, 1877	2,171,020
Oct. 1, 1877	2,171,020
Feb. 1, 1880	1,628,265
Aug. 1, 1880	1,778,265
Feb. 1, 1881	1,778,265
Aug. 1, 1881	1,778,265
Feb. 1, 1882	1,778,265

		Amount
	Central Pacific R. R. Co.—Continued.	
970	Aug. 1, 1882	$1,778,26
	Feb. 1, 1883	1,778,26
	Aug. 1, 1883	1,778,26
	Jan. 15, 1884	1,778,26
	Year ended June 30—	
	1888	672,73
	1889	1,345,51
	1890	1,345,51
	1891	1,345,51
	1892	1,345,51
	1893	1,345,51
	1894	672,73
	1895	None
	1896	None
	1897	None
	1898	None
	1899	None
	Central Pacific Ry. Co.:	
	Year ended June 30—	
	1900	240,00
	1901	None
	1902	None
	1903	None
	1904	1,968,00
	1905	1,861,51
971	1906	2,542,26
	1907	4,568,53
	1908	4,576,53
	1909	4,584,53
	1910	4,592,53
	1911	7,411,53
	1912	4,728,53
	1913	7,540,53

972 PETITIONER'S EXHIBIT NO. 42, SEPTEMBER 30, 1914.

075-US (
SEPT. 29, 1914.

Dates various portions of Southern Pacific lines were opened for public use.

CENTRAL PACIFIC RAILWAY COMPANY.

Main line or branch.	Location.	Date of opening.	Orignial owning corporation.
Main	Sacramento to Newcastle	Nov. 1, 1864	Cent. Pac. R. R. C of California.
Main	Newcastle to Auburn	May 14, 1865	Do.
Main	Auburn to Colfax	Sept. 11, 1865	Do.
Main	Colfax to Dutch Flat	July 5, 1866	Do.
Main	Dutch Flat to Alta	July 11, 1866	Do.
Main	Alta to Cisco	Dec. 3, 1866	Do.
Main	Cisco to Truckee	Apr. 3, 1868	Do.
Main	Truckee to Reno	July 19, 1868	Do.
Main	Reno to Wadsworth	July 22, 1868	Do.
Main	Wadsworth to Winnemucca	Oct. 1, 1868	Do.
Main	Winnemucca to Elko	Jan. 25, 1869	Do.
973 Main	Elko to Promontory	May 29, 1869	Do.
Main	Promontory to near Ogden	May 29, 1869	Do.
Main	Actual completion Sacramento to Ogden.	May 10, 1869	Do.

Date various portions of Southern Pacific lines were opened for public use—Continued.

CENTRAL PACIFIC RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Main	Sacramento to Galt	May 15, 1869	Western Pac. R. R. Co.
Main	Galt to Stockton	Aug. 14, 1869	Do.
Main	Stockton to San Jose	Sept. 15, 1869	Do.
Main	Niles to Alameda Wharf	Sept. 8, 1869	S. F., Oakland & Alameda R. R.
Main	Roseville Junct. to Wheatland.	Oct. 28, 1867	Calif. & Ore. R. R. Co.
Main	Wheatland to Yuba	Sept. 19, 1869	Do.
Main	Yuba to Marysville	June 1, 1869	Do.
Main	Marysville to Chico	July 2, 1870	Do.
Main	Chico to Tehama	Aug. 28, 1871	Cent. Pacific R. R. Co.
Main	Tehama to Red Bluff	Dec. 6, 1871	Do.
Main	Red Bluff to Redding	Sept. 1, 1872	Do.
Main	Redding to Delta	Sept. 1, 1884	Do.
Main	Delta to Oregon State line	Oct. 5, 1887	Do.
974 Main	Lathrop to Modesto	Nov. 8, 1870	Do.
Main	Modesto to Merced	Jan. 25, 1872	Do.
Main	Merced to Fresno	May 28, 1872	Do.
Main	Fresno to Goshen	Aug. 1, 1872	Do.
Main	"Lucin Cutoff," Umbria to Cecil.	Mar. 8, 1904	Cent. Pac. Ry. Co.
Main	Niles to Newark	May 29, 1909	Cent. Calif. Ry. Co.
Main	Newark to Redwood	Sept. 12, 1910	Do.
Branch	Weed to Grass Lake (leased).	Sept. 1, 1906	Calif. N. E. Ry. Co.
Branch	Grass Lake to Bray	Sept. 6, 1907	Do.
Branch	Bray to Dorris	May 1, 1908	Do.
Branch	Dorris to Klamath Falls	May 20, 1909	Do.
Branch	Klamath Falls to Chiloquin	During 1911–12	Ore. East. R. R.Co.
Branch	Chiloquin to Kirk	Sept. 6, 1912	Cent. Pac. Ry. Co.
Branch	Natron to Oak Ridge	May 1, 1912	Do.
Branch	Sacramento to Freeport	June 20, 1909	Sacto. Southern R. R. Co.
Branch	Freeport to Walnut Grove	Mar. 17, 1912	Cent. Pac. Ry. Co.
Branch	Barber to Sterling City	Feb. 29, 1912	Chico. & Nor. R. R. Co.
975 Branch	Elmhurst to Stonehurst	Oct. 10, 1909	Cent. Pac. Ry. Co.
Branch	East Oakland to Fruitvale	June 30, 1908	Do.
Branch	Moundhouse to Hawthorne (Thorne).	Apr. 18, 1881	Carson & Colorado R. R. Co.
Branch	Hawthorne (Thorne) to Belleville.	Dec. 31, 1881	Do.
Branch	Belleville to Candalaria	March, 1882	Do.
Branch	Junction to California line	Jan. 20, 1883	Do.
Branch	Nevada line to Keeler	Aug. 1, 1883	Do.
Branch	Moundhouse to Keeler (acquired by S. P. interests).	March, 1900	Do.
Branch	Hazen to Churchill	Sept. 1, 1905	Nev. & Cal. Ry. Co.
Branch	Hazen to Fallon	Jan. 10, 1907	Do.
Branch	Mojave to Mabel	Apr. 18, 1909	Do.
Branch	Mabel to Olancha	Mar. 19, 1910	Do.
Branch	Olancha to Owenyo	Oct. 22, 1910	Do.
Branch	Derby to New Junction	Sept. 18, 1904	Cent. Pac. Ry. Co.
Branch	Tulasco to Metropolis	Dec. 8, 1911	Do.
Branch	Fernley to Susanville	Oct. 15, 1913	Do.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

976 SOUTHERN PACIFIC RAILROAD COMPANY.

Main line or branch.	Location.	Date of opening.	Orignial owning corporation.
Main	Goshen to Tipton	July 25, 1872	S. P. R. R. Co. of Cal.
Main	Tipton to Delano	July 14, 1873	Do.
Main	Delano to Sumner	Oct. 26, 1874	Do.
Main	Sumner to Caliente	Apr. 26, 1875	Do.
Main	Caliente to Mojave	Aug. 9, 1876	Do.
Main	Mojave to Tunnel	Sept. 6, 1876	Do.
Main	Tunnel to San Fernando	Jan. 1, 1876	Do.
Main	San Fernando to Los Angeles.	Apr. 15, 1874	Do.
Main	Los Angeles to Spadra	Apr. 15, 1874	Do.
Main	Spadra to Colton	July 16, 1875	Do.
Main	Colton to Indio	Mar. 29, 1876	Do.
Main	Indio to Colorado River near Yuma.	May 23, 1877	Do.
Main	Completion Colorado River Bridge into Yuma.	Sept. 30, 1877	Do.
Main	Yuma to Casa Grande	May 15, 1879	S. P. R. R. Co. of Ariz.
Main	Casa Grande to Tucson	Mar. 17, 1880	Do.
Main	Tucson to New Mexico line	Sept. 15, 1880	Do.
977 Main	Arizona line to Rio Grande bridge.	Oct. 18, 1880	S. P. R. R. Co. of N. M.
Main	Rio Grande bridge to El Paso.	April, 1881	G., H. & S. A. Ry.
Main	San Francisco to Menlo Park.	Oct. 17, 1863	S. F. & San Jose R. R. Co.
Main	Menlo Park to San Jose	Jan. 16, 1864	Do.
Main	San Jose to Gilroy	Mar. 13, 1869	S. P. R. R. Co. of Cal.
Main	Gilroy to Pajaro	Nov. 27, 1871	Do.
Main	Pajaro to Salinas	Nov. 1, 1872	Do.
Main	Salinas to Soledad	Aug. 12, 1873	Do.
Main	Soledad to Templeton	Nov. 16, 1886	S. P. Branch Ry. Co.
Main	Templeton to Santa Margarita.	Jan. 13, 1889	S. P. R. R. Co. of Cal.
Main	Santa Margarita to San Luis Obispo.	May 5, 1894	Do.
Main	San Luis Obispo to Guadalupe.	July 1, 1895	Do.
Main	Guadalupe to Lake	Dec. 31, 1895	Do.
Main	Lake to Surf	Aug. 18, 1896	Do.
Main	Surf to Honda	During 1898–'99.	S. P. R. R. Co.
Main	Honda to Cuate Canon	During 1899–'00.	Do.
Main	Saugus to Ellwood	Dec. 21, 1887	S. P. Branch Ry. Co.
978 Main	Completion of gap between Ellwood and Cuate Canon, thus opening Coast line.	March, 1901	S. P. R. R. Co.
Main	Mojave to Calco	Nov. 15, 1882	S. P. R. R. Co. of Cal.
Main	Calco to Amboy	Feb. 12, 1883	Do.
Main	Amboy to Goffs	Mar. 19, 1883	Do.
Main	Goffs to Needles	July 1, 1883	Do.
Main	Junction formed with A. & P. R. R.	Aug. 9, 1883	Do.
Main	Line Mojave to Needles sold A., T. & S. F.	Dec. 27, 1911	Do.
Main	West Oakland to Shellmound	Aug. 16, 1876	Northern Ry. Co.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

SOUTHERN PACIFIC RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Main	Shellmound to Martinez	Jan. 9, 1878	Northern Ry. Co.
Main	Martinez to Tracy	Dec. 3, 1878	San Pablo & Tulare R. R. Co.
Main	Tracy to Newman	July 1, 1888	S. P. R. R. Co. of Cal.
Main	Newman to Los Banos	Nov. 1, 1889	Do.
Main	Los Banos to Armona	Aug. 28, 1891	Do.
Main	Collis (Kerman) to Fresno	July 1, 1892	Do.
Main	Vallejo to Sacramento	During 1868–'69.	Cal. Pac. R. R. Co.
Main	Benicia to Suisun	Dec. 23, 1879	Northern Ry. Co.
979 Main	Davis to Knights Landing	During 1868–'69.	Cal. Pac. R. R. Co.
Main	Knights Landing to Marysville.	Feb. 4, 1891	Nor. Cal. Ry. Co.
Main	Woodland to Williams	July 1, 1876	Northern Ry. Co.
Main	Williams to Willows	Oct. 3, 1878	Do.
Main	Willows to Orland	July 31, 1882	Do.
Main	Orland to Tehama	Sept. 27, 1882	Do.
Main	Montalvo to Oxnard	During 1897–'98.	S. P. R. R. Co.
Main	Oxnard to Strathearn	During 1899–'00.	Do.
Main	Strathearn to Simi Tunnel	During 1900–'01.	Do.
Main	Simi Tunnel to Burbank	Mar. 20, 1904	Do.
Main	Baden to San Bruno	Dec. 31, 1892	S. P. R. R. Co. of Cal.
Main	"Bay Shore Cutoff," San Francisco to San Bruno.	Dec. 8, 1907	S. P. Company.
Branch	Elmira to Vacaville	Jan. 25, 1869	Vaca Valley & Clear Lake R. R.
Branch	Vacaville to Winters	Aug. 26, 1875	Do.
Branch	Winters to Madison	May 1, 1877	Do.
Branch	Madison to Rumsey	July 1, 1888	Northern Ry. Co.
Branch	Sacramento to Folsom	Feb. 22, 1856	Sacto. Valley R. R. Co.
Branch	Folsom to Shingle Springs	Jan. 20, 1865	Placerville & Sacto. Valley R. R. Co.
980 Branch	Shingle Springs to Placerville.	May 29, 1888	Northern Ry. Co.
Branch	Napa Jct. to Calistoga	During 1868–69	Cal. Pac. Ry. Co.
Branch	Napa Jct. to Santa Rosa	May 31, 1888	Northern Ry. Co.
Branch	Wingo to Ramal	July 19, 1906	San Fran. & Napa Ry.
Branch	Buchli to Union	July 19, 1906	Do.
Branch	Marysville to Oroville	Feb. 1864	Cal. Nor. Ry. Co.
Branch	Stockton to Milton	Feb. 1871	Stockton & Copperopolis R. R. Co.
Branch	Peters to Oakdale	Feb. 1871	Stockton & Visalia R. R. Co.
Branch	Oakdale to Merced	Feb. 2, 1891	S. P. R. R. Co. of Cal.
Branch	Shellmound to Berkeley	Aug. 16, 1876	Berkeley Branch R. R. Co.
Branch	Berkeley to Berrymans	July 1, 1878	Do.
Branch	Galt to Ione	Dec. 4, 1876	Amador Branch R. R. Co.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

SOUTHERN PACIFIC RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Branch	Bracks to Lockeford	August, 1882	San Joaquin & Sierra Nevada R. R. Co.
Branch	Lockeford to Clements	Sept., 1882	Do.
Branch	Clements to Wallace	Oct., 1882	Do.
Branch	Wallace to Benson	Sept., 1884	Do.
Branch	Benson to Valley Spring	April, 1885	Do.
981 Branch	Carnadero to Hollister	July 31, 1870	S. P. R. R. Co. of Cal.
Branch	Hollister to Tres Pinos	Aug. 12, 1873	Do.
Branch	Santa Cruz to Pajaro	May 18, 1876	Santa Cruz R. R. Co.
Branch	Castroville to Monterey	Sept. 12, 1881	Monterey R. R. Co.
Branch	Monterey to Lake Majella	Aug. 1, 1889	S. P. R. R. Co. of Cal.
Branch	Hillsdale to Almaden	Nov. 16, 1886	San Jose & Almaden R. R. Co.
Branch	Goshen to Huron	Feb. 1, 1877	S. P. R. R. Co. of Cal.
Branch	Huron to Alcalde	July 14, 1888	Do.
Branch	Los Angeles to Wilmington	Oct. 26, 1869	Los Angeles & San Pedro R. R. Co.
Branch	Wilmington to San Pedro	Aug. 15, 1882	S. P. R. R. Co. of Cal.
Branch	Florence to Anaheim	Jan. 14, 1875	Los Angeles & San Diego R. R. Co.
Branch	Anaheim to Santa Ana	Dec. 17, 1877	Do.
Branch	Santa Ana to Newport Beach and Smeltzer (purchased).	During 1899–00	S. P. R. R. Co.
Branch	Los Angeles to Santa Monica	Dec., 1875	Los Angeles & Independence R. R. Co.
Branch	Santa Monica to Santa Monica Wharf.	Dec. 31, 1892	S. P. R. R. Co. of Cal.
982	Small extension of Santa Monica Branch.	June 1, 1893	Do.
Branch	Home Junction to Soldiers Home (Santa Monica Beach).	Apr. 15, 1893	Do.
Branch	Willows to Fruto	July 1, 1888	Northern Ry. Co.
Branch	Thenard to Long Beach	Feb. 20, 1888	S. P. R. R. Co. of Cal.
Branch	Studebaker to Whittier	Mar. 16, 1888	Long Beach & Whittier County R. R.
Branch	Miraflores to Tustin	Sept. 15, 1888	S. P. R. R. Co. of Cal.
Branch	Berenda to Raymond	May 1, 1886	San Joaquin Valley & Yosemite R. R.
Branch	Fresno to Porterville	July 1, 1888	S. P. R. R. Co. of Cal.
Branch	Porterville to Poso (Famoso) Junction.	Dec. 24, 1890	Do.
Branch	Famoso Jct. to Famoso	Apr. 10, 1909	S. P. R. R. Co.
Branch	Porterville to Springville	Apr. 1, 1912	Porterville Northeastern Ry. Co.
Branch	Surf to Lompoc	During 1899-00	S. P. R. R. Co.
Branch	Guadalupe to Betteravia	During 1899-00	Do.
Branch	Burbank to Chatsworth Park.	Sept. 30, 1893	S. P. R. R. Co. of Cal.
Branch	Avon to San Ramon	June 7, 1891	Do.
Branch	San Ramon to Radum	Feb. 7, 1909	S. P. R. R. Co.
983 Branch	Fresno to Pollasky (Friant)	Oct. 1, 1892	Do.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

SOUTHERN PACIFIC RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Branch	Bakersfield to Asphalto	Feb. 1, 1893	S. P. R. R. Co.
Branch	Ingle to Hardwick	Apr. 15, 1912	Hanford & Summit Lake Ry.
Branch	Old Beach to Imperial	Apr. 10, 1903	Imperial & Gulf Ry.
Branch	Imperial to Calexico	June 29, 1904	Do.
Branch	Calexico to Tecolote	Apr. 22, 1908	Inter-California Ry. Co.
Branch	Tecolote to Hanlon Junction.	Aug. 1, 1909	Do.
Branch	Andrade to Araz Jct.	July 24, 1911	Do.
Branch	Colorado Jct. to Potholes	May 1, 1908	S. P. R. R. Co.
Branch	Salinas to Sugar Factory	May 11, 1899	Do.
Branch	Goshen to Visalia (leased in 1898).	Sept., 1874	Visalia Railroad.
Branch	Visalia to Exeter	During 1898-99	S. P. R. R. Co.
Branch	Extending from Madera	During 1899-00	Do.
	Various extensions in oil districts in San Joaquin Valley.	During 1900-01	Do.
Branch	Fair Oaks Junct. to Fair Oaks bridge.	During 1900-01	Do.
Branch	San Pablo to Point Richmond.	During 1904-05	Do.
984 Branch	Corbin to Richmond	During 1910-11	Do.
Branch	Wyo to Hamilton	Oct. 15, 1906	Do.
Branch	Santa Cruz to Davenport	July 8, 1907	Coast Line Ry.
Branch	Mayfield to Vasona	Apr. 19, 1908	Peninsular Ry.
Branch	Rossi to Stratton	June 20, 1907	S. P. R. R. Co.
Branch	Peart to Howard	Aug. 20, 1908	Do.
Branch	Ontario to Chino	Feb. 17, 1891	S. P. R. R. Co. of Cal.
Branch	Pomona Jct. to South Pomona.	May 10, 1897	Do.
Branch	Pomona to Chino	May 1, 1899	S. P. R. R. Co.
Branch	Redlands Jct. to Crafton	Mar. 14, 1892	S. P. R. R. Co. of Cal.
Branch	San Bernardino to Motor Jct. (leased).	May 14, 1892	San Bernardino & Redlands R. R.
Branch	San Bernardino to Riverside.	July 20, 1896	S. P. R. R. Co.
Branch	Short extension at Riverside.	May 11, 1899	Do.
Branch	Declez to Declezville	Dec. 31, 1892	S. P. R. R. Co. of Cal.
Branch	Shorb to Monrovia	June 12, 1893	Do.
Branch	Monrovia to Duarte	Jan. 28, 1896	Do.
Branch	Shorb to Pasadena	Oct. 30, 1895	Do.
Branch	Bassett to Covina	Dec. 31, 1895	Do.
985 Branch	Covina to Pomona	Aug. 22, 1896	Do.
Branch	Anaheim to Los Alamitos	Oct. 21, 1896	Do.
Branch	Anaheim to Loara Junction	During 1900-01	S. P. R. R. Co.
Branch	Smeltzer to Benedict	Sept. 7, 1907	Do.
Branch	Ventura Jct. to Nordhoff (purchased).	During 1898-99	Do.
Main	Benson to Nogales (leased)	July 15, 1898	New Mexico & Arizona R. R.
Main	Through service to Guaymas.	Oct. 25, 1882	
	Tucson to Suhuarita (purchased).	June 19, 1910	Twin Buttes R. R.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

SOUTHERN PACIFIC RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Main.....	Suhuarita to Calabasses.....	June 19, 1910	Tucson & Nogales R. R.
	Various extensions of suburban lines in Oakland, Alameda, and Berkeley owned by Southern Pacific Company.	During 1911-12	S. P. Co.

SOUTH PACIFIC COAST RY. CO.

Main.....	Alameda Mole to Alameda Point.	Mar. 15, 1884	San Fran. & Colorado River R. R. Co.
Main.....	Alameda Point to Newark...	June 1, 1878	Bay & Coast R. R. Co.
Main.....	Newark to Los Gatos.....	June 1, 1878	South Pac. Coast R. R. Co.
986 Main.....	Los Gatos to Alma.....	Aug. 1, 1878	Do.
Main.....	Alma to Wright.....	May 1, 1879	Do.
Main.....	Wright to Felton.....	May 15, 1880	Do.
Main.....	Felton to Santa Cruz.....	Oct. 13, 1875	Santa Cruz & Felton R. R. Co.
Branch.....	Alameda Point to Oakland..	May 30, 1881	Bay & Coast R. R. and Oakland Township R. R.
Branch.....	Newark to Centerville.....	Feb. 18, 1882	S. P. C. R. R. Co.
Branch.....	Campbells to New Almaden.	June 15, 1886	Almaden Branch R. R. Co.
Branch.....	Felton to Boulder Creek.....	May 1, 1885	Pescadero R. R. Co.
Main.....	West San Leandro to Elmhurst.	During 1905-06	S. P. C. Ry. Co.
Branch.....	Newell Creek to Shingle Mill.	June 30, 1907	Do.

OREGON & CALIFORNIA RAILROAD COMPANY.

Main.....	Portland to Albany.....	Dec. 25, 1869	O. & C. R. R. Co.
Main.....	Albany to Roseburg.....	Dec. 1, 1872	Do.
Main.....	Roseburg to Riddle.....	During 1882	Do.
Main.....	Riddle to Ft. Lane.....	During 1883	Do.
Main.....	Ft. Lane to Ashland.....	During 1884	Do.
Main.....	Ashland to California State line.	During 1887	Do.
987	First through train San Francisco to Portland.	Dec. 16-17, 1887	
Branch.....	Portland to St. Joseph (Yamhill River) via Beaverton and Hillsboro.	Nov. 3, 1872	Oregon Central R. R. Co.
Branch.....	St. Joseph to Corvallis.....	During 1897	Western Oregon R. R. Co.
Branch.....	Portland to Dundee Jct.....	During 1886	Portland & Willamette Valley Ry. Co.

Date various portions of Southern Pacific lines were opened for public use—Continued.

OREGON & CALIFORNIA RAILROAD COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Branch.....	Dundee Jct. to St. Joseph....	During 1878	Willamette Valley R. R. Co.
Branch.....	Whiteson to Smithfield.....	During 1879	Do.
Branch.....	Smithfield to Dallas.....	During 1879	Oregonian R. R. Co.
Branch.....	Dallas to Airlie.....	During 1881	Do.
Branch.....	Ray's Ferry (Woodburn) to Brownsville.	During 1880	Do.
Branch.....	Brownsville to Coburg.....	During 1881	Do.
Branch.....	Albany Jct. to Lebanon.....	During 1881	O. & C. R. R. Co.
Branch.....	Coburg to Springfield.....	Sept. 2, 1891	Do.
Branch..	Springfield to Natron.....	Sept. 28, 1891	Do.
988 Branch..	Springfield to Springfield Jct.	Oct. 1, 1896	O. & C. R. R. Co.
Branch..	Mohawk Jct. to Wendling....	Jan., 1901	Do.
Branch.....	Crabtree to Lebanon.....	July 17, 1910	Do.
Branch.....	St. Joseph to Lafayette.....	During 1905–06	Do.
	Oregonian Railroad, Dundee to Airlie and Sheridan Jct. to Sheridan (leased).	Dec. 5, 1890	
	Portland & Willamette Valley Ry., Portland to Dundee (acquired).	Jan. 1, 1891	
	Oregonian Railroad, Woodburn to Coburg (purchased)	Dec. 5, 1890	

BEAVERTON & WILLSBURG RAILROAD COMPANY.

Branch.....	Beaverton to Willsburg.....	July 17, 1910	Beaverton & Willsburg R. R. Co.

PACIFIC RAILWAY & NAVIGATION COMPANY.

Branch.....	Hillsboro to Tillamook.....	During 1911–12	P. R. & N. Co.

SALEM, FALLS CITY & WESTERN RAILWAY COMPANY.

Branch.....	West Salem to Black Rock (acquired).	During 1911–12	S. F. C. & W. Ry. Co.
Branch.....	Salem to Geer.....	Dec. 20, 1912	Do.

CORVALLIS & EASTERN RAILROAD.

Branch.....	Yaquina to Idanha (Hoover).	During 1906–07	C. & E. R. R. Co.

COOS BAY, ROSEBURG & EASTERN RAILROAD & NAVIGATION CO.

Branch.....	Marshfield to Myrtle Point.	During 1906–07	C. B. R. & E. R. R. & Nav. Co.
Branch.....	Marshfield to North Bend...	Dec. 20, 1913	Do.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

ARIZONA EASTERN RAILROAD CO.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Branch	Phoenix to Winkelman (acquired during 1906–1907).	During 1905	P. & E. R. R.
Branch	Phoenix to Maricopa (M. & P. and S. R. V.).		M. & P. R. R. Co.
Branch	Bowie to Globe	During 1899	G. V. G. & N. Ry. Co.
Branch	Phoenix to Hassayampa	During 1910–11	A. E. R. R. Co.
	Consolidation to various Arizona Eastern companies under name of Arizona Eastern Railroad.	Jan. 31, 1910	

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY.

Main	Algiers to Lafourche	Nov. 6, 1854	N. O. Ope. & G. W. R. R. Co.
Main	Lafourche to Bayou Boeuf	Mar. 1, 1856	Do.
990 Main	Bayou Boeuf to Berwick Bay (Morgan City).	Apr. 12, 1857	Do.
Main	Berwick Bay (Morgan City) to Vermilionville (Lafayette).	1880	M. L. & T. R. R. Co.
Main	Vermilionville (Lafayette) to Alexandria.	1881	Do.
Branch	Thibodeaux Branch	1881	Do.
Branch	New Iberia to Salt Mine	1882	Do.
Branch	Cade to St. Martinsville	1882	Do.
Branch	St. Martinsville to Arnaudville.	1898–99	Do.
Branch	Arnaudville to Port Barre	May 15, 1907	Do.
Branch	Houma Branch	1871	Do.
Branch	Baldwin to Cypremort	1884	Do.
Branch	Cypremort to Weeks	Nov. 1, 1903	Do.
Branch	Raceland Branch	1886	Do.
Branch	Raceland to Lockport	Oct. 2, 1904	Do.
Branch	Thibodeaux to Oakley	1898–99	Do.
Branch	Oakley to Napoleonville	Oct., 1899	Do.
Main	Lafayette to Baton Rouge Junction.	Jan. 15, 1911	Do.

991 IBERIA & VERMILION RAILROAD.

Branch	New Iberia to Abbeville (acquired).	During 1895	I. & V. R. R.

LOUISIANA WESTERN RAILROAD.

Main	Vermilionville (Lafayette) to Orange.	Aug., 1880	L. W. R. R. Co.
Branch	Midland Junction to Eunice	Sept. 9, 1894	Do.
Branch	Eunice to Mamou	July 3, 1910	Do.
Branch	Gueydan to Abbeville	May 1, 1902	Do.
Branch	Mallard Junction to Hayes	Aug. 15, 1903	Do.
Branch	Hayes to Lake Arthur	Dec. 29, 1903	Do.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

TEXAS & NEW ORLEANS RAILROAD COMPANY.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Main	Houston to Orange	Constructed before Civil War, but badly damaged and subsequently reconstructed as follows:	
Main	Houston to West Liberty	Before Jan. 1, 1870.	T. & N. O. R. R. Co.
Main	West Liberty to Orange (Sabine R.).	Aug. 1, 1876	Do.
Branch	Sabine Pass to Rockland	During 1882	Sabine & E. T. R. R. Co.
Branch	Dallas to Cedar (acquired)	1899–1900	Texas Trunk R. R. Co.
992 Branch	Cedar to Athens	1899–1900	T. & N. O. R. R. Co.
Branch	Athens to Frankfort	May 20, 1901	Do.
Branch	Frankfort to Jacksonville	Apr. 20, 1902	Do.
Branch	North of Rockland 25 miles	1899–1900	Do.
Branch	Rockland northerly 25 miles additional.	May 20, 1901	Do.
Branch	Bonita Junction to Mahl	Dec. 10, 1901	Do.
Branch	Mahl to Cushing	Feb. 10, 1903	Do.
Branch	Cushing to Jacksonville	May 17, 1903	Do.
Branch	Nome to Sour Lake	July 1, 1903	Do.
Branch	West Port Arthur to Port Arthur.	Sept. 15, 1907	Do.
Branch	Gallatin to Rusk	Apr. 15, 1909	Do.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

Main	Harrisburg to Columbus	Previous to 1870.	Buffalo Bayou, Brazos & Colorado R. R.
Main	Columbus to Luling	1874	G. H. & S. A. Ry. Co.
Main	Luling to San Antonio	Mar. 1, 1877	Do.
Main	Rio Grande bridge to El Paso.	1881	Do.
	Completion of construction between El Paso and San Antonio near Pecos bridge, completing through line.	Jan. 15, 1883	
993	First trains between San Fran. and New Orleans.	Feb. —, 1883	Do.
Branch	Columbus to La Grange	1880	Do.
Branch	Harrisburg to Pierce Jct.	1880	Do.
Branch	Spafford to Eagle Pass	June 1, 1882	Do.
Branch	Harwood to Gonzales (leased)	1883	Do.
Branch	Indianola (Port Lavaca) to Cuero.	Mar. 3, 1873	G. W. T. & P. Ry.
Branch	Cuero to Smiley	Aug. 16, 1906	G. H. & S. A. Ry. Co.
Branch	Smiley to Stockdale	Apr. 18, 1906	Do.
Branch	Stockdale to San Antonio (purchased).	Aug. 9, 1905	S. A. & Gulf Ry. Co.
Branch	Rosenberg to Navidad	Jan. 9, 1882	N. Y. T. & M. Ry.
Branch	Garcitas to Victoria	Jan. 9, 1882	Do.
Branch	Completed Rosenberg to Victoria.	June 2, 1884	Do.
Branch	Victoria to Beeville	Sept. 10, 1889	G. W. T. & P. Ry.
Branch	Van Vleck to Hawkinsville	Feb. 1, 1903	N. Y. T. & M. Ry.
Branch	Wharton to Van Vleck	Sept. —, 1900	Do.
Branch	Bay City Jct. to Bay City	Oct. 1, 1902	Do.

Dates various portions of Southern Pacific lines were opened for public use—Continued.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY—Continued.

Main line or branch.	Location.	Date of opening.	Original owning corporation.
Branch..	Bay City to Markham.....	Mar. 31, 1903	N. Y. T. & M. Ry.
994 Branch..	Markham to Tres Palacios....	July 1, 1903	Do.
Main.....	Magers to Galveston (acquired).	Jan. —, 1900	G. H. & N. Ry. Co.
Main.....	New Galveston Causeway...	May 25, 1912	G. H. & S. A. Ry. Co.

HOUSTON & TEXAS CENTRAL RAILROAD.

Main.....	Houston to Denison.....	Mar. 11, 1873	H. & T. C. R. R. Co.
Main.....	Mexia to Jewett.....	July 15, 1906	Do.
Main.....	Jewett to Nelleva.....	Dec. 16, 1906	Do.
Main.....	Giddings to Stone City.....	Sept. 10, 1913	Do.
Branch.....	Hempstead to Austin.....	1871	Do.
Branch.....	Austin to Burnet.....	Jan. 1, 1882	A. & N. W. R. R. Co.
Branch.....	Burnet to Lampasas.....	Nov. 10, 1902	H. & T. C. Ry. Co.
Branch.....	Bremond to Ross.....	1878	Do.
Branch.....	Ennis to Waxahachie.....	1886	C. T. & N. W. R. R. Co.
Branch.....	Waxahachie to Fort Worth (acquired during 1895).	May —, 1886	F. W. & N. O. R. R. Co.
Branch.....	Hutchins to Lancaster (purchased).	Oct. 1, 1905	Lancaster Tap R. R. Co.

995 HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY.

Main.....	Houston to Goodrich.....	1879	H. E. & W. T. Ry. Co.
Main.....	Goodrich to Moscow.....	1880	Do.
Main.....	Moscow to Burke.....	1881	Do.
Main.....	Burke to Nacogdoches.....	1882	Do.
Main.....	Nacogdoches to Sterne.....	1883	Do.
Main.....	Sterne to Logansport.....	Dec. 1, 1885	Do.

HOUSTON & SHREVEPORT RAILROAD COMPANY.

Main.....	Logansport to Shreveport....	Oct. —, 1885	S. & H. Ry. Co.
	Bridge completed and first through train run.	Jan. 26, 1886	

996 PETITIONER'S EXHIBIT No. 43–44, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway between all points west of Ogden, Utah, and Atlantic seaboard territory, comprising all points east of a line from Toronto via Buffalo and Pittsburg to Bristol, Tenn., and north of the line of the Norfolk and Western Ry. from Bristol to the Atlantic Ocean.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
astbound	154,229	926,433
estbound	68,916	593,339
otal eastbound and westbound	223,145	1,519,772

Issued by accounting department, New York, N. Y., January 13, 915.

97 PETITIONER'S EXHIBIT No. 45–46, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the outhern Pacific Company on traffic moved via Ogden gateway be- ween all points west of Ogden, Utah, and Middle West territory, omprising all points on and east of the line of the Chicago, Rock land and Pacific Railway extending from the Kansas-Oklahoma tate line, via McFarland and Belleville, Kansas, and Des Moines, owa, to St. Paul, Minn., north of the northern boundary of the tates of Oklahoma and Arkansas; north of the Ohio River and ast of the Atlantic seaboard territory.

For the year ended June 30th, 1914.

[Even tons & dollars.]

	Tons.	Revenue.
stbound	368,975	2,576,384
stbound	259,648	2,451,700
tal east and west bound	628,623	5,028,084

Issued by accounting department, New York, N. Y., January 13, 15.

8 PETITIONER'S EXHIBIT No. 47–48, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the uthern Pacific Company on traffic moved via El Paso gateway ncluding relatively small amount of traffic interchanged with A., T. S. F. Ry at Deming, N. M.) between all points west of Ogden, tah (which includes all points west of El Paso, Texas), and At- ntic seaboard territory, comprising all points east of a line from oronto via Buffalo and Pittsburg to Bristol, Tenn., and north of e line of the Norfolk and Western Ry. from Bristol to the Atlantic ean.

For the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	163,180	1,991,965
Westbound	105,808	2,209,328
Total east and west bound	268,988	4,201,293

Issued by accounting department, New York, N. Y., January 13, 1915.

999 PETITIONER'S EXHIBIT No. 49–50, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry. at Deming, N. M.) between all points west of Ogden, Utah (which includes all points west of El Paso, Texas), and Middle West territory, comprising all points on and east of the line of the Chicago, Rock Island & Pacific Railway extending from the Kansas-Oklahoma State line, via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minn., north of the northern boundary of the States of Oklahoma and Arkansas, north of the Ohio River, and west of the Atlantic seaboard territory.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	271,897	2,193,601
Westbound	269,970	3,125,331
Total east and west bound	541,867	5,318,932

Issued by accounting department, New York, N. Y., January 13, 1915.

1000 PETITIONER'S EXHIBIT No. 51, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic which originated, passed over, or was delivered on the Central Pacific R. R. (this includes all freight tonnage and total revenue on traffic which originated or was delivered at points reached by Central Pacific, whether moving over Central Pacific line or not) moving via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry. at Deming, N. M.) between all points west of Ogden, Utah, and Atlantic seaboard territory, comprising all points east of a line from Toronto via Buffalo and Pittsburg to Bristol, Tenn., and north of the

line of the Norfolk and Western Ry. from Bristol to the Atlantic Ocean.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	34,812	646,005
Westbound	50,045	1,093,267
Total east and west bound	84,857	1,739,272

Issued by accounting department, New York, N. Y., January 13, 1915.

1001 PETITIONER'S EXHIBIT No. 52, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic which originated, passed over, or was delivered on Central Pacific R. R. (this includes all freight tonnage and total revenue on traffic which originated at or was delivered at points reached by Central Pacific, whether moving over Central Pacific line or not) moving via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry. at Deming, N. M.) between all points west of Ogden and Middle West territory, comprising all points on and east of the line of the Chicago, Rock Island and Pacific Railway extending from the Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minn.; north of the northern boundary of the States of Oklahoma and Arkansas; north of the Ohio River and west of the Atlantic seaboard territory.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	31,180	269,457
Westbound	63,734	665,035
Total east and west bound	94,914	934,492

Issued by accounting department, New York, N. Y., January 13, 1915.

1002 PETITIONER'S EXHIBIT No. 53, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway between all points in Nevada and Atlantic seaboard territory, comprising all points east of a line from Toronto via Buffalo and Pitts-

burg to Bristol, Tenn., and north of the line of the Norfolk a Western Ry. from Bristol to the Atlantic Ocean.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenu
Eastbound	---	---
Westbound	539	13,2
Total eastbound and westbound	539	13,2

Issued by accounting department, New York, N. Y., January 1 1915.

1003 PETITIONER'S EXHIBIT No. 54, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of th Southern Pacific Company on traffic moved via El Paso gatewa between all points in Nevada and Middle West territory, comprisin all points on and east of the Chicago, Rock Island and Pacific Rai way extending from the Kansas-Oklahoma State line via McFarlan and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minn. north of the northern boundary of the States of Oklahoma an Arkansas; north of the Ohio River and west of the Atlantic seaboar territory.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenu
Eastbound	---	---
Westbound	30	9
Total eastbound and westbound	30	9

Issued by accounting department, New York, N. Y., January 1 1915.

1004 PETITIONER'S EXHIBIT No. 55, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of th Southern Pacific Company on traffic moved via El Paso gatewa (including relatively small amount of traffic interchanged with A T. & S. F. Ry. at Deming, N. M.) between all points in Oregon and beyond and in California, north of Roseville, Davis, Elmir Suisun, and South Vallejo and Atlantic seaboard territory: com prising all points east of a line from Toronto via Buffalo and Pitt burg to Bristol, Tenn., and north of the line of the Norfolk an Western Ry. from Bristol to the Atlantic Ocean.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	22,161	426,324
Westbound	2,801	84,260
Total, east and west bound	24,962	510,584

Issued by accounting department, New York, N. Y., January 13, 1915.

1005 PETITIONER'S EXHIBIT No. 56, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry. at Deming, N. M.) between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory: comprising all points on and east of the line of the Chicago, Rock Island and Pacific Railway extending from the Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minn.; north of the northern boundary of the States of Oklahoma and Arkansas; north of the Ohio River and west of the Atlantic seaboard territory.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	5,351	51,384
Westbound	13,122	124,919
Total east and west bound	18,473	176,303

Issued by accounting department, New York, N. Y., January 13, 1915.

1006 PETITIONER'S EXHIBIT No. 57, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A. T. & S. F. Ry. at Deming, N. M.) between San Francisco and Oakland, California (includes all traffic which originated at, passed through, or was delivered at San Francisco or Oakland) and Atlantic seaboard territory: comprising all points east of a line from Toronto via Buffalo and Pittsburg to Bristol, Tenn., and north of the line of the Norfolk and Western Ry. from Bristol to the Atlantic Ocean.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	4,598	95,841
Westbound	38,933	920,502
Total east and west bound	43,531	1,016,343

Issued by accounting department, New York, N. Y., January 13, 1915.

1007–1044 PETITIONER'S EXHIBIT No. 58, OCTOBER 7, 1914.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A. T. & S. F. Ry. at Deming, N. M.) between San Francisco and Oakland, California (includes all traffic which originated at, passed through, or was delivered at San Francisco or Oakland) and Middle West territory: comprising all points on and east of the line of the Chicago, Rock Island and Pacific Railway extending from the Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minn.; north of the northern boundary of the States of Oklahoma and Arkansas; north of the Ohio River and west of the Atlantic seaboard territory.

For the year ended June 30th, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	10,295	76,39[illegible]
Westbound	40,497	433,[illegible]
Total east and west bound	50,792	509,6[illegible]

Issued by accounting department, New York, N. Y., January 13, 1915.

1045 PETITIONER'S EXHIBIT No. 59, OCTOBER 7, 1914.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 1, 1914.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true and correct copies of the original as the same appear on file and of record in this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

B. SWEENEY,
Assistant Secretary of the Interior.
P.

Seal Department of the Interior.

1046 OFFICE OF THE CENTRAL PACIFIC
RAILROAD COMPANY OF CALIFORNIA,
November 1st, 1862.

In accordance with the requirements of the 9th section of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes"—I herewith forward the acceptance of the provisions of the said act by the Central Pacific Railroad Company of California, which please file in the Department of the Interior, and oblige,

Very respectfully, your obedient servant,

MARK HOPKINS,
Secty. Central P. R. R. Co. of California.

To the Hon. SECRETARY OF THE DEPARTMENT OF THE INTERIOR,
Washington, D. C.

1047 (Endorsement on back:)

Nov. 13, 1862.
Mark Hopkins, Sec'y Cent. P. R. R. Co. of California.
Forwards acceptance by said Co. of the provisions of the 9th section of an act to aid in constructing a Rail Road, &c., from the Mo. River to the Pacific Ocean, &c.
Copy sent to Senate March 4/64.
Rect. ackd. Dec. 24, 1862.
Certified copy of within furnished.

C. P. HUNTINGTON.

No. filed.
Jan. 11, 1865.

Copy of certificate furnished Henry Beard June 8, 1870, Mr. White.

Whereas on the first day of July, in the year of our Lord one thousand eight hundred and sixty-two, the President of the United States of America duly approved an act passed by the Congress of the United States entitled

1048 "*An act* to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to

secure to the Government the use of the same for postal, military, and other purposes."

And whereas by the provisions of the said act of Congress "The Central Pacific Rail Road Company of California," are authorized and empowered to construct a portion of the line of Rail Road and telegraph provided for by said act of Congress;

And whereas by the terms of the ninth section of said act of Congress said company is required to file its acceptance of the conditions of said act in the Department of the Interior within six months after the passage of said act;

And whereas on the seventh day of October A. D., one thousand eight hundred and sixty-two the said "Central Pacific Rail Road Company of California," by its board of directors, at a regular meeting of said board of directors, held at their office in the city of Sacramento, in the State of California, on that day duly adopted the following resolutions:

Resolved, That this "The Central Pacific Rail Road Company of California" hereby accepts the conditions of said act of Congress, and hereby agrees faithfully to perform and comply with all
1049 the terms, conditions, stipulations, and requirements of the said act of Congress, so far as the same are applicable to the said company.

Resolved further, that the secretary of this company is hereby directed to prepare a written acceptance of the conditions of the said act of Congress; that the same be signed by the president and secretary of said company, and sealed with the corporate seal of the said company; that the President cause the same to be filed in the Department of the Interior at Washington City, in the District of Columbia, within six months from the date of the passage of said act of Congress; and that a duplicate of such acceptance be also prepared and filed in the office of the secretary of this company."

Now, therefore, the said "The Central Pacific Rail Road Company" of California," have accepted, and do hereby accept, the conditions of the said act of Congress, and hereby agree to faithfully perform and comply with all the terms, conditions, stipulations, and requirements of the said act of Congress, so far as the same are applicable to the said company.

In testimony whereof the said "The Central Pacific Rail Road Company of California," have caused their corporate seal to
1050 be hereto affixed, and the same to be signed by the president and secretary of said company, in pursuance of the resolu

tions of the board of directors aforesaid, this seventh day of October, A. D. one thousand eight hundred and sixty-two.

LELAND STANFORD,
President Central Pacific R. R. Co. of California.
MARK HOPKINS,
Secretary Central Pacific R. R. Co. of California.

Central Pacific Railroad Co. of California. Incorporated June 28, 1861.

1051 (Endorsement:)

Central Pacific.

Departmentof the Interior.

Received Dec. 24th, 1862.
Dated Nov. 1st, 1862.
From Mark D. Hopkins, Sec'y Cent. Pac. R. R. Co. of California.

Subject.

Forwards acceptance by said Co. of the provisions of the 9'' section of an act to aid in constructing a R. R., &c., from the Mo. River to the Pac. Ocean, &c.
Case I K–9.

Action.

Vol. I Railroads, page 109.
Ackd. Dec. 24/62. Copy sent to Senate Mar. 4—64.
Filed.
Registered, 1—109.
Filed, Jan. 11—1865.

1052 PETITIONER'S EXHIBIT NO. 60, OCTOBER 7, 1914.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 1, 1914.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true and correct copies of the originals as the same appear on file and of record in this department.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed the day and year first above written.

B. SWEENEY,
Assistant Secretary of the Interior.
P.

Seal Department of the Interior.

1053 UNION PACIFIC RAILROAD COMPANY,
SECRETARY'S OFFICE, 54 WILLIAM STREET,
New York, June 25, 1863.

Hon. J. P. USHER,
Secretary of the Interior, etc. etc.

SIR: I have the honor to enclose herewith the assent of the Union Pacific Railroad Company to the act incorporating the same, and respectfully request that said assent be filed in the Department of the Interior agreeably to the provision of the seventh section of said act.

I have the honor to be,
Very respectfully,

HENRY V. POOR,
Secretary of the Union Pacific Railroad Company.

1054 (Endorsement:)
Union Pacific Railroad Co., No. 54 William Street, New York, June 25, 1863.
S. V. Poor, sec'y R. R. Co.
Encloses acceptance by said company of the provisions of the act of 1st July, 1862.
Rect. ackd. June 27, 1863.
File.
Copy sent to Senate March 4/64.
Mr. White.

1055 UNION PACIFIC RAILROAD COMPANY,
SECRETARY'S OFFICE, 54 WILLIAM STREET,
New York, June 23d, 1863.

To the Hon. J. P. USHER,
Secretary of the Interior, &c., &c., Washington, D. C.

SIR: The undersigned, president and secretary of the Union Pacific Railroad Company, in obedience to the resolution of the board of commissioners of the Union Pacific Railroad and Telegraph Company, passed at the meeting of the same held at Chicago, Illinois, on the second day of September, 1862, and by virtue of the authority vested in us by said board, have the honor, in behalf of the same, of signifying, under the seal thereof, the full acceptance by the Union Pacific Railroad Company of the provisions of the act of Congress passed on the first day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." And we respectfully request that this assent of said company to the provision of

1056 said act may be seasonably filed, as provided in the same, in the Department of the Interior. We have the honor to be,
Your obdt. servants,

W. B. OGDEN,
President of the Union Pacific Railroad Co.
HENRY V. POOR,
Secretary of the Union Pacific Railroad Co.

Union Pacific Railroad Company. 1862.

1057 (Endorsement:)
Department of the Interior.
Received June 26th, 1863. Dated June 25th, 1863.
From Henry V. Poor, No. 54 William St., New York City.

Subject.

Encloses acceptance by U. Pac. Railway Co. of the provisions of he act of 1st July, 1862.

Action.

Receipt ackd. June 27th/63.
Filed.
Copy to Senate Mar. 4,/64.
Registered, 1–744.
Filed.

1058 PETITIONER'S EXHIBIT NO. 61, OCTOBER 7, 1914.

o. D26773. 10 shares.

This is to certify that W. H. Joy is entitled to ten (10) shares of e hundred dollars each in the capital stock of the Central Pacific ilroad Company transferable only on the books of the said com-ny in the city of New York upon the surrender of this certificate d all unpaid dividend warrants belonging thereto. This certificate not valid without the signature of the registrar and transfer agent. Any dividends that may be declared or become payable upon the ck represented by this certificate will be paid only upon presenta-n and surrender of the annexed dividend warrants corresponding number with the dividend so declared and to the bearer of said rrants.

In witness whereof the said company has caused this certificate to signed by its president and secretary this 12 day of March, 1883, l to be countersigned by its registrar and transfer agent.

1059 E. H. Miller, Jr., secretary. Countersigned and prior certificate annulled this 13 day of March, 1883. Fourth National Bank of New York, registrar. By H. Buckhout, cashr.

Leland Stanford, president. Countersigned this 12 day of March, 1883. Geo. Watkins, transfer agent.

(On back:)

For value received ——— hereby sell, assign, and transfer unto ——— ——— shares of the stock represented by the within certificate and do hereby irrevocably constitute and appoint ——— ——— attorney to transfer the said stock on the books of the within-named company with full power of substitution in the premises.

Dated March 13th, 1883.

W. H. Jox.

In presence of T. L. Manson, Jr.

Correct. Charles Head Co.

1060 PETITIONER'S EXHIBIT (BOOZE) No. 62, OCTOBER 7, 1914.

(Pursuant to agreement of counsel at page 535 of the record, Exhibit No. 62 need not be copied, as it is identical with petitioner's Exhibit No. 24, with the following exceptions, the page numbers given below referring to Exhibit 24 in volume 5 of petitioner's exhibits:)

Page 626, line 9:

Ex. 24. be added to or taken from as the case may be, the cargo of.

Ex. 62. be added or taken from as the case may be, the cargo of.

Page 628, line 15:

Ex. 24. ment, and on or before the thirteenth day of the succeeding.

Ex. 62. ment, and on or before the thirtieth day of the succeeding.

Page 630, line 6:

Ex. 24. either party to the other, with this exception, that if the.

Ex. 62. either party to the other, with this exception, that it the.

Page 630, line 13:

Ex. 24. or via the Isthmus of Panama, that shall affect the through.

Ex. 62. or via the Isthmus of Panama, that shall effect the through.

Page 630, line 19:

Ex. 24. tion to Europe via Panama—it is understood that the class.

Ex. 62. tion to *to* Europe via Panama—it is understood that the class.

Page 631, line 11:

Ex. 24. Trans-Continental Association.

Ex. 62. Trans-Continental Assocn.

1061 PETITIONER'S EXHIBIT (BOOZE) No. 63, OCTOBER 7, 1914.

Agreement of the Trans-Continental Association.

This agreement, made the first day of December, A. D. 1887, by and between

The Atchison, Topeka & Santa Fe Railroad Company,
The Atlantic & Pacific Railroad Company,
The Burlington & Missouri River Railroad in Nebraska,
The California Central Railway Company,
The California Southern Railroad Company,
The Canadian Pacific Railway Company,
The Central Pacific Railroad Company,
The Denver & Rio Grande Railway Company,
The Denver & Rio Grande Western Railroad Company,
The Galveston, Harrisburg & San Antonio Railway Company,
The Missouri Pacific Railway Company,
(Pencil notation on first page: "Notice of withdrawal effective 12/31/92.")

1062 The Northern Pacific Railroad Company,
The Oregon & California Railroad Company,
The Oregon Railway and Navigation Company,
The Oregon Short Line,
The St. Louis & San Francisco Railway Company,
The Southern Pacific Company,
The Texas & Pacific Railway Company, and
The Union Pacific Railway Company.

Witnesseth: The object of this agreement is to promote harmony of action between the above-named carriers to the end that reasonable rates of charge for their respective services may be jointly made and maintained. In pursuit of said object, it is agreed as follows:

Article I.

That an organization is hereby formed, to be called the Trans-Continental Association.

Article II.

The traffic subject to this agreement shall be as follows: To, from, or passing through Sacramento, Marysville, Mojave, San Bernardino, and Colton, California; Portland, Oregon; Tacoma and Seattle, Washington Territory; Vancouver, British Columbia, on one
1063 hand, to, from, or through points on or east of the 97th meridian of longitude, including Winnipeg, Manitoba, on the other hand, excepting ~~freight~~ business from or to Asia, Australasia, and Central America.

Article III.

Executive Committee.

1. The affairs of the association shall be directed by an executive committee of seven members, to be annually elected unanimously. This committee shall adjudicate differences between members.

2. The committee shall fix the salary of the chairman and other officers, shall approve the appointment and salaries of necessary employees, and authorize and audit all disbursements.

3. Meetings of the committee shall be called on the request of two members addressed to the chairman, or when deemed necessary by him, the main objects for consideration to be stated in the call.

4. Five members shall constitute a quorum. All action of the executive committee must be unanimous.

Article IV.

1. The officers of the association shall be elected by consent
1064 of all the members. Vacancies shall be filled by the executive committee pending next general meeting of the association.

2. The executive officer of the association shall be the chairman. He shall preside at all meetings and shall be *ex officio* chairman of regular committees.

3. He shall have authority to construe this agreement and all resolutions which may be adopted, and his decision shall be binding until reversed by the executive committee or by a general meeting.

4. He shall investigate any violation of this agreement and in such manner as he may elect, reporting same to executive committee.

5. He shall keep the records of the association, shall issue in joint form all rates, rules, and regulations relating to traffic covered by this agreement, issuing them to all members and their designated representatives simultaneously, filing copies with the Interstate Commerce Commission as required by law, keep a full and accurate account of the movements of and revenue received from such traffic,

make such reports as may be required by the executive committee or the association, and render monthly detailed statements and approximate weekly reports of all traffic.

1065 6. He or his deputy shall at all times have access to all books and papers of the parties hereto which have a bearing on the business subject to this agreement.

7. He shall be supplied daily with legible impression copies of the waybills of all freight and with statements monthly of the passenger traffic covered by this agreement; and in addition thereto the initial roads for east and westbound business, respectively, shall make daily reports showing approximately the number of passengers of each class, route, origin, and destination (if either or both be an association point), and junction or terminal points through which the business passes.

8. Each party hereto shall file with the chairman all of its tariffs, regular or special, bearing on the traffic covered by this agreement, and it shall be his duty to see that they in no wise conflict with the rates adopted by the association.

9. Should necessity for change in the rates or regulations arise, prompt action shall be taken by the chairman, and his ruling shall stand until reversed by the executive committee or by general meeting.

1066 Article V.

1. The general freight and passenger agents, respectively, or other designated officers of the companies parties hereto, shall constitute rate committees. Said committees shall make all rates and divisions and rules pertaining thereto. Should the rate committee fail to agree, reference shall be had to the executive committee.

2. The rates, divisions, rules, and regulations adopted shall be promulgated by the chairman for the guidance of the parties in interest, and no deviation shall be allowed nor any change made, except as provided in article 4, section 9.

(Typewritten slip pasted in margin:)

Resolution adopted August 20th, 1889, appearing on *page 469* of printed proceedings.

"Resolved, That rates and divisions to any point shall not be effective until published by the chairman, it being understood that when divisions are arranged by the chairman to any point which any member of this association can not reach by the lines with which such divisions have been arranged, such member of the association is at liberty to arrange divisions by other lines to reach the 1067 same point, provided in all cases that the full tariff rates established by the association shall be fully maintained."

Article VI.

1. The expenses of this association shall be borne by the several parties hereto in the proportion their entire revenue from freight and passenger traffic subject to the agreement bears to the total revenue of all parties from same traffic, except as may hereafter be provided.

2. The executive committee shall provide for the expenses until a basis of assessment can be arrived at.

Article VII.

1. The meetings of the association shall be held at the call of the chairman, when in his judgment they are necessary, or at the request of two members addressed to the chairman.

2. Two-thirds of the members shall constitute a quorum, and the unanimous action of such meeting shall be binding on all parties, except that propositions designed to effect changes in existing agreements or limitations, or extensions of the interests of this association, shall not be considered at any meeting where all the
1068 members are not represented, except as herein provided.

3. Whenever it shall be deemed necessary to call a meeting the chairman shall consult the wishes of all members before fixing the date and place of such meeting. Not less than two weeks' notice shall be given. When the date shall have been set the meeting shall not be postponed, except on the request of a majority of the members. Each member shall be represented at such meeting by some person duly authorized to act, whose vote shall be binding. A quorum being present, it is understood and agreed that failure to attend a meeting so called shall be taken as authorizing the chairman to act for any member not represented.

4. The chairman, in all notices of meetings of the executive committee or of the association, shall state the subjects to be discussed at such meetings.

5. No person shall be allowed to be present during meetings of this association except the president, vice president, general manager, general superintendent, traffic manager, general freight agent, general ticket agent, and general passenger agent, or other duly authorized officers of the roads members of this association, together with the chairman and his secretary, except by unanimous consent.

1069 Article VIII.

This agreement shall take effect January 1, 1888, and shall continue, subject thereafter to ninety days' written notice to the chair-

man of a desire on the part of any member to withdraw from or amend the same.

(Typewritten slip pasted in margin:)

Article VIII.

(In pencil:) See page 67 of proceedings for 1888.

This agreement shall take effect January 1, 1888, and shall continue, subject thereafter to ninety days' written notice to the chairman of a desire on the part of any member to withdraw from or amend the same, which notice shall specify whether he desires to withdraw from the agreement as far as it may be applied to passenger or freight traffic, or both, and in the event of such notice the chairman shall, prior to the expiration of the ninety days, convene the members of the association to decide what action shall be taken.

1070 Wm. F. White, traffic mgr., for the Atchison, Topeka & Santa Fe Railroad Company.

Wm. F. White, traffic mgr., for the Atlantic & Pacific Railroad Company.

Thos. Miller, for the Burlington & Missouri River Railroad Company in Neb.

Wm. F. White, traffic mgr., for the California Central Railway Company.

Wm. F. White, traffic mgr., for the California Southern Railroad Company.

G. W. Olds, gen. traffic manager, for the Canadian Pacific Railway Company.

J. C. Stubbs, genl. traffic mgr., S. P. Co., for the Central Pacific Railroad Company.

A. S. Hughes, traffic mangr., for the Denver & Rio Grande Railroad Company.

J. H. Bennett, genl. frt. & passr. agt., for the Denver & Rio Grande Western Railroad Company.

J. C. Stubbs, genl. traf. mgr., S. P. Co., for the Galveston, Harrisburg & San Antonio Railway Company.

1071 W. H. Newman, 3d v. prest., for the Missouri Pacific Railway Company.

T. F. Oakes, vice-president & gen'l manager, per C. A. Fee, for the Northern Pacific Railroad Company.

J. C. Stubbs, genl. traffic mgr. S. P. Co., for the Oregon & California Railroad Company.

T. J. Potter, 1st vice pres., per H. A. Johnson, for the Oregon Railway & Navigation Company.

T. J. Potter, 1st vice pres., per H. A. Johnson, for the Oregon Short Line.

H. L. Morrill, 2nd vice prest. & genl. manr., for the St. Louis & San Francisco Railway Company.

J. C. Stubbs, genl. traffic mgr., for the Southern Pacific Company.

——— ———, for the Texas & Pacific Railway Company.

T. J. Potter, 1st vice pres., per H. A. Johnson, for the Union Pacific Railway Company.

——— ———, for the Chicago, Kansas, and Nebraska R. R. Co.

1072 ——— ———, for the Great Northern Railway Line.

H. Collbran, for the Colorado Midland Railway Company.

(Endorsement:)

Original.

Agreement of the Trans-Continental Association. January 1, 1888.

1074 PETITIONER'S EXHIBIT (CONNOR) No. 65, OCTOBER 7, 1914.

Statement showing proportions of transcontinental rates from Pittsburg-Buffalo territory, Cincinnati, Cincinnati territory, and Detroit territory to California terminals other than San Francisco, accruing to lines west of Council Bluffs and New Orleans, respectively.

Rate.	Pittsburg-Buffalo territory.		Cincinnati, and Cincinnati and Detroit territories.			
	Prop'n west of Council Bluffs.	Prop'n west of New Orleans.	Prop'n west of Council Bluffs.	Proportion west of New Orleans.		
				Cincinnati territory.	Cincinnati (proper).	Detroit territory.
600	434.2	408.5	449.6	419.2	458.5	412.1
480	347.6	327.0	359.8	335.5	366.9	329.8
450	325.9	306.6	337.3	314.6	344.1	309.3
400	289.8	272.6	300.0	279.8	305.9	275.0
390	282.5	265.8	292.5	272.8	298.3	268.2
340	246.4	231.8	255.1	237.9	260.1	233.8
300	217.5	204.7	225.1	210.0	229.7	206.5
270	195.8	184.3	202.7	189.1	206.8	185.9
260	188.6	177.5	195.2	182.1	199.1	179.0
1075						
250	181.4	170.7	187.8	175.2	194.2	172.4
240	174.1	163.9	180.3	168.2	183.9	165.9
225	163.3	153.7	169.0	157.7	172.4	155.1
220	159.7	150.3	165.3	154.3	168.7	151.6
215	156.1	146.9	161.6	150.7	164.8	148.2
210	152.5	143.5	157.8	147.3	161.0	144.8
200	145.2	136.7	150.3	140.3	153.4	137.4
190	138.0	130.0	142.9	133.4	145.8	131.1

1073 PETITIONER'S EXHIBIT (CONNOR) No. 64, OCTOBER 7, 1914.

Official map of railroad freight classification territories and freight traffic association territories issued under the direction of Central Freight Association. Eugene Morris, chairman. L. A. Lowrey, secretary. Copyright, 1913, by Eugene Morris, 2046 Transportation Building, Chicago, Ill.

Pursuant to agreement of counsel, this map is not to be reproduced as an exhibit.

Rate.	Pittsburg-Buffalo territory.		Cincinnati, and Cincinnati and Detroit territories.			
	Prop'n west of Council Bluffs.	Prop'n west of New Orleans.	Prop'n west of Council Bluffs.	Proportion west of New Orleans.		
				Cincinnati territory.	Cincinnati (proper).	Detroit territory.
185	134.4	126.6	139.1	129.9	142.0	127.7
180	130.8	123.2	135.4	126.4	138.1	124.2
175	127.2	119.7	131.7	122.9	134.3	120.7
170	123.6	116.4	127.9	119.4	130.5	117.4
165	119.9	113.0	124.2	115.9	126.7	114.0
160	116.3	109.6	120.4	112.4	122.9	110.5
115	112.8	106.2	116.7	109.0	119.1	107.1
150	109.1	102.7	113.0	105.4	115.3	103.7
145	105.5	99.3	109.2	101.9	111.4	100.2
1076						
140	101.9	96.0	105.5	98.4	107.6	96.8
135	98.3	92.5	101.7	95.0	103.8	93.4
130	94.7	89.2	98.0	91.5	100.0	89.9
125	91.0	85.8	94.2	88.0	96.2	85.5
120	87.4	82.4	90.5	84.5	92.4	83.1
115	83.9	79.0	86.8	81.0	88.6	79.6
110	80.2	75.6	83.0	77.5	84.7	76.2
105	76.6	72.2	79.3	74.0	80.9	72.8
100	73.0	68.8	75.6	70.6	77.1	69.4
95	69.4	65.4	71.8	67.1	73.3	66.0
90	65.8	62.0	68.1	63.6	69.5	62.5
85	62.1	58.6	64.3	60.2	65.7	59.1
80	58.6	55.2	60.6	56.6	61.9	55.7
78½	57.5	54.2	59.5	55.6	60.7	54.7
75	55.0	51.8	56.9	53.2	58.0	52.2

S. F., October 29, 1901.

1077 PETITIONER'S EXHIBIT (CONNOR) No. 66, OCTOBER 7, 1914.

Ten year statement in carloads of business handled from the territory of W. H. Connor, Commercial Agent, via Sunset.

	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	Total.	Monthly average.
January	74	63	83	145	119	112	128	145	194	105	1,168	116.8
February	126	71	137	182	120	121	134	151	242	175	1,459	145.9
March	122	58	129	230	168	147	200	149	353	262	1,908	190.8
April	116	64	113	238	145	117	320	128	263	244	1,748	174.8
May	96	70	95	236	236	156	153	116	297	209	1,664	166.4
June	123	74	121	116	225	248	185	141	276	241	1,750	175
July	126	110	131	113	191	127	156	116	203	253	1,526	152.6
August	111	98	106	94	161	137	143	147	208	232	1,437	143.7
September	130	113	131	108	219	133	131	*51	160	179	1,355	135.5
October	125	121	117	136	156	161	144	*X	132	165	1,257	125.7
November	152	109	139	206	160	214	132	56	194	266	1,628	162.8
December	60	132	167	128	178	219	183	160	185	209	1,621	162.1
Total	1,361	1,083	1,469	1,932	2,078	1,892	2,009	1,360	2,707	2,540	18,521	1,852.1

*Yellow fever months.
Banner month—March, 1898.
Banner average month—March.
Banner year—1898.

1078 Recapitulation of ten-year statement of business handled from the territory of W. H. Connor, Commercial Agent, via Sunset Route.

	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	Total.	Yearly avge
San Fran....	236	158	244	233	382	333	419	344	936	685	3,970	397
Oakland....	26	16	28	5	13	41	40	18	37	77	301	30
Stockton....	12	2	13	14	11	11	84	13	38	26	224	22
San Jose....	15	3	10	12	14	8	13	15	86	19	195	19
Los Angeles.	37	27	35	82	92	152	122	82	184	129	942	94
Marysville..	5	2	5	1	1	1	7	2	8	2	34	3
Sacramento.	20	49	20	31	37	35	48	50	69	63	422	42
San Diego...	*	1	*	3	6	4	5	1	2	3	25	2
State.....	25	45	28	24	52	26	52	53	294	199	798	79
Ore., Nev., etc.....	11	17	11	12	12	17	3	5	36	10	134	13
Total Merchandise	387 272	320 216	394 301	417 285	620 283	628 277	793 301	583 240	1,690 252	1,213 247	7,045 2,674	704 267
Total Calif..	659	536	695	702	903	905	1,094	823	1,942	1,460	9,719	971
Texas.....	584	409	648	1,079	1,076	897	893	420	496	809	7,311	731
New Mex.–Ariz.....	14	19	13	27	16	17	16	20	39	50	231	23
Mexico.....	84	72	90	87	47	42	68	50	205	214	959	95
Col., Cuba, Fla., etc...	20	47	23	37	36	31	28	47	25	7	301	30
Total....	702	547	774	1,230	1,175	987	1,005	537	765	1,080	8,802	880
Grand total..	1,361	1,083	1,469	1,932	2,078	1,892	2,099	1,360	2,707	2,540	18,521	1,852

1079 Petitioner's Exhibit (Connor) No. 67, October 7, 1914.

Mileage.

California.

Q. & C., New Orleans	836
S. P., San Francisco	2,487
	3,323
C. & O., Chicago	285
C. & NW., Omaha	491
U. P., Ogden	1,000
S. P., San Francisco	783
	2,559
B. & O., St. Louis	342
R. I., El Paso	1,246½
S. P., San Francisco	1,295
	2,883½

Columbus, O.

Cincinnati, B. & O	116
Chicago, Penna. Co	315
St. Louis, Penna. Co	422

Cleveland, O.

Cincinnati, Big Four	254
Chicago, L. S. & M. S	357
St. Louis, Big Four	537

Oregon.

C. & O., Chicago	285
C. & NW., Omaha	491
U. P., Granger	854
O. S. L., Huntington	541
O. W. R. & N., Portland	404
	2,575
C. & O., Chicago	285
C. & NW., Omaha	491
U. P., Ogden	1,000
S. P., Roseville	675
Roseville-Portland	664
	3,115

Toledo, O.

Cincinnati, C. H. & D	201
Chicago, L. S. & M. S	244
St. Louis, Wabash	437

Louisville, Ky.

Chicago, Penna. Co	306
St. Louis, Sou. Ry	274
New Orleans, I. C	787

1080 PETITIONER'S EXHIBIT (CONNOR) No. 68, OCTOBER 7, 1914.

California carloads.

Sept. 1st to Sept. 1st.	1901 to 1902	1902 to 1903	1903 to 1904	1904 to 1905	1905 to 1906	1906 to 1907	1907 to 1908	Total.
U. P.	1,500	1,897	2,066	3,049	4,243	3,364	2,557	18,676
S. S.	874	1,054	882	692	830	1,172	825	6,329
	2,374	2,951	2,948	3,741	5,073	4,536	3,382	25,005

1081 PETITIONER'S EXHIBIT (CONNOR) No. 69, OCTOBER 7, 1914.

January 1st, 1912, to December 31st, 1912.

California via—	Number cars.	Per cent.
Union Pacific	2,356	51
El Paso & Deming	1,239	27
New Orleans & Shreveport	671	14
California junctions	235	5
Other Texas junctions	85	2
Ogden Sou. Pac. only	61	1
	4,647	100
Union Pacific	2,356	50½
Sou. Pac	2,291	49½

1082 PETITIONER'S EXHIBIT (CONNOR) No. 70, OCTOBER 7, 1914.

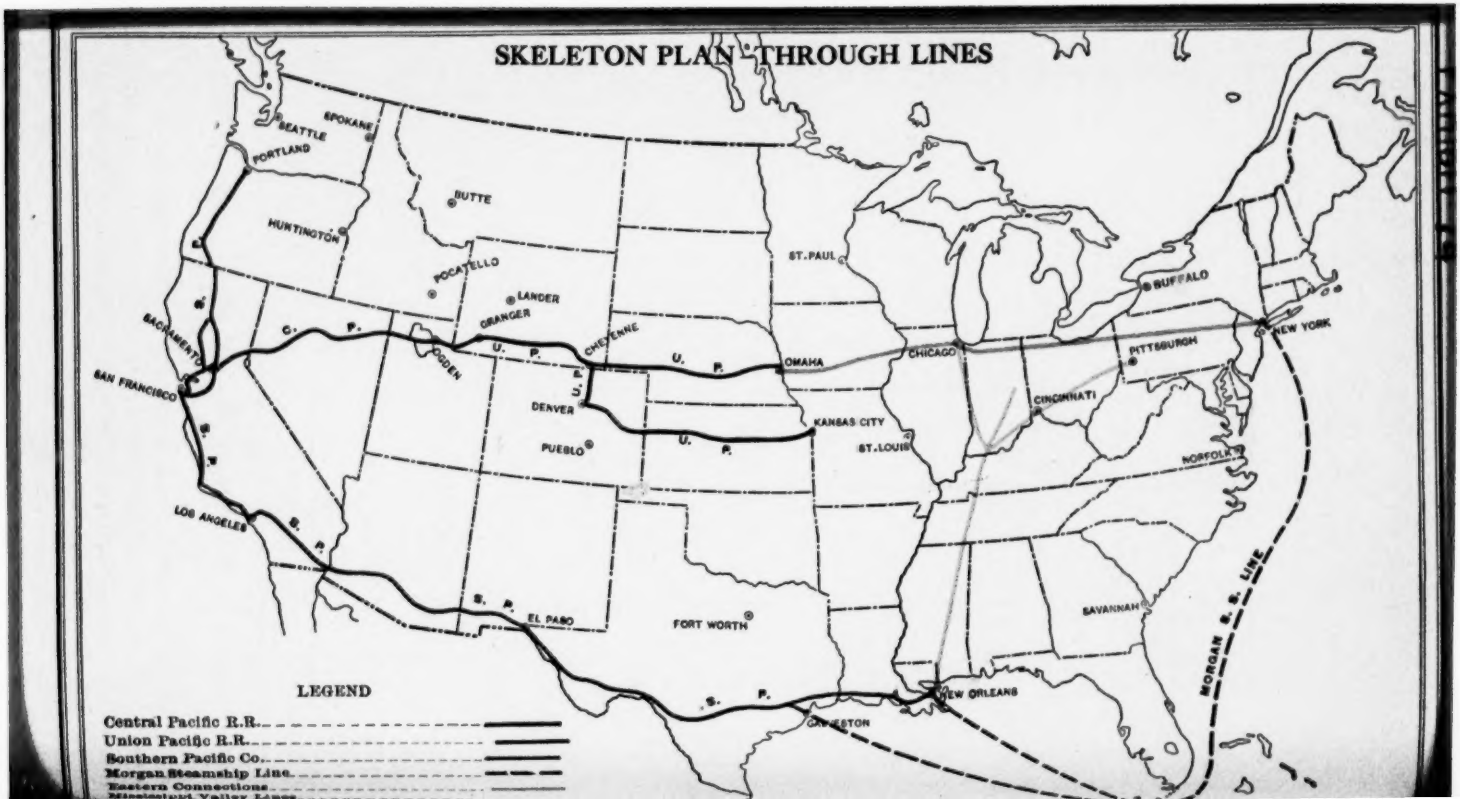
Carloads to California (exclusive of Los Angeles and southern points) from Cincinnati territory.

	July, 1914.	Aug., 1914.	Sept., 1914.	Total.
Crisco	6	4	12	22
Whiskey	6	18	7	31
Auto trucks	3	4	.....	7
Plate steel	3	3	2	8
Iron drums	4	.....	.....	4
~~Fireless cookers~~	½	.....	.....	½
Galvanized iron	6	6	6	18
Stoves	2	.....	.....	2
Packing-house products	23	18	16	57
Tin cans	1	85	14	100
Automobiles	6	18	33	57
Street cars	38	17	6	61
Machinery	10	14	6	30
Furniture	4	1	10	15
Vehicles	2	.....	1	3
~~Gas cylinders~~	½	.....	.....	½
Tile	3	2	2	7
Paper	4	1	2	7
Steam shovels	1	1	.....	2

	July, 1914.	Aug., 1914.	Sept., 1914.	Total.
Clay pigeons	2	1		
~~Bottles~~	~~1~~			
~~Steel doors~~	~~1~~			
Glassware	4	3	1	
Pianos	2	4	1	
~~Wine~~	~~1~~			
~~Soap~~	~~1~~			
~~Truck poles~~	~~1~~			
Army cook outfits	1		6	
Iron pipe	8	1	1	
Starch	1	2		
Canned goods	5		17	
Bath tubs	2	1		
Wire	2		3	
Lamp chimneys	3	3	3	
Belting	3	1		
Veneer wood	1			
Fruit jars	1	1	2	
Bridge iron	3	1	6	
~~Chilled shot~~	~~1~~			
Road rollers	1	2	2	
1084 ~~Lumber~~	~~1~~			
Brick	2		1	
H. H. goods	1	1		
Iron safes & vault work	1	2	1	
~~Cotton goods~~	~~1~~			
Enamelware	1		1	
~~Pig iron~~		~~1~~		
~~Wheelbarrows~~		~~1~~		
Locomotive crane		2		
Cash registers		1	2	
~~Pottery~~		~~1~~		
Live stock		3		
Agl. implements		3	3	
Tobacco		2		
Electrical goods		1	1	
Tin plate		3	1	
~~Tanks~~		~~1~~		
~~Mineral water~~		~~1~~		
Toys		1	1	
1885 ~~Sand~~		~~1~~		
~~Stove pipe~~		~~1~~		
Building stone			14	1
~~Earthenware~~			~~1~~	
Candles			1	
Syrup			1	
Stockfood			1	
Matches			1	
Seed			1	
Sweat pads			1	
Fencing			1	
Total	176	238	192	6

1086 PETITIONER'S EXHIBIT (MUNROE) No. 71, OCTOBER 8, 1914.

(Typewritten copy of agreement dated September 28, 1883. This agreement is the same as petitioner's Exhibit No. 18, and, pursuant to agreement of counsel at page 647 of the record, need not be copied.)


SKELETON PLAN THROUGH LINES
SEATTLE
SPOKANE
PORTLAND
BUTTE
HUNTINGTON
POCATELLO
LANDER
GRANGER
OGDEN
CHEYENNE
OMAHA
DENVER
PUEBLO
KANSAS CITY
ST. LOUIS
ST. PAUL
CHICAGO
BUFFALO
PITTSBURGH
NEW YORK
CINCINNATI
NORFOLK
SAVANNAH
SACRAMENTO
SAN FRANCISCO
LOS ANGELES
EL PASO
FORT WORTH
NEW ORLEANS
GALVESTON
MORGAN S.S. LINE
C. P.
U. P.
S. P.
LEGEND
Central Pacific R.R.
Union Pacific R.R.
Southern Pacific Co.
Morgan Steamship Line
Eastern Connections

1087 PETITIONER'S EXHIBIT (MUNROE) No. 72, OCTOBER 8, 1914.

(Typewritten copy of agreement dated November 8, 1883. This agreement is the same as petitioner's Exhibit No. 19, and, pursuant to agreement of counsel at page 647 of the record, need not be copied.)

1088 PETITIONER'S EXHIBIT (MUNROE) No. 73, OCTOBER 8, 1914.

Statement of freight interchanged with Southern Pacific Company at Ogden, Utah, for the fiscal years ending June 30, 1906 to 1914, inclusive:

Year.	U. P. received from.		U. P. delivered to.		Total.	
	Tons.	Union Pacific R. R. revenue.	Tons.	Union Pacific R. R. revenue.	Tons.	Union Pacific R. R. revenue.
1906....	511,992	3,348,871.01	582,724	4,051,393.88	1,094,716	7,400,264.89
1907....	472,615	3,260,096.63	664,794	4,958,384.18	1,137,409	8,218,480.81
1908....	492,607	3,376,328.75	617,842	4,492,402.76	1,110,449	7,868,731.31
1909....	566,823	4,107,010.61	553,460	3,643,679.49	1,120,283	7,750,690.10
1910....	591,110	4,377,831.93	672,852	4,149,557.64	1,263,962	8,527,389.57
1911....	608,206	4,280,709.84	557,347	3,433,054.88	1,165,553	7,713,764.72
1912....	623,162	4,197,519.32	501,848	3,218,575.25	1,125,010	7,416,094.57
1913....	616,421	3,998,077.85	586,964	3,736,170.51	1,203,385	7,734,248.36
1914....	609,848	4,142,369.82	540,741	3,567,593.52	1,150,589	7,709,963.34

Compiled from Accounting Department Form No. 925.

1090 PETITIONER'S EXHIBIT No. 75, NOVEMBER 4, 1914.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.
Washington, D. C., October 22, 1914.

Pursuant to section 882 of the Revised Statutes I hereby certify that the annexed papers are true and correct copies of the originals as they appear of record and on file in this department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[Seal, Department of the Interior.] B. SWEENEY,
Assistant Secretary of the Interior.

P.

1091 OFFICE OF THE SOUTHERN PACIFIC R. R. Co.,
San Francisco, Nov. 30th, 1866.

Hon. the SECRETARY OF THE INTERIOR:

Your favor of the 29th ult. addressed to Hon. T. G. Phelps, presi
dent of this company, is received, and enclosed I send you certifie
copy, under seal of the company, of resolution accepting the provi
sions and conditions of the act of Congress referred to in your lette

We trust that this will be found satisfactory, and that upon receip
hereof the request made in Mr. Phelps' letter of Sept. 28th, 1866
will be complied with.

I write this at request of Mr. Phelps.

Very respectfully, your obt. servt.,

CHAS. N. FOX,
Acting Secy. of S. P. R. R. Co.

1092 (Endorsement on back of preceding page:)
Rec'd Dec. 21, 1866. San Francisco, Nov. 30, 1866. Southern
Pac.
Chas. N. Fox, Actg. Sec'y.
Enclosed acceptance by the Southern Pac. R. R. Co. of the act o
Congress.
Department of the Interior. Dec. 24, 1866.
L. G. Pac. R. R. Vol. 1. 120.
Ack. by chf. clerk Dec. 24, 1866. Also see letter to Mr. Fox an
Comr. Genl. L. O., dated Jan. 3/66.

1093 To the Hon. the President and the Secretaries of the seven
departments of the Government of the United States o
America.

At a meeting of the board of directors of the "Southern Pacif
Railroad Company" held at the office of said company in the ci
of San Francisco, in the State of California, on the twenty-fourt
day of November, A. D. 1866, it was unanimously

"Resolved, That this company will and does hereby accept th
terms, conditions, and impositions of the act of Congress of th
United States entitled 'An act granting lands to aid in the constru
tion of a railroad and telegraph line from the States of Missou
and Arkansas to the Pacific Ocean,' passed at the first session of th
Thirty-ninth Congress, and that a copy of this resolution of accep
ance, certified under the seal of this company, and signed by th
president and secretary, be forwarded to and filed with the Secr
tary of the Interior."

1094 All of which we hereby certify. Witness our hands and the seal of said company this twenty-sixth day of November, A. D. 1866.

Southern Pacific Railroad Co.

CHAS. N. FOX,
Acting Secretary of the Southern Pacific R. R. Co.
T. G. PHELPS,
President of the Southern Pacific R. R. Co.

(Endorsement:)

Southern Pacific Railroad Co. "Resolution of acceptance."

1095 PETITIONER'S EXHIBIT No. 76, NOVEMBER 4, 1914.

4-207]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 22, 1914.

I hereby certify that the annexed copies of the letter of the Acting Secretary of the Interior of April 3, 1871, transmitting to this office the map filed by Chas. Crocker, showing the general route of the branch line of the Southern Pacific Railroad, and of the certificate indorsed upon said map and signed by said Crocker as president of the Southern Pacific Railroad Company, are true and literal exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

Seal United States General Land Office.

1096

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 3d, 1871.

SIR: The 23d section of the act to incorporate the Texas Pacific Railroad, and for other purposes, approved March 3d, 1871, authorizes "the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River," with the same rights and privileges, and subject to the same limitations and restrictions, as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

The accompanying map designating the route of said road from Tehachapa Pass, by way of Los Angeles to the Colorado River, has been filed by Charles Crocker, Esq., president of the company, with a request that the lands may be withdrawn, as provided in the 12th section of said act, "from preemption, private entry and sale."

You will issue the necessary order for a withdrawal of the lands, within twenty miles, and along the route designated on said map.

Very respectfully, your obt. servant,

WALTER H. SMITH,
Acting Secretary.

Hon. WILLIS DRUMMOND,
Commissioner of the General Land Office.

1097 To Hon. C. Delano, Secretary of the Interior, and Hon. Willis Drummond, Commissioner of General Land Office.

Please to take notice that this Map is filed by the Southern Pacific Railroad Company of California in the office of the Commissioner of the General Land Office in the Department of the Interior for the purpose of designating by the heavy red line traced thereon the general route of the line of railroad, as near as may be, "from a point at or near Tahatchapa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River," adopted by the said Southern Pacific Railroad Company in pursuance of the power and authority granted to said company by the 23d section of the act of the Congress of the United States, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3d, 1871, and in pursuance of the provisions of the act of July 27th, 1866, referred to in said 23d section, and for the purpose of obtaining the benefit of the provisions of said acts of Congress.

CHAS. CROCKER,
President Southern Pacific Railroad Company.

1098 PETITIONER'S EXHIBIT (GRIGGS) No. 77, APRIL 20, 1915.

House of Representatives. 55th Congress, 3d session. Document No. 238.

Indebtedness of Central Pacific and Western Pacific Railroads.

Report of the commissioners appointed to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific Railroads.

February 20, 1899.—Referred to the Committee on Pacific Railroads and ordered to be printed.

WASHINGTON, D. C., *February 15, 1899.*

To the House of Representatives:

The undersigned commissioners, appointed by the deficiency appropriation act approved July 7, 1898, to settle the indebtedness to the Government growing out of the issue of bonds in aid of the
1099 construction of the Central Pacific and Western Pacific Rail-

roads, would respectfully report that they have concluded a settlement of the said indebtedness with the Central Pacific Railroad Company, the owner of the said railroads. A copy of the agreement of settlement is herewith transmitted.

The settlement is made as of the 1st day of February, 1899, at which date the amount due to the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific railroads amounted to the sum of $58,812,715.48, that being the full amount necessary to reimburse the United States for the moneys paid for interest or otherwise in aid of the construction of said railroads.

Said indebtedness is, by the agreement of settlement, funded at the amount aforesaid into twenty promissory notes, dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of $2,940,635.78, which is one-twentieth of the total amount due. Said notes bear interest at the rate of 3 per cent per annum, payable semi-annually, and have a condition attached thereto to the effect that if default be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of the agreement of settlement.

It is further provided that the payment of the principal and interest of said notes shall be secured by $58,820,000 of face value first refunding mortgage 4 per cent gold bonds to be hereafter issued by the Central Pacific Railroad Company or its successor having title to the railroads now owned by said company and specified in said agreement, such bonds to be part of an issue of not exceeding $100,000,000 in all.

Said bonds are to be secured by a mortgage upon all railroads, equipments, and terminals now owned by said Central Pacific Railroad Company, which mortgage shall be the first lien upon such property or shall be secured by the deposit as collateral security therefor of certain percentages of the now outstanding bonds upon said property or the different divisional parts thereof. The form of such mortgage is subject to the agreement of the parties to said agreement of settlement and has been approved by the Attorney General.

The agreement further provides that Speyer & Co., who are a party thereto, shall, within one month after the delivery to the United States of the settlement notes, accept from the Secretary of the Treasury the four earliest maturing notes and pay to the United States the face value thereof, with accrued interest

thereon to the date of payment, without recourse further than that Speyer & Co. shall, until the delivery of the refunding bonds as collateral, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure said indebtedness.

The said agreement was submitted in writing to the President and approved by him on the 15th day of February, and the said promissory notes have been duly delivered to the Treasurer of the United States.

Other provisions and particulars of said agreement will appear by a perusal thereof, to which reference is respectfully made.

The execution of the agreement was duly authorized by resolution of the board of directors of the Central Pacific Railroad Company and approved by the formal action and consent of a large majority of the stockholders.

The commissioners have not found it necessary to expend
1102 any part of the sum of $20,000 appropriated for the expenses of the commission.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney General.

* * * * * * *

(The agreement appearing at this point is given as Exhibit A of defendants' answer, and pursuant to stipulation at page 2075 of the testimony, need not be copied as a part of this exhibit.)

* * * * * * *

State of California, city and county of San Francisco, ss:

On this 6th day of February, A. D. 1899, before me, E. B. Ryan, a notary public in and for the city and county of San Francisco, duly commissioned and sworn, personally appeared Isaac L. Requa, known to me to be the president, and W. M. Thompson, known to me
1103 to be the secretary, of the Central Pacific Railroad Company, the corporation described in and who executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco the day and year in this certificate first above written.

[SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

×

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted]

No. [redacted]5

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

VOLUME V.

FILED JULY [redacted], 1917

(26050)

In Equity, No. 420

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

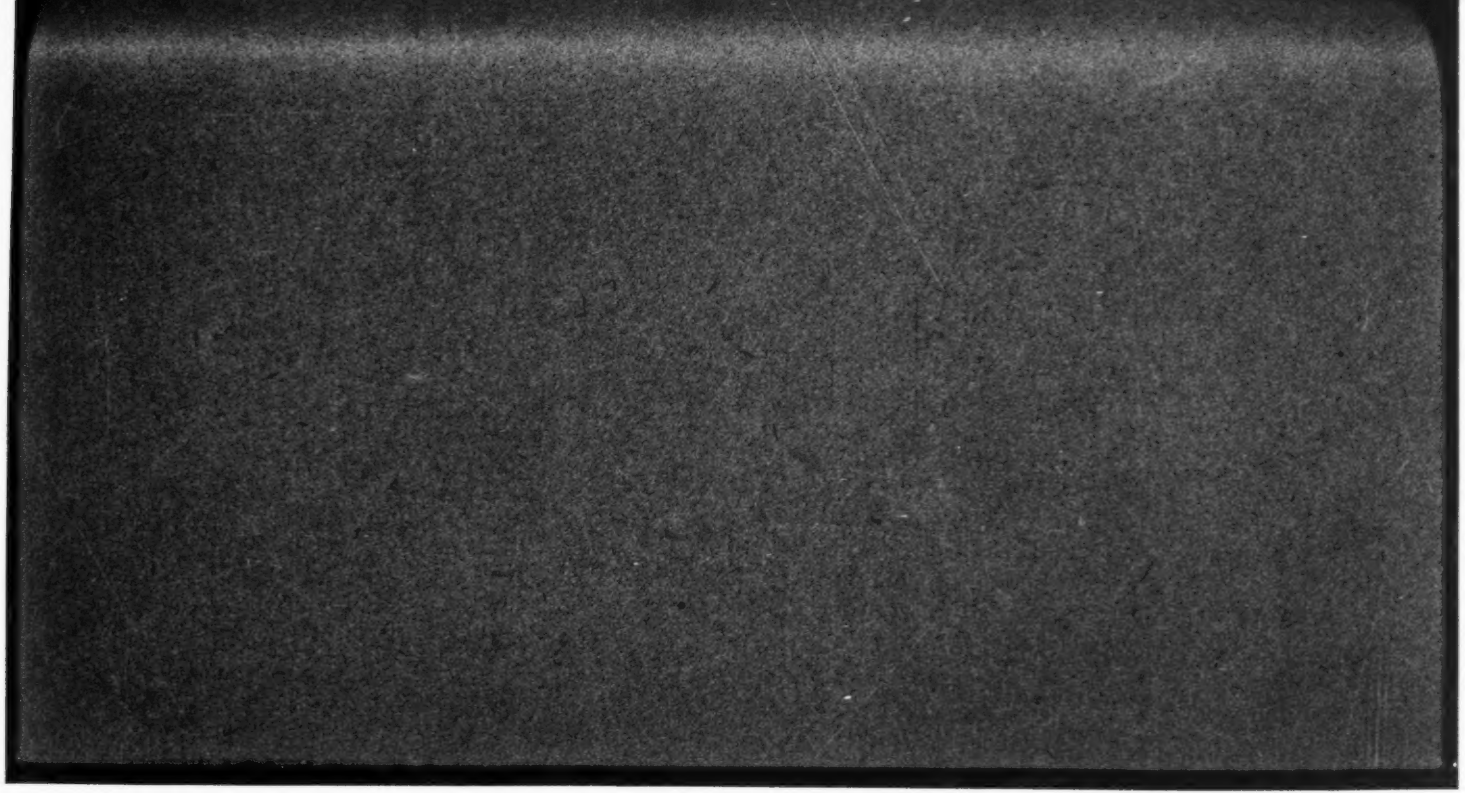
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 6.

DEFENDANTS' EXHIBITS.

Pages 1077 to 1324, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1913



In Equity, No. 420

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 5.

DEFENDANTS' EXHIBITS.

Pages 1677 to 1989, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

MAPS

TOO

LARGE

FOR

FILMING

DEFENDANTS' EXHIBIT (HOOD) No. 1, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1870.

DEFENDANTS' EXHIBIT (HOOD) No. 2, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1875.

DEFENDANTS' EXHIBIT (HOOD) No. 3, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1880.

DEFENDANTS' EXHIBIT (HOOD) No. 4, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to January 1, 1882.

DEFENDANTS' EXHIBIT (HOOD) No. 5, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to March 1, 1885.

DEFENDANTS' EXHIBIT (HOOD) No. 6, MARCH 1, 1915.

Map showing construction of Southern Pacific lines prior to July 2, 1890.

DEFENDANTS' EXHIBIT (HOOD) No. 7, MARCH 1, 1915.

Map showing lines operated by Southern Pacific Company west of El Paso, Texas, on July 2, 1890, and subsequently; new construction since July 2, 1890, and lines acquired since July 2, 1890.

(The foregoing maps, Defendants' Exhibits Nos. 1 to 7, are not reproduced for distribution as exhibits.)

DEFENDANTS' EXHIBIT (REDINGTON) No. 8, MARCH 3, 1915.

A. N. Towne, general superintendent. E. C. Fellows, asst. genl. superintendent. Central Pacific Railroad. P. O. lock box, 2328.

Central Pacific Railroad	1,214
Southern Pacific R. R. (south of Goshen)	552
Southern Pacific R. R. of Arizona	182
Los Angeles & San Diego R. R.	28
California Pacific Railroad	140

Northern Railway	113
San Pablo & Tulare R. R.	47
Stockton & Copperopolis R. R.	49
Amador Branch Railroad	27
Los Angeles & Independence R. R.	17
Berkeley Branch Railroad	3
Steamer lines, Sacramento River	294
Steamer lines, Colorado River	385
Miles	3,031

8–12–79.

4 GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Aug. 15, 1879.

Mr. J. A. Fillmore is hereby appointed master of transportation of the Central Pacific R. R. and leased lines, with headquarters at San Francisco.

Mr. R. H. Pratt, superintendent of the Salt Lake division, will succeed Mr. Fillmore as superintendent of the Sacramento and Oregon and the California Pacific and northern divisions, with headquarters at Sacramento.

Mr. A. G. Fell will succeed Mr. Pratt as superintendent of the Salt Lake division, with headquarters at Ogden.

Appointments to take effect August 20th, 1879.

A. N. TOWNE,
General Superintendent.

5 DEFENDANTS' EXHIBIT (REDINGTON) NO. 9, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Cal., April 27, 1881.

Circular.

Mr. W. G. Curtis is hereby appointed superintendent of track for the Central Pacific Railroad and leased lines, with headquarters at San Francisco.

Mr. A. A. Bean will succeed Mr. Curtis as assistant superintendent of the Southern Pacific R. R. of Arizona and the Southern Pacific R. R. of New Mexico, with headquarters at Tucson.

Appointments to take effect the second proximo.

All orders given by these gentlemen pertaining to the duties of their offices will be respected accordingly.

A. N. TOWNE, *Gen'l Superintendent.*

6 DEFENDANTS' EXHIBIT (REDINGTON) No. 10, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, October 8th, 1881.

Circular.

Mr. James Campbell is this day appointed asst. supt. of the Rio Grande division, Southern Pacific R. R. of N. M., also the El Paso division of the Galveston, Harrisburg and San Antonio R. R. with headquarters at El Paso, Texas. All orders given by him pertaining to the duties of his office will be respected.

A. N. TOWNE, *Genl. Supt.*

7 DEFENDANTS' EXHIBIT (REDINGTON) No. 11, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,
GENERAL SUPT'S OFFICE,
San Francisco, Jany. 12th, 1882.

On Monday next, January 16th, the G., H. & S. A. Ry. (El Paso division) will be opened for business to Marfa, 103.4 miles east of Sierra Blanca. Stations, distances, and agencies east of Sierra Blanca will be as follows:

Sierra Blanca, 18.3, agent. Torbert, 18.1. Haskell, 15.6. Chispa, 16. Valentine, 15.8. Ryan, 19.6, agent. Marfa, J. A. Fillmore.

8 DEFENDANTS' EXHIBIT (REDINGTON) No. 12, MARCH 3, 1915.

Central Pacific Railroad Company. General superintendent's office. A. N. Towne, general superintendent. J. A. Fillmore, ass't gen'l superintendent. E. M. Railton, master of transportation. P. O. lock box 2328.

Central Pacific Railroad	1,214
Southern Pacific R. R. (s. of Goshen)	552
Southern Pacific R. R. of Arizona	384
Southern Pacific R. R. of New Mexico	171
Galveston, Harrisburg & San Antonio R. R	54
Los Angeles & San Diego R. R	28
California Pacific Railroad	116
Northern Railway	118
San Pablo & Tulare R. R	47
Stockton & Copperopolis R. R	49
Amador Branch Railroad	27
Los Angeles & Independence R. R	17

	Berkeley Branch Railroad	3
9	Steamer lines, Sacramento River	294
	Steamer lines, Colorado River	365
	Miles	3,439

11-18-81.

SAN FRANCISCO, *March 6, 1882.*

Circular.

Six new stations—Araby, Wilmot, Grayton, Dalberg, Wendell, and Aragon—have been established in Arizona and Texas. Locations are as follows:

Yuma, 5.7. Araby, 8.1 (no agent). Gila City, ———. Tucson, 6.7. Wilmot, 7.9 (no agent). Papago, ———. Torbert, 9.1. Dalberg, 9.0 (no agent). Haskell, 15.6. Chispa, 8.0. Wendell,
10 8.0 (no agent). Valentine, 15.8. Ryan, 10.1. Sierra Blanca, 9.9. Grayton, 9.1 (no agent). Aragon, 9.5 (no agent). Marfa.

J. A. FILLMORE, *Asst. Genl. Supt.*

11 DEFENDANTS' EXHIBIT (REDINGTON) No. 13, MARCH 3, 1915.

A. N. Towne, general superintendent. J. A. Fillmore, ass't gen'l superintendent. E. M. Railton, master of transportation. P. O. lock box 2328. Central Pacific Railroad Company, general superintendent's office.

	Central Pacific Railroad	1,214
	Southern Pacific R. R. (s. of Goshen)	552
	Southern Pacific R. R. of Arizona	384
	Southern Pacific R. R. of New Mexico	171
	Galveston, Harrisburg & San Antonio R. R.	54
	Los Angeles & San Diego R. R.	28
	California Pacific Railroad	116
	Northern Railway	118
	San Pablo & Tulare R. R.	47
	Stockton & Copperopolis R. R.	49
	Amador Branch Railroad	27
	Los Angeles & Independence R. R.	17
	Berkeley Branch Railroad	3
12	Steamer lines, Sacramento River	294
	Steamer lines, Colorado River	365
	Miles	3,439

11-18-81

SAN FRANCISCO, *April 1st, 1882.*

Circular.

On Saturday, April 8th, 1882, the G., H. and S. A. R. R. will be opened for business to Haymond, 74–4/10 miles east of Marfa. An agency will be opened at Haymond. Marfa agency will be closed. Other stations named will have no agents.

Stations and distances are as follows:

Marfa, 13.8. Paisano, 7.8. Toronto, 5.5. Osman, 5.5. Strobel, 10.2. Altuda, 7.0. Lenox, 8.9. Marathon, 8.6. Warwick, 7.1. Haymond.

J. A. FILLMORE, *Asst. Genl. Supt.*

13 DEFENDANTS' EXHIBIT (REDINGTON) NO. 14, MARCH 3, 1915.

OFFICE OF THE PRESIDENT CENTRAL PACIFIC RAILROAD,
San Francisco, Cal., May 3, 1882.

Mr. A. N. Towne is this day appointed general manager of the Central Pacific Railroad and leased lines, with headquarters at San Francisco.

Under the direction of the president, he will attend generally to the executive business of the company, having the supervision and direction of all the departments of the company's service, the financial and accounting excepted.

His orders will be obeyed and respected accordingly.

LELAND STANFORD,
President Central Pacific Railroad.

14 DEFENDANTS' EXHIBIT (REDINGTON) NO. 15, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, May 20th, 1882.

Circular.

On Monday, May 22nd, 1882, the G., H. & S. A. R. R. (El Paso division) will be opened for business to Strobridge, 314.1 miles east of El Paso. An agency will be opened at Strobridge. The agency at Haymond will be closed. Other stations named below will have no agents.

Stations and distances are as follows:

Haymond, 6.1. Taber, 6.4. Maxon Springs, 7.5. Rosenfeld, 8.5. Longfellow, 8.0. Emerson, 8.4. Strobridge.

J. A. FILLMORE, *General Supt.*

15 DEFENDANTS' EXHIBIT (REDINGTON) No. 16, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD CO. AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, July 24, 1882.

Circular.

On Sunday, July 30th, 1882, the Galveston, Harrisburg & San Antonio Ry. (El Paso division) will be opened for business to Lozier, 358.2 miles east of El Paso.

On the same date the name of Osman Station will be changed to Murphysville, and the name of Strobridge Station will be changed to Sanderson.

Stations, distances, and agencies will be as follows:

Sanderson, 7.3, agent. Irwin, 6.8, no agent. Eldridge, 6.9, no agent. Tryden, 7.0, no agent. Thurston, 7.8, no agent. Watkins, 8.2, no agent. Lozier, agent.

J. A. FILLMORE, *Gen. Supt.*

16 DEFENDANTS' EXHIBIT (REDINGTON) No. 17, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD COMPANY,
PRESIDENT'S OFFICE,
San Francisco, January 1st, 1883.

Mr. Timothy Hopkins has been elected treasurer of this company, vice E. W. Hopkins, resigned.

CHARLES CROCKER,
Second Vice President.

17 DEFENDANTS' EXHIBIT (REDINGTON) No. 18, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD CO. AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Aug. 21st, 1884.

Circular.

September 1st the Oregon division of the Central Pacific Railroad will be opened for business to Delta, 38.48 miles north of Redding.

Stations, agencies, and distances will be as follows:

Redding, 2.73 (agent). Middle Creek, 6.97 (agent). Copley, 7.65 (no agent). Kennet, 4.54 (no agent). Morley, 3.65 (no agent). Elmore, 7.28 (no agent). Smithson, 5.66 (no agent). Delta (agent).

J. A. FILLMORE, *Genl. Supt.*

18 DEFENDANTS' EXHIBIT (REDINGTON) No. 19, MARCH 3, 1915.

CENTRAL PACIFIC RAILROAD AND LEASED LINES,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, Oct. 5th, 1884.

Circular.

The name of *Vermillionville* station, on the G., H. and S. A. Ry. system, has this day been changed to *La Fayette.*

J. A. FILLMORE, *Genl. Supt.*

19 DEFENDANT'S EXHIBIT (KLINK) No. 20, MARCH 4, 1915.

This agreement, made this 10th day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the United States and the State of California; the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation duly organized and existing under the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation duly organized and existing under the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation duly organized and existing under the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation duly organized and existing under the laws of the State of
20 Louisiana; and the Mexican International Railroad Company, a corporation duly organized and existing under the laws of the State of Connecticut—

Witnesseth, That the said Southern Pacific Railroad Company, organized and existing under the laws of the United States and the State of California, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of California, known and designated as the Southern Pacific Railroad of California, with all its branches and all railroads now leased by it, together with the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroads, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

II. That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of Arizona, hereby leases to the said Southern Pacific Company, for the term of ninety-
21 nine years from the date hereof, all of its railroad situated in the Territory of Arizona, and known and designated as the Southern Pacific Railroad of Arizona, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever, now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property, and to receive the rents, issues, and profits thereof.

III. That the said Southern Pacific Railroad Company, organized and existing under the laws of the Territory of New Mexico, hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the Territory of New Mexico and known and designated as the Southern Pacific Railroad of New Mexico, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use,
22 and operate the said property and to receive the rents, issues, and profits thereof.

IV. That the said Galveston, Harrisburg and San Antonio Railway Company hereby leases to the said Southern Pacific Company for the terms of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and known and designated as the Galveston, Harrisburg and San Antonio Railway, with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or its branches, and together with all the appurtenances thereunto belonging, and all other property now owned, held, and possessed by it, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

V. That the said Texas and New Orleans Railroad Company of 1874 hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and known and designated as the Texas
23 and New Orleans Railroad of 1874, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches, and together with all the appurtenances thereunto belonging, with the right to

possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VI. That the said Louisiana Western Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad situated in the State of Texas and Louisiana and known and designated as the Louisiana Western Railroad, together with all its branches and all the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad or branches and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VII. That the said Morgan's Louisiana and Texas Railroad and Steamship Company hereby lease to the said Southern Pa-
24 cific Company for the term of ninety-nine years from the date thereof its railroad situated in the State of Louisiana and known and designated as the Morgan's Louisiana and Texas Railroad, together with all the branches thereof and the rolling stock, telegraph lines, tools, and property of every kind and nature whatsoever now in use upon or in connection with said railroad and branches, and together with all the appurtenances thereunto belonging; also all the steamships, steamboats, tugs, wharves, piers, landings, depots, buildings, and all other property real and personal now owned, held, or possessed by the said Morgan's Louisiana and Texas Railroad and Steamship Company with the right to possess, maintain, use, and operate the said property and to receive the rents, issues, and profits thereof.

VIII. That the said Mexican International Railroad Company hereby leases to the said Southern Pacific Company for the term of ninety-nine years from the date hereof all of its railroad and the branches thereof situated in the Republic of Mexico, known and designated as the Mexican International Railroad, together with all
its branches and the rolling stock, telegraph lines, tools, and
25 property of every kind and nature whatsoever now in use upon or in connection with said railroad and together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, and operate the said property and to receive rents, issues, and profits thereof.

In consideration of the leases aforesaid the said Southern Pacific Company agrees to and with the other corporations, parties hereto, that it will keep the said leased property in good order, condition, and repair; operate, maintain, add to, and better the same at its own expense; pay all taxes legally assessed against or levied thereon; and will upon the termination of this lease return the same to the

respective parties from which it was leased or to their successors, with additions and betterments in as good condition and repair as the same was at the date hereof.

That it hereby assumes and will discharge all the liabilities and obligations of every kind of the said railroad companies, and each of them, except the obligations to pay the principal of their indebtedness, known as the bonded indebtedness now outstanding and secured by mortgage or deed of trust, or which may hereafter be incurred by either of said companies under the provisions of
26 any existing mortgage or deed of trust, or any mortgage or deed of trust hereafter, with the consent of this company made. That as to such bonded indebtedness, it will pay off and discharge at maturity the interest upon the same, and will, upon demand of either of said railroad companies, guarantee, in such form as said company may require, the payment of the principal and interest thereof.

That said Southern Pacific Company will annually on the first day of May pay the following named railroad companies as rental a sum equal to ninety-three and one-twelfth (93–1/12) per cent of its net profits, if any net profits there be, for the year ending on the thirty-first day of December next preceding that date as follows:

To the said Southern Pacific Railroad Company, existing under the laws of the United States and the State of California, twenty-six and one-half (26–1/2) per cent of said net profits;

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of Arizona, twelve (12) per cent of said net profits;

To the said Southern Pacific Railroad Company, existing under the laws of the Territory of New Mexico, four (4) per cent of said net profits;

27 To the said Galveston, Harrisburg and San Antonio Railway Company sixteen and one-quarter (16–1/4) per cent of said net profits;

To the said Texas and New Orleans Railroad Company of 1874 seven and one-half (7–1/2) per cent of said net profits;

To the said Louisiana Western Railroad Company three and one-third (3–1/3) per cent of said net profits;

To the said Morgan's Louisiana and Texas Railroad and Steamship Company twenty-two and one-half (22–1/2) per cent of said net profits;

To the said Mexican International Railroad Company one (1) per cent of said net profits;

The term net profits as used herein shall be construed to mean the monies on hand available for dividends after all expenses, payments,

and disbursements of every nature and kind of the said Southern Pacific Company, except for the rental of railroads now or hereafter leased by said company, have been deducted.

In testimony whereof the parties hereto have caused these presents to be signed by their respective presidents and countersigned by their secretaries, and their corporate seals to be hereunto affixed pur-
28 suant to orders of their respective boards of directors on the day and year first herein written.

In octuple.

Southern Pac. Co. corporate seal.

W. E. BROWN,
President Southern Pacific Company.

H. C. NASH,
Secretary Southern Pacific Company.

S. P. R. R. Co. corporate seal.

CHARLES CROCKER,
President Southern Pacific Railroad Company.

J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

S. P. R. R. Co. corporate seal, Arizona.

CHARLES F. CROCKER,
President Southern Pacific Railroad Company.

F. S. DOUTY,
Secretary Southern Pacific Railroad Company

S. P. R. R. Co. corporate seal, New Mexico.

CHARLES F. CROCKER,
President Southern Pacific Railroad Company of New Mexico.

GEO. E. GRAY,
Secretary Southern Pacific Railroad Company of New Mexico.

29 G., H. & S. A. Ry. Co. corporate seal.

T. W. PIERCE,
President Galveston, Harrisburg & San Antonio Railway Company.

CHAS. BABBIDGE,
Asst. Secretary Galveston, Harrisburg & San Antonio Railway Company.

T. & N. O. R. R. Co. corporate seal of 1874.

C. P. HUNTINGTON,
President Texas & New Orleans Railroad Company of 1874.

I. E. GATES,
Secretary Texas & New Orleans Railroad Company of 1874.

L. W. R. R. Co. corporate seal.

C. P. HUNTINGTON,
President Louisiana Western Railroad Company.

I. E. GATES,
Secretary Louisiana Western Railroad Company.

M. L. & T. R. R. & S. S. Co. corporate seal.

A. C. HUTCHINSON,
President Morgan's Louisiana & Texas Railroad & Steamship Company.

JNO. B. RICHARDSON,
Secretary Morgan's Louisiana & Texas Railroad & Steamship Company.

M. I. R. R. Co. corporate seal.

C. P. HUNTINGTON,
President Mexican International Railroad Company.

F. H. DAVIS,
Secretary Mexican International Railroad Company.

30 (Endorsement on cover:) Omnibus lease. S. P. R. R. of Cal. S. P. R. R. Co. of Arizona. S. P. R. R. Co. of New Mexico. G., H. & S. A. Ry. Co. T. & N. O. R. R. Co. L. W. R. R. Co. M. L. & T. R R. & S. S. Co. Mex. Int. R. R. Co. to the S. P. Co. Dated Feby. 10, 1885.

31 DEFENDANTS' EXHIBIT (HOPKINS) NO. 21, MARCH 9, 1915.

Settlement with Pierce, 1, 7.
California & Oregon R. R. matters, 3.
Sending S. P. bonds to Cal., 4.
Issuing 20-year bonds for floating debt of C. P., 5.
Have Am. Dev. Co. make transfer to S. D. Co., 6.
Gates & Brown appointed committee, 7.
Order of consideration of affairs, 9.
Leases between S. P. R. R. & C. P. R. R. & Sou. Pac. Co., 10.
Exchange of stock between S. D. Co. & P. I. Co., 11.
General offices of Sou. Pac. Co. in San Francisco, 12, 19.
Sale of property to C. P. R. R. Co. & S. P. R. R. Co., 12.
Meetings to be held every day, 13.
Organization of Southern Pac. Co., 14, 15, 16, 18.
Steel plate certificates of stock, 17.
Seven directors Sou. Pac. Co., 19.
32 Investing in Gal., Har. & San A. bonds, 21.
Central Pacific stock on hand, 22.
Dividing stocks, 24.
Pro rata of S. P. R. R. stock to be paid in, 24.

Branch road of Memphis & N. O. Line, 27.
Bonds of Memphis & N. O. Line, 29, 39.
Equalizing accounts, 30.
Mr. Pierce agrees to sale of bonds, 32.
Petition to board of directors G., H. & S. A., 33.
Meeting of stockholders of Sou. Dev. Co., 36.
Division of assets of S. D. Co., 41.
Mr. Quintard & Mr. McAlpin, 42.
Division of bonds and stocks, 43.
G., H. & S. A. pay its floating debt by bonds, 45.
33 Floating debt of Texas & New Orleans R. R., 46.
Expert be put upon books, 46.
Charge Pier 37 to Morgan Co.
Leasing to Central Pacific to Sou. Pac. Co., 47.
Sale of Wells Fargo & Co. stock, 48.
Division of all stocks, 48.

34 NEW YORK, *August 28, 1884.*

At a meeting of Leland Stanford, C. P. Huntington, Charles Crocker, and Timothy Hopkins, representing Mrs. M. F. S. Hopkins, it was mutually agreed to meet together from day to day for the purpose of discussing and deciding business matters in which all were interested.

W. E. Brown was appointed secretary, and requested to keep minutes of meetings and a record of transactions.

The first business was to formulate a basis of settlement with Thomas W. Pierce, and it was agreed to purchase from Mr. Pierce 5,747 shares of the capital stock of the Galveston, Har. & San Antonio R. R. Co. and 548 shares of the capital stock of the
35 Texas & New Orleans R. R. Co., and to give him credit for the same on the books of the Southern Dev. Co. It was then agreed to make up the interest on all the accounts of the stockholders of the S. D. Co. to August 30th, 1884.

S., H., H. & C. to assume payment of the bills payable of the S. D. Co. & the amount due to the P. I. Co. on the books of the S. D. Co.

Notes of the S. D. Co. payable in one year to be executed in favor of the five stockholders, drawing interest at 6% pr. annum, for the balance due to each. Mr. Pierce places in the hands of the four others, one quarter to each, notes given for his balance, as collateral security for his proportion of indebtedness to them; he also
36 places in their hands his 10,000 shares of capital stock of the S. D. Co. as further collateral security for his indebtedness.

The Secretary was instructed to make up a statement embodying these points of agreement.

Adjourned.

The letters S., H., H., and C. used in these minutes refer to Leland Stanford, C. P. Huntington, Charles Crocker, and Mrs. M. F. S. Hopkins.

S. D. Co. refers to Southern Development Co. P. I. Co. refers to Pacific Improvement Co.

W. E. BROWN, *Secretary.*

NEW YORK, *August 29, 1884.*

Meeting again called.

California & Oregon R. R. matters were discussed and informal suggestions considered.

37 One suggestion that was made that the C. P. R. R. Co. guarantee 6% on 15,000,000 of bonds, 1,800 mile, 2% on 12,000,000 of prefd. stock, 480 mile, equal to $2,280 pr mile on 500 miles of road.

Oregon and California people to take $2,500,000 of C. P. 1st mortgage bonds at par, paying the money as the work progresses; we furnish balance necessary to complete it.

It was agreed that $300,000 more of S. P. of Cal. bonds be sent to C. F. Crocker to add to the $700,000, already sent, to be used as collateral in place of bonds of S. P. of New Mexico in possession of N. Luning.

Adjourned.

W. E. BROWN, *Secretary.*

38 NEW YORK, *August 30, 1884.*

Meeting again called.

It is agreed that twenty-year bonds be issued at 6% interest, to be used by the C. P. R. R. Co. as far as they can be made available, to take up floating indebtedness of the company and for such other uses as may be thought desirable by action of the board of directors from time to time, the company reserving the right to redeem these bonds on six months' notice at their par value, commencing with the lowest outstanding numbers.

If the market price should be less than par, then the company to advertise and give the bonds to the lowest bidder.

39 The holders of these bonds shall have the right to exchange them for stock of the company, at the market price, but not less than fifty pr cent of their par value. Issue of bonds not to exceed $10,000,000.

NEW YORK, *Sept. 3d, 1884.*

Meeting again called.

Have American Development Company transfer to Southern Dev. Co. all the bonds and stock of the Mexican International R. R. Co. for constructing and equipping the railroad and telegraph line.

NEW YORK, *Sept. 5th, 1884.*

Meeting again called and a basis of settlement with Mr. T. W. Pierce, submitted by the secretary as of date, August 30th, 1884,
40 and its terms agreed upon by all the parties interested. The notes of the S. D. Co. were then executed and delivered in accordance with the basis of settlement and agreements made and executed by Mr. Pierce to each of the other four parties.

The secretary was directed to have the proper entries made on the books of the S. D. Co.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Sept. 10, 1884.*

Meeting again called.

I. E. Gates and W. E. Brown were appointed a committee to examine all securities on hand in New York, and all that are
41 used as collaterals for payment of the liabilities of S., H., H., and C.

To ascertain what securities are available, and generally to make such an examination of the properties of S., H., H., and C. in New York as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S., H., H., and C. in New York, so that the several parties in interest can sign the schedule as of date as being correct on that date.

Adjourned.

W. E. BROWN, *Secretary.*

42 NEW YORK, *Sept. 11th, 1884.*

Meeting again called.

It is agreed that the order of consideration of affairs shall be as follows:

1st. Consolidation of all the lines of Southern Pacific system in one company;

2d. Separation of Central Pacific business from the Southern Pacific business;

3rd. Leasing of Central Pacific system to Southern Pacific system (new organization);

4th. General consolidation of lines from San Francisco to Newport News.

Adjourned.

W. E. BROWN, *Secretary.*

43 NEW YORK, *Sept. 25, 1884.*

Meeting assembled.

It was agreed that the Southern and Central Pacific Companies terminate their present leases, and that the Central lease from the Southern that portion of road between Goshen and Mojave. Then a running arrangement be made between the Central and the Southern Pacific Company (new organization) between Mojave and San Francisco and other points in California, as now exists between the Central Pacific R. R. Co. and the Atlantic & Pacific R. R. Co.

Adjourned.

W. E. BROWN, *Secretary.*

44 NEW YORK, *Sept. 26, 1884.*

Meeting with Mr. Pierce to discuss values of the several roads in the through line contemplated between New York and San Francisco.

It was agreed that the P. I. Co. exchange S. P. of California stock for Galveston, Harrisburgh & San Antonio stock (on road between Houston & San Antonio) on same basis of values as is embraced in the Southern Pacific organization.

Then P. I. Company to exchange with T. W. Pierce so that he will have two shares of Southern Pacific stock for every share he owns of G., H. & S. A. old stock.

Adjourned.

W. E. BROWN, *Secretary.*

45 NEW YORK, *Sept. 29, 1884.*

Meeting assembled; all present.

It was decided that the general offices of the Southern Pacific Company be located in San Francisco.

It was also decided to sell to the Central Pacific and Southern Pacific Railroad Companies the property owned in San Francisco by S., H., H., and C. that is now used for the terminal facilities of those roads.

The question of leasing or selling the bridges at Yuma and El Paso belonging to the P. I. Co. was discussed but no conclusion reached.

46 It was ordered that a division of the capital stock of the several construction companies, heretofore undivided, be made.

It was agreed that meetings be held every day, from eleven to three o'clock, and if any one of the four persons be absent the others should go on with the discussion of affairs.

Adjourned.

W. E. BROWN.

NEW YORK, *Sept. 30th, 1884.*

Assembled at 11 o'clock.

Previous minutes read by the secretary and approved.

It was ordered that the basis of values on properties east of El Paso should be changed as follows:

47 Texas & New Orleans shall be exchanged at the rate of 150 shares for 100 of stock of Southern Pacific Co.

Louisiana Western, 100 shares for 100.

Mexican International, 20 shares for 100.

The reorganization of the Southern Pacific Company, the question of the number of directors, and other matters connected therewith were discussed, but nothing definitely settled.

Adjourned at 3 o'clock.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 1st, 1884.*

Assembled at 11 a. m.

48 Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads forming the through line of Southern Pacific Company.

It was decided to take immediate action towards raising the capital stock of the Southern Pacific Company to 100 millions, and to have temporary certificates of stock printed, to be exchanged hereafter when steel plate certificates can be prepared.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 2, 1884.*

Met at 11 a. m.

Further discussion was had as to basis of holdings in Southern Pacific Company of outside stockholders in Galveston, Har. &

49 San A. Company and other companies. No definite conclusion reached.

Mr. Pierce was sent for and the matter discussed with him as to his interest in the stock of G., H. & S. A. between Houston & San Antonio.

Mr. Quintard was also called into council in order to ascertain his views relative to the new organization.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 3, 1884.*

Met at 11 a. m.; all present.

50 A proposition was submitted to Mr. Pierce to give him 150 shares of stock of the Southern Pacific Co. for each 100 shares

he holds of the old stock of the Galveston, Har. & San Antonio Company.

Mr. Pierce accepted the proposition and agreed to put in his 28,059 shares on the basis proposed.

It was then agreed (Mr. Pierce being present) that certificates of stock of the Southern Pacific Company be printed for temporary use, and be issued to parties in accordance with the basis agreed upon. It was further agreed that certificates of stock with coupon warrants attached be ordered made from steel plates, to be exchanged, when ready, for the printed certificates.

Adjourned.

W. E. BROWN, *Secretary.*

51 NEW YORK, *Oct. 6, 1884.*

Met at 11 a. m.

The organization of Southern Pacific Company was further discussed and it was agreed to pay in one million dollars cash into its treasury in accordance with the terms of the charter, and it was further agreed to obtain by telegraph the resignations of Mr. Echol and Mr. McHenry in order to substitute new directors in their places.

Mr. R. T. Wilson came in to discuss the project of putting up the levee between points on the Memphis & New Orleans Railroad that is liable to overflow. After a long discussion, the final decision was postponed until to-morrow.

52 Mr. Bond sent word that he wants an option for account of Speyer & Co. to purchase 18,000 shares of Central Pacific stock at forty-five. No answer given to the proposition.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 6th, 1884.*

Met at 11½ a. m. Read minutes of last two meetings.

It was agreed that the directors of the Southern Pacific Company when permanently organized shall consist of seven, viz, C. P. Huntington, of New York; T. W. Pierce, of Boston; and five others, to be selected from San Francisco, and that the general offices be located in San Francisco.

53 Mr. R. T. Wilson and Mr. Evors came in with a report on lands in Mississippi Delta belonging to Memphis & New Orleans R. R. Co. and to Mr. Evors. The report was read, but no definite action taken thereon.

Adjourned.

W. E. BROWN, *Secretary.*

Met at 11¼ a. m.; all present.

It was unanimously agreed to pay into the Southern Pacific Company $950,000 cash, so as to make up one million dollars actually paid in on the capital stock of the company.

It was further agreed to invest one million dollars of cash
54 belonging to Southern Pacific Company in the six per cent 2d mortgage bonds of the Galveston, Harrisburg & San Antonio Railroad Company, at the rate of ninety.

Adjourned.

W. E. BROWN.

NEW YORK, *Oct. 8/84.*

OCTOBER 9TH, 1884.

Met at 11-1/2 a. m.

General discussion of business matters, particularly of Central Pacific affairs, as connected with the organization of the new Southern Pacific Company.

Secretary instructed to hasten all matters in connection with organization of the Southn Pac. Company.

Adjourned.

W. E. BROWN, *Sec.*

55 NEW YORK, *Oct. 10, 1884.*

Met at 11-1/2 a. m.

Secretary makes up statement of Central Pacific stock on hand as follows:

	Shs.
Leland Stanford, in N. Y	25,200
Do. (say), in S. F	5,000
Chas. Crocker, N. Y	32,700
Do., S. F	32,299
Mrs. Hopkins, N. Y	21,250
Do., S. F	336
C. P. H., N. Y	16,850
Do., N. Y	133,635
P. I. Co., Speyer & Co	18,700
Do., Lloyd & McK	5,200

Total shares, 592,755; 157,535; 26.5%.

Some discussion with Mr. Huntington as to Chesapeake and
56 Ohio matters and their connection with other joint interests.

Adjourned.

W. E. BROWN, *Secty.*

NEW YORK, *Oct. 13th, 1884.*

Met at 11-1/2 a. m.

Mr. Quintard appeared to talk over his interest in the Morgan Company and his proposed connection with the Southern Pacific Company. He desires a dividend on Morgan Company's assets before it is put into the new company.

It is agreed by all parties that the liabilities of all the companies in which they are interested be provided for as far as leaving
57 sufficient securities to provide collaterals for their payment.

After such provision is made, it is agreed that all bonds and stocks belonging to the various companies be divided among the stockholders.

It is agreed to pay into P. I. Co. $1,244,200 in S. P. of Cal. stock to meet the trade with T. W. Pierce for exchange of stocks. Stock to be paid in as follows: L. S., 311,100; C. P. H., 311,000; C. C. 311,100; Mrs. H., 311,000; $1,244,200.

Adjourned.

W. E. BROWN, *Secty.*

58 NEW YORK, *Oct. 14th, 1884.*

Met at 11-1/2 a. m.

Mr. Tweed appeared and suggested that the meeting of the Southern Pacific Company called for to-day be postponed for one week, until the million dollars of subscription be fully paid and certificate thereof be filed with Secretary of State of Kentucky.

In view of the cost of the railroad from San Antonio to the Rio Grande being very largely in excess of the market value of the bonds received for the construction of the road, it is agreed that the 2d mortgage bonds now in possession of G., H. & S. A. Company,
59 amounting to $3,355,000, be transferred to the contracting company on terms that shall be just and equitable to the Gal. Har. & San Antonio Co.

Adjourned.

W. E. BROWN, *Secty.*

NEW YORK, *Oct. 15, 1884.*

Met at 11-1/2 a. m. Mr. Crocker absent. Mr. Bond, of Speyer & Co., came in and some of the details of the organization of the Southern Pacific Company were explained to him by Governor Stanford.

No definite action taken.

Adjourned.

W. E. BROWN.

60 NEW YORK, *Oct. 20, 1884.*

Met at 12 o'clock.

It was agreed that at meeting of stockholders of the Southern Pacific Company to-morrow, that the order of business should be

1st. Raising capital stock to one hundred millions.

2d. Changes in by-laws.

3d. Fixing location of general offices.

4th. Increase in number of directors.

Mr. Wilson appeared and urged his associates in the Memphis & New Orleans line to join in the completion of the branch line to ———.

61 It was agreed that when the bonds on the main line were executed and delivered free from injunctions or legal restraints that the branch road to ——— might be finished under the present charter and that S., H., H., and C. would furnish their proportion of the money. Mr. Wilson gave his positive assurance that not more than $95,000 would be required for immediate use.

Adjourned.

W. E. BROWN.

NEW YORK, *Oct. 21st, 1884.*

Met at 11-1/2 a. m. Mr. Hopkins absent.

62 Discussion about permanent organization of Southern Pacific Company. At two o'clock the stockholders of that company met and added to its capital stock, making it one hundred millions, and added two more directors to the board.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 22d, 1884.*

Met at 11-1/2 a. m.

Memphis & New Orleans line:		
455 miles, at $30,000		$13,650,000
S., H., H., and C. proportion	8,190,000	
Wilson proportion	5,460,000	
		$13,650,000
S., H., H., and C. proportion	$8,190,000	
5% off	409,500	
		$7,780,500

63 NEW YORK, *Oct. 23, 1884.*

Met at 11-1/2 a. m.

General discussion of affairs; no conclusions reached.

Adjourned.

W. E. BROWN, *Secty.*

NEW YORK, *Oct. 24, 1884.*

Met at 11-1/2 a. m.

Memorandum of proposition for equalizing accounts was suggested and submitted by the secretary, as follows:

Use bonds belonging to S. D. Co. to the extent of $14,000,000 to pay on account of notes due S., H., H., and C. from that Co.
64 at a valuation of, say, 85¢ on the dollar.

This would give $3,500,000 to each of the four, in bonds. Then let the P. I. Co. buy and sell these bonds at same rate from the parties interested, until the accounts are made equal, as follows:

L. S. has due to him	12,471,390.78	
Cr. $3,500,000 bonds, at 85	2,975,000.	
		$15,446,390.78
C. P. H. has due to him	14,502,341.71	
Cr. $1,100,000 bonds, at 85	935,000.	
		$15,437,341.71
C. C. has due to him	16,266,454.99	
Dr. 1,000,000 bonds, at 85	850,000.	
		$15,416,454.99
65 Mrs. H., due to her	17,088,585.70	
Dr. 2,000,000 bonds, at 85	1,700,000	
		$15,388,585.70

This leaves $1,600,000 in treasury of P. I. Co.

Adjourned.

W. E. BROWN, *Secretary.*

NEW YORK, *Oct. 28, 1884.*

Met at 11-1/2 a. m.

The question of using the bonds of G., H. & S. A. Co. belonging to the S. D. Co. for making payments on the notes of S. D. Co. was discussed with Mr. Pierce, and all agreed that the proposition was a good one.

66 The following communication was sent to board of directors of Galveston, Harrisburgh & San Antonio Railroad Co.:

NEW YORK, *October 28th, 1884.*

To the board of directors of the Galveston, Harrisburgh & San Antonio Railroad Co.

GENTLEMEN: Whereas the Southern Development Company has constructed a railroad and telegraph line from El Paso to San Antonio, in the State of Texas, under a contract with your company, and has received for said construction 13,416 five per cent first-
67 mortgage bonds of $1,000 each, and 3,354 six per cent second-mortgage bonds of $1,000 each, and the capital stock issued upon the said line of railroad and telegraph;

And whereas the difficulties which were encountered in the said construction were greater than were anticipated, involving an unexpected outlay of more than three millions of dollars;

And whereas the Galveston, Harrisburgh & San Antonio Railroad Company have issued an additional amount of second-mortgage bonds to the number of 3,355 of $1,000 each, which it now has on hand in its treasury:

Now, therefore, in consideration of the foregoing premises,
68 the Southern Development Company prays the board of directors of the Galveston, Harrisburgh & San Antonio Railroad Company to vote an additional payment on account of its contract with the Southern Development Company, as part remuneration for the loss it has sustained in the construction of the said railroad and telegraph line, to the extent of the said 3,355 second mortgage bonds which it now has on hand.

Very respectfully,

W. E. BROWN,
President pro tem. Southern Dev. Co.

69

NEW YORK, *Oct. 29, 1884.*

Meeting of stockholders of the Southern Dev. Co. at office of Leland Stanford.

Present: Leland Stanford, 10,000 shares; C. P. Huntington, 10,000 shares; Chas. Crocker, 10,000 shares; Mrs. M. F. S. Hopkins, by Timothy Hopkins, 10,000 shares; T. W. Pierce, 10,000 shares.

The following resolution was offered by Chas. Crocker and seconded by Timothy Hopkins:

Resolved, That the board of directors of this company be and are hereby authorized and requested to sell the first and second
70 mortgage bonds of the Galveston, Harrisburgh & San Antonio Railroad Company now owned by the Southern Dev. Co. at the best price they can obtain, but not less than eighty cents on the dollar of their par value and accrued interest. The proceeds of such sale or sales to be applied exclusively to payments on account of outstanding liabilities of the Southern Dev. Co.

The resolution was unanimously adopted.

The following resolution was offered by T. W. Pierce and seconded by Chas. Crocker:

Resolved, That the board of directors of this company be
71 authorized to exchange the capital stock owned by this company in the various railroad companies that constitute the Southern Pac. system, for the capital stock of the Southern Pacific Company, upon such terms as may be agreed upon by the officers of the several companies.

The resolution was unanimously adopted.

W. E. BROWN,
Prest. pro tem. Sou. Dev. Co.

72 NEW YORK, *Oct. 30, 1884.*

Met at 11-1/2 a. m.

General discussion about dividing securities and segregating securities belonging to other companies which are used for collaterals.

Mr. Wilson sends statement of contracts made between Memphis & New Orleans line and parties from whom it was purchased.

1st contract gave them one-sixth of the following securities: 500 miles × $20,000=10,000,000 income bonds; 500 miles × 10,000=5,000,000 stock; which gives them $1,666,666.67 inc. bonds, 833,333.33 stock; $2,500,000.

1st mortgage to be limited to $24,000 pr. mile.

73 2d contract gives them income bonds, 1,333,333.33; stock, 666,666.67; $2,000,000.

1st mortgage limited to $30,000 pr. mile.

Between the dates of the two contracts the sellers of the road had assigned about one-sixth of their interest in the securities to Hobart Smith & Co., who have not as yet fully assented to the provisions of the second contract. Mr. Wilson thinks, however, that they will probably do so.

Mr. Pierce came in and expressed his views as to contract with Wells, Fargo & Co. on Galveston, Har. & San Antonio Rail-

74 road. It was agreed (Mr. T. W. Pierce concurring) that assets of the Southern Dev. Co. may be divided pro rata in kind as far as may be advisable, Mr. Pierce desiring that his proportion of said assets be kept intact, as collateral security for his portion of the indebtedness of the company until said indebtedness was paid.

Adjourned.

W. E. BROWN.

NEW YORK, *Oct. 31, 1884.*

Met at 12 o'clock.

Matters connected with the contract with Texas & Pacific

75 Railroad were discussed, Mr. Pierce being present and joining in the discussion.

Mr. Quintard and Mr. McAlpin came in to talk of the interest allowed the Morgan Company in the Southern Pacific Company, they not being satisfied with the arrangement to give 450 shares of stock of the new Co. for 100 shares of the old. Mr. McAlpin thought he would rather sell his stock at what it cost.

No conclusion reached.

Adjourned.

W. E. BROWN.

76 NEW YORK, *Nov. 1, 1884.*

Met at 10-1/2 a. m.

A general discussion as to division of securities was had.

It was agreed to divide $6,000,000 Louisville, New Orleans & Texas Railroad bonds, and to wind up the affairs of the Western Dev. Co. as soon as may be, and to dispose of its property as soon and in such a manner as may be most advisable.

Also to divide $140,000 of Los Angeles & San Diego bonds
77 belonging to S., H., H., and C.

Also $2,000,000 common stock of St. Louis & San Franco stock.

Also $1,480,000 stock of Northern Railway Company.

Also $140,000 stock of Los Angeles & San Diego R. R. Co.

Also stock of Park & Ocean Railroad Co.

Adjourned.

W. E. BROWN.

NEW YORK, *Nov. 3, 1884.*

Met at 11 a. m.

The matter of contract with Mr. Wilson was under discussion as to his percentage, to be allowed out of the Memphis and New
78 Orleans bonds. It was agreed to sell Broadway Wharf property to C. P. R. R. Co.

That the G., H. & S. A. R. R. Co. pay its floating debt by 2nd mortgage bonds to be issued or that are now on hand.

Mr. Wilson came in and it was decided to settle with him on the basis of 5% on $24,000 a mile for 355 miles of main line of Memphis & N. O. Road for his commission.

Adjourned.

W. E. BROWN, *Secty.*

79 NEW YORK, *Nov. 4, 1884.*

Met at 11¼ a. m.

It was agreed that the floating debt of the Texas & New Orleans R. R. be paid by its bonds at 90.

Also that an expert be put upon all the books of the companies that are to make up the Southern Pacific Company.

Accts. of Pier 37 to be charged to Morgan Co.

Also divide 3,999 Mexican International R. R. Co. and stocks of all construction companies.

Adjourned.

W. E. BROWN, *Secty.*

80 NEW YORK, *November 5, 1884.*

Met at 11½ a. m.

The question of leasing the Central Pacific system of roads to th Southern Pacific Company came up.

It was agreed to lease the properties and temporarily to fix th lease at fixed charges and a guarantee of 2% interest on capital stoc and all the earnings of the Central Pacific system over and above th percentage until the amount reached 6% on its capital stock p annum. After 6% all profits to go to the Southern Pacific Compan

Adjourned.

W. E. BROWN, *Secretary.*

81 NEW YORK, *Nov. 6, 1884.*

Met at 11 a. m.

It was agreed by all that the Wells Fargo & Co.'s stock be sold soon as the market would take it.

Boxes were ordered made for Messrs. Stanford, Crocker, and Mr Hopkins for packing their bonds to be shipped to Cala.

NEW YORK, *Nov. 7th, 1884.*

Met at 11 a. m.

It was agreed to divide all the stocks of the Southern Dev. Co pany and the Atlantic & Pacific stock. The proportion due to T. Pierce to be held as collateral.

NEW YORK, *Nov. 10, 1884.*

82 DEFENDANTS' EXHIBIT (LYNCH) No. 22, MARCH 12, 1915.

Resolved, That the proposed suit by the Government of the Unit States to require the Southern Pacific Company to sell the capi stock of the Central Pacific Railroad is not in the public intere nor is there in our opinion any sufficient legal reason requiring th such suit should be brought.

The ownership of the Central Pacific Railroad Company by t Southern Pacific Company does not in any sense constitute a co bination in restraint of trade. On the contrary, the lines of r road owned by the Central Pacific Railroad Company and the li of railroad owned by the Southern Pacific Railroad Company, all which are, and have been since 1885, leased to and operated by t Southern Pacific Company, were built and extended practically one system of railroads and by one ownership and control. T Central Pacific Railroad, the main line of which is from Og to San Francisco, was the original nucleus of this system of r roads. The transcontinental line, of which the Central Pacific R

road is a part, was opened for traffic in 1869. The construction of the lines of the Southern Pacific Railroad, connecting with
83 the Central Pacific Railroad, began in 1871. The main line from Goshen to Los Angeles was completed in 1876, and the line from Los Angeles to Fort Yuma was completed in October, 1877. This line was extended eastwardly from Fort Yuma to a connection with the Atchison, Topeka and Santa Fe R. R. at Deming in March, 1881, with the Texas and Pacific Ry. at Sierra Blanca in January, 1882, and with the Galveston, Harrisburg and San Antonio Ry. at Pecos, Texas, in February, 1883. The capital stock of the Southern Pacific Railroad Company was at all times held in substantially the same ownership and control as the stock of the Central Pacific Railroad Company, and as soon as any section of the Southern Pacific Railroad was opened for operation, it was leased to and operated by the Central Pacific Railroad Company as lessee, which lease continued until February 1, 1885, when the lease of the lines of the Southern Pacific Railroad to the Central Pacific Railroad was cancelled, and a new lease of the Southern Pacific Railroad lines made to the Southern Pacific Company, which at all times since has been the lessee in possession of and operating said lines, such lease being for the term of 99 years. At the same time, the Southern Pacific Company became the lessee of the lines of the Central
84 Pacific Railroad Company for the term of 99 years, and has at all times since been in possession of and operating the lines of that company. The lines of railroad, therefore, comprised in the ownership of the Central Pacific Railroad Company and the Southern Pacific Railroad Company were never in separate ownership or in competition, but have at all times been practically in one ownership and control and have been built up, developed, and operated as a unified system of roads responsive to the demands of the communities served as much as if the same had been in the ownership and control of one company. To separate the ownership of these lines, therefore, breaks up the unified system and naturally impairs the efficiency of that system to serve the community. Such separation leaves the Southern Pacific Railroad without a through line and connection necessary to unite its different branch lines together for operation and also deprives it of terminals and main lines which are essential to the service of the community reached by its lines. Likewise the Central Pacific Railroad in separate ownership and control will be left without terminal properties and connections necessary for its successful operation, all of which will necessarily disturb the service that these lines are now giving
85 as a unified system to the public. We are also persuaded that the evils of the proposed dissolution could not be offset

by any compensating advantages to be derived from the proposed creation of two unequal competitors.

Resolved, That this body fully endorses the decision of the railroad commission of California in so far as it gives reasons against the breaking up and separation of the lines now operated by the Southern Pacific Company in California, and we believe that such decision was in the very best interests of the public and should be sustained. We further maintain that there is no business reason for the suggested separation, and such separation would be a commercial injury to the people of this State and against our interest.

SAN FRANCISCO CHAMBER OF COMMERCE,
C. F. MICHAELS, *President*.

86 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(1. Report of the Southern Pacific Railroad Company for the year ending June 30, 1868.)

OFFICE CENTRAL PACIFIC R. R. OF CALIFORNIA,
C. P. HUNTINGTON, V. P.,
No. 54 WILLIAM STREET,
New York, Sept. 25, 1868.

Hon. O. H. BROWNING,
Secretary of the Interior, Washington, D. C.

DR. SIR: Herewith I have the honor to hand you the annual report of the Southern Pacific Railroad Company, as required by the acts of Congress in relation thereto, & of which please acknowledge the receipt.

Resp'ly, yours, C. P. HUNTINGTON.

87 Annual report of the Southern Pacific Railroad Company to the Secretary of the Interior of the United States.

* * * * * * *

Second. The following are the names of the directors and all other officers of the said company:

Directors: T. G. Phelps, San Mateo, California; B. G. Lathrop, San Francisco, California; W. B. Carr, San Francisco, California; T. B. Shannon, San Francisco, California; Lloyd Tevis, San Francisco, California; Lewis Cunningham, San Francisco, California; Edgar Mills, Sacramento, California.

President, T. G. Phelps; secretary, Lloyd Tevis; treasurer, Edgar Mills.

Third. The amount subscribed of the capital stock of the said company is eighteen thousand shares, of one hundred dollars each,

amounting to one million eight hundred thousand dollars ($1,800,000).

The amount actually paid in on the said capital stock is seventy-
o thousand dollars ($72,000.00).

Fourth. The following is a description of the lines of the road of
id company surveyed and of the lines thereof fixed upon for the
nstruction of the road:

Up to this date but few lines have been surveyed and only so much
were necessary to commence and carry on the construction of that
rtion of the railroad of the company lying between the towns of
n Jose and Gilroy, in the county of Santa Clara. The line thus
rveyed and finally located is thirty miles in length and runs in
arly a direct line between those points. The work of grading that
rtion of the road of the company is rapidly progressing and will
on be completed. The iron for laying the track on this portion
the line has been purchased and shipped and is now on its way to
n Francisco, and the company confidently expect to have the said
irty miles between San Jose and Gilroy completed on or before the
t day of April, 1869.

The company has not deemed it necessary up to this date to
prosecute any surveys beyond Gilroy, as for a long distance
beyond the line will run through valleys, which need surveys
ly as the work progresses.

The actual cost of the surveys up to this date is eighteen hundred
nd twenty-nine 50/100 dollars ($1,829.50).

Fifth, sixth, and seventh. As no portion of the railroad of the
mpany is yet completed or in running order, no amounts have been
ceived from passengers or for freight and no expenses have been
curred in running or operating the same.

Eighth. The following is a statement of the indebtedness of said
mpany:

The said company has issued to H. M. Newhall, Charles Mayne,
nd Peter Donahue, as trustees for its bondholders, four hundred and
ighty bonds for one thousand dollars each, amounting to four hun-
red and eighty thousand ($480,000) dollars, dated July 1st, 1868,
nd payable thirty years from date, with interest at the rate of six
er cent per annum, and paid to said parties upon a contract for
he construction of that portion of the railroad of said company
etween San Jose and Gilroy. These bonds are secured by a mort-
gage upon said portion of said railroad.

No reports have been made to the company from its engi-
neers or officers.

T. G. PHELPS,
President of Southern Pacific R. R. Co.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Timothy G. Phelps, being duly sworn, says that he is the president of the said Southern Pacific Railroad Company, and that the foregoing report and statement by him subscribed is true and correct, according to the best of his knowledge, information, and belief.

T. G. PHELPS.

Subscribed and sworn to before me, Henry Haight, a notary public, and as such authorized to administer oaths this 11th day of September, 1868, as witness my hand and official seal.

HENRY HAIGHT,
Notary Public.

91 (Endorsement:) Southern Pacific R. R. Co. Annual report to Secretary of Interior.

(Endorsement:) Department of the Interior. A–8. Received Sept. 26, 1868. Dated Sept. 25, 1868. From C. P. Huntington, New York City, N. Y. Subject: Transmits annual report of Southern Pacific Railroad Company. Action: Ack. Oct. 2, 1868. Registered, B. 1, page 73. Filed.

92 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(2. Report of the Southern Pacific Railroad Company for the year ending June 30, 1870.)

* * * * * * *

Fifth, sixth, and seventh. As the completed portion of the road between San Jose and Gilroy is in the hands of the contractors no amounts have been received by the company from passengers or for freight, and no expenses have been incurred by it in running or operating said completed portion.

* * * * * * *

93 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(3) Report of the Southern Pacific Railroad Company for the year ending June 30, 1871.

Annual report of the Southern Pacific Railroad Company (of California) to the Secretary of the Interior for the year ending June 30th, 1871.

First. The following are the names of the stockholders of said company, with their places of residence:

Leland Stanford, Sacramento, California; Chas. Crocker, Sacramento, California; C. P. Huntington, New York, N. Y.; Mark Ho

kins, Sacramento, California; Charles Mayne, San Francisco, California; Peter Donahue, San Francisco, California; A. E.
94 Head, San Francisco, California; Lloyd Tevis, San Francisco, California; H. M. Newhall, San Francisco, California; county of San Mateo, California.

Second. The following are the names and residences of the directors and all other officers of the company:

Directors: Chas. Crocker, Sacramento, California; Leland Stanford, Sacramento, California; C. P. Huntington, New York, N. Y.; Mark Hopkins, Sacramento, Cal.; Peter Donahue, San Francisco, Cal.; Lloyd Tevis, San Francisco, Cal.; Charles Mayne, San Francisco, Cal.

Officers: President, Chas. Crocker, Sacramento; vice prest., C. P. Huntington, New York; treasurer, Mark Hopkins, Sacramento; secretary, J. L. Willcutt, San Francisco; chief engineer, Geo. E. Gray, San Francisco.

95 Third. The amount subscribed to the capital stock is fifty-two thousand two hundred and forty shares (52,240) of one hundred ($100) dollars each, amounting to five million two hundred and twenty-four thousand ($5,224,000) dollars.

The amount actually paid in on the said capital stock is one million nine hundred and ninety-four thousand eight hundred ($1,994,800) dollars.

Fourth. Two hundred and eighty (280) miles of line have been surveyed, as described in accompanying copy of report of the chief engineer.

The cost of surveys has been thirty thousand and ninety 52/100 dollars ($30,090.52).

Fifth. The amount received for transportation of passengers for the year is two hundred and fifty-six thousand four hundred and ten 13/100 ($256,410.13) dollars.

Sixth. The amount received for transportation of freight for the year is one hundred and forty-four thousand four hundred and forty-four 48/100 ($144,444.48) dollars.

96 Seventh. The expenses of the said road and its fixtures for the year is two hundred and twenty-two thousand four hundred and twenty-seven 06/100 ($222,427.06) dollars.

Eighth. The following is a statement of the indebtedness of said company:

The said company has issued to H. M. Newhall, Chas. Mayne, and Peter Donahue, as trustees for its bondholders, four hundred and eighty (480) bonds for one thousand dollars ($1,000) gold coin each, amounting to four hundred and eighty thousand dollars ($480,000), dated July 1st, 1868, and payable thirty years from date with interest at the rate of six (6) per cent per annum and paid to said

parties upon a contract for the construction of that portion of the railroad of said company between San Jose and Gilroy. These bonds are secured by a mortgage upon said portion of said railroad.

The said company having on the 13th day of October, 1870, taken possession of the San Francisco and San Jose Railroad (from San Francisco to San Jose) and a consolidation of the capital
97 stock, debts, property, and assets & franchises of said companies having been made as provided by law, it is also indebted for seven hundred and forty bonds of the last-named company of one thousand dollars ($1,000) gold coin each, amounting to seven hundred and forty thousand dollars ($740,000), the said bonds having been issued by the said San Francisco and San Jose Railroad Company to Charles McLaughlin and Alexander H. Houston as trustees for its bondholders and dated July 1st, 1864, and payable twenty years from date with interest at rate of eight (8) per cent per annum. The said bonds were paid to said parties upon a contract for construction of that portion of the railroad between San Francisco and San Jose and are secured by a mortgage upon said portion of said railroad.

Ninth. The accompanying report of the chief engineer is the only report that has been received from any officer of the company during the year.

STATE OF NEW YORK,
City & county of New York, ss:

C. P. Huntington, being duly sworn, says that he is now the president of the Southern Pacific Railroad Company of California;
98 that he was elected to that office on the 14th day of August, 1871, in the place of Charles Crocker, whose term of office expired on that day; and that the foregoing report of the condition and operations of said company for the year ending June 30th, 1871, is true and correct.

C. P. HUNTINGTON,
President.

STATE OF NEW YORK,
City & county of New York, ss:

On this thirtieth day of September, 1871, before me came C. P. Huntington, known to me to be the president of the Southern Pacific Railroad Company of California, and being by me duly sworn, did

make oath & say that the above affidavit by him subscribed is true to his best knowledge, information, and belief.

Witness my hand and notarial seal the day and year above written.

[SEAL.]

DAN MARVIN,
Notary Public.

99 **Southern Pacific Railroad Company—Copy of report of the chief engineer for year ending June 30th, 1871.**

To the president and directors of the Southern Pacific Railroad of California:

GENTLEMEN: I herewith report the progress of surveys and continuation on the Southern Pacific Railroad during the current year ending June 30th, 1871.

Since the last annual report of my predecessor the surveys have been diligently prosecuted. Two hundred and eighty miles have been surveyed and explored. Of this nearly the entire distance has been in exploring, from the completed portion of your road at Gilroy, through the different passes over the Mount Diablo range to the San Joaquin Valley. The surface material encountered in these passes in this range is generally a decomposed sand stone, with considerable clay and sand, through which the water has cut deep channels and canons, making the progress of survey a work of time and study.

100 From the data obtained by my predecessors and from the survey continued under my charge we hope to be enabled to lay before you in a few months a detailed report of the work done and the most feasible route for a railroad embraced under your charter. These surveys have progressed necessarily very slow, owing to the mountainous regions traversed and the absence of reliable information of that portion of the State.

A provision of your charter requiring an additional twenty miles of railroad and telegraph line to be completed from Gilroy southward on July 1st, 1871, has been complied with; the twenty miles being completed, equipped, and in running order on June 30th, 1871, and over which excursion trains ran the entire distance from Gilroy to the end of the track on the 1st day of July, 1871.

Respectfully yours, &c.,

(Signed) GEO. E. GRAY,
Chief Engineer Southern Pacific Railroad.

A true copy.
Attest:
J. L. WILLCUTT,
Secretary Southern Pacific Railroad Company.

101 OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON, V. P.,
No. 54 WILLIAM STREET,
New York, September 30, 1871.

Hon. C. DELANO,
Secretary of the Interior,
Washington, D. C.

SIR: With this please find the annual report of the Southern Pacific Railroad Company of California to the Secretary of the Interior for the year ending June 30th, 1871.

I have the honor to be,
Very respectfully, yours,

C. P. HUNTINGTON, *Prest.*

102 (Endorsement:) (Southern Pac.). D–11. Department of the Interior. Received 2 Oct., 1871. Dated 30 Sept., 1871. From C. P. Huntington, prest., 54 Wm. St., N. Y. Subject: Transmits report of Southern Pac. R. R. Co. of Cal. for year ending 30 June, 1871. Action: Filed. Ackd. 14 Nov., '71. ———, chief clerk. Registered 1–352.

103 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(4. Report of the Southern Pacific Railroad Company for the year ending June 30, 1873.)

Office Southern Pacific R. R. Co. of California, No. 54 William Street, C. P. Huntington, V. P.

NEW YORK, *Oct. 2d, 1873.*

Hon. C. DELANO,
Secretary of Interior,
Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Railroad Company of California, to be placed on file in your department, and remain,
Respectfully,

C. P. HUNTINGTON, *President.*

104 Annual report of the Southern Pacific Railroad Company to the Secretary of the Interior, Washington, D. C.

In pursuance of the provisions of an act of Congress entitled "An act relative to filing reports of railroad companies", approved July 25th, 1868, the undersigned, the president of the Southern Pacific

Railroad Company, presents the following report for the year ending June 30th, 1873:

First. The following are the names of the stockholders of said company, with their places of residence:

County of San Mateo, California; Contract & Finance Co., Sacramento, Cal.; Chas. Crocker, Sacramento; Peter Donahue, San Francisco, Cal.; C. P. Huntington, New York; Mark Hopkins, Sacramento, Cal.; A. E. Head, San Francisco, Cal.; Charles Mayne, San Francisco; H. M. Newhall, San Francisco; Leland Stan-
105 ford, Sacramento, Cal.; Lloyd Tevis, San Francisco, Cal.; J. L. Willcutt, San Francisco.

Second. The following are the names and residences of the directors and all other officers of the company:

Directors: C. P. Huntington, New York; Leland Stanford, Sacramento, Cala.; Mark Hopkins, Sacramento, Cal.; Lloyd Tevis, San Francisco, Cala.; Peter Donahue, San Francisco, Cal.; Chas. Mayne, San Francisco, Cal.; J. L. Willcutt, San Fran°.

Officers: President, C. P. Huntington, New York; vice presdt., Lloyd Tevis, San Francisco, Cala.; treasurer, Mark Hopkins, Sacramento, Cala.; secretary, J. L. Willcutt, San Francisco, Cala.; chief engineer, Geo. E. Gray, San Francisco; general superintendent, A. N. Towne, Sacramento, Cala.; land agent, B. B. Redding, Sacramento, Cala.

106 Third. The amount subscribed to the capital stock is one hundred and thirty-one thousand eight hundred and ninety-four (131,894) shares of one hundred (100) dollars each, amounting to thirteen million one hundred and eighty-nine thousand four hundred (13,189,400) dollars.

Fourth. Explorations and examinations of former preliminary lines have been continued since the last fiscal report, amounting to about seven hundred and fifty (750) miles. One hundred and fourteen 50/100 (114 50/100) miles of road have been permanently located and sixty-four 50/100 (64 50/100) miles completed. Twenty (20) miles of this latter distance is on the route from Tipton to Delano and fifty (50) miles on the line from Tehichipa Pass to Fort Yuma, the latter distance commencing at the San Fernando Pass, via Los Angeles, thence towards San Bernardino, terminating about twenty-nine (29) miles easterly from Los Angeles. Forty-two 50/100 (42 50/100) miles have been completed on the branch line in the Salinas Valley. The cost of the surveys to this date has been one hundred and five thousand (105,000) dollars.

107 Fifth. The amount received for transportation of passengers for the year is four hundred and sixty-nine thousand seven hundred and eighty-nine 63/100 (469,789 63/100) dollars.

Sixth. The amount received for transportation of freight for the year is four hundred and eighty-six thousand four hundred and sixty-five 37/100 (486,465 37/100) dollars.

Seventh. The expenses of said road and its fixtures for the year are four hundred and fifty-eight thousand seven hundred and thirty-nine 14/100 (458,739 14/100) dollars.

Eighth. The following is a statement of the indebtedness of the company:

The company has issued eight thousand and fifty (8,050) first-mortgage bonds of $1,000 each gold coin, amounting to eight million and fifty thousand (8,050,000) dollars, all bearing date of November 1st, 1870, and payable on the 1st day of April, 1901, with interest, payable semiannually, at the rate of six per cent per annum.

108 Appended hereto are copies of the annual reports of the general superintendent and land agent for the fiscal year ending June 30, 1873.

Owing to the illness of the chief engineer, his report is incomplete, but the data herewith furnished has been obtained from information on file in his office.

C. P. HUNTINGTON, *President.*

* * * * * * *

SOUTHERN PACIFIC RAILROAD CO.,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, August 8th, 1873.

C. P. HUNTINGTON, Esq.,
President Southern Pacific R. R. Co., New York.

DEAR SIR: Herewith I respectfully submit statement of the operation and business of the road for the fiscal year ending June 30th, 1873, together with comparative statement of the earnings and expenses of the previous year.

San Joaquin Valley Branch.—That portion of the road which is temporarily leased and operated by the Central Pacific R. R.

109 Co. in the San Joaquin Valley from Goshen to Tipton, 20 9/10 miles, was opened up for business July 25th, 1872; also from Tipton to Delano, 20 3/10 miles, July 14th, 1873.

Extension of the road.—The extension of the road in the Salinas Valley from Salinas City to Soledad, distance 25 3/10 miles, is completed and will be put in operation on the 12th inst. This opens up a new section of the country, from which a large increase of business may be expected.

Number of miles road operated:

	Year ending June 30—	
	1872.	1873.
Average number of miles operated (exclusive of the above) was	100	121 6/10

* * * * * * *

SOUTHERN PACIFIC RAILROAD CO.,
LAND DEPARTMENT,
Sacramento, June 30, 1873.

To the President and Directors of the Southern Pacific Railroad Company.

GENTLEMEN: The route of the road in this State on which the Land Department at Washington ordered the lands to be
110 withdrawn is four hundred and eighty miles long, extending from San Jose through the San Joaquin Valley and Tehichipa Pass to the Colorado River. The reservation of lands extends to the odd-numbered sections for thirty miles on each side of the road, twenty miles of which are directly granted if vacant, and when not vacant a sufficient amount is to be taken from the unappropriated land between the twenty and thirty mile limits to make up the deficiency.

I have obtained the records from the local land offices, which show that there are enough of vacant lands between the twenty and thirty mile limits from which to obtain indemnity for those that are settled upon or reserved within the twenty-mile limit or grant proper. Therefore it is safe to state that the railroad company will receive, upon the completion of the road, the full amount of its land grant, or 6,144,000 acres.

About one-third of this land is situated in the San Joaquin, Tulare, and other fertile valleys in the southern part of the central portion of this State. Of these lands only 62,257 09/100 acres have been contracted to be sold.

Three thousand applications to purchase have been received and filed in this office. Sales could be made daily on the applica-
111 tions, but I have deemed it (in the absence of instructions) for the best interest of the company to withhold land from sale until more of the road shall have been completed and patents received. At least fifteen hundred of the applicants have actually settled upon the lands of the company and are improving and cultivating them, thus enhancing the value not only of the land occupied but of those which are contiguous. The fact that ninety miles of the main trunk of the railroad and that sixty miles of the Pajaro and Salinas branch of it have been constructed directly through the grant, as well as the continued influx of population, is having the effect of increasing the average price of the farming land, of which the company has vast tracts in many of the most fertile valleys in the State and those most noted for the excellence of their agricultural products.

The company has built ninety 26/100 miles of the road, which has been accepted by the Government, viz, fifty 26/100 miles, commencing

at San Jose, in Santa Clara County, the initial point, and running south therefrom, and forty miles commencing at Goshen, in Tulare County, and running south therefrom to a point within one 2/3 miles north of the town of Delano.

112 Part of the lands between San Jose and the fiftieth 26/100 mile, has been listed in the U. S. land office and are in process of being patented to the company. The Commissioner of the General Land Office is now having prepared a diagram of the definite limits of the grant along the line of the road between Goshen and Delano. As soon as it shall be finished and official copies thereof received at the local land office listings of the lands will be immediately asked for and the same forwarded to Washington for approval and patenting.

When the patents shall be received the lands will be immediately graded and prices fixed. After this the lands will be ready for disposal whenever the board of directors shall order the sales to commence.

Respectfully, &c.,

(Sg'd) B. B. REDDING, *Land Agent.*

* * * * * * *

113 DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(5. Report of the Southern Pacific Railroad Company for the year ending June 30, 1874.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON, PREST.,
NO. 9 NASSAU STREET,
New York, Dec. 8th, 1874.

Hon. C. DELANO,
Secretary of the Interior, &c., &c.,
Washington, D. C.

SIR: Referring to your letter, addressed to me under date of October 16th, 1874, asking for a statement of the entire cost of the road and fixtures of the Southern Pacific Railroad Company up to the date of the last annual report, 30 June, 1874, I hand you herewith a copy of the annual report of the Southern Pacific R. R. Company for the year ending June 30th, 1874, which will give you the desired information.

Very respectfully, your obedient servant,

C. P. HUNTINGTON, *President.*

* * * * * * *

114 Annual report of the board of directors of the Southern Pacific Railroad Company to the stockholders for the year ending June 30th, 1874. New York: Evening Post Steam Presses, 41 Nassau Street, cor. Liberty. 1874.

Annual report of the board of directors.

OFFICE SOUTHERN PACIFIC RAILROAD COMPANY,
NO. 9 NASSAU STREET,
New York, September, 1874.

To the stockholders:

Your president and board of directors herewith submit such reports of subordinate officers as will give a general view of the operations of the road for the fiscal year ending June 30, 1874, and the financial condition of the company at that date. To these reports your careful consideration is invited.

Capital stock:

The amount of capital stock authorized is	$70,000,000
The amount of capital stock subscribed is	15,429,200
The amount of capital stock paid in is	14,071,100

115 Progress of construction.—Since the last report the Contract and Finance Company that has the contract for building the road has completed seventy-five (75) miles, which, with the amount given in previous reports, make 278 miles of completed road.

Condition of the road and equipment.—For a statement in detail of the condition of the road and equipment, together with the cost of repairing the same, for the year ending June 30, 1874, you are referred to the report of the general superintendent, submitted herewith. (See page 17.)

Earnings and operating expenses.—The earnings for the year were as follows, viz:

From freight	$504,256.42
" passengers	512,637.53
" express	18,111.55
" rental	102,877.49
" storage	5,731.58
" miscellaneous	3,041.15
" mail service	13,682.62
" telegraph	2,400.00
Total	$1,162,738.33
116 Operating expenses	463,674.34
Earnings over operating expenses	$699,033.99

Comparative statement of earnings and operating expenses.—The earnings and operating expenses since the organization of the company have been as follows, viz:

Year.	Earnings.	Operating expenses.	Earnings over operating expenses.
1870 and '71, 9 months, Oct. 1, 1870, to June 30, 1871	$430,097.50	$222,427.06	$207,670.44
1871 and '72	723,856.01	376,278.11	347,577.90
1872 and '73	1,035,311.56	458,739.14	576,572.42
1873 and '74	1,162,738.33	463,674.34	699,063.99

An examination of the above statement will show that while earnings have increased the ratio of operating expenses to earnings has decreased, being 52 per cent in the year ending June 30, 1871, 44 3–10 per cent in the year ending June 30, 1873, and only 39 8–10 per cent in the year ending June 30, 1874.

Financial condition.—The report of the secretary, herewith submitted (see page 29), gives a full exhibit of the earnings and
117 operating expenses, and also of the financial condition of the company at the close of the fiscal year ending June 30, 1874.

The Los Angeles division.—As your board thought that it would be for the best interest of the company to build that portion of your road from Los Angeles via San Gorgonio to Fort Yuma, on the Colorado River, to secure the trade of Arizona and Sonora, before completing the road from the Tulare Valley to Los Angeles, they have built 50 miles on that division during the past year. But as this division is not connected with that portion of the road running out from San Francisco, and as it can hardly be said as yet to have been fully opened for general business, the earnings have been light and are not included in the preceding statement. Since the 1st of April, 1874, the earnings and operating expenses on this division have been as follows, viz:

Month.	Earnings.	Operating expenses.	Earnings over operating expenses.
April	$2,032.31	[1] $2,172.01	.....
May	6,553.09	5,222.07	$1,331.0
June	6,738.94	4,704.47	2,034.4
Total	$15,324.34	$12,098.55	$3,225.7

[1] Deficit, $139.70.

118 The last annual report.—As the last annual report was not published until a late period, and but few copies circulated, the general statements in that report in regard to the organization of the company, the grants from the State of California and the United States, and the business prospects of the road, are repeated in this report.

Organization.—The present organization of the Southern Pacific Railroad Company was effected October 12, 1870, by the consolidation of the following companies, viz, the San Francisco & San Jose Railroad Company, the Southern Pacific Railroad Company, the Santa Clara & Pajaro Valley Railroad Company, and the California Southern Railroad Company, all of which had been duly incorporated under the laws of the State of California. By virtue of the consolidation the new company succeeded to all the rights, privileges, and franchises of the companies above named.

The object of the new corporation was to construct, equip, maintain, and operate a line of railroad from the city of San Francisco to a point on the Colorado River, in the southeastern portion
119 of the State, a distance of, say, six hundred and twenty-nine miles, with a branch from Tehachapi Pass to the Colorado River, at or near Fort Yuma, a distance of, say, three hundred and fifty-three miles.

Grants from the State of California and the city of San Francisco.—Your company has received from the State of California a grant of thirty acres of land, situated in what is known as Mission Bay, in the city of San Francisco, an equal amount having been granted to the Central Pacific Railroad Company.

Since the last report the tracks have been extended down Fourth Street to Louisiana Street, and thence along the water front on that street to Eldorado Street. This extension will secure the object so long desired, the bringing together of ship and car, and will largely increase the earnings of the road.

Land grant of the United States Government.—As before stated, the contract for building the road is such that it leaves to the company, unencumbered, all the lands granted by the act of Congress, excepting the right of way 200 feet wide through the public lands.

The length of road upon which lands have been granted is,
120 say, nine hundred and thirty-two miles. The grant embraces all unoccupied lands designated by odd-numbered sections for twenty miles on each side of the road; and when any of these odd-numbered sections have been reserved or otherwise disposed of the company has the right to select a sufficient amount from the unappropriated lands between the twenty and thirty mile limits to make up the deficiency. From examinations made in the local land offices

it has been ascertained that there is a sufficient amount of vacant land between the twenty and thirty mile limits from which to select, in place of land settled upon or reserved within the boundaries of the grant proper. It is therefore safe to say that the company will receive, upon the completion of the road, the full amount of land covered by the grant. The land agent of the company, after a careful examination and classification of the lands, places their value, at a low estimate, at $30,000,000; and it is with much satisfaction that you can contemplate the ownership of this immense property, especially when you consider that its value to yourselves and the country has nearly all been created by your own energy and perseverance.

Your board would recommend that the lands be sold to actual settlers at low rates, according to location and quality, as soon
121 as arrangements for their sale can be completed, as it will be much more advantageous to the company to sell their lands at low prices and have them brought under cultivation at once than to hold them, even though much higher prices could be realized after a few years.

The policy of the General Government in granting each alternate section of land to aid in the construction of railroad lines through those districts far removed from navigable waters is fully justified by the rapid increase in the value of lands along the line of road so constructed.

Before the Southern Pacific Railroad was built, land in some of the great valleys through which it runs was of very little value, and there was no market for it even at the minimum Government price of $1.25 per acre, while now, with the road in operation, it is being rapidly taken up at the price fixed by the Government, which is twice that charged for lands unaffected by these improvements, so that the Government not only receives the same amount of money that it would have received if no grant had been made to the railroad company but also has a market for its lands where there would have been none without the road. And this is not all; the construction of a line of railroad, with all the necessary fixtures and
122 buildings, adds largely to the amount of taxable property in every township through which it passes, and thus tends to lighten taxation on the people who settle along the line of the road.

Prospective business of the road.—There are several considerations that have an important bearing upon the prospective business of your road which demand special notice:

First. The construction of the railroad from Watsonville to Santa Cruz. This railroad will pass through the extensive redwood forest and will afford a vast tonnage for your road, as the timber will find a ready market in large quantities in the Salinas and other valleys

long the line. A branch road is also nearly completed from your
oad to Monterey, which will give that town an all-rail connection
ith San Francisco and bring the business over your road.

Second. The towns and villages through which the Southern Pa-
ific Railroad passes afford the most delightful as well as the most
ailable suburban residence. San Jose, Santa Clara, Redwood City,
lenlo Park, Belmont, and other places equally well located, with a
imate that is unsurpassed, with the intelligence and refinement of
their citizens, and their educational and religious advantages,
23 afford great inducement to all who are seeking quiet and de-
lightful residences within easy access of the city. Already
any of the business men of San Francisco are finding a home be-
ond the city limits, and the steady and rapid increase of this sub-
rban population guarantees to your road a large and profitable local
usiness.

Third. The discovery of extensive deposits of coal in close prox-
nity to the line of your road, which can be easily reached as the
oad is extended.

When we consider that coal from these deposits can be delivered
n San Francisco over the low grades of your road at the minimum
st for transportation, and when we consider also the limited supply
f coal on the Pacific coast from other sources, together with the
ct that the road can supply itself with cheap fuel and secure a large
ncrease in its business in the transportation of coal for domestic
nd manufacturing purposes, the importance of this interest can not
ell be overestimated.

Fourth. The general location of the Southern Pacific Railroad is
eculiarly favorable for developing and controlling a large and
emunerative miscellaneous business, for it occupies almost the only
passes through which a railroad extending from San Fran-
24 cisco to the Colorado River can be built, and must therefore
command the entire business between San Francisco and the
outhern portion of California, as well as nothern Mexico and Ari-
ona. At the Colorado River it will meet the Texas & Pacific Rail-
oad, and when this connection is made it will give your road a direct
ommunication by rail with all the southern and southwestern por-
ions of the United States and the shortest line from San Francisco
o New Orleans and the country bordering the Gulf of Mexico, over
hich you may look for much of the surplus grain from the southern
alf of California to pass on its way to the European market.

Fifth. The country tributary to your road embraces nearly one-
hird of the entire State of California, say 50,000 square miles. In
raversing this large extent of country the road passes through some

of the finest valleys in California, such as the San Jose, Santa Clara, Pajaro, Salinas, Tulare, and the large and fertile valleys south of the Sierra Madre, in the counties of Los Angeles and San Bernardino. The soil in those valleys is exceedingly fertile and produces all kinds of vegetables and grain of the temperate zones and most of the fruits of the semitropical regions, such as oranges, lemons,
125 limes, olives, apricots, figs, etc., in great abundance. Recent experiments in the culture of tobacco near Gilroy, where some four hundred acres were planted the past season, have shown that the soil in that part of the State is peculiarly adapted to that crop, the yield per acre being from 1,500 to 2,000 pounds of a superior quality, equal to the best Havana, and from 2,500 to 3,000 pounds per acre of the coarser varieties. Recent experiments have also demonstrated that jute, ramie, and cotton can be grown in great abundance along the line of your road, for which the producer will always find a ready sale and remunerative prices, as these products will bear transportation, and thus have access to the world's markets.

Among the foothills and on the slopes of the mountains are vast tracts of land abounding in wild oats and native grasses, which are very nutritious and afford pasturage for sheep and cattle throughout the entire year; and the temperature is so mild, even in winter, that shelter is seldom required. Nearly all the land in the foothills also produces the grape in great abundance, and much of it is considered the best vineland in the world, as it never fails to yield a crop. There are also immense tracts of timberland covered with redwood,
126 red cedar, pine, and other varieties, which will afford an extensive lumber business for the road; in short, the country traversed by and tributary to the Southern Pacific Railroad has almost every variety of land adapted to every branch of agriculture with a mild and healthful climate, and is already attracting the attention of emigrants from the Eastern States, as well as from the nations of Europe, and is being rapidly taken up along the line of the road and even in advance of its construction.

With all these vast and varied interests awaiting the construction of your road, the villages and cities with their rapid increase of population, the fertile valleys with their great abundance and variety of agricultural resources, the forests with their wealth of lumber, the mines with their vast supplies of coal and untold millions of the precious metals, we think you may reasonably hope for satisfactory dividends on your investments when the road is completed.

We can not, however, ignore the fact that at this time a spirit of hostility against property held in a corporate capacity is being aroused and stimulated among the people by a small portion of the

newspaper press and a class of people who never seem happy unless they are disturbing some legitimate interests.

127 The claim advanced is virtually this, in the case of railroads, that having been built and paid for by one company of men, they should be controlled by another who have no interest in them whatever, except as a means of transportation for themselves and the products of their own industry. But ownership and control can no more be separated in the management of railroads than in the conduct of any other legitimate business.

A sense of justice, as well as the necessities of the case, establish the principle that ownership and control must go together. Railroad companies must have passengers and freight to transport or their investment will be unremunerative, and the people along railroad lines must have easy and rapid transportation or the products of their industry would be of little value. And we hope and believe that the time will soon come when property in railroads properly managed will be as safe from excessive taxation, unfriendly legislation, and enormous awards for damages to persons and property as though owned by private individuals, for in the end excessive charges imposed upon the roads must be paid by those who use them.

128 The companies that are employing their time, energy, and capital in constructing, equipping, and operating railroads, and the agriculturists and manufacturers are naturally, and of right should be, allies and not antagonists. And this fact will be fully recognized and understood when the agrarian war cry against corporate property has been placed to more correct views of the relation between labor and capital. That portion of your road now completed and in operation is earning more than sufficient to pay the interest on its bonded debt, and is increasing in value from month to month. Still your board would recommend that the company go forward with the work of construction with great caution, practicing the most rigid economy in operating the completed portion of your road, acquiring all necessary grounds for depots, sidings, machine shops, and other necessary purposes, and thereby strengthening the credit of the company so as to give its securities a high standing in the great financial centers from which the capital necessary for the completion of the road must be drawn; and then when the time comes, as it surely will, that capital invested in good railroad securities will be considered safe, this great work can be carried rapidly forward to completion.

129 In conclusion your president and board of directors would express their acknowledgments to all the officers and employes

of the company for their faithfulness and efficiency in the performance of their respective duties.

C. P. HUNTINGTON, *President.*

General superintendent's report.

A. N. TOWNE,
GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, August 21, 1874.

C. P. HUNTINGTON, ESQ.,
President Southern Pacific R. R. Co., New York.

SIR: Herewith I respectfully submit a report of the operation and business of the road for the fiscal year ending June 30, 1874, together with comparative statement of the earnings and expenses of the previous year.

* * * * * * *

Matters in general.—The Southern Pacific Road in the San Joaquin Valley, leased to the Central Pacific, extends from Goshen to the north bank of the Kern River, distance 71 8/10 miles, of
130 which 29 8/10 miles (from Delano to the latter point) were opened up for business August 1st, 1874. The bridge over the Kern River, it is expected, will be completed and trains running into Bakersfield, distant about 2 4/10 miles, as early as October 1st.

The average number of miles of road operated for the year ending June 30th, 1874, exclusive of the above, was 157.2/10.

The number of miles of road in operation August 1st, 1874, was as follows:

San Francisco to Soledad	142.9
Carnadero Junction to Tres Pinos	18
Goshen to terminus (north bank of Kern River)	71.8
Total	232.7

The completion of the Salinas & Monterey R. R. (narrow gauge) is promised by the end of September. Work also has been commenced on the Santa Cruz & Watsonville R. R., connecting with your road at Pajaro. Both of these roads, it is believed, will prove to be quite valuable feeders.

All that was promised concerning the percentage of operating expenses has been more than fulfilled, and the earnings com-
131 pared with previous years show a steady increase in both freight and passenger business, which we confidently believe will continue.

It is a source of satisfaction that the road has been operated during the year without accident to its passenger trains, all trains having

been run with great regularity and without loss of life or injury to passengers.

My acknowledgments are due to the officers, heads of the different departments, and to the employes for their cheerful cooperation in the successful management of the road.

Respectfully submitted.

A. N. TOWNE, *General Superintendent.*

* * * * * * *

132 DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(6. Report of the Southern Pacific Railroad Company for the year ending June 30, 1875.)

Annual report of the board of directors of the Southern Pacific Railroad Company to the stockholders for the fiscal year ending June 30th, 1875. San Francisco: H. S. Crocker & Co., stationers and printers. 1875.

Report.

OFFICE SOUTHERN PACIFIC RAILROAD COMPANY,
COR. FOURTH AND TOWNSEND STREETS,
San Francisco, October 1st, 1875.

To the stockholders:

The board of directors herewith submit the reports of subordinate officers, which give the operations of the road for the fiscal year ending June 30th, 1875, and the financial condition of the company at that date.

Since the last report the company has been reorganized and consolidated with the Los Angeles and San Pedro Railroad Company, under the name of the "Southern Pacific Railroad 133 Company", December 18th, 1874.

Capital stock:

The capital stock of the new corporation authorized is	$90,000,000
The amount of capital stock subscribed is	23,770,330
The amount of capital stock paid in is	22,412,200

Progress of construction.—Since the last report the Western Development Company, which has the contract for building the road, has completed sixty-four and one-half miles of road (up to August 1, 1875), and which is now being operated by the company, as follows:

From Lerdo to Caliente	36 miles.
From Spadra to Colton	28½ miles.
	64½ miles.

Since August 8th, and up to the present writing (October 1st), the track has been laid from Colton to a point seven and one-half miles southerly and beyond San Gorgonio Pass, and twenty-nine miles beyond Colton. The grading is completed to a point 35 miles beyond San Gorgonio, and upon the arrival of rails via Cape Horn, now overdue, track laying will be resumed, and also the grading (which has been temporarily suspended), and the track will
134 be pushed forward to the Colorado River, which can be reached by March next, if the company shall so decide.

Tehachapi Pass.—In the meantime the Western Development Company has been pushing the work of grading your road in the Tehachapi Pass—through the "Sierra Nevada" Mountains—with great energy. They have now employed twenty-nine hundred and sixty Chinese laborers, besides many hundred white as foremen, teamsters, carpenters, masons, and at other occupations, upon forty-three miles of heavy work in this pass. They have also fifteen hundred men employed upon the San Fernando Tunnel, which is proceeding rapidly to completion.

All this work is under the general superintendence of Mr. J. B. Harris, assisted by Mr. Arthur Brown, as superintendent of bridge and tunnel lining. Mr. Harris reports that this work will be advanced so as to permit the commencement of track laying at Caliente about March 1st, and continue on until the connection is made at San Fernando about July 1st next.

Length of road completed Oct. 1st, 1875, is as follows:

135	San Francisco to Tres Pinos	100.5
	Carnadero Junction to Soledad	60.4
Goshen to Caliente		96.0
San Fernando to 7 miles beyond San Gorgonio, via Los Angeles		107.5
Los Angeles to Wilmington		22.2
Total miles		386.6

Earnings and operating expenses.—The earnings and operating expenses for the year ending June 30th, 1875, were as follows:

Earnings:		
	Freight	$741,318.25
	Passengers	617,148.70
	Express	21,141.17
	Lighterage, freight	44,879.88
	Lighterage, passenger	14,488.91
	Rental	315,427.45
	Storage	5,191.63
	Miscellaneous	3,313.42
	Mail	14,277.53
136	Telegraph	3,269.60
	Total earnings	$1,780,456

Operating expenses:		
Expenses of superintendents	$7,197.28	
Station service	103,146.29	
Train service	63,214.91	
Locomotive service	149,583.52	
Telegraph service	447.22	
Office expense	34,473.96	
Stationery and printing	9,556.20	
Advertising	1,678.72	
Water service	7,244.92	
Repairs of tools	6,929.00	
Repairs of track	107,074.37	
Repairs of buildings	8,966.83	
Repairs of engines	48,535.84	
Repairs of cars	41,886.01	
Repairs of foreign cars	3,356.88	
Repairs of bridges and culverts	6,072.74	
Repairs of fences	3,474.65	
Miscellaneous expense	2,158.14	
Mail service	1,497.30	
137 Loss and damage (property)	4,091.20	
Damages (personal)	1,167.72	
Wharf	16,787.62	
Steamer and lighterage	21,834.20	
Expense of leased roads	123,100.00	
Total operating expenses		773,485.52
Net earnings		1,006,971.02

J. L. WILLCUTT, *Secretary.*

CHAS. J. ROBINSON, *Auditor.*

Details of repairs and equipment.—For full details of repairs, including cost of same and the running expenses, you are referred to the reports of A. C. Bassett, superintendent of Northern Division (see pages 9 to 20), and E. E. Hewitt, superintendent of Los Angeles Division (see pages 23 to 31).

The report of the secretary.—You are referred to the report of the secretary (see pages 35 to 39) for a full exhibit of the financial condition of the company up to the close of the year ending June 30th, 1875.

It is not deemed necessary at this time to make an
138 extended exhibit of the future prospects of your company in this report, as a pamphlet giving "Description, progress, and business with reference to the financial condition of the company and the value of its first mortgage six per cent gold bonds" has been lately published by the financial agent of the company at New York, Mr. C. P. Huntington, and which is very full and complete.

A copy of this pamphlet will be forwarded to each stockholder.

CHAS. CROCKER, *President.*

* * * * * * *

139 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(7. Report of the Southern Pacific Railroad Company for the year ending June 30, 1876.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON,
No. 9 NASSAU STREET,
New York, Sept. 25, 1876.

Hon. Z. CHANDLER,
Secretary of the Interior, &c., &c.,
Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Rail Road Company (of California) for the year ending June 30, 1876. Please acknowledge receipt and oblige,

Yours, very respectfully,

C. P. HUNTINGTON, *Agt. & Atty.*
(G.)

* * * * * * *

140 Fourth. For a description of the lines of road surveyed reference is made to previous reports and the accompanying report of the chief engineer.

The cost of surveys has been paid by the contractors constructing the road.

* * * * * * *

(Copy.)

SAN FRANCISCO, *Aug. 10th, 1876.*

To the president and directors of the S. P. R. R. Co.:

I have the honor to submit the following as my report of the operations of the engineer's department for the fiscal year ending June 30th, 1876.

In our annual report for the year ending June 30th, 1875, it was stated "The road was completed from Sumner to Caliente, a distance of 16 miles", &c. Since that report the construction has progressed steadily from Caliente to San Fernando station, a distance of 124.4 miles.

On that portion of this division embracing the Tehachapi Pass from Caliente to Tehachapi Station, a distance of 25.4 miles, very heavy and expensive work in grading was encountered. The
141 location of this subdivision required careful study and sound judgment. It is on this part of the route where we resorted to a novel expedient to obtain distance and to accommodate the grades to the natural surface of the country.

This was accomplished by taking advantage of a nearly conical butte, circling round it, and then tunneling through a spur of the butte over which the line ran in making the circuit. The circuit is made in a lineal distance of $3{,}794\frac{7}{10}$ feet and a difference in elevation, where the line crosses itself, of $77\frac{5}{10}$ feet. Seventeen tunnels were necessary on this subdivision, having an aggregate length of $7{,}677\frac{1}{10}$ feet.

It is confidently believed, under all the circumstances, this location has been judiciously made and will stand the test of impartial criticism.

The track was laid and ready for the transportation of passengers, mails, and freights from Caliente to Tehachapi station on June 30th, 1876.

From Tehachapi Station to and including San Fernando Tunnel, a distance of $94\frac{2}{10}$ miles, the grading is well advanced. Three tunnels were necessary on this subdivision—two in the Soledad Canon,
142 of an aggregate length of 560 feet, and one in the San Fernando Pass, of $6{,}966\frac{1}{2}$ feet. It is anticipated this subdivision will be completed and an all-rail connection made between San Francisco and Los Angeles, on or before Sept. 15th, 1876.

There has been 5 miles graded and track laid between San Fernando Tunnel and San Fernando station. Trains commenced running carrying passengers, mails, and freights from the tunnel to San Fernando on Jany. 1st, 1876.

In our annual report before referred to it was stated "50 miles from Spadra to San Gorgonio had been graded and the track laid to Colton, and that a contract had been entered into to grade 50 miles from San Gorgonio to near Dos Palms, &c." Since that report the track has been laid from Colton to San Gorgonio, and thence to Indian Wells, in the Cabazon Valley, a total distance from Colton to Indian Wells of $71\frac{1}{2}$ miles.

Trains commenced running carrying passengers, mails, and freights on May 29th, 1876.

Indian Wells, the present terminal of the road, is one hundred and sixteen miles from Fort Yuma, on the Colorado River; the final location of this subdivision has been completed, and the line is now ready for the graders.

143 To recapitulate: There have been completed and brought into operation during the year ending June 30th, 1876, the following subdivisions of railroad and telegraph line, all of which is first class:

	Miles.
From Caliente to Tehachapi Station	24.40
" San Fernando Tunnel to San Fernando	5.00
" Colton to Indian Wells	71.50
Total miles	100.90

Of this distance of 100 90/100 miles there was laid 29 36/100 miles of iron weighing 56 lbs. per lineal yard and 71 54/100 miles of steel rails weighing 50 lbs. per lineal yard.

There has been about 850 miles of line instrumentally surveyed during the year besides many side trial lines, of which no account is here made.

This company have in operation transporting passengers, mails, and freights the following miles of railroad:

	Miles.
From San Francisco to Tres Pinos	100.50
" Carnadero to Soledad	60.40
" Goshen to Tehachapi Station	121.00
" San Fernando Tunnel to Indian Wells	155.20
" Los Angeles to Wilmington	22.25
Total	459.35

144 Extended reconnaissances were made during the year, principally under the charge (in the field) of Isaac W. Smith, Esq., commencing at the terminus of completed road, and thence into Nevada, Arizona & New Mexico, to El Paso, on the Rio Grande.

The first examination was made from Dos Palms in Cabazon Valley, thence to Ehrenberg, on the Colorado River, and thence to Phoenix, on Salt River, just above the junction of this river, with the Gila in Arizona, a distance of about 245 miles.

The information obtained demonstrated it would require a careful instrumental survey to decide the practicability of this route, an instrumental survey is now in progress and will be completed in a few days.

A reconnaissance was made from Los Angeles to San Diego, thence via the different passes through the mountain range lying north and eastward from San Diego, thence to the plains between the mountains and Fort Yuma, all of which has been heretofore reported upon.

An extended reconnaissance was made starting near Camp Cody on the Mojave River, thence to Soda Lake, Ivanport, Los Vegas,
145 the Amargoza Valley, Collville, and the Rio Virgen River. Further examinations in the above directions are desirable.

The reconnaissance from Dos Palms to the junction of the Salt and Gila Rivers was continued from Phoenix to Tucson, Railroad Pass, Camp Bowie to El Paso, and Franklin on the Rio Grande, a distance of 408 3/4 miles. The distance from Indian Wells, the end of the completed road, to El Paso will be about 675 miles. A very favorable route for a railroad was found from the Colorado River to the Rio Grande River with generally easy grades and inexpensive construction if properly located.

Respectfully submitted.

GEO. E. GRAY, *Chief Engineer.*

146 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(8. Report of the Southern Pacific Railroad Company for the year ending June 30, 1877.)

OFFICE SOUTHERN PACIFIC R. R. CO. OF CALIFORNIA,
C. P. HUNTINGTON, AGT. & ATTY.,
No. 9 NASSAU STREET,
New York, Sept. 29, 1877.

Hon. CARL SCHUZ,
Secretary of the Interior, &c., &c.,
Washington, D. C.

SIR: I have the honor to hand you herewith the annual report of the Southern Pacific Rail Road Company (of California) for the year ending June 30th, 1877, which is submitted in accordance with an act of Congress entitled "An act relative to filing reports of rail road companies", approved June 25th, 1868, the receipt of which I will thank you to acknowledge.

Very respectfully, your obedient servant,
C. P. HUNTINGTON, *Agent & Atty.*

* * * * * * *

147 Fourth. For a description of the lines of road surveyed and of the lines thereof fixed upon for the construction of the road reference is made to previous reports and the accompanying copy of the report of the chief engineer. The cost of surveys has been paid by the contractors constructing the road.

* * * * * * *

SAN FRANCISCO, *July 3rd, 1877.*

To the president and directors of the Southern Pacific Railroad:

I have the honor to submit the following account of surveys made by the engineer's department and the additional miles of railroad constructed for the fiscal year ending June 30, 1877.

In our annual report ending June 30, 1876, it was then stated: "The railroad was completed from Caliente to Tehachapi Station and from San Fernando Station to San Fernando Tunnel, and
148 from Colton to Indian Wells (since called Indio, a total distance of 100 9/10 miles, and considerable advancement had been made in grading on other portions of the line." Since that report the construction has steadily progressed.

Grading and track laying was completed from Tehachapi to Mojave, a distance of 20 2/10 miles (and trains commenced running, conveying U. S. mails, passengers, and freights), August 8, 1876.

From Mojave to and including San Fernando tunnel the grading and track laying for a distance of 75 00/100 miles was completed,

and trains commenced running, conveying U. S. mails, passenger
and freights, September 6, 1877.

Grading and track laying commenced at Goshen Mar. 1st, 187
and was completed to Huron, a distance of 40 miles, Jany. 9, 187
Trains commenced running, conveying U. S. mails, passengers, a
freights, Feby. 1st, 1877.

January 1st, 1877, grading and track laying commenced at Ind
(formerly called Indian Wells), and was completed to the Colora
River near Yuma, a distance of 118 3/10 miles, on the 20th of Ma
1877, and trains commenced running, conveying U. S. mails, passe
gers, and freights, on the 23d of May, 1877.

149 To recapitulate, there has been constructed and brought in
operation during the fiscal year ending June 30th the follo
ing portions of railroad and telegraph line, all of which is first cla

	Mi
From Tehachapi to Mojave	20
From Mojave to and including San Fernando tunnel	75
From Goshen to Huron	40
From Indio to Colorado River near Yuma	118
Total completed	253

Of this distance of 253.78 miles the whole has been laid w
steel rails, weighing not less than 50 lbs. per lineal yard.

This company now have in operation carrying U. S. mails, p
sengers, freights, etc., the following miles of railroad and telegr
lines, viz:

	M
From San Francisco to Tres Pinos	10
From Carnadero to Soledad	6
From Huron via Goshen and Los Angeles to the Colorado River near Yuma	52
(x) From Los Angeles to Wilmington (new depot)	2
Total in operation	71

150 (x) This distance includes the "Y" at Goshen, 0 28/100 m
The location of the bridge to cross the Colorado River
been fixed upon, and the materials for the same are now being
idly delivered for its erection. It is intended to have the br
completed by Sept. 1st next.

The bridge will be all of wood, will have a draw of 80 fe
the clear, opening placed on a turn-table. There will be five o
spans (fixed) of 80 feet each resting on piled piers, driven to
rock underlying the bed of the river.

Grading for depot grounds, engine house, and general station purposes are in progress at Yuma, and will be completed on or before the completion of the bridge.

There has been 650 miles of instrumental and experimental lines run in addition to final locations, during the fiscal year, besides a large extent of country examined barometrically east of the Colorado River, the latter having been the subject for special reports.

Respectfully submitted,

(Sgd.) GEO. E. GRAY, *Chief Engineer.*

151 DEFENDANTS' EXHIBIT No. 23, MARCH 12, 1915.

(9. Report of the Central Pacific Railroad Company for the year ending June 30, 1873.)

OFFICE CENTRAL PACIFIC R. R. Co.,
C. P. HUNTINGTON, V. P.,
No. 9 NASSAU STREET,
New York, September 23, 1873.

Hon. C. DELANO,
Secretary of the Interior, Washington, D. C.

SIR: I have the honor to hand you herewith the "Annual report of the Central Pacific Railroad Company of California", and the "Western Pacific Railroad Company" and the "California and Oregon Railroad Company" and the "San Francisco and Oakland Railroad Company" and the "San Francisco and Alameda Railroad Company", consolidated under the name of the "Central Pacific Railroad Company", for the year ending June 30, 1873, and will thank you to acknowledge receipt of same.

Very respectfully,

C. P. HUNTINGTON, *Vice President.*

152 * * * * * * *

Annual report of the board of directors of the Central Pacific Railroad Company to the stockholders for the year ending December 31st, 1872. Sacramento: Record Book and Job Printing House. 1873.

Report.

OFFICE CENTRAL PACIFIC RAILROAD CO.,
Sacramento, July 8th, 1873.

The directors herewith submit to the annual meeting of the stockholders of the Central Pacific Railroad Company such reports of

subordinate officers as will give a general resumé of the operations of the road from its commencement up to the 1st of this month, and a particular account of the condition of the company's property and financial condition up to December 31st, 1872.

Your careful attention to these reports is invited.

The capital stock authorized is	$100,000,000.00
The capital stock subscribed is	59,644,000.00
The capital stock paid in is	54,283,100.00
153 Of the amount subscribed there is held in trust for the company	5,333,300.00

Indebtedness.—The debts of the company are:

Funded debt	54,084,000.00
Less sinking fund	878,847.00
	53,205,153.00
United States subsidy bonds	27,855,680.00
Total	81,060,833.00

For detailed statement of funded debt see secretary's report, hereto appended, Table No. 2.

Assets.—The assets of the company are:

1,222 miles main line of railroad and telegraph, with all necessary sidings, turnouts, switches, turntables, depots, depot buildings, roundhouses, and snow galleries, also wharves, slips, piers, and steamers for ferries at San Francisco (cost)	$130,485,678.74
Equipments for same—Locomotives, cars, snowplows, etc. (cost)	5,622,693.04
Real estate purchased for use of road (cost)	968,976.00
154 Shops and machinery (cost)	1,280,223.25
Telegraph instruments, furniture, safes, etc., at stations and offices (cost)	76,602.00
Sacramento River steamers (cost)	830,372.00
Material on hand:	
In shops for constructing and repairs (per inventory) (cost)	985,283.25
In store of supply department (per inventory) (cost)	112,769.25
Fuel on hand (per inventory) (cost)	325,048.25
Balance of accounts outstanding after deducting obligations	2,366,130.00
Farming lands—estimated value	29,306,000.00
Undivided half 60 acres land in Mission Bay, in San Francisco; 500 acres water front at Oakland; about 140 acres and water front at Sacramento—estimated value, independent of improvements	7,750,000.00
Cash in hands of treasurer	147,156.00
Total	180,257,024.00

Length of road.—The following statement shows the length of the main line and branches December 31st, 1872:

Division.	Termini.	Length (miles).
Main Line	San Francisco to Junction with U. P. R. R.	883
Oregon Division	Roseville to Redding	152
San Joaquin Division	Lathrop to Goshen	146
San Jose Division	Niles to San Jose	18
Alameda Division	Alameda to Haywards	17
Oakland	Oakland to Brooklyn	6
Total		1,222

The length of side tracks is $110\frac{40}{100}$ miles, equivalent to an aggregate of $1,332\frac{40}{100}$ miles single-track road:

Statement of equipment, Dec. 31, 1872.

Locomotives	184	Platform cars	1,494
First-class passenger cars	93	Section cars	179
Second-class passenger cars	54	Hand cars	222
Palace sleeping cars	21	Dump cars	110
Mail and express cars	15	Track-laying cars	51
Baggage cars	25	Directors and superintendents' cars	2
Caboose cars	38	Wrecking cars	2
Hay cars	1	Snow plows	7
Box freight cars	1,704	**Wrecking cars**	2
Directors and superintendents' cars	2	**Snow plows**	7

In the Sacramento shops there have been, in addition to the above, four hundred and thirty-seven cars built since January 1st, 1873; three locomotives, and seven now building and nearly completed. The Miller platform has been put on all the passenger cars, and passenger trains are equipped with the Westinghouse air brakes.

Shops.—There are complete and extensive shops for the construction and repair of locomotives and cars, fully equipped with most approved machinery for that purpose, located at Sacramento (within the city limits), on large and commodious grounds belonging to the company; and also division repair shops, located at San Francisco, Oakland, Lathrop, Rocklin, Truckee, Wadsworth, Winnemucca, Carlin, Toano, Terrace, and Ogden. These shops and the machinery have been largely added to during the year.

Far removed as we are from manufacturing centers, shops complete for the manufacture of cars and locomotives are a necessity, which justifies the liberal expenditure above noted, of $1,280,223.25, made for that purpose, and the large amount of material necessarily kept on hand, at a cost of $1,098,052.47.

San Francisco ferries to and from Oakland and Alameda.—The equipment of these ferries is composed of the following steamboats

Name of steamer.	Tonnage.	Number, kind, and size of engines.			
		No.	Kind.	Inches.	Feet and inches.
El Capitan	982	1	Condensing, beam	36	12
Alameda	813	1	Condensing, beam	42	10
Oakland	285	2	Noncondensing, slide valve	20	6
Washoe	580	2	Noncondensing, lever	22	7
Thoroughfare	1,012	2	Noncondensing, lever	22	7
Loaise	386	1	Condensing	40	9
Flora Temple	334	1	Noncondensing	16	3

With wharves, piers, and slips for their accommodation. One of these steamers, the Thoroughfare, is a large, powerful boat, designed exclusively for transportation of freight trains between Oakland and San Francisco, with track capacity for eighteen cars, besides additional room and pens for sixteen carloads of stock. It is
158 a most decided success, and determines the question of manner of approach to the city of San Francisco.

River steamboats.

Name of steamer.	Tonnage.	Number, kind, and size of engines.			
		No.	Kind.	Inches.	Feet and inches.
Amador	897	2	High pressure	25	7
Amelia	386	1	do	36	6
Capital	1,625	1	Low pressure	65	12
Cornelia	383	1	do	27	5
Cora	298	2	High pressure	20	5
Chrysopolis	1,080	1	Low pressure	60	12
Chin-du-Wan	181	2	High pressure	18	5
Dover	164	2	do	14	5
Empire City	102	2	do	12	5
Enterprise	246	2	do	15	5
Flora	225	2	do	14	5
Fresno	33	2	do	8½	2
Gem	235	2	do	15½	5
Gov. Dana	300	2	do	15½	5
Goodman Castle	160	2	do	14½	4
Julia	520	2	do	20	5
159 Lark	271	2	do	16	5
Mary Emma	48	2	do	9	2
Moulton	294	2	do	14	5
Paul Pry	331	2	do	18	6
Pilot	165	2	do	12	4
Red Bluff	249	2	do	15½	5
Reliance	227	1	do	24	5
Sacramento	541	2	do	20	7
Tulare	122	2	do	12	4
T. C. Walker	137	2	do	14	4
Vallejo	273	2	do	16	6
Washington	148	2	do	12	3
Yosemite	1,272	1	Low pressure	56	16

List of barges.

Name.	Tonnage carrying capacity.	Name.	Tonnage carrying capacity.
n	500	160 Jacinto	800
Antonio	700	Chico	600
of Spades	250	Tehama	600
t of Clubs	250	Orient	250
	800	Grant	200
y	250	Dr. Franklin	250
	200	Paradise	200
mer	450	Cattle Barge	100
o	400	Sybil	150
o	400	Napa	250

The railroad hospital.—Located in the city of Sacramento, on ple grounds, is a large and commodious building, built by the com- ny in 1869.

It is under the able administration of Dr. A. B. Nixon, and has lly realized the expectation of its founders.

Every officer and employee of the company contributes monthly fty cents from his pay, as "hospital dues," which constitutes a spital fund to defray the current expenses of the institution. The yment of this monthly hospital due entitles the employee to free mission and medical attendance at the hospital in case of sick- ss or injury while in the service of the company.

Thus far the fund from this source has been sufficient to defray e current expenses of the hospital and pay the interest on its st. There is no reason to doubt it will continue to be self-sus- taining.

The building of this asylum has proved a humane provision against the improvidence too frequent among men, and is garded with favor among employees, tending to attach them to e service of the company.

The actual cost of real estate purchased for railroad terminal and ation purposes on the line of your road is $968,976.06.

Its real value at this time is very much more, as it has been largely hanced since it was acquired, and from natural causes its value will ntinue to increase.

These locations and purchases were made with reference to the ture wants, no less than the present need, of your company, and e believed to be ample to meet all the requirements of its increasing siness for many years to come.

There have been important improvements made at the joint cost the Central Pacific and Southern Pacific Railroad Companies of 52,224. upon the sixty-acre tract of land granted to these com-

panies by the State, at Mission Bay, in the city of San Francisco. Further improvement is deemed unnecessary there until a proper ordinance shall be passed by the city authorities closing certain streets and allowing the cars to reach deep water, which, we
162 understand, the city is now willing to do. At your next annual meeting we hope to be able to report that the necessary concessions have been made and that the track has been extended to deep water, so as to bring the cars and ships together at that point.

At the city of Oakland you have 288 acres most advantageously located, besides 500 acres of water front opposite the city of San Francisco, from which a pier has been constructed to ship's channel that amply meets the present wants of commerce at that point. One hundred and fifteen ships have taken full cargoes of wheat at this pier for foreign ports since the last harvest.

At the city of Sacramento your company was granted 2,800 feet of water front in the most central business part of the town. This grant was confirmed by act of the legislature in 1863. It has since been improved by the construction of docks and tracks covering the entire length; with three stationary engines, derricks, and other needful appliances for the rapid and economical discharge of merchandise and heavy weights to and from cars and water craft. As a business facility, in the interest of the increasing commerce centering at this point, it is exceedingly valuable. In addition to this water-front property, your company owns a connected tract
163 of about 140 acres, conveniently situated within the city limits, on a portion of which its principal shops are located.

At every station on the entire length of your road ample room has been acquired for railroad purposes.

The right of way acquired from the National Government is four hundred feet in width and that derived from individual landowners as far as practicable, is of the same width.

The land grant from the United States Government to the Central Pacific Railroad of 12,800 acres per mile for 742 miles is	9,497,600 acres
Deduct for lands previously granted and reserved, say	1,500,000 acres
Leaves	7,997,600 acres
The land grant to the California and Oregon Railroad of 12,800 acres per mile for 291 miles is	3,724,800 acres
Total	11,722,400 acres

(The grant to the C. & O. R. R. Co. provides that where lands are lost to the railroad company by reason of previous
164 grants or reservations they can be made good from an indemnity grant of ten miles in extent on either side of the twenty-mile limit, which insures to the railroad company the full amount of land granted.)

The value of these lands at the Government minimum price for adjoining lands, $2.50 per acre, would be	$29,306,0

Much of this is the choicest agricultural and timbered land in the untry, and will sell for a much larger price.

The policy of the company has been to sell its farming lands at w prices and on easy terms of payment to actual settlers, believing e best interests of the company are promoted by selling in limited antities within twenty miles of its road to those who will cultivate e soil and who will own the soil they cultivate. By this means we rite an industrious agricultural population, whose improvements d production tend to increase the business of your road and to hance the value of your unsold lands. Most of the lands that have en sold were purchased for gold on a credit of five years, a payment f twenty per cent being made at the time of sale and the remainder in equal annual installments, with annual interest at the rate of ten per cent per annum, payable in advance, on all sums remaining unpaid.

Of these lands there were sold previous to October 1st, 1870, 27,635 $\frac{55}{100}$ acres, which brought the sum of $295,065.50, being an verage of $2.21 per acre.

From October 1, 1870, to December 31, 1872, there was sold 22,765 acres, which brought the sum of $484,227.97, being an verage of $3.93 per acre.

From December 31, 1872, to June 30, 1873, there was sold 20,638 $\frac{71}{100}$ cres, which brought the sum of $132,337.54, being an average of 6.41 per acre.

These sales were made to 1,446 individual purchasers, being an verage of about 187 acres to each buyer.

This annual advance in the average price of lands sold indicates he increasing value of the unsold lands of your company, and when iewed in connection with the annual increase of the business of our road, fully justifies the policy of selling, as far as practicable, o the actual settler for cultivation.

The active competition with the California Pacific Railroad Company for the traffic between Sacramento and San Francisco, which existed in 1871, was terminated by mutual agreement between that company and your own, by which the Central Pacific guaranteed the payment of 1,600 of the twenty-year six per cent mortgage bonds of the California Pacific Railroad Company, for $1,000 each, which arrangement has proved highly advantageous to your company in a financial point of view.

Since the construction of your road to a junction with the Union Pacific at Ogden, there has been added to it by construction and consolidation, 480 miles, viz: Western division, 141 miles; Oregon division, 152 miles; San Joaquin, 146 miles; San Jose, 18 miles; Alameda, 17 miles; Oakland, 6 miles. All these additions to the main line have proven at once profitable investments, adding to and with

themselves increasing the pro rata earnings and net income of each mile of the whole.

These additions, like the stem line, have mostly penetrated a sparsely settled and undeveloped country, but of vast resources, and together they may be said to command the entire scope of the San Joaquin and Sacramento Valleys, and all the country, in fact, whose business shall seek the Pacific. The Sacramento and San Joaquin Valleys—the two great valleys of California—alone comprise an area
of 480 miles in length by an average of 70 miles in breadth, or
167 21,504,000 acres of arable land, susceptible of varied and most
profitable cultivation, which must bring a very large traffic to your road as soon as they shall be brought into culture, and which is confidently expected in the near future.

From the valley of the Sacramento to Ogden the Truckee and the Humboldt Rivers alone offer a practicable pass through the range of mountains that occupy so largely the country from the Wahsatch to the Sierra Nevada, lying parallel to them and running north and south. The natural and only drainage of all that vast country for hundreds of miles north and south is to the lines of your road, and it is the same with the drainage of the great valley system of California. Your lines are so laid with reference to the topography and passes of the country that these valleys and their tributaries are completely commanded, and hereafter the construction of all lines of railroads in this vast country of hundreds of thousands of square miles must prove feeders to your lines.

It is not too much to assume that no railroad system in the world
is so comprehensive as this, which nature has pointed out, and
168 of which your company has been so fortunate as to secure and
develop. It is the very key to the commerce of the Pacific.

The results of the operations of your roads for the year 1872 are more than satisfactory; they are conclusive of preeminent financial success. Though your lines command this vast country so rich in mineral, agricultural, and manufacturing resources and of great commercial advantages, it is but sparsely occupied and but slightly developed, and your roads only fairly opened for business. Your interest account necessarily is large, consequent upon the cost of your roads.

The natural difficulties to be overcome upon the main line were immense. During the period when that work was being performed the War of the Rebellion was raging. Material was at war prices. The bonds received from the Government, as well as your own mortgage bonds, were sold for currency which had to be converted into gold at a great sacrifice. Yet the year 1872 shows the ability of your roads to take care of themselves and pay interest with a handsome balance over. With the population and development that is certain

n the future, the annual increase of business for years to come will ontinue; as the causes remain, but with growing force, great financial success therefore is assured.

169 On the original line from Sacramento to Ogden, as well as upon the other parts, large expenditures have been made in perfecting them since they were opened for business, until now they are in such a state of completeness as to tracks, depots, machinery, snow galleries, docks, wharves, and terminal accommodations and supplies on hand that you may reasonably expect dividends upon your shares from this time on. Heretofore the net earnings have gone to construct and bring your property to its present state of completeness and effectiveness.

At the present time the question of control of railroads is somewhat agitated. Congress in the Pacific Railroad act, section 18, says: "And be it further enacted, That whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, deducting all expenditures, including repairs and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost (exclusive of the five per centum to be paid to the United States), Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law." This 170 takes the control of freights and fares on the Pacific railroads from the States and Territories through and into which they run, and leaves the question entirely with Congress, in accordance with the section above quoted. The principle embraced in the act of Congress, that the companies are to control their business unmolested, in any event, until a fair return is had upon their investment, must prevail for all railroads.

Ownership and control must be inseparable. If the owners in a business are not to control, but its management and control to be by those who do not own, then that business cannot be prosecuted.

But the necessities of the case and the sense of justice will establish it as a principle that ownership and control in railroad matters, as in other legitimate business, must go together.

During the past year much has been said about the relations of your road to the Government. Your board of directors are much pleased to be able to state that the company has more than fulfilled every obligation arising out of its contract with the Government, and has saved to the Government, by its rapid construction and consequent opening for business (seven years earlier than its 171 contract required), more millions than the company netted in gold from the bonds received from the Government. All the additions are consolidated with the main line, and are equally

with it security to the Government for its loan, and these addition
are and will ever be more valuable per mile than the greater part o
the main line.

To confound the ignorant or malicious caluminators of you
company you can point to the record of what you have done and t
the contract under which you did it. By the contract you will abid
and by it be judged, asking no favors, only justice; but if the equitie
are to govern you can well afford to go into an accounting of mutu
benefits and stand by the balance sheet.

To give to the Government and the country the benefits of you
road seven years earlier than the contract required cost your com
pany probably not less than ten (10) millions of dollars more tha
it would have cost had the full time been taken for constructio
which the contract allowed. One of the reasons for the sacrifice t
secure rapid construction was the absolute necessity of reaching th
Great Salt Lake Valley in time to meet the Union Pacific there, s
that we might command the business to that point and to th
172 north and south of the line and secure the fair advantages d
the expensive work of the "Sierras." Almost any sacrifi
was justified by this consideration, but the Government and the cou
try have none the less the benefit of the sacrifice. And even yo
company, besides having secured the advantage consequent upo
making the junction with the Union Pacific at Ogden in the Gre
Salt Lake Valley is in great measure compensated by having th
benefits arising from the use of the road so early and the develo
ment of business so much in advance of what otherwise would be th
case. But no one could at that time foresee the great developme
of local business consequent upon the construction of your roads in
the then unoccupied country between the valley of the Truckee a
that of Salt Lake. It is a suggestive fact that between these valle
a distance of nearly six hundred miles, where now there is a bu
ness such as demands lateral lines of railroads for its accommodatio
there lived at the time when your road was commenced but one whi
man. The reports of other roads, so far as they have come to o
knowledge, show no such wonderful increase of business yearly
you will perceive, has been made by your roads. But we can n
clearly see that they will be greater in the future.
173 The immigration this year promises to be more than doul
that of any year since the junction of the roads at Ogden.

The wealth of our soil, as exhibited in its great wool, grain, a
vine productions, and the advantages of climate are attracting
tention that must each year largely increase the flow of immigrati

The trade of the Pacific Ocean, centering at the bay of San Fr
cisco, shows a remarkable growth, and is a foretaste of the gr
business that is to come from the exchange of productions with

eming millions of the islands of the Pacific Ocean and the coun-ies bordering upon it.

Altogether the prospects of your company are bright, and you ave the satisfaction of knowing at the same time you have per-ormed a most beneficent work in opening up to settlement a country therwise in great part inaccessible for development.

LELAND STANFORD, *President.*

* * * * * * *

74 Chief Engineer's Report, S. S. Montague.

Report of the Chief Engineer.

ENGINEER'S OFFICE, C. P. R. R.,
Sacramento, July 1, 1873.

To the President and Directors of the Central Pacific Railroad:

GENTLEMEN: In presenting a general report of the progress of sur-eys and construction and of the present condition of your road it will, I presume, be unnecessary to trace in detail the history of the ork from its inception, as most matters of interest in this connec-ion have from time to time been placed before you.

The most important works undertaken by your company since the onnection of the main line with the Union Pacific Railroad have een confined to the State of California, and have been designed as part of a general railroad system comprehending in its plan the evelopment of the great interior valleys of the State, and pro-viding suitable means of communication between them and
75 the most eligible point for the connection of inland and ocean commerce.

In furtherance of this plan the construction of the Western Pa-ific had been commenced previous to the completion of the track on he main line and the connection of the Central Pacific and Union acific roads, and was opened for traffic in the fall of 1869, thus orming an unbroken line from Omaha to San Francisco Bay.

Simultaneously with the construction of the Western Pacific, ork was commenced on the extension of the California and Oregon ailroad. This road was in operation previous to 1868 to a point out seven miles south of Marysville, and it was pushed rapidly rward to the town of Redding, Shasta County, one hundred and venty miles from Sacramento, and, by the line of our preliminary rvey, one hundred and thirty-nine miles from the northern undary of the State.

The construction of the road thus far, through the counties of lacer, Sutter, Yuba, Butte, Tehama, and Shasta, has developed me of the best agricultural lands of the State, and will render

productive a large region heretofore uncultivated and unpopulate
for want of facilities for transporting grain and other products
market.

176 The certainty of the grain crop, in the northern part
the valley especially, will always render farming lands the
very desirable, and the appreciation of real property since the co
struction of the road is ample evidence that its advantages are n
overlooked by those seeking investments in that direction.

The fine grazing region in the northern part of this State a
southern Oregon is already being occupied, and the products
these large districts, when fully stocked with sheep and cattle, m
find an outlet to a market over your line. Added to this may
mentioned the business of the thrifty mining and agricultural po
lation of Siskiyou and adjoining counties, and the transportati
of lumber from some of the best pineries in the State. Large
posits of marble and iron are known to exist in convenient proxim
to the line, which will undoubtedly be worked with profit at an ea
day. Valuable deposits of coal have already been discovered
Shasta County, but have not yet been worked extensively, and simi
discoveries have been reported in the adjoining counties on the no

The connection of this line with the Oregon and Califo

177 Railroad, or its construction as an independent line to
Columbia River, will make this one of the most import
routes of travel on the Pacific coast, and will be sought not
by the business community, but by tourists, to whom it will open
of the most interesting fields for pleasure and observation that
yet attracted their attention.

Not less important than the California and Oregon is the
Joaquin Valley Railroad, forming the great southern, as the fo
does the northern, arm of the system.

Both of these roads, since their commencement, have been co
dated with and are now known, respectively, as the Oregon and
Joaquin divisions of the Central Pacific Railroad. The latter
verging from the main line at Lathrop, runs southeasterly in a n
direct line for a distance of one hundred and forty-six miles to
shen, where it connects with the Southern Pacific Railroad, whi
already constructed from this point to Delano, a distance of
forty-one miles further south, and is ultimately, as I understan
be extended southerly through the State to the Colorado River,
forming an important feeder to this part of your road, making
fact, a link in the great southern transcontinental route,

178 must eventually find its most eligible terminus at San
cisco Bay. In view of its importance in this respect, a
as with regard to the heavy local traffic which must result fro
development of the agricultural resources of this valley, the ro

been constructed upon a maximum grade of ten and one-half feet per mile ascending and with a grade of but five and one-fourth feet per mile against freight descending the valley. The alignment is also very favorable, the total curvature after leaving Lathrop being, in a distance of one hundred and forty-six miles, but two hundred and fifty-five degrees, with a minimum radius of five thousand seven hundred and thirty feet.

This great valley, extending from the confluence of the San Joaquin and Sacramento Rivers, southeasterly for a distance of two hundred and forty miles, with a width of from sixty to seventy miles, nearly all susceptible of cultivation, is as yet sparsely populated, though the large grain shipments from the comparatively small area under cultivation fully attest its value as a grain-producing region.

With the completion of the system of irrigation already in contemplation by resident and foreign capitalists, and for which
179 the topography of the country is admirably adapted, the population of this valley must rapidly increase; and when this is accomplished its productive capacity can hardly be overestimated.

Work has already been commenced on one of the principal irrigating canals, and it is confidently expected that more extensive operations will soon be inaugurated, looking to the speedy development of a large area, now comparatively useless except for grazing purposes.

The general business anticipated upon this, as well as upon the Oregon Division of your road, has thus far been more than realized; and although these lines now command the greater portion of the business of the mining districts of the Sierra Nevada, as they do the business of the valley, it is thought that the construction of lateral lines may at many points be made remunerative, tending to develop local enterprises which are now languishing for lack of a cheap and expeditious means of communication with the main lines leading to the seaboard.

The vast forests of pine and other valuable timber which abound in many parts of the Sierra Nevada; valuable ore deposits undeveloped or but indifferently worked, for the reasons just men-
180 tioned; and towns that were once the centers of busy mining districts are waiting for this communication with the valleys and coast, and promise remunerative returns when it shall be provided.

The topography of California and the country lying between the Sierra Nevada and Wahsatch Mountains is such that the business of the country must naturally flow towards, and find its outlet over, your road; in fact, can not avoid centering upon your line. Hence the construction of lateral roads in this country must necessarily become feeders to your own.

The Virginia and Truckee Railroad, connecting with the Centr
Pacific at Reno, is an important illustration, and the impulse i
construction has given to business in Virginia, Gold Hill, and vici
ity warrants the belief that many similar enterprises will soon
inaugurated in Nevada and elsewhere. Surveys are already bei
made for a railroad from Elko to Eureka, White Pine, Pioche, a
other important mining districts. The Utah Northern and Ut
Central roads, extending north and south, respectively, through t
fertile and populous valleys of Bear River and Great Salt La
both form important connections with, and already bring a lar
amount of business to, your line.

The construction of the San Pablo and Tulare Railro
181 which is already graded from Fassett (on the Central Paci
Railroad) to Antioch, will place you in connection with
roads leading to the Mount Diablo Coal Mines, and will enable
to receive and distribute coal for use on the road at much less th
the present cost, and its distribution for use throughout the St
must make this an important item for local freight.

Location and construction.—The history of the location of
Central Pacific Railroad across the Sierra Nevada, and thence to S
Lake Valley, having been referred to in detail in former reports
is, I presume, unnecessary to repeat it here.

The heavy grades and sharp curves necessarily adopted in locat
a railroad line across this formidable range, of course render its
eration very expensive, though not more so than was anticipated.

In the construction of the road it has been the aim to bring it
to the standard of the first-class roads of the country. Embs
ments and excavations have been made of ample width, and the
is well balanced. Where the material composing the roadbed
not suitable for this purpose it has been transported from
182 most available localities, though in some cases it has
found necessary to haul long distances.

On the mountain divisions, as well as elsewhere, where stone c
be procured, all culverts and bridge piers have been built of
material, but in the valleys it has generally been found necessa
substitute wood for structures. In such cases, whenever it coul
obtained, redwood or cedar has been used.

The redwood, so well known on this coast, closely resemble
cedar in appearance, and fully equals it in durability. It has
used almost exclusively for ties on the valley roads, as well a
such portions of trestle and culvert work as are most expos
decay.

For bridges and the superstructure of trestlework on the
roads, Puget Sound pine has been used almost exclusively, an

purposes where rigidity and strength are both essential qualities it has no superior among American woods.

Owing to the periodical rise and overflow of the principal streams in the Sacramento and San Joaquin Valleys, it has been found necessary to introduce trestlework or piling for the approaches to
183 many of the principal bridges, where otherwise embankments would not only have been more desirable, but would also have been cheaper, and the circumstances which required the construction will also require the maintenance of this work or its replacement with some more durable material. This, however, is not an immediate necessity, as the present structures may generally be depended on for several years without extensive repairs.

Your road first reached San Francisco Bay by a connection with the San Francisco and Oakland and San Francisco and Alameda Railroads, since consolidated with the Central Pacific Railroad.

The wharves in use by those roads had been built with a view to the accommodation of the Oakland and Alameda ferry business, and were extended only to a depth of water sufficient to meet the boats used upon those lines. Extensive additions were at once made to the Alameda Wharf for the temporary accommodation of the overland and interior freight, which was discharged there upon lighters, towed across the bay, and delivered to consignees at the Second and King Street Wharf, at which point freight for shipment on the road was also received, thus making San Francisco, practically, the
184 terminus of the overland road as soon as the rails were laid to the eastern shore of the bay.

With the constantly increasing overland as well as local freight the necessity for some more expeditious method of handling it soon became apparent, and the steamer *Oakland* was accordingly fitted up as a car-ferry boat, carrying five loaded cars; and suitable slips being provided at Alameda and Second Street Wharves, freight was thus landed in San Francisco with but little delay and without breaking bulk.

Meantime, work had been commenced at Oakland Wharf with the view of extending it to ship's channel and providing suitable slips for the reception of the largest sea-going vessels, as well as for the boats in the regular passenger and freight ferry service.

The length of this wharf when it came into the possession of your company was about 6,900 feet, with a width sufficient for a railroad track and a roadway for teams, having at the terminus a single slip for the ferryboat *El Capitan*.

The plan adopted for its extension consisted of a new track for the main overland line, connecting with the old wharf about 4,000 feet from the Oakland shore and running parallel with the same to its terminus; and thence the extension of the wharf for a dis-

185 tance of about 4,200 feet, with a width sufficient for three parallel tracks and a roadway for teams; the construction of three slips, one for the passenger boat *El Capitan*, one for a new car-ferry boat, and one of sufficient capacity to hold four large ships, with warehouses alongside for the temporary storage of grain when vessels were not at hand to receive it. Outside of these slips there is an available frontage on either side of more than four thousand feet, where vessels lie with convenience and safety.

Extensive passenger depots were also provided for, and every arrangement made for the rapid transshipment of passengers and freight.

A new freight ferryboat with a capacity for eighteen loaded cars and additional room for sixteen carloads of loose stock was built and ready for use as soon as the new wharf was completed, in January, 1871, since which time all of the freight and passenger business of the company's roads has been concentrated at this point. Recent extensive additions have been made for the reception and storage of lumber awaiting shipment by rail. The construction of this

186 wharf has consumed 7,006,875 feet board measure of timber and plank, 848,658 lineal feet of round piles, and 215 tons of iron.

In manner of construction and for excellence of material, I think this may safely challenge a comparison with any similar structure in the world. Its efficiency for the purposes intended is best attested by the convenience and economy with which freight is handled and transshipped, and the security it affords the largest vessels, many of which have lain in its slips during the heaviest storms that have occurred since its construction, and with much less inconvenience than was experienced by vessels on the opposite side of the bay.

During the past year there have been loaded here with grain 110 vessels, carrying 161,135 tons, and all the local and overland freight received at or shipped from the terminus at San Francisco over your road, as well as all lumber, timber, ties, iron, and other material for use on the road, passes over this wharf.

The stability of this structure has as yet been unaffected by the action of the currents or by the heavy storms which at times prevail in the bay of San Francisco, and although it can not be re-

187 garded as permanent, its life will greatly exceed that of the San Francisco wharves, where the ravages of the teredo have been so destructive to all wooden structures exposed to their attacks.

The immunity of the wharves on the eastern side of the bay from the attacks of the teredo is undoubtedly due to the fresh water from the Straits of Carquinez, which, at certain stages of the tide, flow along this shore.

The experiment of using piles treated by the "Robbins process," as a preventive both against decay and the work of the teredo, has been made at Oakland Wharf, and also in some of the new work at Second Street and in Mission Bay. The piles so treated have thus far withstood the attacks of the teredo, and, it is to be hoped, will continue to do so, as any process by which timber and piles may be treated, at a reasonable cost, and render it safe from the destructive agencies referred to, must prove of great value to your company, as well as to the public.

Work at San Francisco.—The additions which had been made to Second Street Wharf, San Francisco, though occupying all the available space south of Townsend Street, soon proved inadequate to the wants of the rapidly increasing freight business, and
188 early in 1871 steps were taken for its better accommodation. The block of ground lying between Fourth and Fifth, King and Townsend Streets was purchased as a site for temporary freight depots, and the use of the adjacent block west of Fifth Street and the greater portion of the block east of Fourth Street was also secured for yard purposes. Work was commenced on the buildings early in 1872. Meanwhile a new slip had been constructed for the steamer Thoroughfare (new car ferryboat) at the foot of King Street, and a double track was laid through King Street to the blocks above named, there connecting with ten parallel tracks, extending from Fourth to Sixth Streets, and two tracks on Townsend Street.

Two large buildings for the receiving and delivery of freight were also erected—one fifty feet in width, fronting on Townsend and extending from Fourth to Fifth Streets, and the other seventy-five feet in width, fronting on King Street, and likewise extending from Fourth to Fifth Street, a distance of eight hundred and twenty-five feet. The freight offices are in the second story of the latter, and the two buildings are connected by a footbridge over the ten tracks above noted. The general arrangement of the yard and buildings are,
189 it is thought, the best of which the space occupied will admit; and the advantage of separate buildings for receiving and delivering, where so large an amount of freight is daily handled, must be apparent to anyone who has experience in the business.

A large amount of work has been done in Mission Bay conjointly with the Southern Pacific Railroad Company—wharves covering an area of nearly seven acres have been built, and two depots, 60 x 300 and 60 x 500 feet, respectively, have been erected thereon. Tracks have been laid connecting these depots and wharves with the main tracks at Fourth and Townsend Streets. Spur tracks have also been laid from King Street to the Pacific Mail Steamship Company's wharf, at the foot of Beale Street, and to Hooper's warehouse, between Berry and Channel Streets. The former is a most important

connection, as it brings the cars within a convenient distance of the China steamers, thus facilitating the transshipment of teas, silks, and, in fact, of all Asiatic freight seeking overland transit. It may be noted here that it is only on those wharves not directly under the control of the State or city government that this connection of ship and car has been accomplished, and until further action of the proper authorities shall have removed the present restrictions
190 which prevent the bringing together of ship and car in Mission Bay, you will be unable to use to advantage the property already acquired there for depot purposes. The new buildings and yard in San Francisco have now been in use for more than a year, and although the amount of business is already large, it is thought they will be found adequate to the requirements for two or three years to come, or until the grading of the Mission Bay lands and the erection of permanent depots thereon shall have been accomplished. An important feature of the improvements made by your company in this part of the city is the new building for your general offices. It is located on the corner of Fourth and Townsend Streets, fronting one hundred and eighty feet on each, with a depth of sixty and seventy feet, respectively. It is three stories high, built of brick upon a pile foundation, with front of pressed brick, and is constructed throughout in the most thorough and substantial manner. It contains seventy-seven rooms and was planned especially with a view to the convenience of the several departments by which it is to be occupied.

I omitted to mention a large amount of grading in Mission Bay, consisting of a wide embankment extending from Channel
191 Street southerly on the eastern line of Illinois Street to the Potrero, at which place the greater part of the material for the work was obtained. This work was also done conjointly with the Southern Pacific Railroad Company and is preliminary to the work of reclaiming the lands granted by the State to the two companies for depot purposes. The expenditures upon the work south of Channel Street have already amounted to $352,224.

Shops.—The construction of shops for the motive power and car departments was, of course, coincident with the construction of your road. Sacramento being a central and convenient point for the principal manufacturing and repair shops, it was early decided to locate them at this place, and the small structures at first required have gradually given place to the present large and commodious buildings, consisting of a roundhouse with stalls for twenty-nine locomotives; a machine shop one hundred by four hundred feet; car shop, ninety by two hundred and thirty feet, two stories high, with wing ninety by three hundred and ten feet; paint shop, two hundred and twenty-five by seventy feet, with five wings each twenty-four by seventy feet;

blacksmith shop, two hundred and fifty feet long, of which one
192 hundred and forty-five feet are sixty, and the rest ninety feet in width; boiler shop, sixty by one hundred and seventy feet; foundry, one hundred and twenty by eighty-three feet; copper shop, fifty-two by seventy feet; and a supply store, thirty-four by sixty feet. All of these shops are supplied with tools and machinery of the latest and most approved kind, and for economy and class of work produced are unsurpassed by any similar works in the country.

The necessities of your work will soon require a rolling mill, for which Sacramento will be a convenient location.

The car and machine shops, blacksmith shop, and roundhouse are built of brick, the others of wood. The ground upon which these buildings are located has mostly been reclaimed from what was formerly a swamp, and has been filled from a depth of ten to twenty-five feet, and the work of grading is still in progress, the necessity for more room in the near future being already apparent. About twelve hundred men are regularly employed in these shops.

In addition to the above, division repair shops have been erected
193 at San Francisco, Oakland Point, Lathrop, Rocklin, Truckee, Wadsworth, Winnemucca, Carlin, Toano, Terrace, and Ogden. Commodious depot buildings, adapted to the wants of the business, have been erected at the principal stations, and the necessary provision made for the storage of fuel and water.

Snow galleries.—A novel and important feature of the work on the Sierra Nevada has been the construction of galleries for the protection of the track from the heavy snowstorms incident to that region. The experiment was first made of covering the track in the cuts only, depending upon snowplows for clearing the embankments, but experience soon proved that where snow was liable to accumulate to a great depth its removal even from the high embankments would incur great expense and often delay the movement of trains; and it was therefore deemed best to make the covering through the deep snow belt continuous. More than thirty miles of these galleries were built, consuming 44,639,552 feet, board measure, of sawed timber, and 1,316,312 lineal feet of round timber, equivalent in the aggregate to 52,537,424 feet, board measure, of sawed timber, and 721 tons of iron and spikes. Two general styles of construction were
194 adopted—one intended for localities where the weight of the snow only had to be supported, and the other for such places as were exposed to "slides" and the slower but almost irresistible "glacial movement" of the snow on the steep and rocky slopes along which a great portion of the road near the summit was built.

A detailed description of the manner of constructing these galleries would occupy too much space for this report, but I need only

say that they have proven a complete success, and though frequently covered with drifted snow to a depth of ten or twenty, and, in some places on the slope of Donner Mountain, of more than fifty feet, they have afforded a safe passage for trains through this inclement region at all times and seasons without any noticeable detentions.

As a security against fire the wooden coverings of sections of the sheds, of from one hundred to two hundred feet in length, at intervals of one-fourth to one-half mile, is being replaced with galvanized corrugated iron, and this work will be extended as rapidly as the material can be procured.

Present condition of the road.—The necessary repairs of track, bridges, buildings, wharves, etc., have been kept up, so that, with the exception of the unavoidable wear of track incident to the
195 heavy business of the road, it is at present in better condition than at any time since its construction.

In consequence of the heavy grades and sharp curves on the mountain divisions the life of the iron on that part of your road must always be much less than on the lighter grades of the valleys, and the renewal of some portions of the mountain track has already been found necessary. During the past year there have been received two thousand and fourteen tons of steel rails, weighing sixty pounds per yard, sufficient for twenty-one and a half miles of track, most of which has already been laid upon the mountain division. The superiority of this over iron rail, especially where exposed to the heavy service of your main lines, both on the mountains and in the valleys, can not be questioned. Its use on eastern roads is highly commended wherever it has been tried, and that the truest economy will always be found in the use of the best procurable materials, not only in track but all railroad structures, can not be doubted.

As a matter both of utility and experiment, a small amount of this steel rail has been laid on Oakland wharf and in the yard at San Francisco, at points exposed to excessive wear, and the result
196 has been very satisfactory. In one locality they have already outlasted three sets of iron rails, and the wear on the steel rail is almost imperceptible. I would recommend to your board the propriety and economy of providing steel rail not only for the mountain track but of the whole of your main lines as rapidly as the renewal of the rail may be necessary. The renewal of a considerable number of ties on the Truckee, Humboldt, and Salt Lake divisions has already been found necessary.

The ties laid between Promontory and Ogden, which were obtained on the Wahsatch and Uintah Mountains, have been found to decay most rapidly, the quality of the timber found on those ranges being evidently inferior to that of the Sierra Nevada, from which source most of the ties used between Blue Canon and Promontory have been

obtained. A great difference is noticed in the life of the ties laid on the sandy and gravelly soil of the highlands and the strongly saline and alkaline soil of the river bottoms and "sinks" east of Wadsworth.

In the former most woods are found to decay more or less rapidly, while in the latter the ties are still as sound as when first laid.

Besides the ordinary repairs, a large amount of work
197 has from time to time been done in the widening of deep cuts, where the material has been loosened by blasting and in additions to the high embankments.

Bridges and trestles.—All of the bridges on your road are in good condition.

The only renewals of bridges required thus far have been to supply losses by fire, which have occurred in a few instances. All bridges over sixty feet span are of the "Howe truss" and are equal to the best class of wooden structures.

The ultimate replacement of these structures with iron bridges will undoubtedly be found advisable, but they may be safely depended upon for many years yet as safe against ordinary causes of decay.

The trestle work found necessary to introduce in the first construction has in some instances been replaced with stone culverts and embankments, and elsewhere it has been kept in thorough repair. Between Promontory and Blue Creek the line has been changed so as to avoid the two high trestles over which the track was originally laid, and at Blue Creek a stone arch culvert has been built, and the high trestle at that place replaced by an embankment.

198 A number of the smaller trestles, twenty or more, at different points on the Salt Lake and Humboldt divisions have been similarly replaced.

On the Sierra Nevada two trestles have already been filled, one near Colfax and one near Clipper Gap; another, crossing Deep Gulch about a mile east of Clipper Gap (the highest structure of the kind on the road), will soon be abandoned for the track just built upon a new line (without trestle), crossing the gulch just above the old one.

This change of line was necessary, as it was not deemed prudent to build an embankment on the old line and maintain the trestle at the same time. This change has materially improved the alignment, but has involved the necessity of an open cut of 90,000 and an embankment of 70,000 cubic yards, a tunnel 700 feet in length, with approaches of 100 feet on either end. Five hundred feet in length of this tunnel has been lined with granite masonry, with portals of the same material.

The other trestles, between and including those at Newcastle and Secrettown—seven in number—have recently been thoroughly repaired, and may safely be depended upon for three and prob-
199 ably four or five years. To replace these, embankments aggregating 653,000 cubic yards will be required at a probable cost not to exceed forty cents per yard.

The long trestle forming the northern approach to the American River bridge has just been repaired, and may now be considered good for five years, and probably longer. This, like other similar structures in the valley, already referred to, must always be maintained.

The force at present employed on repairs of track, bridges, etc., is lighter than at any previous time since the road has been in operation, and it is thought that the expenses properly chargeable to this account may be kept within the present cost. The rapidity with which the track will require renewal will, of course, depend largely upon the amount of tonnage carried over it and the speed with which it is moved, and, as before mentioned, I would most earnestly recommend that whenever renewals of any kind become necessary they be made with the best and most durable materials. Though not always practicable in the first construction, permanent structures are in the end the most economical, and the amount of business that may be reasonably anticipated for your road will certainly warrant their adoption in the future.

200 The accompanying map shows the line of your road and its connections and their relative position to the great valleys of the State.

Respectfully submitted.

S. S. MONTAGUE, *Chief Engineer.*

* * * * * * *

201 DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(10. Report of the Central Pacific Railroad Company for the year ending June 30, 1875.)

CENTRAL PACIFIC R. R. CO.,
C. P. HUNTINGTON, V. PREST.,
NOS. 9 NASSAU & 11 PINE STS.,
New York, September 13th, 1875.

Hon. C. DELANO,
Secretary of the Interior, Washington, D. C.

SIR: I have the honor to hand you herewith "Annual report of the Central Pacific R. R. Co. of Cal." and the "Western Pacific R. R Co." and the "California & Oregon Railroad Company" and the "San Francisco, Oakland & Alameda R. R. Co.," and the "San

Joaquin Valley R. R. Co.," consolidated under the name of the "Central Pacific Railroad Company," for the year ending June 30, 1875.

Very respectfully, yours,

C. P. HUNTINGTON, *V. P.*

* * * * * * *

202 General superintendent's report.

GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, June 1st, 1875.

Hon. LELAND STANFORD,
President C. P. R. R. Co.

DEAR SIR: I beg to hand you herewith annual report of the operations of the road for the year ending December 31st, 1874, together with comparative statements of the earnings and expenses of the preceding year:

Earnings.	1873	1874
Gross earnings, coin	$7,643,469.58	$8,276,301.55
Gross earnings, currency	5,220,483.40	5,334,729.08
Total earnings, coin and currency	12,863,952.98	13,611,030.63
Total earnings, equal to currency	13,851,489.24	14,531,355.36

Operating expenses.	1873	1874
Operating expenses, coin	$4,929,684.09	$5,223,429.42
Operating expenses, currency	39,587.43	44,702.45
Total expenses, coin and currency	4,969,271.52	5,268,131.87
203 Total expenses, equal to currency	5,606,186.70	5,848,977.22
Percentage of operating expenses to gross earnings	40.47	40.25

As shown above, a slight decrease is noticeable in the percentage of operating expenses to gross earnings as compared with 1873.

The earnings over operating expenses for 1874 were (all in currency)	$8,682,378.14
For year ending December 31st, 1873	8,245,302.54
Being a gain of	$437,075.60

Or $5\frac{10}{100}$ per cent.

The number of miles of road operated, including the ferry between San Francisco and Oakland Wharf, at the close of the year, was $1,212\frac{44}{100}$ miles. There are also 74 miles in the San Joaquin Valley operated under lease from the Southern Pacific R. R. Co., of which $32\frac{1}{10}$ miles were completed November 8th.

* * * * * * *

204 Defendants' Exhibit No. 23, March 12, 1915.

(11. Report of the Central Pacific Railroad Company for the year ending June 30, 1876.)

* * * * * * *

General superintendent's report.

GENERAL SUPERINTENDENT'S OFFICE,
San Francisco, June 20th, 1876.

Hon. LELAND STANFORD,
President C. P. R. R. Co.

SIR: I herewith submit annual report of the operations of the road for the year ending December 31st, 1875, together with comparative statements of the earnings and operating expenses for the year 1874:

Earnings.	1874	1875
Gross earnings in coin	$8, 276, 301. 55	$9, 063, 729.8
Gross earnings in currency	5, 334, 729. 08	6, 601, 352.9
Total earnings, coin and currency	13, 611, 030. 63	15, 665, 081.8
Total earnings, equal to currency	14, 531, 355. 36	17, 021, 015.7

205

Operating expenses.	1874	1875
Operating expenses, coin	$5, 223, 429. 42	$6, 221, 554.7
Operating expenses, currency	44, 702. 45	265, 645.1
Total expenses, coin and currency	5, 268, 131. 87	6, 487, 199.8
Total expenses, equal to currency	5, 818, 977. 22	7, 417, 944.4
Percentage of operating expenses to gross earnings	40. 25	43.5

The earnings over operating expenses in 1875 (all in currency) were	$9, 603, 071.3
For year ending December 31st, 1874	8, 682, 373.1
Being a gain of	920, 698.2

Or 10.60 per cent.

At the close of the year there were, including the ferry between San Francisco and Oakland Wharf, $1{,}212\frac{33}{100}$ miles of road in operation under my management. To this should be added 96 miles in the San Joaquin Valley operated under lease from the Southern Pacific Railroad Company, of which $22\frac{4}{10}$ miles were completed May 11th, 1875.

* * * * * * *

206 I respectfully refer you to the report of the chief engineer for information relative to the track, bridges, snow galleries and buildings.

The large and convenient passenger apartments and baggage room at the new slips on East Street, near the foot of Market Street, in this city, were completed and occupied by the company for the ferry and general passenger travel of the Central Pacific Railroad September 4th, 1875. Adjoining these on the south is Market Street Wharf, used for the river steamers, together with those running between San Francisco and south Vallejo in connection with the California Pacific Railroad, thus concentrating our passenger travel at this point, which is reached by the street car lines, whose cars run through many of the business streets and pass the principal hotels.

The telegraph fire-alarm system and railroad patrol, inaugurated in 1874 and referred to in my last report, together with the water trains, which were run two days of each week, thoroughly wetting down the inside of galleries and snowsheds between Blue Canyon and Truckee, proved a most thorough protection against fire, and I have no losses of any moment to report from this source during the season.

207 It is gratifying, indeed, to notice a marked increase in the general traffic of the road over the preceding year, which is an index of the general prosperity of California, as well as of the entire Pacific coast, which has been comparatively exempt from the universal business depression experienced in the States east of the Rocky Mountains.

The rapid increase of business necessarily demands a large addition to the rolling stock, which is now in course of construction. This will be completed in time to move the products of the country, which promises to exceed in quantity and value those of any previous year.

While the traffic of the Visalia and Tulare divisions is comparatively light, it is very encouraging to note the extensive arrangements which are being made for irrigation and for general agricultural development all along the line, especially in the rich region of the State embraced in Fresno, Tulare, and Kern Counties, which development is made possible by the extension of the road through the San Joaquin Valley to Caliente, three hundred and twenty-four miles from San Francisco. This road offers to that section of the country the long-desired outlet to market, and a large increase

208 of business may be expected in the near future from it and the rich mining districts beyond.

The Eureka and Palisade Railroad (narrow gauge), referred to in my last report, was completed to Eureka (90 miles from Palisade) in November, 1875.

The Nevada County R. R. (also a narrow gauge), extending from Colfax to Grass Valley and Nevada City, was completed and in operation May 24th, 1876.

Both, it is believed, will contribute much business to our line.

I would add in conclusion that the present business prospects
the company for the year 1876 are very flattering, with indicatio
of a large increase over the preceding year.

Respectfully submitted.

A. N. TOWNE,
General Superintendent.

* * * * * * *

209 DEFENDANTS' EXHIBIT NO. 23, MARCH 12, 1915.

(12. Report of the Central Pacific Railroad Company for the ye
ending June 30, 1877.)

FROM CENTRAL PACIFIC R. R. CO.,
C. P. HUNTINGTON, V. PREST.,
NOS. 9 NASSAU & 11 PINE STS.,
New York, Oct. 3d, 1877.

Hon. CARL SCHURZ,
Secretary of the Interior &c. &c., Washington, D. C.

SIR: I have the honor to hand you herewith the Annual Report
the Central Pacific Railroad Company to the Secretary of the I
terior for the year ending June 30th, 1877, the receipt of which
will thank you to acknowledge.

Very respectfully,

C. P. HUNTINGTON, *Vice Prest.*

210 * * * * * * *

To appease public clamor and to remove all doubt or u
certainty relative to the question of survey and measurement, a
that it might hereafter remain beyond cavil, Congress, on the 19
day of July, 1876, by a resolution of the House of Representativ
requested the Hon. Secretary of War to detail a sufficient force fr
the Engineer Corps of the Army to make a careful and exact surv
of the Central Pacific Railroad Company, it having been alleged th
the measurement reported by the company was at least hastily ma
if not intentionally incorrect.

But it will be seen by the report of Government engineers in char
that after a most careful and accurate survey they certify that t
road is 951/1000 of a mile longer than the distance upon which bon
were issued.

In this connection it is but proper that I should quote from t
closing paragraph of the official report of W. H. Heuer, captain
U. S. Engineers in charge, in which he says: "Although not

quired of me in this report, I feel it but doing the Central Pacific Railroad Company an act of justice to mention the admirable condition in which their road bed was found. It is certainly
211 maintained to that high standard of excellence so important and necessary to a national road."

Accepting the Government survey of the distance between Sacramento and Ogden, together with a careful measurement of other portions of the road, we had at the commencement of the year, including the ferry between San Francisco and Oakland Wharf and that portion of the Southern Pacific Railroad between Goshen and Caliente (operated under lease), in the aggregate 1,308.87 miles. There was laid during the year 71/100 miles of track—70/100 between East Oakland and Melrose and 1/100 between Broadway and Masticks. Also additions of leased lines have been made at different times, as follows:

Southern Pacific R. R. Co.:		
May 26th.	Caliente to Keene	13.60
August 8th.	Keene to Mojave	31.80
September 6th.	Los Angeles to Mojave	100.50
September 6th.	Los Angeles to Wilmington	22.30
September 6th.	Los Angeles to Indio	129.50
Los Angeles & San Diego R. R. Co.:		
September 6th.	Florence to Anaheim	20.70
212 Northern Railway Company:		
August 16th.	West Oakland to Shell Mound	2.12
Berkeley Branch R. R. Co.:		
August 16th.	Shell Mound to Berkeley	3.16
Amador Branch R. R. Co.:		
December 3d.	Galt to Ione	27.20

making a total at the close of the year of 1,660.46 miles operated.

The completion of that portion of the Southern Pacific Railroad (leased to the Central Pacific Railroad Co.) to the Colorado River secures to that company the traffic to and from Arizona, which promises to be very large; and as the road shall be extended beyond the river through this rich mining territory it will largely develop and secure the trade also of New Mexico and the adjacent country.

The looked for remunerative business over this long line will, we confidently believe, materially increase the earnings for the current year and more than compensate for the loss of traffic we may expect from the short harvest consequent upon the drouth more or less affecting the southern portion of the State.

Respectfully submitted.

A. N. TOWNE,
General Superintendent.

* * * * * * *

213 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(1. Extract from return of Central Pacific Railroad Company page 77, part 2, Biennial Report of Commissioner of Transportation of California for years ending December 31, 1877 and 1878.)

Roads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length 5.00 miles. Date of lease: From June 30, 1875, to June 30, 1875 Amount of rental: The same amount per mile as the Union Pacific Railroad Company earns net per mile on the line of its road operated by itself.

Southern Pacific.—Termini: From Huron to Colorado River Length: 529.90 miles. Date of lease: From Sept. 1, 1876, to sixty days' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

Southern Pacific.—Termini: From Los Angeles to Wilmington Length: 22.30 miles. Date of lease: Sept. 1, 1876, to sixty
214 days' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.82 miles. Date of lease: Sept. 1, 1876, to sixty days' notice. Amount of rental: Net receipts.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 18.00 miles. Date of lease: From June 1877, to notice. Amount of rental: Two thousand seven hundred dollars per annum.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From Sept. 1, 1869, notice. Amount of rental: One thousand five hundred dollars per month. (Mem.—This 5.64 miles is not operated by the Central Pacific, except to run its trains thereon; it leases only the right to use the track.)

Stockton and Copperopolis.—Termini: From Stockton to Milton from Peters to Oakdale. Length: 44.65 miles. Date of lease: Dec. 30, 1874, to January 1, 1905. Amount of rental: The principal and interest of one thousand five per cent five-hundred-dollar thirty-year bonds.

Amador Branch.—Termini: From Galt to Ione. Length:
215 27.05 miles. Date of lease: Jan. 1, 1877, to notice. Amount of rental: Forty thousand five hundred dollars per annum.

Berkeley Branch.—Termini: From Shell Mound to Berkeley. Length: 315 miles. Date of lease: From Jan. 1, 1877, to notice. Amount of rental: Six thousand dollars per annum.

Northern Railway.—Termini: From West Oakland to Delaware Street; length, 4.59 miles; from junction near Woodland to Williams; length, 39.20 miles. Date of lease: July 1, 1876, to notice. Amount of rental: One thousand five hundred dollars per annum.

California Pacific.—Termini: From South Vallejo to Sacramento; length, 60.17 miles; from Adelante to Calistoga; length, 34.60 miles; from Davisville to Marysville;[1] length, 43.56 miles; from San Francisco to South Vallejo; length, 26.25 miles. Date of lease: From July 1, 1876, to July 1, 1905. Amount of rental: Five hundred and fifty thousand dollars per annum and three-fourths of the net earnings in excess of that amount.

Total length	891.88 miles.
Not operated (see note)[1]	25.24 miles.
Total length leased lines operated	866.64 miles.

216 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(2. Extract from return of Central Pacific Railroad Company; page 317, Biennial Report of Commissioner of Transportation of California, for the years ending December 31, 1877 and 1878.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Date of lease: From June 30, 1874, to June 30, 2874. Amount of rental: The same amount per mile as the Union Pacific Railroad Company earns net per mile on the line of its road operated by itself.

Southern Pacific.—Termini: From Huron to Yuma. Length: 530.30 miles. Date of lease: From Sept. 1, 1876, to sixty days' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

[1] Operated only from Davisville to Knights Landing, 18.32 miles.

Southern Pacific.—Termini: From Los Angeles to Wilmington. Length: 22.30 miles. Date of lease: From Sept. 1, 1876, to
217 sixty days' notice. Amount of rental: Five hundred dollars per mile per month, less two hundred and fifty dollars per mile per month for operating expenses.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.82 miles. Date of lease: From Sept. 1, 1876, to sixty days' notice. Amount of rental: Net receipts.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.69 miles. Date of lease: From June 4, 1877, to notice. Amount of rental: Twenty-six thousand and six hundred and twenty-eight dollars and ninety cents for the year.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From Sept. 1, 1869, to notice. Amount of rental: One thousand five hundred dollars per month. (Mem.—This 5.64 miles is not operated by the Central Pacific Railroad except to run its trains thereon; it leases the right to use the track.)

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 44.65 miles. Date of lease: Dec. 30, 1874, to January 1, 1905. Amount of rental: The principal and interest on one thousand five per cent five hundred dollar
218 thirty-year bonds; if the net earnings for any year exceed the interest on the bonds, such excess to be applied to the floating debt of the Stockton and Copperopolis Railroad Company.

Amador Branch.—Termini: From Galt to Ione. Length: 27.05 miles. Date of lease: Jan. 1, 1877, to notice. Amount of rental: Forty thousand five hundred dollars per annum.

Berkeley Branch.—Termini: From Shell Mound to Berryman. Length: 3.83 miles. Date of lease: From Jan. 1, 1877, to notice. Amount of rental: Six thousand dollars per annum.

Northern Railway.—Termini: From West Oakland to Martinez; from Woodland to Willows. Length: 94.62 miles. Date of lease: July 1, 1876, to notice. Amount of rental: One thousand five hundred dollars per mile per annum; that portion of road between West Oakland and Martinez has been given its proportion of earnings since September 1, 1878.

California Pacific.—Termini: From South Vallejo to Sacramento, length, 60.17 miles; from Adelante to Calistoga, length, 34.60 miles; from Davisville to Knight's Landing, length, 18.60 miles; from San Francisco to South Vallejo, length, 26.25 miles. Date of lease: From July 1, 1876, to July 1, 1905. Amount of rental: Five hundred and fifty thousand dollars per annum and three-fourths
219 of the net earnings in excess of that amount.

San Pablo and Tulare.—Termini: From Martinez to Tracy, length, 47.61 miles. Date of lease: From Sept. 8, 1878, to ------ Amount of rental: Proportion of earnings.

Total length, 965.13 miles.

220 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(3. Statement for the year ending December 31, 1880; third annual report of the Board of Railroad Commissioners of California for the years ending December 31, 1880, 1881, and 1882, page 191.)

Roads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Date of lease: From June 30, 1874, to 1,000 years. Amount of rental: The same rate per mile as Union Pacific Railroad Co. earns net per mile on the line of its road operated by itself.

Southern Pacific of California.—Termini: Huron to Yuma. Length: 528.56 miles. Date of lease: From Jan. 1, 1880, to 5 years. Amount of rental: $250 per mile per month.

Southern Pacific of California.—Termini: Los Angeles to Wilmington. Length: 21.64 miles. Date of lease: Jan. 1, 1880, to 5 years. Amount of rental: $250 per mile per month.

Southern Pacific of Arizona.—Termini: From Yuma to New Mexico line. Length: 383.21 miles. Date of lease: Nov. 1,
221 1880, to 5 years. Amount of rental: $125 per mile per month to June 30; $135 per mile per month balance of year.

Southern Pacific of New Mexico.—Termini: From New Mexico line to Deming. Length: 93.80 miles. Date of lease: From Nov. 1, 1880, to 5 years. Amount of rental: $135 per mile per month October, November, and December.

Los Angeles and San Diego.—Termini: Florence to Santa Ana. Length: 27.83 miles. Date of lease: From Nov. 1, 1880, to 5 years. Amount of rental: $100 per mile per month from November 1, 1880, and taxes.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Date of lease: Nov. 1, 1880, to 5 years. Amount of rental: $2,126.30 per month to October 31; $1,683 for balance of the year, and taxes.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From notice to ——. Amount of rental: $600 per month for use of track only.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.0 miles. Date of lease: Jan. 1, 1875, to Jan. 1, 1905. Amount of rental: The principal and
222 interest on one thousand five per cent $500 thirty-year bonds, and net earnings on all expenses to apply on floating debt of Stockton and Copperopolis Railroad Co.

Amador Branch.—Termini: From Galt to Ione. Length: 27.20 miles. Date of lease: From Nov. 1, 1880, to 10 years. Amount of rental: $2,126.30 per month to Oct. 31 and $3,500 per month for balance of year, and taxes.

Berkeley Branch.—Termini: Shell Mound to Berryman's. Length: 3.84 miles. Date of lease: From Nov. 1, 1880, to 10 years. Amount of rental: $500 per month to Oct. 31 and $768 per month for balance of year, and taxes.

Northern Railway.—Termini: From West Oakland to near Martinez; from Woodland to Willows; from Port Costa to Suisun. Length: 112.61 miles. Date of lease: From Jan. 1, 1880, to 5 years. Amount of rental: $570,000 per annum.

San Pablo and Tulare.—Termini: From near Martinez to Tracy. Length: 46.51 miles. Date of lease: From Jan. 1, 1880, to 5 years.

California Pacific.—Termini: From Vallejo Junction to Vallejo; from Vallejo to Sacramento; from Davisville to Knight's Land'g; from Napa Junction to Calistoga. Length: 115.44 miles. Date of lease: From Jan. 1, 1880, to July 1, 1905. Amount of rental: $600,000 per annum.

223 Western Development Co.—Termini: Colorado River Bridge. Length: 700 feet. Amount of rental: $100,000 per month.

224 DEFENDANT'S EXHIBIT NO. 24, MARCH 12, 1915.

(4. Statement for the year ending December 31, 1881; third annual report of the Board of Railroad Commissioners of California for the years ending December 31, 1880, 1881, and 1882, page 373.)

Roads belonging to other companies operated by this company under lease or contract.

Names, description, and length of each.

Southern Pacific.—Termini: From Huron to Yuma, length, 528.50 miles; from Los Angeles to Wilmington, length, 21.64 miles. Date of lease: From Jan. 1, 1880, to five years. Amount of rental: $250 per mile per month.

Southern Pacific of Arizona.—Termini: From Yuma to New Mexico; length, 384.17 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: $135 per mile per month.

Southern Pacific of New Mex.—Termini: From New Mexico to Rio Grande. Length: 167.22 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: $135 per mile per month.

Galveston, Harrisburg & San A.—Termini: From Rio
225 Grande to Chispa. Length: 147.11 miles. Date of lease: From Oct. 9, 1881, 'till complete to San Antonio. Amount of rental: $83.33 per mile per month.

California Pacific.—Termini: From Vallejo Junction to Vallejo; length, 2.00 miles. From Vallejo to Sacramento; length, 60.39 miles. From Davis to Knights; length, 18.57 miles. From Napa Junction to Calistoga; length, 34.48 miles. Date of lease: From Jan. 1, 1880, to July 1, 1905. Amount of rental: $600,000 per annum.

Northern Railway.—Termini: From West Oakland to near Martinez; from Woodland to Willows; from Port Costa to Suisun. Length: 112.61 miles.

San Pablo and Tulare R. R.—Termini: From near Martinez to Tracy. Length: 46.51 miles. Date of lease: From Jan. 1, 1880, to five years. Amount of rental: $570,000 per annum.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Date of lease: From Nov. 1, 1880, to five years. Amount of rental: $1,683 per month and taxes.

Los Angeles and San Diego.—Termini: From Florence to Santa
Ana. Length: 27.83 miles. Date of lease: From Nov. 1, 1880,
226 to five years. Amount of rental, $2,783 per month and taxes.

Pacific Improvement Co.—Termini: Colorado River Bridge. Length: .13 mile. Amount of rental: $1,000 per month.

Sacramento and Placer R. R.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Date of lease: From notice to ———. Amount of rental: Jan., $600; Feb. 1 to May 16, $1,000 per month; May 17 to Dec. 31, $600 per month.

Berkeley Branch R. R.—Termini: From Shell Mound to Berryman. Length: 3.84 miles. Date of lease: From Nov. 1, 1880, to ten years. Amount of rental: $768 per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.00 miles. Date of lease: From Jan. 1, 1875, to Jan. 1, 1905. Amount of rental: The principal and interest on one thousand five per cent $500 bonds, thirty years, and net earnings over all expenses, to apply to floating debt of Stockton and Copperopolis R. R.

Amador Branch.—Termini: From Galt to Ione. Length: 27.20
miles. Date of lease: From Nov. 1, 1880, to five years.
227 Amount of rental: $3,500 per month and taxes; 2d five years at $4,000 per month and taxes.

Union Pacific.—Termini: From Ogden to five miles west. Length, 5.00 miles. Date of lease: From June 30, 1874, to June 30, 2874.

Amount of rental: The same rate per mile as the Union Pacific earn net per mile on the line of its own road operated by itself.

Bridge crosses Rio Grande.—Length: .23 mile.

Total, 1,658.96 miles.

228 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(5. Statement for the year ending December 31, 1882; fifth annual report of the Board of Railroad Commissioners of California for the year ending December 31, 1884; page 67.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific of California.—Termini: From Huron to Colorado River. Length: 528.56 miles. Amount of rental: $250 per mile per month.

Southern Pacific of California.—Termini: From Los Angeles to San Pedro. Length: 24.24 miles. Amount of rental: $250 per mile per month.

Southern Pacific of California.—Termini: from Calico to Mojave. Length: 80.33 miles. Amount of rental: $125 per mile per month.

Southern Pacific of Arizona.—Termini: From Colorado River to New Mexico. Length: 384.17 miles. Amount of rental: $135 per mile per month and taxes.

Southern Pacific of New Mexico.—Termini: From Arizona
229 to Rio Grande. Length: 167.22 miles. Amount of rental: $135 per mile per month.

Pacific Improvement Company.—Colorado River Bridge. Length: .13 mile. Amount of rental: $1,000 per mile per month.

Pacific Improvement Company.—Rio Grande Bridge. Length: .23 mile. Amount of rental: $1,000 per mile per month.

Galveston, Harrisburg and San A.—Termini: Rio Grande to La Zier, Texas. Length: 361.80 miles. Amount of rental: $83.33 per mile per month.

Los Angeles and San Diego.—Termini: From Florence to Santa Ana. Length: 27.60 miles. Amount of rental: $100 per mile per month and taxes.

Los Angeles and Independence.—Termini: From Los Angeles to Santa Monica. Length: 16.83 miles. Amount of rental: $100 per mile per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milton; from Peters to Oakdale. Length: 49.00 miles. Amount of rental:

incipal and interest on $500,000, thirty year bonds at five per cent, and net earnings to apply on floating debt of H. C. R. R. Co.

) Amador Branch.—Termini: From Galt to Ione. Length: 27.30 miles. Amount of rental: $3,500 per month and taxes.

Berkeley Branch.—Termini: From Shell Mound to Berryman's; ngth, 3.84 miles. Amount of rental: $768 per month and taxes.

California Pacific.—Termini: From Vallejo Junction to Vallejo; stance, 2.00 miles. From Vallejo to Sacramento; length, 60.39 les. From Davisville to Knights Landing; length, 18.57 miles. om Napa Junction to Calistoga; length, 34.48 miles. Amount of ntal: $600,000 per annum.

Northern Railway.—Termini: From Port Costa to Suisun; ngth, 17.33 miles. From Oakland to Martinez; length, 35.56 miles. om Woodland to Willows; length, 64.25 miles. Amount of rental: 7,500 per month, including, also, the San Pablo and Tulare Rail-ad (that company being leased to the Northern Railway Com-ny).

Northern Railway.—Termini: From Willows to Tehama; length, 49 miles. Amount of rental: $5,250 per month.

San Pablo and Tulare.—Termini: From Martinez to Tracy; ngth, 46.51 miles. Amount of rental: Included in lease of North-n Railway above.

Sacramento and Placerville.—Termini: From Sacramento 1 to Brighton; length, 5.64 miles. Amount of rental: $600 per month.

Union Pacific.—Termini: From Ogden to five miles west; length, 00 miles. Amount of rental: Same rate per mile as earned by nion Pacific Railroad on road operated by itself.

Total, 1,997.38 miles.

2 DEFENDANTS' EXHIBIT NO. 24, MARCH 12, 1915.

(6. Statement for the year ending December 31, 1883; fifth annual port of the Board of Railroad Commissioners of California for e year ending December 31, 1884; page 232 of appendix.)

oads belonging to other companies, operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific of California.—Termini: From Huron to Colo-do River. Length: 528.56 miles. Amount of rental: $250 per mile r month.

Southern Pacific of California.—Termini: From Los Angeles
San Pedro. Length: 24.24 miles. Amount of rental: $250 per m
per month.

Colorado division S. P. of California.—Termini: From Moja
to The Needles. Length: 240.13 miles. Amount of rental: $125 p
mile per month.

Southern Pacific of Arizona.—Termini: From Colorado Riv
to New Mexico. Length: 384.17 miles. Amount of rental: $135 p
mile per month and taxes.

Southern Pacific of New Mexico.—Termini: From Arizo
233 to Rio Grande. Length: 167.22 miles. Amount of rent
$135 per mile per month.

Pacific Improvement Company.—Colorado River Bridge. Lengt
.13 mile. Amount of rental: $1,000 monthly.

Pacific Improvement Company.—Rio Grande Bridge. Lengt
.23 mile. Amount of rental: $1,000 monthly.

Galveston, Harrisburg and San A.—Termini: From Rio Gran
Bridge to El Paso. Length: 3.61 miles. Amount of rental: $83.
per mile per month.

Galveston, Harrisburg and San A.—Termini: From El Paso
Le Zier, Texas. Length: 358.20 miles. Amount of rental: $83.
per mile per month.

Lon Angeles and San Diego.—Termini: From Florence to San
Ana. Length: 27.60 miles. Amount of rental: $100 per mile p
month and taxes.

Los Angeles and Independence.—Termini: From Los Angeles
Santa Monica. Length: 16.83 miles. Amount of rental: $100 p
mile per month and taxes.

Stockton and Copperopolis.—Termini: From Stockton to Milto
from Peters to Oakdale. Length: 49.00 miles. Amount of rent
Principal and interest on $500,000, thirty-year bonds at fi
234 per cent, and net earnings to apply on floating debt of Sto
ton and Copperopolis Railroad Company.

Amador Branch.—Termini: From Galt to Ione. Length: 27.
miles. Amount of rental: $3,500 per month and taxes.

Berkeley Branch.—Termini: From Shell Mound to Berryma
Length: 3.84 miles. Amount of rental: $768 per month and taxes.

California Pacific.—Termini: From Vallejo Junction to Valle
length, 2.00 miles. From Vallejo to Sacramento; length, 60.39 mil
From Davisville to Knights Landing; length, 18.57 miles. Fr
Napa Junction to Calistoga; length, 34.48 miles. Amount of rent
$600,000 per annum.

Northern Railway.—Termini: From Port Costa to Suisun; leng
17.33 miles. From Oakland to Martinez; length, 35.56 miles. Fr

Woodland to Willows; length, 64.25 miles. Amount of rental: $47,500 per month, including, also, the San Pablo and Tulare Railroad (that company being leased to Northern Railway Company).

Northern Railway.—Termini: From Willows to Tehama. Length: 36.49 miles. Amount of rental: $4,750 per month.

San Pablo and Tulare.—Termini: From Martinez to Tracy. Length: 46.51 miles. Amount of rental: Included in lease of
235 Northern Railway above.

Sacramento and Placerville.—Termini: From Sacramento to Brighton. Length: 5.64 miles. Amount of rental: $600 per month.

Union Pacific.—Termini: From Ogden to five miles west. Length: 5.00 miles. Amount of rental: Same rate per mile as earned by Union Pacific Railroad on road operated by itself.

Total length, 2,157.18 miles.

236 DEFENDANTS' EXHIBIT No. 24, MARCH 12, 1915.

(7. Statement for the year ending December 31, 1884; seventh annual report of the Board of Railroad Commissioners of California for the year ending December 31, 1886; page 69 of appendix.)

Roads belonging to other companies operated by this company under lease or contract.

30. Names, description, and length of each.

Southern Pacific Railroad of California.—Termini: From Huron to Colorado River. Length: 528.56 miles. Amount of rental: $250 per mile per month.

Southern Pacific Railroad of California.—Termini: From Los Angeles to San Pedro. Length: 24.24 miles. Amount of rental: $250 per mile per month.

Southern Pacific Railroad of Arizona.—Termini: From Colorado River to New Mexico. Length: 384.17 miles. Amount of rental: $135 per mile per month and taxes.

Southern Pacific Railroad of New Mexico.—Termini: From Arizona to Rio Grande. Length: 167.22 miles. Amount of rental: $135 per mile per month.

Pacific Improvement Company.—Col. River Bridge.
237 Length: .13 mile. Amount of rental: $1,000 per month.

Pacific Improvement Company.—Rio Grande Bridge. Length: .23 mile. Amount of rental: $1,000 per month.

Galveston, Harrisburg and San A. Ry.—Termini: From Rio Grande bridge to El Paso. Length: 3.61 miles. Amount of rental: $83.33 per mile per month.

Los Angeles and San Diego Railroad.—Termini: From Flores to Santa Ana. Length: 27.60 miles. Amount of rental: $100 p mile per month and taxes.

Los Angeles and Independence Railroad.—Termini: From L Angeles to Santa Monica. Length: 16.83 miles. Amount of rent $100 per mile per month and taxes.

Stockton and Copperopolis Railroad.—Termini: From Stock to Milton; length, 30.00 miles. From Peters to Oakdale; leng 19.00 miles. Amount of rental: Principal and interest on $500,0 thirty-year bonds at 5 per cent and net earnings to apply on floati debt of Stockton and Copperopolis Railroad Company.

Amador Branch Railroad.—Termini: From Galt to Ion Length: 27.20 miles. Amount of rental: $3,500 per month a taxes.

Berkeley Branch Railroad.—Termini: From Shell Mou
238 to Berrymans. Length: 3.84 miles. Amount of rental: $ per month and taxes.

California Pacific Railroad.—Termini: From Vallejo Junction Vallejo; length, 2.00 miles. From Vallejo to Sacramento; leng 60.39 miles. From Davisville to Knights Landing; length, 18 miles. From Napa Junction to Calistoga; length, 34.48 mi Amount of rental: $50,000 per month and taxes.

Northern Railway.—Termini: From Port Costa to Suisun; leng 17.33 miles. From Oakland to Martinez; length, 35.56 miles. Fr Woodland to Willows; length, 64.25 miles. From Willows to T hama; length, 36.49 miles. Amount of rental: $40,000 per month

San Pablo and Tulare Railroad.—Termini: From Martinez Tracy. Length: 46.51 miles. Amount of rental: $13,800 per mon

Sacramento and Placer Railroad.—Termini: From Sacramento Brighton. Length: 5.64 miles. Amount of rental: $600 per mon

Union Pacific Railroad.—Termini: From Ogden to five miles w Length: 5.00 miles. Amount of rental: Same rate per mil
239 earned by Union Pacific Railway on road operated by itself. Total length, 1,558.85 miles.

Southern Pacific of California, Col. Div.—Termini: From Moj to Needles. Length: 240.13 miles. Amount of rental: $125 per m per month. (Colorado division was transferred to Atlantic Pacific Railroad Company on October 1, 1884.)

Total length, 1,798.98 miles.

240 DEFENDANTS' EXHIBIT (ESHLEMAN) No. 25, MARCH 13, 1915.

(Decisions of the Railroad Commission of the State of California, Volume II, January 1, 1913, to June 30, 1913; pages 233 to 247.)

Decision No. 477.—In the matter of the application of Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad; to make a sale of a certain railroad; to make a contract for the joint use and possession of a certain railroad; to make a contract for running and trackage rights over a certain railroad; and to make a contract for the joint use of certain railroad terminals.

Application No. 409. Decided February 24, 1913.

* * * * * * *

McCutchen, Olney & Willard and W. W. Cotton for Central Pacific Railway Company.

Wm. F. Herrin and Guy V. Shoup for Southern Pacific Company and Southern Pacific Railroad Company.

241 Chas. S. Wheeler and Allan P. Matthew for Western Pacific Railway Company.

Robert T. McKisick, city attorney, for city of Sacramento.

Ben F. Woolner, city attorney, for city of Oakland.

Seth Mann for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION.

On February 17, 1913, the railroads herein mentioned applied to this commission for its approval of five certain proposed transactions hereinafter more specifically referred to. On the second day of December, 1912, the Supreme Court of the United States, in the case of United States vs. Union Pacific Railroad Company, Southern Pacific Company et al., rendered a decision declaring the ownership by said Union Pacific Railroad Company (hereinafter referred to as the Union Pacific) of certain shares of the capital stock of the Southern Pacific Company (hereinafter referred to as the Southern Pacific) to be a combination in restraint of trade and decreeing that said Union Pacific should dispose of said stock of the Southern Pacific, and likewise providing for an injunction against the voting of the stock of the Southern Pacific by the Union Pacific and prohibiting the payment of any dividends upon said stock of the Southern Pacific.

242 In order to better understand the issues before this com
mission a brief review of the history of this case is advisable.

Heretofore the Southern Pacific had secured all of the stock of th
Central Pacific Railway Company (hereinafter referred to as th
Central Pacific), Central Pacific Railroad Company, Southern Pa
cific Railroad Company, and various other lines of railway within
the States of California, Nevada, Utah, Arizona, and New Mexic
by which ownership the said Southern Pacific secured control of
line of railroad from El Paso to San Francisco and from Ogden t
San Francisco. Thereafter the Union Pacific, by securing control o
46 per cent of the stock of the Southern Pacific, secured wha
amounted to actual control of the Southern Pacific, thereby placin
the Union Pacific in a position so that at the time of the bringin
of the suit in question it had actual control of a line of railroad fro
Omaha to San Francisco, comprising the lines of the Union Pacif
and the Central Pacific, a second line of railroad from El Paso t
San Francisco, operated by the Southern Pacific, a third line of rai
road from Salt Lake to Los Angeles, operated by the San Pedro
Los Angeles and Salt Lake Railway Company, and a fourth
243 line of railroad from Granger, Wyoming, and Ogden, Utah
to Portland, Oregon, including all of the lines heretofore de
scribed.

The Supreme Court of the United States in the case of United
States of America vs. Union Pacific Railroad Company, heretofore
referred to, held that the dominance by the Union Pacific of the lin
of the Southern Pacific constituting the so-called Sunset route fro
El Paso to San Francisco, and the route from Ogden to San Fran
cisco, brought about the ownership or dominance by the same agenc
of two competing transcontinental lines, thereby bringing about
combination in restraint of trade in violation of the so-called Sher
man Anti-Trust Act. As has already been said, the court decide
that to destroy such combination the Union Pacific should divest itsel
of its ownership of Southern Pacific stock, amounting to the aggre
gate amount of $126,650,000 par value.

In accordance with such decision the various companies ha
agreed upon a certain agreement (hereinafter referred to as th
agreement), which has been filed with this commission and in pa
approved by the Attorney General of the United States. Thi
agreement, in addition to providing for the sale of the stock of th
Southern Pacific held by the Union Pacific to the stockholder
244 of the Union Pacific and the Southern Pacific in proportion
one share of this stock owned by the Union Pacific to eac
four shares of Union Pacific stock, and one share of said Southe

Pacific stock to each three shares of Southern Pacific stock owned by stockholders other than the Union Pacific, provides also for the sale by the Southern Pacific of the stock of the Central Pacific theretofore acquired by said Southern Pacific. This provision, the evidence shows, is the result of the suggestion of the Attorney General of the United States, he having apparently taken the position that the ownership by the Southern Pacific of the Central Pacific stock constitutes the same kind of prohibited act under the Sherman Anti-Trust Act as the ownership by the Union Pacific of Southern Pacific stock brought about. Admittedly, however, the provision of the agreement requiring the sale of the stock of the Central Pacific by the Southern Pacific is in excess of the requirements of the decree of the Supreme Court of the United States. The only portion of that decree which relates at all to a relationship between the Union Pacific and the Central Pacific is that which provides that the decree shall not prevent "the Central Pacific connection from Ogden to
245 San Francisco and thereby to control that line to the coast, thus affecting such a continuance of the Union Pacific and Central Pacific as is contemplated by the acts of Congress under which they were constructed." The acts of Congress referred to provide that the Central Pacific and the Union Pacific shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected continuous line (12 Statutes at Large, 489–495, enacted July 1, 1862), and to afford and secure to each equal advantages and facilities as to rates, time, and transportation without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others (31 Statutes at Large, 356, enacted July 2, 1864).

The only thing provided in the agreement which was in accordance with the positive admonition of the Supreme Court is the sale by the Union Pacific of the stock of the Southern Pacific. Everything else provided in the agreement is, in our judgment, in excess of the requirements of the Supreme Court; but it is presupposed in the agreement that the design of the Attorney General of the United States was to bring about at the same time the dissolution of
246 the Southern Pacific and Union Pacific and the Southern Pacific and the Central Pacific in accordance with the suggestion of the Supreme Court hereinbefore referred to, which suggestion, however, went merely to an outlet for the Union Pacific over the lines of the Central Pacific to the coast, in accordance with the original plan of Congress as laid down in the statutes heretofore referred to, and did not in any way necessitate the sale by the Southern Pacific of all the Central Pacific feeders within this State.

The agreement presented to this commission, a part of which r
quires the approval of this commission and a part of which does no
contemplates:

First. The sale by the Union Pacific of the stock of the Souther
Pacific heretofore referred to.

Second. The sale by the Southern Pacific to the Union Pacific o
the Central Pacific stock held by the Southern Pacific.

Third. The cancellation of the leases of the Central Pacific an
allied lines held by the Southern Pacific.

Fourth. The lease for 999 years by the Central Pacific of its lin
of railroad from Tehama, California, to the Oregon line t
247 the Southern Pacific Railroad Company at an annual rent
of 5 per cent upon the value of such line from Tehama to th
Oregon line as determined by a method which will hereinafter b
discussed.

Fifth. The sale by the Central Pacific to the Southern Pacifi
Railroad Company of the line of railroad, now partly complete
from Weed, in Siskiyou County, California, to Natron, Oregon, at
valuation to be determined as hereinafter provided.

Sixth. The lease for 999 years by the Southern Pacific and th
Southern Pacific Railroad Company to the Central Pacific of its lin
of railroad from Sacramento by way of Benicia to Oakland at a
annual rental of 2 1/2 per cent upon the value of said line to be deter
mined in a manner hereafter described. This lease is to give to th
lessee an equal joint use with the Southern Pacific Company of sai
line, and no other line is to be admitted to said use without the per
mission of said Central Pacific.

Seventh. The lease for 999 years by the Southern Pacific an
Central Pacific to one another of the joint use of their respectiv
terminals, including industry tracks, at all junctions of their respec
tive lines within city limits.

Eighth. The lease for 999 years by the Southern Pacifi
248 Railroad Company and the Southern Pacific to the Centra
Pacific of trackage and running rights over the lines of th
former companies between Redwood City and San Francisco, fo
through freight trains only, at an annual rental of 5 per cent upo
the valuation, to be determined as hereinafter set out.

The entire consideration for these various trades, aside from th
annual rental provided, is to be the assumption by the Union Pacifi
of approximately two hundred million dollars of bonded indebted
ness of the Central Pacific and the payment to the Southern Pacifi
of about $104,000,000.

We, of course, accept without question the mandate of the Supreme
Court, and it is our desire to exercise whatever authority we hav
in this matter in a manner which will bring about the design of th

Supreme Court to produce active and actual competition between these two transcontinental lines. However, over the sale of the stock of the Southern Pacific by the Union Pacific as ordered by the Supreme Court we, of course, have no authority. Neither have we power under the public utilities act to require or to prevent the sale of the stock of the Central Pacific, one foreign corporation, by
249 the Southern Pacific, another foreign corporation, as provided for in the plan of the Attorney General. However, the representatives of both the Union Pacific and the Southern Pacific have testified that this plan as presented in the agreement must be carried out without substantial change, and we feel that the entire plan is one which should be considered by us with a view to determining whether or not the entire plan, which must be accepted or rejected under the circumstances herein presented, is one designed to bring about in good faith the result contemplated by the mandate of the Supreme Court.

We concede that the Attorney General in urging the sale of the Central Pacific stock by the Southern Pacific merely has in mind the fact that by the control of the Central Pacific by the Southern Pacific the latter company, a competing transcontinental line under the design of Congress, is controlling a part of this transcontinental line and thereby is in directly the same position as regards the Western or Central Pacific end of this line as the Union Pacific is with reference to the Eastern or Union Pacific end thereof. That the elimination of this condition does not require the sale of the stock of the Central Pacific by the Southern Pacific is plain. This,
250 of course, is but one method of bringing about the result desired by the Attorney General. It is our opinion that this result could be equally well brought about by the sale to or long-term lease by the Union Pacific of the line of the Central Pacific from Ogden to Sacramento and thence, via Stockton, Niles, and Oakland, to San Francisco, being a portion of the continuous line referred to in 18 Statutes at Large, page 111, chapter 331 (June 20, 1874).

The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in northern and central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into

the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation Company gives it access to Portland and other Oregon points.

251 The Southern Pacific, on the other hand, while it is left with its coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central Pacific to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the

252 traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset Route only a comparatively small amount of freight which originates at points north of the Tehachapi Mountains. It would appear that under the circumstances of this case the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains the Sunset Route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus if the Union Pacific secures control of the Central Pacific, with its feeders as far south as Goshen and into practically all of the important commercial centers in northern and central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific

253 were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco the condition

would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road can not be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, how-
254 ever, active and bona fide competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service—how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of the transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time the local lines of the Southern Pacific and the Central Pacific form one system within this State, reaching from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitu-
255 tion as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates, or to interfere with the service locally within the State, yet we can not refrain from

observing that this result usually follows upon a substitution of two agencies in the performance of a service theretofore performed by one. We invariably have it urged upon us in rate controversies before the commission where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by reason of the dismemberment of the Southern Pacific lines in
256 this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.

It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long-term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to bay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system.

Having given our views upon that portion of the contract, which, while involved in the entire plan, does not specifically require our approval, we shall now consider those matters for which our approval is required.

257 The lease by the Central Pacific of its line of road from Tehama to the Oregon line, to the Southern Pacific Railroad Company for 999 years, we believe, is unobjectionable, and should meet with our approval, except as to the method of determining the rental thereof. Inasmuch as the same fault which we find with the method here involved is inherent in the method of determining the rentals in each instance and the sale price of the road from Weed to Natron, it is well for us at this time to point out our objection and to suggest a remedy.

The agreement provides that the Southern Pacific shall pay to the Central Pacific an annual rental of 5 per cent of the value of the line

to be leased, the value to be agreed upon by the parties, if possible, and if not, to be determined by arbitration according to a method laid down in the agreement.

This commission has heretofore held that in cases involving the sale by a public utility of any portion of its property devoted to the public use, or the rental of such property, the valuation shall be subject to this commission's approval, and we see no reason for departing from this principle in this case. While we do not
258 disapprove of the plan of arriving at the valuation outlined in the agreement as a preliminary ascertainment of such value, still for such vallue to have final effect it will be necessary for this commission in each instance to pass upon it. The observation applies to all cases of salle or lease herein considered.

In the Tehama-Oregon line transaction we do not object to the term of 999 years, constituting, of course, practically a perpetual lease, because we conceive this to be a case wherein a sale of this property would meet with our approval, and where such sale is only prevented by the outstanding bonded obligations rendering a sale impracticable.

We likewise approve of the provision for the sale of that portion of the Weed-Nattron branch which is located in California, except as to the valuation, as heretofore stated. The same may be said as to the Redwood-Sam Francisco lease, except as to the term thereof. Except in those cases where we would approve a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, we think a perpetual lease is not warranted. In other words, except in those cases where we would approve a sale we will not approve a perpetual lease. This is equally applicable to the term of 999 years provided in all of the
259 other leases which are hereafter to be considered.

The commission is, however, willing to permit the leases in this case to run for a period of fifty years, and for the further period until the commission or other competent State authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made.

The city of Sacramento was represented at the hearing by its city attorney, who stated that the city was at present in litigation with the parties hereto, or some of them, in the matter of city franchises which the city claims have expired, and that the city expected that additional litigattion as to other city franchises would soon be initiated. The city attorney requested that the commission insert in its order a condition to the effect that no rights of the city should be prejudiced by the order. The city attorney of Oakland made a similar request. The attorneys for the applicants herein agreed

that such condition might be inserted, and the commission will
so, although it is of the opinion that no act on its part could
construed to revive an expired city franchise or otherwise prejudi
the cities with respect to such franchise.

260 The provision for the lease of the Benicia short line a
the joint use of terminals, including industry tracks, are t
ones to which we find the most serious objection. The agreeme
contemplates that the Southern Pacific shall grant to the Centr
Pacific for the Union Pacific the equal joint use and possession
the short line from Sacramento to Oakland via Benicia at an annu
rental, and that no additional company may use the tracks so leas
unless it has first secured the written consent of both the Southe
Pacific and the Central Pacific. In other words, these two compani
are to have the use of these very desirable tracks to the exclusion
any other railway company, unless both the Southern Pacific a
the Central Pacific concur in letting in the stranger. We recogni
fully that this property now belongs solely to the Southern Paci
Railroad Company and is operated solely by the Southern Pacif
Nevertheless, the grant by the Southern Pacific of the use of i
tracks to one independent competitor (the Central Pacific), whi
refusing to grant the same rights to another independent co
petitor (the Western Pacific), would work a discrimination whi
the welfare of this State does not permit and which this co

261 mission will not sanction. If the Southern Pacific is going
throw its property open to one of its several independe
competitors, it must play fair with the others and permit its use
them also on terms which shall provide for a just compensation
the extent to which the capacity of the property reasonably permi
If the present plan of a sale by the Southern Pacific of the Centr
Pacific stock to the Union Pacific be abandoned and in lieu there
the Union Pacific shall buy the line of the Central Pacific betwe
Ogden and Sacramento or secures long-term lease thereof, with le
or trackage rights thence into San Francisco, other consideratio
might arise. It might then be held that the Union Pacific would
acting in accordance with the plan of Congress to secure a connect
line of railway via the Union Pacific and the Central Pacific to t
coast, and that the Central Pacific was not acting voluntarily
granting the trackage rights to enable the Union Pacific to reach t
coast from Sacramento. This effect of the Federal statutes heret
fore referred to would confine the right to an outlet for the Uni
Pacific to the Stockton-Niles route.

While there is some argument in favor of the joint use
certain terminals by the Southern and Central Pacific

262 the exclusion of other lines, particularly as affects such

terminal as the Oakland Pier, still we do not believe that under all the circumstances of this case the provision that only by the joint approval of these companies are these terminals, including industry tracks, as we interpret the agreement, to be used by any other company, is justified. A condition concerning this matter will be inserted in the order.

We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet
263 we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Central Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities acting within their jurisdiction within this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein, which conditions, while not designed to be oppressive to the contracting parties, have as their object the restoration of real competition in local traffic in addition to the competition in transcontinental traffic which is designed by the Attorney General.

We submit herewith the following form of order:

ORDER.

Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company having filed with this commission their application for an order authorizing (a) the
264 lease by the Central Pacific Railway Company to the Southern Pacific Railroad Company of its line of railway between Tehama, California, and the California-Oregon boundary line; (b) the sale by the Central Pacific Railway Company to the Southern

Pacific Railroad Company of so much of its line of railway between Weed, California, and Natron Station, Oregon, as lies within the State of California; (c) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of the equal joint use and possession of the line of railway of the grantees between Sacramento and Oakland via Benicia and Port Costa, at an annual rental; (d) the grant by the Southern Pacific Railroad Company and the Southern Pacific Company to the Central Pacific Railway Company of trackage and running rights between Redwood City and San Francisco for the operation of through freight trains only, at an annual rental; and (e) the grant by the Southern Pacific Railroad Company (or the Southern Pacific Company) to the Central Pacific Railway Company and the grant by the Central Pacific Railway Company to the Southern Pacific Railroad Company (or the Southern Pacific Company) of the joint and equal use of all terminals, including industry tracks at all junctions of their respective lines within city limits, at annual
265 rentals, all as set forth in said application on file with this commission; and a public hearing having been held on said application, and the Western Pacific Railway Company having appeared in opposition to the granting of said application, and the commission being fully advised in the premises, we hereby find as a fact that public convenience and necessity will not be served by the granting of said application except on the conditions hereinafter specified, basing our order on this finding of fact and on the further findings contained in the opinion which precedes this order,

It is hereby ordered that said application be, and the same is hereby, granted, but only on the following express conditions, and not otherwise, to wit:

1. The price at which the property covered by the agreement between the applicants hereto shall be sold or the valuation on which its rental shall be based, as the case may be, shall be only such price or valuation as shall first have been formally submitted to and approved by the railroad commission. This condition shall not be held to be a condition precedent to the consummation of said agreement, but such sale price and rentals shall not be paid or become due un-
266 til such approval of the railroad commission has been secured.

2. The rates and fares which may be filed with the railroad commission by any party or parties to said agreement, between points within the State of California, growing out of the altered conditions resulting from said agreement, shall in no case exceed the rates and fares in effect between said points on the twenty-fourth day of February, 1913, over the lines now operated by the Southern Pacific Company. Within sixty days from the effective date of said agreement the railroads parties hereto shall file with this commission

joint rates and fares for the transportation of freight and passengers between all points in the State of California, which said joint rates and fares shall not exceed the present rates and fares of the Southern Pacific Company between the said points now on file with this commission.

3. The term of each 999-year lease referred to in the agreement, other than the lease of the line of railway between Tehama and the California-Oregon line, as to which the term is approved, shall be fifty years and for such further period of time thereafter, and upon such terms as the railroad commission, after notice and hearing, shall have determined to be reasonable.

267 4. In the event that the Southern Pacific Company and the Southern Pacific Railroad Company hereafter grant to the Central Pacific Railway Company, under the terms of said agreement or otherwise, or any other line, the use or possession of the line of railway known as the Benicia short line, said Southern Pacific Company and Southern Pacific Railroad Company shall grant a similar privilege to any other competing line of railway which may make application therefor, for an equitable compensation, to the extent to which said line may reasonably be used. If the parties can not agree as to the terms of the use or possession or the reasonableness of being admitted to said use or possession, they shall make formal application to the railroad commission, which will thereupon, after proceedings duly had, determine the question involved.

5. In the event that any of the companies parties to said agreement shall grant, the one to the other, or to any other railroad company, the use or possession of any of the terminals, including industry tracks, specified in said agreement, said company or companies granting such use or possession shall grant a similar privilege to any other competing line of railway which may make appli-

268 cation therefor, for an equitable compensation, to the extent to which such facilities may reasonably be used. In the event that the parties can not agree, the same proceedings shall be had as in the preceding paragraph. This condition, however, may be modified by the commission in the event of terminal facilities now jointly used by any two of the parties to said agreement, in such cases as the commission after a hearing shall find to be reasonable.

6. Neither this order nor any act done in pursuance of its authority shall be construed as extending, reviving, or in any way affecting the term of any franchise or permit or as prejudicing in any way the rights of the State of California or of any city, town, county, or other political subdivision thereof.

7. This order shall not become effective for any purpose unless and until all the parties to said agreement shall first have filed with the railroad commission a stipulation under the hand and seal of said

applicants, duly authorized by the board of directors or other competent governing body of each thereof, agreeing for themselves and their respective successors and assigns, to be bound by and comply in good faith with each condition of this order.

Dated at San Francisco, California, this twenty-fourth day of February, 1913.

269 DEFENDANT'S EXHIBIT (ESHELMAN) No. 26, MARCH 13, 1913.

(Decisions of the Railroad Commission of the State of California, Volume II, January 1, 1913, to June 30, 1913; pages 248 to 254.)

Decision No. 478.—In the matter of the application of Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad; to make a sale of a certain railroad; to make a contract for the joint use and possession of a certain railroad; to make a contract for running and trackage rights over a certain railroad; and to make a contract for the joint use of certain railroad terminals.

Application No. 409. Decided February 24, 1913.

* * * * * * *

McCutchen, Olney & Willard, and W. W. Cotton for Central Pacific Railway Company.

Wm. F. Herrin and Guy V. Shoup for Southern Pacific Company and Southern Pacific Railroad Company.

270 Chas. S. Wheeler and Allan P. Matthew for Western Pacific Railway Company.

Robertson T. McKisick, city attorney, for city of Sacramento.

Ben F. Woolner, city attorney, for city of Oakland.

Seth Mann for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION—SUPPLEMENTAL OPINION.

Inasmuch as we understand the imposition of the conditions set out in the main opinion and order will result in the rejection of the contract in its entirety, thus rendering further negotiations between the parties necessary, it is proper to set out specifically what arrangements we will approve and the reasons therefor.

The Supreme Court orders one act only, aside from the temporary expedients incidental to the carrying out of the decree, namely, the sale by the Union Pacific of the Southern Pacific stock. It permits, however, to the Union Pacific "the Central Pacific connection from Ogden to San Francisco * * *, thus effecting such a continuity

of the Union Pacific and Central Pacific as was contemplated by the acts of Congress under which they were constructed." (United States vs. Union Pacific Railroad Company et al.) Recog-
271 nizing the importance of such a suggestion from the Supreme Court, we will treat the decree as directing such an outlet over the Central Pacific as here suggested and will assume that it is the duty of any inferior tribunal acting within its jurisdiction to exercise any discretion which it may have in such a manner as to effectuate this design of the Supreme Court, as well contained in its suggestion as required by its command. Therefore, we proceed upon the theory that the Union Pacific is to be divested of control of the Southern Pacific by such disposition of the Southern Pacific stock as will make these two lines bona fide independent lines, and that the Union Pacific is to be invested with an outlet to the coast.

The Attorney General of the United States has recognized these two requirements, but he has added an additional requirement, admittedly not commanded or suggested in the decree and which could not be directly brought about except by a new proceeding in the Federal courts prosecuted to a decree favorable to his contention in the Supreme Court of the United States. This is the requirement that the Southern Pacific Company sell the stock of the Central Pacific. We assume, however, that the insistence by the At-
272 torney General upon the sale by the Southern Pacific Company of the stock of the Central Pacific held by it is only incidental to his main design, which is to prevent the control by the Southern Pacific Company, which owns the Sunset line by way of the El Paso gateway, of a line at least in part competitive therewith to the Ogden gateway. We can not believe that the plan of the Attorney General to bring about his desired result makes necessary anything more than the surrender by the Southern Pacific Company of the Central Pacific main line and its exclusion from any interest therein. Certainly the main design does not necessitate the surrender by the Southern Pacific to its present dominant ally, but competitor to be, of its most important feeders and all of its advantages secured by reason of its being first in the field. Neither does it contemplate the admission of this formidable rival to the exclusion of any other rival or ally to the joint use of one of its advantageous short lines nor to the exclusive joint use of its important terminals. Neither do we think the Attorney General desires to upset local traffic conditions by breaking a well-built system of local lines well suited to serve the local needs of the people of this State into two disassociated sets of branches, some of which begin and end nowhere if we
273 have reference to their separate ownership. These local lines

are the result of many years of growth, and anyone at all familia
with railroad conditions in this State knows that they can b
much more conveniently and economically managed as one loca
system than by the substitution of two incomplete local systems an
two agencies to perform the service now being carried on by one com
plete system in charge of one agency.

That the Attorney General has in view the bringing about of
result and is not insisting upon any particular method of accom
plishing such result is, we believe, a fair inference. We are con
firmed in this by his attitude expressed by telegraph on the first da
of the hearing of this case as to the exclusive use of the Benicia cu
off and the terminals of the Southern Pacific by the Union Pacific.

We then conclude that all that the Attorney General adds to th
two requirements of the Supreme Court is the one additional whic
contemplates the disposition by the Southern Pacific Company of it
control of the main line of the Central Pacific, with which it is sup
posed to compete by the El Paso route, and that he is not committe
to any particular method, and that his approval may be ex
274 pected to any reasonable method of effectually accomplishin
this result.

The essential elements of the plan of the Supreme Court as adde
to by the Attorney General are:

First. The sale of the Southern Pacific stock by the Union Pacifi

Second. The securing by the Union Pacific of an outlet to th
coast over the Central Pacific line; and

Third. The surrender by the Southern Pacific Company of so muc
of the Central Pacific line as is necessary to prevent said Southe
Pacific Company from controlling a line designed to compete with it
El Paso route.

With the first requirement we have no direct official concern, bu
we invite the attention of the Attorney General and the court to th
contention of the Western Pacific Railroad Company that the syndi
cate formed by Kuhn, Loeb & Company, the Union Pacific banker
is in effect accomplishing by indirection what the Supreme Court re
fused to permit to be accomplished directly, viz., the purchase by th
stockholders of the Union Pacific of the Southern Pacific stock. I
is urged that this banking house and the syndicate formed by it ar
controlled by the large stockholders of the Union Pacific, an
275 that by making Southern Pacific stock an undesirable inves
ment, the stockholders of the Southern Pacific Company wi
be deterred from buying and the Union Pacific controlled syndicat
will thereby secure control of this stock, thus leaving the Union Pa
cific and Southern Pacific controlled by the same stockholders, a
arrangement which the Supreme Court has already condemned.

The two other conditions, we believe, may be readily worked out together so as substantially to meet the requirement of the court and the Attorney General as well. If a lease similar in terms to the one agreed upon to the Tehama-Oregon line of the Central Pacific be made by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama, freed from the objection already urged against the method of arriving at a value, this commission will approve such a lease. We see no reason why a flat price covering the value of this line can not be agreed upon since an exclusive lease for such a long time would be tantamount to ownership, or a lease with option to purchase when the bonded indebtedness admits, might be consummated. This arrangement would place the Union Pacific at Sacramento in a position
in regard to an outlet to the coast different from that occupied
276 by any other line at that point. Under the acts of Congress
providing for the construction of Union Pacific and Central Pacific, as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific or its successor in interest gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so not as a voluntary act, but as a requirement of Congress, and certainly can not be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. Therefore, if the scheme which we have suggested is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles, because of the fact that this is the outlet of the Central Pacific referred to in the congressional acts and admitted to be such by the parties to this case. Therefore, under such conditions we will sanction an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland.

277 As regards the terminals, we are willing to permit the exclusive use by the Union Pacific of the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Having secured by the method herein outlined an outlet to San Francisco over the line and in a way selected for it by Congress, the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and

there is no more reason for giving it a right of way over a more a
vantageous line between Sacramento and Oakland even for an ad
quate consideration than there is for giving such a right of way
the Western Pacific or any other independent line. The only wa
rant for the position of the Union Pacific that it should be allowed
get to San Francisco is derived from the acts of Congress, whic
alone constitute it superior in this respect to other lines. The inte
tions of Congress having been effectuated by its admission to the u
of the line designated by Congress, it may not urge as a righ
278 its admission either to the joint or several use of another lin
This conclusion has led the commission in its main opinio
and order to impose as a condition upon the use by the Union Pacif
of the Benicia short line the right under similar terms of any othe
road to use the same.

We have endeavored herein to point out a method which we believ
would satisfy the command and suggestion of the Supreme Court an
the desire of the Attorney General, and have stated our reasons fo
recommending this arrangement. If, however, the Attorney Genera
and the Circuit Court in its discretion shall hold that the Southern
Pacific shall sell all of the Central Pacific stock to the Union Pacific
thereby giving to the Union Pacific through stock ownership no
only the main line of the Central Pacific from Ogden by way of Sac
ramento and Niles to Oakland, but also the important feeders from
such line, we shall not be disposed to withhold our approval to the
other provisions of the agreement presented to us on the sole ground
that the Federal authorities have adopted the stock ownership plan
for the transfer of this property with its attendant disadvantages
and not the plan which we have recommended, which we believe
from a careful investigation of the conditions is preferable
279 from the standpoint of the public. In other words we have
deemed it best to point out to the Federal authorities our ob-
jection to the control of the entire Central Pacific system by the
Union Pacific and have suggested an alternative plan which will
meet such objections, but if after having considered our proposal
the Federal authorities, acting within their jurisdiction, adhere to
the original plan of the Attorney General we will waive this ob-
jection, because, while we consider it important, we do not consider it
entirely essential. Particularly do we reach this conclusion by rea-
son of the fact that this commission has the power to regulate local
rates and service and the admitted intention of the parties not to at-
tempt to use the separation of these lines as a means and excuse for
increasing the rates and impairing the service.

If the Union Pacific, under the permission of the Attorney General
and the Federal court, is permitted to purchase the stock of the

Central Pacific, then we will limit it to the line between Sacramento and Oakland, to which this ownership entitles it and the terminals incident thereto. If it is accorded any other terminals or any other route by the voluntary act of the Southern Pacific Company,
280 we shall insist upon the conditions which we have imposed in the main opinion and order. We therefore recommend the arrangement which we have suggested for the acquirement by the Union Pacific of the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland and the branch line from Roseville to Tehama; but if the Attorney General and the circuit court, in spite of such recommendation, desire that the Union Pacific secure the stock of the Central Pacific, thereby securing not only this main line, but the branches, our approval will be given likewise to the following arrangements, but only on the conditions outlined in the main opinion and order.

We will approve, if application is made therefore, the arrangement outlined in the main decision respecting the lease of the line from Tehama to the Oregon State line, the sale of the Weed line, the lease of the Bay Shore cut-off, the lease of the Benicia short line from Sacramento to Oakland, the lease of the terminals, including industry tracks, specified in the agreement, the latter to be made definite and specific hereafter.

We recognize that some of the facilities of the Central Pacific
281 and Southern Pacific are so connected and interwoven that it is practically impossible to require their separation, and the commission will be disposed to recognize any necessities which may arise from such cause; but if the use of any other facilities, such as industry spurs and terminal facilities of a similar character, be accorded by the Southern Pacific to the Central Pacific or the Central Pacific to the Southern Pacific, then the voluntary according of such use will carry with it as an annexed condition the necessity of according a similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor. And it shall only be necessary in each instance for the line desiring these privileges to be accorded to it to secure the consent of the owner of such facilities and not the consent of the other company which has been voluntarily admitted to the use.

Dated at San Francisco, California, this 24th day of February, 1913.

282 DEFENDANTS' EXHIBIT (MACALLISTER) No. 27, APRIL 15, 1915.

The Central Pacific Railway Company to the Central Trust Company of New York, trustee.

First refunding mortgage. Dated August 1, 1899.

[$50,000 internal-revenue stamps affixed and canceled.]

An indenture, made the first day of August, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railway Company, a corporation of the State of Utah (hereinafter called the "Railway Company"), party of the first part, and the Central Trust Company of New York, a corporation of the State of New York (hereinafter called the "Trustee"), party of the second part:

Whereas the Railway Company, party of the first part, is a corporation created by and existing under and by virtue of the
283 laws of the State of Utah and holding franchises under acts of Congress of the United States, and now owns lines of railroad extending from a point about five miles west of Ogden, in the State of Utah, by way of Sacramento, in the State of California, to San Jose, in said last-mentioned State, and from Niles to Oakland and Lathrop to Goshen, all in the State of California, and from Roseville, in the State of California, to the California and Oregon State boundary, besides equipment and terminals therefor and used in connection therewith; and

Whereas certain portions of the said lines of railroad owned by the said Railway Company are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California first-mortgage bonds secured by mortgage dated July 25, 1865, of the several series and for the amounts and now matured or maturing at the dates hereinafter stated, respectively, viz:

284 Series.	Amount.	Date of maturity.
Series A	$2,995,000	Matured.
B	1,000	Matured.
	999,000	December 1, 1899.
C	4,000	Matured.
	996,000	December 1, 1899.
D	4,000	Matured.
	1,379,000	December 1, 1899.
Total	6,378,000	

(b) The Central Pacific Railroad Company of California first-mortgage bonds, secured by mortgage dated January 1, 1867, of the several series, and for the amounts and now matured or maturing at the dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of maturity.
Series E	$5,000	Matured.
	3,990,000	June 1, 1900.
F	9,000	Matured.
	3,990,000	June 1, 1901.
G	13,000	Matured.
	3,985,000	June 1, 1901.
285 H	6,000	Matured.
	3,993,000	June 1, 1901.
I	13,000	Matured.
	3,498,000	June 1, 1901.
Total	19,502,000	

(c) The Western Pacific Railroad Company first-mortgage bonds, secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for $1,970,000, matured July 1, 1899.
B for 765,000, matured July 1, 1899.

Total... 2,735,000

(d) The California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first-mortgage bonds, secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for $5,982,000, maturing January 1, 1918.
B for 4,358,000, maturing January 1, 1918.

Total.. 10,340,000

(e) The Central Pacific Railroad Company first-mortgage bonds (San Joaquin Valley division), secured by mortgage
286 dated October 1, 1870, for the amount of $6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent bonds secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds to the amount of $2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds secured by mortgage dated October 1, 1870, to the amount of $2,134,000 and maturing October 1, 1900.

And whereas heretofore, and under date of February 1st, 1899, the said Central Pacific Railroad Company, in pursuance of a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an act of Congress approved July 7th, 1898, executed its twenty promissory notes in favor of the United States of America for $2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof, which notes were secured by the lien reserved by the acts of Congress approved July 1, 1862, and July 2, 1864, and
the acts amending and supplementing the same, to secure the
287 indebtedness arising from the issue of bonds of the United States to aid in the construction of the bond-aided railroads of the Central Pacific Railroad Company of California and Western Pacific Railroad Company, respectively, and are agreed to be secured by pledge of refunding bonds to be issued hereunder as hereinafter provided, upon the pledge of which refunding bonds as security therefor, the said lien is to be transferred to the Trustee of this mortgage as security for all the bonds to be issued thereunder.

And whereas the said Railway Company is about to issue its refunding bonds to an amount which shall not in any event exceed in the aggregate the principal sum of one hundred million dollars at any one time outstanding, and which shall bear interest at a rate not exceeding four per cent per annum, payable semiannually, and to secure the same by mortgage upon the lines of railroad, equipment, and terminals hereinafter described, with their appurtenances;

And whereas the issue of the said refunding bonds and the execution of said mortgage to secure the same has been duly authorized by the board of directors of said Railway Company, as per resolutions, copies of which are as follows:

"Resolved, That for the purpose of readjusting the in-
288 debtedness secured by liens upon the properties of the company, and for other corporate purposes, this company issue its bonds to be known as 'First refunding mortgage gold bonds,' to an amount which shall not in any event exceed in the aggregate the principal sum of $100,000,000 at any one time outstanding. Such bonds shall bear date August 1st, 1899, in the case of coupon bonds, and of the time of their issue, in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest at a rate not exceeding four per centum per

annum, payable semiannually in like gold coin, on the first day of February and the first day of August in each year. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundreddollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company by resolution of its board of directors may from time
289 to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued as shall be determined by the action of the board of directors or the executive committee of the company at such times and to such amounts as the purposes for which they are to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may nevertheless be adopted and used by the company, and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer,
290 notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

"Resolved further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this company execute a mortgage or deed of trust to the Central Trust Company of New York, a corporation of the State of New York, as Trustee, covering the properties of the company described in the printed form of mortgage now submitted to this board.

"Resolved further, That the said printed form of mortgage now submitted to the board, and the forms of bonds embodied therein, be, and the same are hereby, approved, and that the president, or any vice president, and the secretary, or any assistant secretary, be, and they are hereby, authorized to execute the same on behalf of the company under its corporate seal."

And whereas the said resolution of the board of directors of the Railway Company were thereafter submitted to a meeting of the stockholders of the Railway Company duly called and held, and such action of the said board of directors was duly ratified
291 and confirmed by resolution, a copy of which is as follows:

"Resolved, That the action of the board of directors in authorizing the issue of the first refunding mortgage gold bonds of the company and the execution of the first refunding mortgage to secure the same as set forth in the resolutions of the board of directors now submitted to this meeting be, and the same is, hereby in all respects ratified, approved, and confirmed."

And whereas the form of the coupon bonds, and of the coupons to be attached thereto, and of the registered bonds, and of the Trustee's certificate to be signed by the Central Trust Company of New York, severally and respectively, are to be substantially as follows, to wit:

(Form of coupon first refunding mortgage bond.)

No. $1,000 (or $500).

United States of America. The Central Pacific Railway Company.
First refunding mortgage gold bond.

Know all men by these presents, That the Central Pacific Railway Company, a corporation, hereinafter called the "Railway Company," for value received, promises to pay to the bearer, or, if reg-
292 istered, to the registered holder of this bond, on the first day of August, in the year 1949, at the office or agency of the Railway Company in the city of New York, one thousand (or five hundred) dollars gold coin of the United States, of the present standard of weight and fineness, and to pay interest thereon at the rate of not exceeding four per cent per annum from August 1, 1899, payable semiannually at the said office or agency in like gold coin, on the first day of February and the first day of August in each year, but only upon presentation and surrender, as they severally mature, of the coupons therefor annexed hereto.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom, under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of first refunding mortgage gold bonds (coupon and registered) of the Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars at any one time outstanding, under and in

pursuance of, and all equally secured by, a mortgage or deed of trust dated August 1st, 1899, executed by the Railway Com-
293 pany to the Central Trust Company of New York as Trustee of all the property and franchises of the Railway Company conveyed in trust by said mortgage or deed of trust, to which reference is hereby made for a statement of the property and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Railway Company at its office or agency in the city of New York, such registry being noted on the bonds by the bond registrar of the Railway Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond, but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder may also, at his option, surrender for cancella-
294 tion this bond, with the coupons for future interest thereon in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated, by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust.

In witness whereof, The Central Pacific Railway Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto this 1st day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

By

Vice President.

[L. S.]

Attest:

Assistant Secretary.

295 (Form of interest coupon, of which the first is to be payable ————, 1899.)

No. $20.00 (or $10.00)

On the first day of ——— the Central Pacific Railway Company will pay to bearer at its office or agency in the city of New York twenty (or ten) dollars United States gold coin of the present standard of weight and fineness without deduction for taxes, being six months' interest then due on its first refunding mortgage gold bond No.

Treasurer.

(Form of registered refunding mortgage bond.)

No. $———

United States of America. The Central Pacific Railway Company.
First refunding mortgage gold bond.

Know all men by these presents that the Central Pacific Railway Company, a corporation, hereinafter called the "Railway Company," for value received, promises to pay to or registered assigns the sum of dollars gold coin of the United States of the present standard of weight and fineness on the first day of August, in the year 1949, at the office or agency of the Railway
296 Company in the city of New York, and to pay interest thereon at the rate of (not exceeding four) per cent per annum from the first day of February or August next preceding the date hereof, payable semiannually at said office or agency in like gold coin on the first day of February and on the first day of August in each year until the payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of first refunding mortgage gold bonds (coupon and registered) of the Railway Company, issued and to be issued for an aggregate principal sum not exceeding one hundred million dollars at any one time outstanding under and in pursuance of and all equally secured by a mortgage or deed of trust dated August 1st, 1899, executed by the Railway Company to the Central Trust Company of New York as Trustee of all the property and franchises of the Railway Company conveyed in trust in said mortgage or deed of trust, to which reference is hereby made for a statement

of the property and franchises mortgaged, the nature and
297 extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferrable by the registered holder thereof in person, or by attorney duly authorized, on the books of the Railway Company, at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Railway Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon indorsed by the trustee under said mortgage or deed of trust.

In witness whereof, the Central Pacific Railway Company has caused these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary this day of .

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

298 CENTRAL PACIFIC RAILWAY COMPANY,

By

[L. S.] *Vice President.*

Attest:

Assistant Secretary.

(Form of trustee's certificate.)

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Central Pacific Railway Company to the undersigned.

CENTRAL TRUST COMPANY OF NEW YORK,
Trustee.

By

Vice President.

And whereas, in pursuance of such authority, and of all and every legal power and authority in it vested, the Railway Company proposes now to make and execute and from time to time hereafter to issue and to deliver bonds hereby secured; and in this indenture to declare the terms and conditions upon which every such bond is and shall be issued and secured.

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and i
299 terest of all such bonds at any time issued and outstanding u
der this indenture, according to their tenor and effect, and t
performance of all the covenants and conditions herein containe
and to declare the terms and conditions upon which such bonds a
issued and received, the Railway Company, party of the first par
in consideration of the premises and of the purchase and acceptan
of such bonds by the holders thereof, and of the sum of one dolla
to it duly paid by the trustee at or before the ensealing and deliver
of these presents, the receipt whereof is hereby acknowledged, ha
executed and delivered these presents, and has granted, bargained
sold, released, conveyed, assigned, transferred, and set over, and by
these presents does grant, bargain, sell, release, convey, assign, trans
fer, and set over, unto the Trustee, party of the second part, its suc
cessors and assigns, forever:

All and singular, the railroads, estates, rights, properties, priv
ileges, and franchises described as follows, to wit:

First. The lines of railroad owned by the Railway Company ex
tending from a point about five miles west of Ogden, in the State
of Utah, through the States of Utah, Nevada, and California,
300 to and into the city of Sacramento, in the State of California,
and from said Sacramento to San Jose, in said last-mentioned
State, and from Niles to Oakland and from Lathrop to Goshen, all
in the State of California, and from Roseville, in said State of Cali
fornia, to the California and Oregon boundary.

Second. All the railways belonging to the party of the first part in
San Francisco, Oakland, and Alameda, in the State of California,
and the terminals belonging to the party of the first part, used in
connection therewith, including wharves, piers, docks, embankments,
ferries, steamers, and transfer and ferry boats.

Third. All roadbeds, superstructures, rights of way, rails, tracks,
sidetracks, bridges, viaducts, terminals, buildings, depots, stations,
warehouses, car houses, engine houses, freight houses, coal houses,
wood houses, machine shops and other shops, turntables, water sta
tions, fences, docks, structures, erections, and fixtures and all other
things of whatever kind, now owned or hereafter acquired by the
Railway Company, or its successors, which shall in anywise or at
any time, belong or appertain to or be provided for use upon, or for
the purposes of, any of said lines of railroad hereby mortgaged
301 or intended to be mortgaged, and any and all other property,
real or personal, of every kind and description, now or here
after acquired by the Railway Company, or its successors, for use
upon, or for the purposes of, such lines of railroad or terminals, or
any of them.

Fourth. Any and all locomotives, engines, cars, and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture, and other chattels of the railway company now owned or hereafter held, acquired, or provided by the railway company, or its successors, for use upon any of such lines of railroad or terminals or other property hereby mortgaged.

Fifth. Any and all other railroads, equipment, and terminals owned by the Central Pacific Railroad Company on the first day of February, one thousand eight hundred and ninety-nine.

Sixth. Any and all corporate or other rights, privileges, and franchises which the Railway Company now has or which the Railway Company or its successors hereafter shall acquire, possess, or become entitled to, for or appertaining to the construction, maintenance, use, or operation of such lines of railroad or terminals or other property hereby mortgaged; and

302 Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property now or at any time hereafter subject to the lien of this indenture:

To have and to hold the premises, railroads, properties, real or personal, rights, franchises, estates, and appurtenances hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee and to its successors and assigns forever.

But in trust for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority, or distinction as to lien or otherwise of any one bond over any other bond issued hereunder by reason of priority in the issue or negotiation thereof, or otherwise howsoever.

And it is hereby covenanted and declared, That all such bonds, with the coupons for interest thereon, are to be issued and 303 certified and delivered, and that the mortgaged premises are to be held by the Trustee, subject to the further covenants, conditions, uses, and trusts hereinafter set forth; and it is covenanted between the parties hereto and for the benefit of the respective holders, from time to time, of bonds issued hereunder, as follows, viz:

ARTICLE ONE.

Issue and appropriation of bonds.

SECTION 1. All bonds to be secured hereby from time to time shall be executed and delivered by the Railway Company to the trustee

hereunder, for certification, and thereupon the said Trustee shall certify and deliver the same, as provided in this article, and not otherwise. Any of such bonds from time to time at the option of the Railway Company may be executed, certified and issued originally, either as coupon bonds or as registered bonds. The aggregate amount of the bonds issued and outstanding under this indenture shall never at any one time exceed the principal sum of one hundred million dollars ($100,000,000).

Only such bonds as shall bear thereon endorsed such certificate of the said Trustee by it duly executed under the hand of its president, vice president, or second vice president, shall be secured
304 by this indenture, or shall be entitled to any lien or benefit hereunder; and every such certificate of the said Trustee upon any bond executed in behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder, and is entitled to the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured, the said Trustee shall cut off and cancel all coupons thereof then matured; and the said Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

SEC. 2. Of the bonds authorized to be issued under, and secured by, this indenture, bonds to the aggregate amount of fifty-eight million eight hundred and twenty thousand dollars ($58,820,000) and bearing interest at the rate of four per centum per annum payable semi-annually, immediately upon the execution and delivery hereof, or as soon thereafter as from time to time may be required by the Railway Company, shall by the said Trustee be certified and delivered to the Railway Company, or upon its order in writing under its corporate seal; but the Railway Company shall use all of the bonds so certified and delivered under this section, for delivery to the Treasurer of the United States under said settlement
305 agreement between the United States of America, the Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1st, 1899, and except as so required, may use the same for the general purposes of the Railway Company.

If and so far as any of the said bonds to the aggregate amount of fifty-eight million eight hundred and twenty thousand dollars ($58,820,000) shall be held by the United States of America in the form of registered bonds, the same or any part or parts thereof may at any time or from time to time be exchanged by it for coupon bonds issued hereunder and secured hereby to the like amount and carrying interest from the date from which interest is then due upon such registered bonds. Upon the request of the United States, made by or

through its Secretary of the Treasury therefor, and upon the surrender by it to the Trustee of such registered bonds for cancellation, such coupon bonds shall be issued to the United States to the like amount with the amount of the registered bonds surrendered and carrying interest as above provided, and the surrendered registered bonds shall be cancelled.

When and as any of the bonds issued hereunder and so delivered to the Treasurer of the United States shall be returned to the
306 Railway Company and shall be delivered to the Trustee, either cancelled or for cancellation, the said Railway Company may execute in lieu thereof, and the Trustee shall, when such bonds shall have been cancelled, certify and deliver to the Railway Company, or upon its order in writing under its corporate seal, new coupon or registered bonds, or partly coupon and partly registered bonds, in the form above described to the amount, dollar for dollar in face value, of the bonds issued hereunder, so returned and delivered to the Trustee, bearing interest at the rate of four per centum per annum, or, if the said Railway Company shall so request, at a lower rate, and all such new bonds so executed, certified, and delivered shall be entitled to the benefit and security hereof and to share ratably therein with all other bonds from time to time issued and outstanding hereunder.

Arrangements have been made to secure the return to the Railway Company and reservation under section 3 of this article of bonds to the amount at their face value of $10,045,500, forming part of the bonds to the amount at their face value of $58,820,000 to be delivered to the Treasurer of the United States under the settlement agreement above referred to.

SEC. 3. The remainder of such authorized issue of bonds
307 over and above the fifty-eight million eight hundred and twenty thousand dollars ($58,820,000) face value to be delivered to the Treasurer of the United States as above stated; that is to say, bonds to the amount of forty-one million one hundred and eighty thousand dollars ($41,180,000), together with the bonds to the amount of ten million and forty-five thousand and five hundred dollars ($10,045,500) to be returned to the Railway Company as hereinbefore stated shall be reserved, to be executed from time to time, and to be certified and delivered by the said Trustee when and as called for by the Railway Company against deposit with the Trustee as security for the bonds issued and to be issued hereunder of outstanding old bonds of the classes hereinafter enumerated, together with all unmatured coupons appertaining thereto respectively, such bonds to be so issued under this mortgage against such

deposit of such outstanding old bonds at the rates hereinafter mentioned; that is to say:

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each $1,000 face value of first-mortgage bonds of the Central Pacific Railroad Company of California or the Western Pacific Railroad Company mentioned
308 under subdivision (a), (b), or (c) in the foregoing enumeration of outstanding old bonds.

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each $1,000 face value of California and Oregon Railroad Company or Central Pacific Railroad Company, successor, first-mortgage bonds mentioned under subdivision (d) in such enumeration of outstanding old bonds.

One thousand dollars face value of such refunding bonds against such deposit with the Trustee of each $1,000 face value of Central Pacific Railroad Company first-mortgage (San Joaquin Valley division) bonds mentioned under subdivision (e) in such enumeration of outstanding old bonds.

Five hundred dollars face value of such refunding bonds against such deposit with the Trustee of each $1,000 face value of Central Pacific Railroad Company fifty-year five per cent bonds mentioned under subdivision (f) in such enumeration of outstanding old bonds.

Five hundred dollars face value of such refunding bonds against such deposit with the Trustee of each $1,000 face value of Central Pacific Railroad Company land bonds mentioned in subdivision (g) of such enumeration of outstanding old bonds.

309 Whenever, on or after the maturity of any of such outstanding old bonds, or on or after a date eight months prior to such maturity, the Railway Company shall tender or shall cause to be tendered to said Trustee cash sufficient to purchase or to pay the same at par (and shall also provide to the satisfaction of the said Trustee for any interest due upon such bonds, or accruing before their maturity), the said Trustee shall receive such cash, and in consideration thereof shall certify and deliver to the Railway Company or upon its order bonds hereby secured and reserved under this section at the rates above prescribed, respectively, for certification of such refunding bonds against the deposit with the Trustee of all such outstanding old bonds, for the purchase or payment of which cash shall have been so provided.

All cash received by the said Trustee under this subdivision of this section shall be by it held and applied to the purchase at not above par, or, if such purchase be impracticable, to the payment at par, of an equivalent amount of such outstanding old bonds then unpaid, for the purchase or payment of which such cash shall have been received.

Every outstanding old bond deposited with the Trustee, as above provided, shall by said Trustee be stamped with the words "Not negotiable. Held in trust for the purposes declared in the first refunding mortgage of the Central Pacific Railway Company, dated August 1, 1899", and (either with or without conversion into registered bonds, at the option of the said Trustee) shall be held by the said Trustee as purchaser, without extinguishment or impairment of lien, as additional security for the payment of the bonds hereby secured until (1) not less than ninety-five per cent of all bonds of the same issue at any time outstanding shall have been so deposited, when all deposited bonds of such issue shall, upon the written request of the Railway Company, be cancelled by the Trustee and surrendered to the Railway Company, or until (2) not less than ninety-five per cent of all outstanding old bonds of all the issues above enumerated shall have been deposited hereunder with the said Trustee, whereupon, on the written request of the Railway Company, the said Trustee shall cancel and shall surrender to the Railway Company all outstanding old bonds then in its possession.

If, at the time of the maturity of any such outstanding old bonds, the holder thereof shall decline to sell and to deliver the same at par and accrued interest, but shall require the payment thereof, then, upon payment thereof, the said Trustee shall certify and shall deliver to the Railway Company, or upon its order, the same amount at par of said bonds reserved hereunder as though said matured bonds had been purchased by the Railway Company and by it deposited with the said Trustee; and by virtue of such payment of such outstanding old bonds and the issue of such new bonds hereunder the Trustee shall be forthwith subrogated to and vested with all the rights and liens of the holders of the bonds so paid.

The Railway Company shall provide and maintain books, wherein it shall register as the property of the Trustee all such outstanding old bonds received by the said Trustee; and, except as herein expressly provided, no such outstanding old bonds shall be cancelled by the Trustee.

Neither the principal nor the interest of any such outstanding old bond so held by the said Trustee shall be collected or required to be paid, unless or until proceedings shall have been instituted to enforce the mortgage securing such bond, either by entry or by sale; but then and thereupon all of the bonds of that issue then so held by the said Trustee, and all interest thereon maturing on or subsequent to the date upon which the default was made, for which such proceedings shall have been instituted, shall be entitled to payment; and payment thereof shall be enforced ratably and equally with all other bonds of such issue not deposited with the said

Trustee; but all interest maturing upon any deposited outstand
old bond prior to any default under this mortgage or under the mo
gage securing such deposited bond shall be deemed to have been p
and satisfied, and, upon request of the Railway Company theref
the coupons or interest warrants representing such interest shall
cancelled by the Trustee and returned to the Railway Company.

Upon the satisfaction and discharge of the mortgage or mo
gages securing any issue of such outstanding old bonds, the Trus
shall, when and as called for by the Railway Company, certify a
deliver to it the aggregate amount of refunding bonds issuable und
this mortgage against deposit of all the now outstanding bon
secured by the mortgage or mortgages so satisfied and discharg
except so far as such refunding bonds shall have been theretofo
issued against deposit of such outstanding old bonds with the Trust
as hereinbefore provided.

Notwithstanding anything to the contrary hereinbefore co
313 tained, upon being satisfied that all bonds deliverable to t
Treasurer of the United States under the settlement agre
ment above referred to have been delivered and that sufficient provi
sion has been made for the purchase or payment of each and eve
outstanding old bond, the said Trustee, without any other or furth
condition precedent, shall certify and shall deliver upon the order of t
Railway Company the whole amount of the bonds by this indentu
authorized and secured, and then remaining unissued; and from tim
to time the Railway Company shall take all practicable measures t
procure, upon terms which the Railway Company shall deem reaso
able, the satisfaction and discharge of all the mortgages securin
such outstanding old bonds.

SEC. 4. Whenever any coupon bond or bonds issued under an
secured by this indenture, together with all unmatured coupo
thereto belonging, shall be surrendered for exchange for registere
bonds, the Railway Company shall issue and the said Trustee sha
certify and deliver, in exchange for such coupon bond or bonds
like amount of registered bonds without coupons. Such registere
bonds shall be for $1,000, or for such multiples thereof as from tim
to time the Railway Company may prescribe, and shall bear interes
at the same rate as the surrendered coupon bonds, and fro
314 the date of maturity of the last matured coupons thereof. I
every case of such exchange the said Trustee forthwith sha
cancel the surrendered bond or bonds and coupons and shall deliv
the same to the Railway Company.

Whenever any such registered bond shall be surrendered for tran
fer the Railway Company shall issue, and the said Trustee sha
certify and deliver to the transferee, upon surrender and cancellatio

f the bond or bonds transferred, a like amount of new registered onds for $1,000, or for such multiples of $1,000 as the Railway ompany from time to time may authorize, and bearing interest at he same rate as the surrendered registered bond, but no registered ond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for ny transfer of registered bonds without coupons, the Railway Com- any, at its option, may make a charge not exceeding one dollar for ach new registered bond issued upon such exchange or transfer.

SEC. 5. Upon surrender by the Railway Company to the Trustee or cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued here- under for the like amount at a reduced rate of interest, the Trustee shall certify and deliver to the Railway Company onds issued hereunder and secured hereby to the amount at their ace value of the bonds so surrendered, and carrying interest at such ower rate of interest than four per cent per annum, payable semi- nnually, as the Railway Company may prescribe in that behalf, nd the new bonds so certified and delivered shall be entitled to share n the security of these presents with the like effect as if they had een bonds originally issued under this mortgage.

SEC. 6. In case any coupon bond issued hereunder, with the coupons hereto appertaining, or any registered bond without coupons, shall ecome mutilated or be destroyed, the Railway Company, in its dis- retion, may issue, and thereupon the said trustee shall certify and eliver, a new bond of like tenor and date, bearing the same distin- uishing number, in exchange and substitution for, and upon cancel- ation of, the mutilated coupon bond and its coupons, or the mutilated egistered bond, or in lieu of, and substitution for, the coupon bond nd its coupons, or the registered bond so destroyed, upon receipt of atisfactory evidence of the destruction of such coupon bond and its oupons or of such registered bond, and upon receipt also of satis- factory indemnity.

16 SEC. 7. Nothing in this article or in any other article of this indenture, expressed or implied, is intended or shall be con- trued to enlarge the security of the holders of any of said outstand- ng old bonds, or to create any trust in their favor, or to give to any erson or corporation other than the parties hereto and the holders f bonds issued under and secured by this indenture any legal or quitable right, remedy, or claim, under or in respect to this inden- ure, or any covenant, condition, or provision herein contained; all s covenants, conditions, and provisions being intended to be, and eing, for the sole and exclusive benefit of the parties hereto and of he holders of the bonds hereby secured.

ARTICLE TWO.

Particular covenants of the Railway Company.

The Railway Company covenants as follows:

SEC. 1. It will duly and punctually pay, or cause to be paid, to every holder of any bond issued and secured hereunder the principal and interest accruing thereon, at the dates and place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States or any State or county or municipality thereof
317 which the Railway Company may be required to pay or to retain therefrom under or by reason of any present or future law. When and as paid all such coupons forthwith shall be cancelled.

SEC. 2. Whenever required by the Trustee, the Railway Company will grant, convey, confirm, assign, transfer, and set over unto the Trustee the estate, right, title, and interest of the Railway Company, in or to, all real and personal estate, corporate rights, and franchises which, in any way or manner, it shall acquire as appurtenant to, or for the use of the railroads hereby mortgaged; and also it will do, execute, acknowledge, and deliver, or it will cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, transfers, and assurances for the better assuring, conveying, and confirming unto the Trustee all and singular the premises, estates, and property hereby conveyed, or intended so to be, as they or either of them shall reasonably require for better accomplishing the provisions and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured.

But nothing in this indenture expressed or implied is intended or shall be construed, to limit the right or power of the Rail-
318 way Company, hereby expressly reserved, to own, and hold or to construct, or to acquire, other lines of railroad, or branches or extensions, or interests therein, or other property free from the lien hereof.

SEC. 3. The Railway Company at an office or agency to be maintained by it in the city of New York will keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will, under such reasonable regulations as it may prescribe, register therein any coupon bonds and any bonds without coupons issued under the provisions hereof.

Upon presentation of any such registered coupon bond bearing a written power to transfer the same executed by the registered holder

for the time being, in a form approved by the Railway Company, such bond shall be transferred upon such register. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond shall be payable to any person presenting the same; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with
319 the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration shall be noted by the bond registrar on the bond.

Any registered bond without coupons may be transferred by instrument in writing executed by the registered holder, upon the surrender of such bond, and the payment of the charge for such transfer, in which case new registered bonds for an equivalent amount will be issued to the transferee or transferees, as provided in section 4 of article one hereof.

As to all bonds so registered, the person in whose name the same shall be registered shall, for all purposes of this indenture, be deemed and be regarded as the owner thereof, and thereafter, payment of, or on account of the principal of such bond, if it be a registered coupon bond, and of the principal and interest, if it be a registered bond without coupons, shall be made only to or upon the order of such registered holder thereof, but such registration may be changed as above provided. All such payments so made shall be valid and effectual to satisfy and to discharge the liability upon such bonds to the extent of the sum or sums so paid.

320 Registration of any coupon bond shall, however, not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery and shall remain payable to bearer.

SEC. 4. The Railway Company will well and truly pay and discharge upon presentation thereof for payment at or after maturity, or will acquire and will deposit with the trustee hereunder all of the outstanding old bonds of the issues above mentioned; and it will punctually pay or cause to be paid, or, upon demand of the said Trustee, will provide to its satisfaction for the payment of, the interest on all such outstanding old bonds of said issues, not acquired and deposited hereunder, as and when such interest shall become due and payable, until all bonds of said issues shall have been finally paid and discharged, or shall have been acquired and deposited hereunder, and it will not extend any of such outstanding old bonds and will not cause or suffer the same to be extended.

SEC. 5. The Railway Company will not voluntarily create or suffer to be created any lien or charge having priority to or preference over the lien of these presents upon the mortgaged premises, or any
321 part thereof, or upon the income thereof; and, within three months after the same shall accrue, it will pay, or cause to be discharged, or will make adequate provision for the satisfaction or discharge of, all lawful claims and demands of mechanics, laborers, and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof.

SEC. 6. The Railway Company from time to time will pay and discharge all taxes, assessments, and Governmental charges lawfully imposed upon the lines of railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such properties; provided, however, that nothing contained in this section shall require the Railway Company to pay any such tax, assessment, or charge, so long as the Railway Company in good faith shall contest the validity thereof.

SEC. 7. The Railway Company will not issue, negotiate, sell, or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture, and the
322 agreements in that behalf herein contained; and in issuing, selling, negotiating, or otherwise disposing of such bonds from time to time it will well and truly apply or cause to be applied the same, or the proceeds thereof, to and for the purposes herein prescribed, and to and for no other or different purpose.

ARTICLE THREE.

Remedies of trustee and bondholders.

SECTION 1. The Railway Company covenants and agrees that it will not directly or indirectly extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not directly or indirectly be a party to any arrangement therefore by purchasing or funding said coupons or claims for interest on registered bonds or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the Railway Company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding, and of all

coupons and claims for interest on such bonds, the payment of
323 which has not been so extended, the intention of this agreement being to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds.

SEC. 2. In case (1) default shall be made in the payment of any interest on any bond or bonds secured by this indenture, or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default under clause (3) hereof shall have continued for a period of six months after written notice thereof from the Trustee or from the holders of five per cent in amount of the bonds hereby secured; then, and in each and every such case, the Trustee personally, or by its agents or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interest, and franchises hereby conveyed, and each and every part thereof, and may exclude the Railway Com-
324 pany, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage, and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by their superintendents, managers, receivers, agents, and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs, or construction, may maintain and restore, and insure or keep insured, the rolling stock, tools, and machinery, and other property, buildings, bridges, and structures erected, or provided for use, in connection with said railways and other premises, and whereof they shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals, and replacements, and useful alterations, additions, betterments, and improvements thereto and thereon, as to them may seem judicious; and in such case the Trustee shall have the right to manage the mortgaged premises, and to carry on the business and exercise
325 all rights and powers of the Railway Company, either in the name of the Railway Company or otherwise, as the Trustee shall deem best; and it shall be entitled to collect and to receive all

tolls, earnings, incomes, rents, issues, and profits of the same an
every part thereof; and after deducting the expenses of operatin
said railways and other premises, and of conducting the busine
thereof, and of all repairs, maintenance, renewals, replacement
alterations, additions, betterments, and improvements, and all pa
ments which may be made for taxes, assessments, insurance, an
prior or other proper charges, upon the said premises and propert
or any part thereof, as well as just and reasonable compensation fo
its own services, and for all agents, clerks, servants, and other em
ployees by it properly engaged and employed, it shall apply th
moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not hav
become due, to the payment of the interest in default, in the order o
the maturity of the installments of such interest, with interest thereo
at the rate of four per cent per annum; such payments to be mad
ratably to the persons entitled thereto without discrimination o
preference.

326 In case the principal of the bonds hereby secured, shall hav
become due, by declaration or otherwise, first, to the paymen
of the accrued interest (with interest on the overdue installment
thereof at the rate of four per cent per annum) in the order of th
maturity of the installments, and then to the payment of the prin
cipal of all bonds hereby secured; in every instance such payment
to be made ratably to the persons entitled to such payment, withou
any discrimination or preference.

These provisions, however, not being intended in anywise to mod
ify the provisions of section 1 of this article.

SEC. 3. In case default shall be made in the payment of any inter
est on any bond or bonds hereby secured, or in the performance o
any of the covenants of the Railway Company contained in sectio
5 of article two hereof, and any such default shall have continued fo
a period of six months, then and in every case of such continuing de
fault, upon the written request of the holders of a majority in amoun
of the bonds hereby secured then outstanding, the Trustee, b
notice in writing delivered to the Railway Company, shall de
327 clare the principal of all bonds hereby secured then outstand
ing to be due and payable immediately, and upon any such
declaration the same shall become and be immediately due and pay
able, anything in this indenture or in said bonds contained to the con
trary notwithstanding. This provision, however, is subject to the con
dition, that if at any time after the principal of said bonds shall hav
been so declared due and payable, all arrears of interest upon all such
bonds, with interest at the rate of four per cent per annum on over
due installments of interest, and the expenses of the Trustee, shal

either be paid by the Railway Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Company and to the Trustee may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned because of such
328 waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railway Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies, and powers of the Trustee shall continue as though no such proceedings had been taken.

SEC. 4. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such default under clause (3) hereof shall have continued for a period of six months after written notice thereof from the Trustee or from the holders of five per cent in amount of the bonds hereby secured; then, and in each and every such case of default, provided, however, in respect of each of the two
329 cases so indicated, that such default shall have continued for six months, as above provided, the Trustee, with or without entry, personally or by attorney, in its discretion (a) may sell to the highest and best bidder all and singular the mortgaged property and premises, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of section 6 of this article, in which case such sale may be made in parcels as in said section provided: which sale or sales shall be made at public auction at such place in the city of Ogden, in the State of Utah, or at such other place and at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided; or (b) immediately upon the expiration of the six months in the two cases so

indicated, and immediately upon default in payment of principal
in the other case, may proceed to protect and enforce their rights and
the rights of bondholders under this indenture by a suit or suits
in equity or at law, whether for the specific performance of any
covenant or agreement contained herein, or in aid of the execu-
330 tion of any power herein granted, or for the foreclosure of
this indenture, or for the enforcement of any other appropriate
legal or equitable remedy as the Trustee, being advised by counsel
learned in the law, shall deem most effectual to protect and enforce
any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent in
amount of the bonds hereby secured, in case of any such continuing
default, it shall be the duty of the Trustee, upon being indemnified
as hereinafter provided, to take all needful steps for the protection
and enforcement of their rights and the rights of the holders of the
bonds hereby secured, and to exercise the powers of entry or sale
herein conferred, or both, or to take appropriate judicial proceedings
by action, suit, or otherwise, as the Trustee, being advised by counsel
learned in the law, shall deem most expedient in the interest of the
holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary not-
withstanding, the holders of seventy-five per cent in amount of the
bonds hereby secured and then outstanding, from time to time, shall
have the right to direct and to control the method and place of con-
ducting any and all proceedings for any sale of the premises
331 hereby conveyed, mortgaged, or pledged, or for the fore-
closure of this indenture, or for the appointment of a receiver
or of any other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the power
of sale hereby granted and conferred, or under or by virtue of judi-
cial proceedings, or of some judgment or decree of foreclosure and
sale, the whole of the property hereby mortgaged shall be sold in
one parcel and as an entirety, including all the rights, titles, estates,
railroads, equipment, franchises, contracts, and other real and per-
sonal property of every name and nature, unless the holders of a
majority in amount of the bonds hereby secured then outstanding
shall in writing request the Trustee to cause said premises to be sold in
parcels, in which case the sale shall be made in such parcels as may be
specified in such request or petition, or unless such sale as an entirety
is impracticable by reason of some statute or other cause, and this
provision shall bind the parties hereto and each and every of the
holders of the bonds and coupons hereby secured or intended so to be.

SEC. 7. Notice of any such sale pursuant to any provision of
332 this indenture shall state the time and place when and where
the same is to be made, and shall contain a brief general de-

ription of the property to be sold, and shall be sufficiently given if
ublished once in each week for four successive weeks prior to such
le in a newspaper published in the city of New York, in the State
f New York, and a newspaper published in the city of Ogden, in
e State of Utah, and otherwise as may be required by law.

SEC. 8. The Trustee from time to time may adjourn any sale to be
ade by it under the provisions of this indenture by announcement
t the time and place appointed for such sale or for such adjourned
le or sales, and without further notice or publication it may make
ch sale at the time and place to which the same shall be so
djourned.

SEC. 9. Upon the completion of any sale or sales under this inden-
re, the Trustee shall execute and deliver to the accepted purchaser
r purchasers a good and sufficient deed, or good and sufficient deeds,
f conveyance of the property and franchises sold. And the Trustee
nd its successors are hereby appointed the true and lawful attorneys
r attorney, irrevocable, of the Railway Company, in its name and
ead to make all necessary deeds and conveyances of property
thus sold; and for that purpose they may execute all necessary
33 acts of assignment and transfer, the Railway Company hereby
ratifying and confirming all that its said attorney or attor-
eys shall lawfully do by virtue thereof.

Any such sale or sales made under or by virtue of this indenture,
hether under the power of sale hereby granted or conferred or
nder or by virtue of judicial proceedings shall operate to divest all
ght, title, interest, claim, and demand whatsoever either in law or
n equity of the Railway Company of, in, and to the premises sold,
nd shall be a perpetual bar both at law and in equity against the
ailway Company, its successors, and assigns, and against any and
ll persons claiming or to claim the premises sold, or any part thereof,
rom, through, or under the Railway Company, its successors, or
ssigns.

The personal property and chattels conveyed, or intended to be
onveyed, by or pursuant to this indenture, shall be real estate for
ll the purposes of this indenture, and shall be held and taken to be
ixtures and appurtenances of the said railroads and part thereof,
nd are to be used and sold therewith and not separate therefrom,
except as herein otherwise provided.

34 SEC. 10. The receipt of the Trustee shall be a sufficient dis-
charge to any purchaser of the property, or any part thereof
ld as aforesaid, for the purchase money, and no such purchaser,
r his representatives, grantees, or assigns, after paying such purchase
oney and receiving such receipt, shall be bound to see to the appli-
tion of such purchase money upon or for any trust or purpose of

this indenture, or in any manner whatsoever be answerable for loss, misapplication, or nonapplication of any such purchase m or any part thereof, or be bound to inquire as to the authoriza necessity, expediency, or regularity of any such sale.

SEC. 11. In case of such sale, whether under the power of hereby granted or pursuant to judicial proceedings, the princip all the bonds hereby secured, if not previously due, immedi thereupon shall become and be due and payable, anything in bonds or in this indenture contained to the contrary notwithstand

SEC. 12. The purchase money, proceeds, and avails of any sale hereunder, whether under the power of sale hereby grante pursuant to judicial proceedings, together with any other sums w then may be held by the Trustee under any of the provisions of indenture as part of the trust estate or of the proceeds thereof, s be applied as follows:

335 First. To the payment of the costs and expenses of sale, including a reasonable compensation to the Trustee agents, attorneys, and counsel, and of all expenses, liabilities, advances made or incurred by the Trustee in managing and m taining the property hereby conveyed and to the payment of all t assessments, or liens prior to the lien of these presents, except taxes, assessments, or other superior liens to which such sale s have been made subject.

Second. To the payment of the whole amount then owing or paid upon the bonds hereby secured for principal and interest, interest at the rate of four per cent per annum on the overdue stallments of interest, and in case such proceeds shall be insuffic to pay in full the whole amount so due and unpaid upon the bonds, then to the payment of such principal and interest wit preference or priority of principal over interest or of interest principal or of any installment of interest over any other ins ment of interest ratably to the aggregate of such principal and accrued and unpaid interest, subject, however, to the provision section 1 of this article.

336 Third. To the payment of the surplus, if any, to the way Company, its successors or assigns, or to whomsoever be lawfully entitled to receive the same.

SEC. 13. In case of any sale hereunder, any purchaser, for the pose of making settlement or payment for the property purcha shall be entitled to turn in any bonds and any matured and un coupons hereby secured, in order that there may be credited as thereon the sums payable out of the net proceeds of such sal the holder of such bonds and coupons as his ratable share of net proceeds after allowing for the proportion of the total purc price required to pay the costs and expenses of the sale, or ot

ise; and such purchaser shall be credited, on account of the pur-
ase price of the property purchased, with the sums payable out of
ch net proceeds on the bonds and coupons so turned in; and, at any
ch sale any bondholders may bid for and purchase such property,
d may make payment on account thereof as aforesaid, and, upon
mpliance with the terms of sale, may hold, retain, and dispose of
ch property without further accountability therefor.

SEC. 14. The Railway Company will not at any time insist
upon or plead, or in any manner whatever claim or take the
benefit or advantage of, any stay or extension law now or at
y time hereafter in force in any locality where the mortgaged
remises, or any part thereof, may or shall be situate, nor will it
aim, take or insist on any benefit or advantage from any law now
hereafter in force providing for the valuation or appraisement of
e mortgaged premises, or any part thereof, prior to any sale or sales
ereof to be made pursuant to any provisions herein contained, or
the decree of any court of competent jurisdiction; nor after any
ch sale or sales will it claim or exercise any right under any statute
acted by any State to redeem the property so sold, or any part
ereof; and it hereby expressly waives all benefit and advantage of
y such law or laws; and it covenants that it will not hinder, delay,
impede the execution of any power herein granted and delegated
the Trustee, but that it will suffer and permit the execution of
ery such power as though no such law or laws had been made or
acted.

SEC. 15. In case the Railway Company shall make default in any
f the respects mentioned in section 3 of article three hereof, and
there shall be any judgment outstanding against the Railway
Company unsecured by bond on appeal; or in case any judicial
proceeding by any party other than the Trustee, a receiver shall
e appointed of the Railway Company, or a judgment or order be
tered for the sequestration of its property, the Trustee shall there-
on be entitled forthwith to exercise the right of entry herein con-
rred, and also any and all other rights and powers herein con-
rred, and provided to be exercised by the Trustee upon the occur-
nce and continuance of default as hereinbefore provided, and as
atter of right the Trustee shall thereupon be entitled to the ap-
intment of a receiver of the premises hereby mortgaged, and of
e earnings, income, revenue, rents, issues, or profits thereof, with
ch powers as the court making such appointment shall confer.

SEC. 16. The Railway Company, at any time before full payment
the bonds hereby secured, and whenever it shall deem it expedient
r the better protection and security of such bonds, although there
then no default entitling the Trustee to enter into possession, with
e consent of the Trustee, may surrender and deliver to the Trustee

full possession of the whole or any part of the property, premi
and interests hereby conveyed or intended so to be, for any peri
fixed or indefinite. Upon such surrender and delivery to
339 Trustee, with its consent, the Trustee shall enter into and u
the premises so surrendered and delivered and shall take
receive possession thereof for such period, fixed or indefinite, as afo
said, without prejudice, however, to their right at any time sub
quently, when entitled thereto by any provision hereof, to in
upon and to maintain such possession, though beyond the expirati
of any prescribed period. Upon any such voluntary surrender
delivery of said property and premises, or of any part thereof,
Trustee, from the time of its entry, shall work, maintain, use, m
age, control, and employ the same in accordance with the provisi
of this indenture, and shall receive and apply the income and r
enues thereof as provided in section 2 of this article.

SEC. 17. No holder of any bond or coupon hereby secured sh
have any right to institute any suit, action, or proceeding in equi
or at law for the foreclosure of this indenture, or for the executi
of any trust thereof, or for the appointment of a receiver, or for a
other remedy hereunder, unless such holder previously shall ha
given to the Trustee written notice of such default and of the co
tinuance thereof, as hereinbefore provided; nor unless, also, t
holders of twenty-five per cent in amount of the bon
340 hereby secured then outstanding shall have made written r
quest upon the Trustee, and shall have afforded to it reaso
able opportunity either to proceed to exercise the powers hereinbefo
granted or to institute such action, suit, or proceeding in its o
name; nor unless, also, they shall have offered to the Trustee adequa
security and indemnity against the costs, expenses, and liabilities
be incurred therein or thereby; and such notification, request, a
offer of indemnity are hereby declared, in every such case, at th
option of the Trustee, to be conditions precedent to the execution
the powers and trusts of this indenture and to any action or cau
of action for foreclosure or for the appointment of a receiver, or fo
any other remedy hereunder; it being understood and intended th
no one or more holders of bonds and coupons shall have any right i
any manner whatever to affect, disturb, or prejudice the lien of thi
indenture by his or their action, or to enforce any right hereunde
except in the manner herein provided, and that all proceedings
law or in equity shall be instituted, had, and maintained in th
manner herein provided, and for the equal benefit of all holders
such outstanding bonds and coupons.

341 SEC. 18. Except as herein expressly provided to the co
trary, no remedy herein conferred upon, or reserved to, th
Trustee, or to the holders of bonds hereby secured, is intended to

clusive of any other remedy, but each and every such remedy shall cumulative and shall be in addition to every other remedy given reunder or now or hereafter existing at law or in equity or by tute.

SEC. 19. No delay or omission of the Trustee, or of any holder of nds hereby secured, to exercise any right or power accruing upon y default continuing as aforesaid shall impair any such right or wer or shall be construed to be a waiver of any such default, or an quiescence therein; and every power and remedy given by this ticle to the Trustee or to the bondholders may be exercised from me to time and as often as may be deemed expedient by the Trustee by the bondholders severally and respectively.

SEC. 20. Notwithstanding any entry of any trustee or trustees, or ceiver or receivers, into possession of the properties, rights, fran-ises, and premises hereby mortgaged, or any of them, the United tates shall be entitled to have and enjoy the provisions embodied in rticle sixth of the settlement agreement between the United States of America, the Central Pacific Railroad Company, and 12 Messrs. Speyer & Company, dated February 1, 1899, herein-before referred to, whereby it is provided as follows:

"Until the notes to be given by the Central Pacific Railroad Com-any under article second of this agreement shall have been paid in ill, principal and interest, all amounts due to the Central Pacific ailroad Company, or its successor company, from the United States ubsequent to the date of this agreement in respect of services to the nited States, upon the bond-aided lines from a point about five iles west of Ogden to Sacramento and from Sacramento to San ose, above referred to, shall, as audited and allowed, be applied by he United States pro rata on account of the amounts remaining npaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to he payment of accrued interest thereon and thereafter on account of he principal thereof."

SEC. 21. The Trustee under this mortgage shall, in case of default, hich, under the provisions hereof, shall authorize its entry into pos-ession or sale of the properties hereby mortgaged, be entitled, for the enefit of the holders of bonds issued hereunder and secured hereby, to enforce the lien in favor of the United States reserved in the 13 acts of Congress mentioned on that behalf in the said settle-ment agreement to secure the repayment to the United States f the indebtedness to it of the Central Pacific Railroad Company ferred to in said settlement agreement when such lien shall have sted in and become transferred to the said Trustee as provided in rticle fifth of said settlement agreement, as follows:

"When the Central Pacific Railroad Company or its succ
company shall have delivered to the Treasurer of the United S
said refunding bonds secured as aforesaid, then the lien in fav
the United States, above referred to as then existing, shall imm
ately vest in, and it is hereby, upon the happening of that e
transferred to the Trustee of the mortgage securing such refun
bonds as security for the entire issue of such bonds."

ARTICLE FOUR.

Immunity of officers, directors, and stockholders.

No recourse under or upon any obligation, covenant, or agree
of this indenture, or of any bond or coupon hereby secured, sha
had against any incorporator, stockholder, officer, or director of
Railway Company, or of any successor corporation, either
344 rectly or through the Railway Company, by the enforce
of any assessment or by any legal or equitable proceedin
virtue of any statute or otherwise; it being expressly agreed
understood that this mortgage and the obligations hereby sec
are solely corporate obligations, and that no personal liability w
ever shall attach to or be incurred by the incorporators, stockhol
officers, or directors of the Railway Company, or of any succe
corporation, or any of them, under or by reason of any of the obl
tions, covenants, or agreements contained in this indenture, o
any of the bonds or coupons hereby secured or implied therefr
and that any and all personal liability of every name and nat
either in common law or in equity, or by statute or constitution
every such incorporator, stockholder, officer, or director is he
expressly waived as a condition of and consideration for the ex
tion and issue of this mortgage and such bonds and coupons.

ARTICLE FIVE.

Bondholders' acts, holdings, and apparent authority.

SECTION 1. Any request or other instrument required by this
denture to be signed and executed by bondholders may be in
number of concurrent instruments of similar tenor and may
signed or executed by such bondholders in person or
345 agent appointed in writing. Proof of the execution of
such request or other instrument, or of a writing appoin
any such agent, and of the holding by any person of coupon b
transferable by delivery, shall be sufficient for any purpose of
indenture if made in the following manner:

SEC. 2. The fact and date of the execution by any person of any
ch request or other instrument or writing may be proved by the
rtificate of any notary public or other officer authorized to take ac-
nowledgments of deed to be recorded in New York that the person
gning such request or other instrument acknowledged to him the
xecution thereof or by an affidavit of a witness of such execution.

SEC. 3. The amount of coupon bonds transferable by delivery held
y any person executing any such request or other instrument as a
ondholder, and the amounts and issue numbers of the bonds held
y such persons, and the date of his holding the same, may be proved
y a certificate executed by any trust company, bank, bankers, or
ther depositary (wherever situated), if such certificate shall be
eemed by the Trustee to be satisfactory, showing that at the date
therein mentioned such person had on deposit with such deposi-
46 tary the bonds therein described. The ownership of registered
coupon bonds, or of registered bonds without coupons, shall
e proved by the registers of such bonds as provided in section 3 of
rticle two hereof. Such proof shall be conclusive in favor of the
rustee with regard to any action by them taken under such request
r other instrument.

SEC. 4. The bearer of any coupon bond hereby secured, which at
he time shall not be registered as hereinbefore authorized, and the
earer of any coupon for interest on any such bond, whether the
me shall be registered or not, may be deemed and treated by the
ailway Company, and the Trustee, as the absolute owner of such
ond or coupon, as the case may be, for the purpose of receiving
ayment thereof, and for all other purposes, and no notice to the
ontrary shall affect the Railway Company or the Trustee.

ARTICLE SIX

Releases of mortgaged property.

SEC. 1. Upon the written request of the Railway Company, ap-
roved by resolution of its board of directors or executive committee,
he Trustee, from time to time, while the Railway Company is in
possession of the mortgaged premises, but subject to the con-
47 ditions and limitations in this section prescribed, and not
otherwise, shall release from the lien and operation of this
denture any part of the mortgaged premises then subject thereto;
rovided (1) that no part of the lines of track or of the rights of way
all be released, unless the same shall no longer be of use in the op-
ation of any of the mortgaged lines of railway, and no part of
ch lines of track or rights of way shall be so released if thereby
he continuity of the lines of railway of the Railway Company be-

tween the several termini above mentioned shall be broken; and
that no part of the mortgaged railways or other property shall
released hereunder, unless at the time of such release it shall no lon
be necessary or expedient to retain the same for the operation, ma
tenance, or use of such lines of railway or for use in the busines
the Railway Company.

No such release shall be made unless the Railway Company sh
have sold, or shall have contracted to exchange for other prope
or to sell, the property so to be released; and, unless some other d
position thereof be required by some prior mortgage, the proce
of any and all such sales, and all moneys received as compensati
for any property subject to this indenture taken by exerc
348 of the power of eminent domain, shall be set apart and h
in trust and applied, with the approval of the said Trustee,
the purchase of other property, real or personal, or in betterme
of, or additions to, or rolling stock for any part of the mortgag
premises. Any new property acquired by the Railway Company
take the place of any property released hereunder, ipso facto, sh
become and be subject to the lien of this indenture as fully as
specifically mortgaged hereby; but, if requested by the said Trust
the Railway Company will convey the same to the Trustee, by appr
priate deeds, upon the trusts and for the purposes of this indentur

SEC. 2. The Railway Company, while in possession of the mo
gaged premises, shall also have full power, in its discretion, fr
time to time to dispose of any portion of the machinery, equipme
and implements at any time held, subject to the lien hereof, whi
may have become unfit for such use, replacing the same by new m
chinery, equipment, or implements, which shall become subject
this indenture.

SEC. 3. In no event shall any purchaser or purchasers of any pro
erty sold or disposed of under any provision of this article be requir
to see to the application of the purchase money.

349 SEC. 4. In case the mortgaged premises shall be in the p
session of a receiver lawfully appointed, the powers in and
this article conferred upon the Railway Company may be exerci
by such receiver, with the approval of the Trustee; and if the Trus
shall be in possession of the mortgaged premises under a
provision of this indenture, then all the powers by this article co
ferred upon the Railway Company may be exercised by the Trus
in its discretion.

SEC. 5. The Railway Company from time to time may ma
changes or alterations in, or substitutions of, any leases, or tracka
rights subject to this indenture; but in any such event any modifi
altered, or substituted leases or trackage rights forthwith sh

come bound by, and be subject to, the terms of this indenture in e same manner as those previously existing.

SEC. 6. A certificate signed by the president, a vice president, or e chief engineer of the Railway Company may be received by the id trustee as conclusive evidence of any of the facts mentioned in is article, and shall be full warrant to the said Trustee for any action on the faith thereof; but the said Trustee, in its discre- tion, may require such further and additional evidence as to it may seem reasonable.

ARTICLE SEVEN.

Concerning the trustee.

SECTION 1. The Trustee shall not be answerable for the default or isconduct of any agent or attorney appointed by it in pursuance reof if such agent or attorney shall have been selected with rea- nable care; or for anything whatever, in connection with this trust, cept willful misconduct or gross negligence. The Trustee shall t be personally liable for any debts contracted by it, or for dam- ges to persons or property carried or injured, or for salaries or non- lfillment of contracts, during any period wherein the Trustee shall anage the trust property or premises upon entry or voluntary rrender as aforesaid. The Trustee shall not be under any obliga- on to take any action towards the execution or enforcement of the usts hereby created which, in its opinion, shall be likely to involve it expense or liability, unless one or more of the holders of the bonds reby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability, nor l shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the lders of at least five per cent in amount of the bonds hereby secured en outstanding, or to take any action in respect of any default less requested to take action in respect thereof by a writing signed the holders of not less than twenty-five per cent in amount of the nds hereby secured then outstanding, and tendered reasonable in- mnity as aforesaid, anything herein contained to the contrary not- ithstanding; but neither any such notice or request, nor this provi- on therefor, shall effect any discretion herein given to the Trustee determine whether or not it shall take action in respect of such fault, or to take action without such request. The Trustee shall t be responsible for the recording of this indenture and shall not required to file the same as a chattel mortgage.

The Railway Company covenants that it will cause record of this strument as a mortgage of real estate to be made with all con-

venient speed; on request of the Railway Company the Trustee he
under may certify and deliver bonds hereunder to the amounts a
within the limits hereinbefore prescribed in advance of registrati
or record of this indenture.

352 The Trustee shall be entitled to reasonable compensati
for all services rendered by it in the execution of the tru
hereby created.

SEC. 2. The Trustee or any Trustee hereafter appointed may resig
and be discharged of the trusts created by this indenture by givi
notice thereof to the Railway Company and to the bondholders
publication, at least twice a week, for four successive weeks, in
newspaper at that time published in the city of New York, in t
State of New York, and one newspaper published in the city
Ogden in the State of Utah, and by due execution of the conveya
herein required.

The Trustee may be removed at any time by an instrument
writing under the hands of three-quarters in amount of the hold
of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the said Central Trust Company
New York, or any Trustee hereafter appointed, shall resign or be
moved or otherwise become incapable of acting, a successor, or s
cessors, may be appointed by the holders of a majority in amo
of the bonds hereby secured then outstanding, by an instrument
concurrent instruments signed by such bondholders or their
torneys in fact duly authorized; provided, nevertheless, a

353 it is hereby agreed and declared, that in case at any ti
there shall be a vacancy in the office of Trustee hereund
the Railway Company by an instrument executed by order
its board of directors, may appoint a Trustee to fill such vacan
until a new Trustee shall be appointed by the bondholders as here
authorized. The Railway Company shall thereupon publish noti
of such appointment once a week for six successive weeks in
newspaper published in the city of New York, in the State of N
York, and a newspaper published in the city of Ogden, in the St
of Utah, and any new Trustee so appointed by the Railway Compa
shall immediately and without further act be superseded by
Trustee appointed in the manner above provided by the holders
a majority in amount of the bonds hereby secured prior to the
piration of six months after such publication of notice. Every su
Trustee appointed in place of the Central Trust Company of N
York, or its successor in the trust, shall always be a trust compa
in good standing, doing business in the city of New York, and ha
ing a capital and surplus aggregating at least $2,000,000, if there

ich a Trust Company willing and able to accept the trust upon easonable or customary terms.

Any such new Trustee appointed hereunder shall execute, 54 acknowledge, and deliver to the Trustee last in office and also to the Railway Company an instrument accepting such appointment hereunder, and thereupon such new Trustee without any urther act, deed, or conveyance shall become vested with all the states, properties, rights, powers, and trusts of its predecessor in he trust hereunder with like effect as if originally named as Trustee erein; but the Trustee ceasing to act shall, nevertheless, on the ritten request of the new Trustee, execute and deliver an instruent transferring to such new Trustee, upon the trusts herein exressed, all the estates, properties, rights, powers, and trusts of the rustee so resigning or removed, and shall duly assign, transfer, and eliver any property and moneys held by such Trustee to the new rustee so appointed in its place.

Should any deed, conveyance, or instrument in writing from the ailway Company be required by any new trustee, for more fully nd certainly vesting in and confirming to such new trustees such state, rights, powers and duties, any and all such deeds, conveynces, and instruments in writing shall, on request, be made, executed, cknowledged, and delivered by it.

55

ARTICLE EIGHT.

The Railway Company will create a sinking fund, to be specially pplied to the redemption and payment on or before their maturity f the bonds to be issued under and secured by this indenture, by tting apart out of the net income derived by it from the lines of ilroad herein mortgaged the sum of twenty-five thousand dollars the year 1900 and in each year thereafter, until all of said bonds, rincipal and interest, shall be redeemed or paid in trust to be used redeem said bonds as follows: Notice shall be published in one aily paper in the city of New York and one daily paper in the city f San Francisco for such length of time as said board of directors ay order, not less than four weeks, that bonds will be redeemed erewith, and inviting bids for the surrender of such bonds at rices to be named by the bidders; and upon reception of said bids e lowest bids shall be accepted and bonds redeemed to the extent the money in the sinking fund, and all bonds so redeemed shall forthwith canceled, and the Trustee or Trustees hereunder notified the party of the first part of the distinguishing numbers of the nds so redeemed and canceled.

356 ARTICLE NINE.

Railway company's possession till default.

SECTION 1. Until some default shall have been made in the due a punctual payment of the interest, or of the principal of the bo hereby secured, or some part of such interest or principal, or in t due and punctual performance and observance of some covenant condition hereof obligatory upon the Railway Company, and u such default shall have continued beyond the period of grace, if a herein provided in respect thereof, the Railway Company, its s cessors and assigns, shall be suffered and permitted to retain act possession of all the premises hereby mortgaged, and to mana operate, and use the same and every part thereof, with the rig and franchises appertaining thereto, and to collect, receive, t use, and enjoy the tolls, earnings, income, rents, issues, and pro thereof.

SEC. 2. If, when the bonds hereby secured shall have become d and payable, the Railway Company shall well and truly pay, shall cause to be paid, the whole amount of the principal mon and the interest due upon all of the bonds and the coupons for int

est thereon, hereby secured, and then outstanding, or sh

357 provide for such payment by depositing with the Trus hereunder for the payment of such bonds and coupons entire amount due thereon for principal and interest, then and in t case all property, rights, and interests hereby conveyed shall re to the Railway Company, and the estate, right, title, and inte of the Trustee or Trustees shall thereupon cease, determine, become void, and the Trustee or Trustees in such case, on dem of the Railway Company and at its costs and expense, shall e satisfaction of this indenture upon the record.

ARTICLE TEN.

Sundry provisions.

SECTION 1. All the covenants, stipulations, promises, and ag ments in this indenture contained by or in behalf of the Rail Company shall bind its successors and assigns whether so expre or not.

SEC. 2. Nothing contained in this indenture or in any bond her secured shall prevent any consolidation or merger of the Rail Company with any other corporation, or any conveyance and tr fer, subject to the continuing lien of this indenture and to all provisions thereof, of all the mortgaged premises as an entirety railroad corporation at that time existing under and by vi

of the laws of any State or States or the United States, and entitled to acquire the same; provided, however, that such consolidation, merger, or sale shall not impair the lien and security of this indenture or any of the rights or powers of the Trustee or of the bondholders hereunder, and that upon any such consolidation, merger, or sale, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture shall be assumed by the corporation formed by such consolidation or merger or purchasing as aforesaid.

SEC. 3. In case the Railway Company, pursuant to section 2 of this article, shall be consolidated or merged with any other corporation or shall sell, convey, and transfer, subject to this indenture, all the mortgaged premises as an entirety as aforesaid, the successor corporation formed by such consolidation or into which the Railway Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid—upon executing, and causing to be recorded, an indenture with the Trustee, satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture—shall succeed to and be substituted for, the Railway Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation thereupon may cause to be signed and may issue, either in its own name or in the name of the Central Pacific Railway Company, any or all of such bonds which shall not theretofore have been signed by the Railway Company and certified by the Trustee; and upon the order of said successor corporation in lieu of the Railway Company, and subject to all the terms, conditions, and restrictions herein prescribed, the Trustee shall certify and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Railway Company to the Trustee for certification, and any of such bonds which such successor corporation shall thereafter cause to be signed and delivered to the said Trustee for that purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture.

SEC. 4. For every purpose of this indenture, including the execution, issue, and use of any and all bonds hereby secured, the terms "Railway Company" and "the Central Pacific Railway Company" include and mean not only the party of the first part hereto, but also any such successor corporation. Every such successor corporation shall possess and from time to time may exercise

each and every right and power hereunder of the Central Paci
Railway Company in its name or otherwise.

SEC. 5. Any act or proceeding by any provision of this indentu
required to be done or performed by any board or officer of the Ra
way Company shall and may be done and performed with like fo
and effect by the like board or officer of any railroad corporation th
shall at the time be such lawful sole successor of the Railway Co
pany.

SEC. 6. Except when otherwise indicated the words "the Truste
or any other equivalent term as used in this indenture shall be h
and construed to mean the Trustee or Trustees for the time bei
whether original or successor, and the words "Trustee," "bon
"bondholder," and "holder" shall include the plural as well as t
singular number, and the term "majority" shall signify "major
in amount."

361 The Central Trust Company of New York, Trustee, pa
hereto of the second part, hereby accepts the trusts in this
denture declared and provided and agrees to perform the same up
the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture, the same m
be simultaneously executed in counterparts, each of which so e
cuted shall be deemed to be an original, and such counterparts sh
together constitute but one and the same instrument.

In witness whereof the Central Pacific Railway Company,
party hereto of the first part, has caused this indenture to be sig
and acknowledged or proved by its president and its corporate
to be hereunto affixed, and the same to be attested by the signat
of its secretary, and the Central Trust Company of New York,
party of the second part, has caused its corporate seal to be here
affixed and attested by its secretary and these presents to be sig
and acknowledged or proved by its president or vice president
day and year first above written.

362 CENTRAL PACIFIC RAILWAY COMPAN
By THOMAS MARSHALL, *President.*

Signed, sealed, and delivered in the presence of Jonathan C. R
[Corporate seal of the Central Pacific Railway Company.]
Attest:
DAVID B. HEMPSTEAD, *Secretary.*
CENTRAL TRUST COMPANY OF NEW YOR
By E. FRANCIS HYDE, *2d Vice President.*

Signed, sealed, and delivered in the presence of J. R. Young.
[Corporate seal of the Central Trust Company of New York.]
Attest:
B. G. MITCHELL, *Secreta*

63 STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, a notary public in and for the county of Salt Lake, State of Utah, duly appointed and qualified, personally appeared the within-named Thomas Marshall, president of the Central Pacific Railway Company, and David B. Hempstead, secretary of the Central Pacific Railway Company, personally known to me to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said company; and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Central Pacific Railway Company, free and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal as such notary public at my office in said county of Salt Lake, and State of Utah, the day and year last above written.

[SEAL.] LULA GEOGHEGAN,
Notary Public.

64 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp canceled.]

STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, personally appeared before me Thomas Marshall and David B. Hempstead, who, being by me, respectively, duly sworn, each for himself says that the said Thomas Marshall is the president of the Central Pacific Railway Company and the said David B. Hempstead is the secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said president and secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said Marshall and Hempstead, respectively, acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal in said county of Salt Lake, State of Utah, on this 1st day of August, A. D. 1899.

[SEAL.] LULA GEOGHEGAN,
Notary Public.

65 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp canceled.]

STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geogh a notary public in and for the county of Salt Lake, State of duly commissioned and qualified, personally appeared Thomas shall, known to me to be the president, and David B. Hemp known to me to be the secretary of the Central Pacific Railway pany, the corporation described in and which executed the w annexed instrument and acknowledged to me that said corpo executed the same.

In witness whereof I have hereunto set my hand and affixe official seal at my office in the city and county of Salt Lake, St Utah, the day and year in this certificate first above written.

[SEAL.] LULA GEOGHEGAN,
Notary Pub

366 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK, *County of New York, ss:*

On this eighth day of August, A. D. 1899, personally appe before me, George H. Corey, a notary public in and for the co of New York, State of New York, duly appointed and qual and a commissioner of deeds for the State of New York, appointed under the laws of the State of Utah to take acknowl ments of deeds, E. Francis Hyde and Benjamin G. Mitchell, being by me respectively duly sworn, each for himself says tha the said E. Francis Hyde, is the 2nd vice president of the Ce Trust Company of New York, and the said Benjamin G. Mitch the secretary of said company, one of the corporations named in foregoing instrument, and that said instrument was signed in be of said corporation by said 2nd vice president and secretary, res tively, under and in pursuance of a resolution of its board of trus and the said Hyde and Mitchell, respectively, acknowledged to that said corporation executed the same.

367 In witness whereof I have hereunto set my hand and aff my official seals in said county of New York, State of N York, on this eighth day of August, A. D. 1899.

[L. S.] GEO. H. COREY *Notary Publi*
My commission as notary public expires March 30, 1901.

[L. S.] GEO. H. COREY,
Commissioner of Deeds of the State of Utah in and for the State of New York
My commission as commissioner of deeds expires January 5, 19
[10-cent int. rev. stamp cancelled.]

TATE OF NEW YORK, *County of New York*, *ss:*

I, William Sohmer, clerk of the county of New York, and also
erk of the supreme court for the said county, the same being a court
f record, do hereby certify that Geo. H. Corey, whose name is sub-
cribed to the certificate of the proof or acknowledgment of the an-
exed instrument and thereon written, was, at the time of taking
such proof or acknowledgment, a notary public in and for the
68 county of New York, dwelling in the said county, commissioned
and sworn and duly authorized to take the same. And, further,
hat I am well acquainted with the handwriting of such notary, and
erily believe that the signature to the said certificate of proof or
cknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the
eal of the said court and county the 9th day of August, 1899.

[L. S.] WM. SOHMER, *Clerk.*

[10-cent int. rev. stamp cancelled.]

TATE OF NEW YORK,
County of New York, *ss:*

On this eighth day of August, A. D. 1899, before me, George H.
orey, a notary public in and for the county of New York, State of
ew York, duly appointed and qualified, and a commissioner of
eeds of the State of New York, duly appointed under the laws of the
tate of Nevada to take acknowledgments of deeds, personally ap-
eared the within-named E. Francis Hyde, 2nd vice president of the
Central Trust Company of New York, and Benjamin G.
69 Mitchell, secretary of the Central Trust Company of New
York, personally known to me to be the said officers of the
aid corporation, respectively, and the individuals described in and
who executed the within instrument as such officers of said company,
nd they each, severally and personally, then and there, acknowl-
dged to me that they executed the said instrument as the free act
nd deed of the said Central Trust Company of New York, freely
nd voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my
official seals as such notary public and commissioner of deeds, at my
office in said county of New York and State of New York, the day
nd year last above written.

[L. S.] GEO. H. COREY, *Notary Public.*

My commission as notary public expires March 30, 1901.

[L. S.] GEO. H. COREY,
Commissioner of Deeds of the State of Nevada
in and for the State of New York.

My commission as commissioner of deeds expires January 23, 1900.

[10-cent int. rev. stamp cancelled.]

370 STATE OF NEW YORK,
County of New York, ss.:

I, William Sohmer, clerk of the county of New York, and clerk of the supreme court for the said county, the same bein court of record, do hereby certify that Geo. H. Corey, whose n is subscribed to the certificate of the proof or acknowledgment of annexed instrument, and thereon written, was, at the time of tak such proof or acknowledgment, a notary public in and for the cou of New York, dwelling in the said county, commissioned and sw and duly authorized to take the same. And further, that I am acquainted with the handwriting of such notary and verily beli that the signature to the said certificate of proof or acknowledgm is genuine.

In testimony whereof, I have hereunto set my hand and affixed seal of the said court and county the 9th day of August, 1899.

[L. S.] WM. SOHMER, *Clerk*

[10-cent int. rev. stamp, cancelled.]

371 STATE OF NEW YORK,
County of New York, ss.:

On this eighth day of August, A. D. 1899, before me, George Corey, a notary public in and for the county of New York, State New York, duly commissioned and qualified, and a commissioner deeds for the State of New York, duly appointed under the la of the State of California to take acknowledgments of deeds, p sonally appeared E. Francis Hyde, known to me to be the v vice president, and Benjamin G. Mitchell, known to me to be t secretary of the Central Trust Company of New York, the cor ration described in and which executed the within annexed inst ment, and acknowledged to me that said corporation executed t same.

In witness whereof, I have hereunto set my hand and affixed m official seals at my office in the city and county of New York, St of New York, the day and year in this certificate first above writt

GEO. H. COREY,

[L. S.] *Notary Public*

My commission as notary public expires March 30, 1901.

372 GEO. H. COREY,
Commissioner of Deeds of the State of California

[L. S.] *in and for the State of New York*

My commission as commissioner of deeds expires October 28, 18

[10-cent int. rev. stamp, cancelled.]

STATE OF NEW YORK,
County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknewledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

3873 In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. S.] WM. SOHMER, *Clerk.*

[10-cent int. rev. stamp, cancelled.]

3874 DEFENDANTS' EXHIBIT (MARSHALL) No. 28, APRIL 15, 1915.

The Central Pacific Railway Company to the United States Trust Company of New York, Trustee.

Three and one-half per cent mortgage. Dated August 1, 1899.

[$12,500 internal-revenue stamps affixed and cancelled.]

An indenture made the first day of August, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railway Company, a corporation of the State of Utah (hereinafter called the "Railway Company"), party of the first part, and the United States Trust Company of New York, a corporation of the State of New York (hereinafter called the "Trustee"), party of the second part:

Whereas the Railway Company, party of the first part, is a corporation created by, and existing under and by virtue of, the
3875 laws of the State of Utah and holding franchises under acts of Congress of the United States, and now owns lines of railroad extending from a point about five miles west of Ogden, in the State of Utah, by way of Sacramento, in the State of California, to San Jose, in said last-mentioned State, and from Niles to Oakland, and Lathrop to Goshen, all in the State of California, and from Roseville, in the State of California, to the California and Oregon State boundary, besides equipment and terminals therefor and used in connection therewith; and

Whereas the said Railway Company is the owner of large amou
of land granted by the United States to the Central Pacific Railro
Company of California by an act of Congress approved on the fi
day of July, 1862, entitled "An act to aid in the construction o
railroad and telegraph line from the Missouri River to the Paci
Ocean, and to secure to the Government the use of the same f
postal, military, and other purposes", and an act amendatory there
approved on the second day of July, 1864, and large amounts of la
granted to the California and Oregon Railroad Company by an act
Congress approved on the twenty-fifth day of July, 1866, entitl
"An act granting lands to aid in the construction of a railro
376 and telegraph line from the Central Pacific Railroad in Ca
fornia to Portland in Oregon"; and

Whereas certain portions of the said lines of railroad and said lan
owned by the said Railway Company are subject to the liens of certa
mortgages severally and respectively securing bonds now outstan
ing (hereinafter called "outstanding old bonds") for the sever
aggregate principal sums following, to wit:

377 Series.	Amount.	Date of maturity.
Series A	$2,995,000	Matured.
B	1,000	Matured.
	999,000	December 1, 189
C	4,000	Matured.
	996,000	December 1, 189
D	4,000	Matured.
	1,379,000	December 1, 189
Total	6,378,000	

(b) The Central Pacific Railroad Company of California fir
mortgage bonds secured by mortgage dated January 1, 1867, of t
several series and for the amounts and now matured or maturing
the dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of maturity.
Series E	$5,000	Matured.
	3,990,000	June 1, 1900.
F	9,000	Matured.
	3,990,000	June 1, 1901.
G	13,000	Matured.
	3,985,000	June 1, 1901.
378 H	6,000	Matured.
	3,993,000	June 1, 1901.
I	13,000	Matured.
	3,498,000	June 1, 1901.
Total	19,502,000	

(c) The Western Pacific Railroad Company first-mortgage bonds secured by mortgage dated July 1, 1869, of the several series and for the amounts and which matured at the date hereinafter mentioned, viz:

Series A for	$1,970,000	matured July 1, 1899.
B	765,000	matured July 1, 1899.
Total	2,735,000	

(d) The California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first-mortgage bonds secured by mortgages dated January 1, 1868, and January 1, 1872, respectively, of the several series and for the amounts and maturing at the date hereinafter mentioned, viz:

Series A for	$5,982,000,	maturing January 1, 1918.
B for	4,358,000,	maturing January 1, 1918.
Total	10,340,000	

(e) The Central Pacific Railroad Company first-mortgage bonds (San Joaquin Valley Division) secured by mortgage dated October 1, 1870, for the amount of $6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent bonds secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds to the amount of $2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds secured by mortgage dated October 1, 1870, to the amount of $2,134,000 and maturing October 1, 1900.

And whereas heretofore and under date of February 1st, 1899, the said Central Pacific Railroad Company, in pursuance of a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899, entered into under the provisions of an act of Congress approved July 7th, 1898, executed its twenty promissory notes in favor of the United States of America for $2,940,635.78 each, maturing on or before the expiration of each successive six months from the date thereof; and

Whereas the said Railway Company is about to issue its three and one-half per cent mortgage gold bonds to an amount which shall not in any event exceed in the aggregate the principal sum of twenty-five million dollars at any one time outstanding, and which shall bear interest at a rate not exceeding three and one-half per cent per annum payable semiannually, and to secure the same by mortgage upon the lines of railroad, equipment,

and terminals hereinafter described, with their appurtenances, a upon the lands and notes hereinafter referred to, and by deposit wi the Trustee hereof of the sinking fund securities and moneys here after mentioned; and

Whereas the issue of the said three and one-half per cent mortg gold bonds and the execution of said mortgage to secure the same h been duly authorized by the board of directors of said Railw Company, as per resolutions, copies of which are as follows:

"Resolved, That, for the purpose of readjusting the indebtedne secured by liens upon the properties of the company, and for oth corporate purposes, this company issue its bonds, to be known a 'three and one-half per cent mortgage gold bonds', to an amou which shall not in any event exceed in the aggregate the princip sum of $25,000,000 at any one time outstanding. Such bon
381 shall bear date August 1st, 1899, in the case of coupon bond and of the time of their issue in the case of registered bond shall become and be payable on the first day of August, 1929, i gold coin of the United States of the present standard of weight a fineness, and shall bear interest at a rate not exceeding three a one-half per centum per annum, payable semiannually in like go coin on the first day of June and the first day of December in ea year. Said bonds shall be issued either as coupon or register bonds. The coupon bonds shall be for the principal sum of o thousand dollars or five hundred dollars each, and shall give to t holders the right to register the principal thereof, and also the rig to convert the same into fully registered bonds. The register bonds without coupons shall be each for the principal sum of o thousand dollars, or such multiples thereof as the company, by res lution of its board of directors, may from time to time prescri and may be issued either originally as registered bonds or in exchan for coupon bonds for an equivalent sum. Such bonds, whether coup bonds or registered bonds, shall be issued as shall be determined b the action of the board of directors or the executive committee of th company at such times and to such amounts as the purpo
382 for which they are to be issued may require. When issu such bonds shall be signed by the president or any vice pre dent of the company, and the corporate seal shall be thereu affixed and attested by the secretary or any assistant secretary. I case the officers who shall have signed and sealed any such bon shall cease to be officers of the company before the bonds so signe and sealed shall have been actually issued, certified, and deliver such bonds may nevertheless be adopted and used by the compan and may be issued, certified, and delivered as though the perso who signed and sealed such bonds had not ceased to be officers of th company. There shall be attached to the coupon bonds coupons f

he interest to grow due thereon, authenticated by the engraved ignature of the treasurer or of any future treasurer of the company; nd the company may adopt and use for that purpose the engraved ignature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such reasurer when such bonds shall have been actually issued, certified, nd delivered.

"Resolved, further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this com-
83 pany execute a mortgage or deed of trust to the United States Trust Company of New York, a corporation of the State of New York, as Trustee, covering the properties of the company described in the printed form of mortgage now submitted to this board.

"Resolved, further, That the said printed form of mortgage now ubmitted to the board and the forms of bonds embodied therein be, nd the same are hereby, approved, and that the president or any vice resident, and the secretary or any assistant secretary, be, and they re hereby, authorized to execute the same on behalf of the company nder its corporate seal."

And whereas the said resolutions of the board of directors of the Railway Company were thereafter submitted to a meeting of the tockholders of the Railway Company duly called and held, and such ction of the said board of directors was duly ratified and confirmed y resolution, a copy of which is as follows:

"Resolved, That the action of the board of directors in authorizing he issue of the three and one-half per cent mortgage gold bonds of he company, and the execution of the three and one-half per cent mortgage to secure the same, as set forth in the resolutions of
84 the board of directors now submitted to this meeting, be, and the same is hereby, in all respects ratified, approved, and confirmed."

And whereas the form of the coupon bonds and of the coupons to e attached thereto, and of the registered bonds, and of the Trustee's ertificate to be signed by the United States Trust Company of New ork, severally and respectively are to be substantially as follows, o wit:

[Form of coupon three and one-half per cent mortgage bonds.]

No. $1,000 (or $500).

United States of America. The Central Pacific Railway Company three and one-half per cent mortgage gold bond.

Know all men by these presents that the Central Pacific Railway Company, a corporation, hereinafter called the "Railway Company",

for value received, promises to pay to the bearer, or, if registe
to the registered holder, of this bond, on the first day of Aug
nineteen hundred and twenty-nine, at the office or agency of the R
way Company in the city of New York, one thousand (or five h
dred) dollars, gold coin of the United States of the present st
ard of weight and fineness, and to pay interest thereon at
385 rate of three and one-half per cent per annum from Aug
1st, 1899, payable semiannually at the said office or agenc
like gold coin, on the first day of June and the first day of Decem
in each year, but only upon presentation and surrender, as they s
erally mature, of the coupons therefor annexed hereto.

Both the principal and interest of this bond are payable with
deduction for any tax or taxes which the Railway Company may
required to pay, or to retain therefrom, under any present or fut
law of the United States, or of any State or county or municipal
therein.

This bond is one of a series of three and one-half per cent mo
gage gold bonds (coupon and registered) of the Railway Compa
issued and to be issued for an aggregate principal sum not exceed
twenty-five million dollars at any one time outstanding, under a
in pursuance of, and all equally secured by, a mortgage or deed
trust, dated August 1st, 1899, executed by the Railway Company
the United States Trust Company of New York, as trustee, of
the property and franchises of the Railway Company conveyed
trust by said mortgage or deed of trust, to which reference
386 hereby made for a statement of the property and franchi
mortgaged, the nature and extent of the security, the rig
of the holders of said bonds under the same, and the terms and co
ditions upon which said bonds are issued and secured.

This bond shall pass by delivery, unless registered in the owne
name on the books of the Railway Company at its office or agen
in the city of New York, such registry being noted on the bond
the bond registrar of the Railway Company. After such registrati
no transfer shall be valid unless made on the company's books by t
registered owner and similarly noted on the bond, but the same ma
be discharged from registry by being transferred to bearer, a
thereafter transferability by delivery shall be restored, but this bo
may again, from time to time, be registered or transferred to bear
as before. Such registration, however, shall not affect the negot
ability of the coupons, which shall continue to be transferable b
delivery merely.

The holder may also, at his option, surrender for cancellation th
bond, with the coupons for future interest thereon, in exchange for
registered bond without coupons, as provided in said mortgage
deed of trust.

This bond shall not become obligatory for any purpose
37 until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage or deed of trust. In witness whereof the Central Pacific Railway Company has used these presents to be signed by its president or one of its vice presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto, this first day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

[L. S.] By

Vice President.

Attest:

Assistant Secretary.

8 [Form of coupon.]

o. $17.50 (or $8.75).

On the first day of the Central Pacific Railway Company ill pay to bearer, at its office or agency in the city of New York, venteen 50/100 (or eight 75/100) dollars, United States gold coin the present standard of weight and fineness, without deduction for xes, being six months' interest then due on its three and one-half r cent mortgage gold bond No.

Treasurer.

[Form of registered three and one-half per cent mortgage bond.]

o. $.

nited States of America. The Central Pacific Railway Company three and one-half per cent mortgage gold bond.

Know all men by these presents that the Central Pacific Railway ompany, a corporation, hereinafter called the "Railway Company," r value received, promises to pay to , or registered assigns, e sum of dollars gold coin of the United States of the present standard of weight and fineness, on the first day of August, 9 nineteen hundred and twenty-nine, at the office or agency of the Railway Company in the city of New York, and to pay terest thereon at the rate of three and one-half per cent. per annum om the first day of June or December next preceding the date

hereof, payable semiannually at said office or agency in like gold c
on the first day of June and the first day of December in each y
until the payment of said principal sum.

Both the principal and interest of this bond are payable without
duction for any tax or taxes which the Railway Company may
required to pay, or to retain therefrom, under any present or fu
law of the United States, or of any State or county or municipal
therein.

This bond is one of a series of three and one-half per cent mo
gage gold bonds (coupon and registered) of the Railway Compa
issued and to be issued for an aggregate principal sum not exceed
twenty-five million dollars at any one time outstanding, under and
pursuance of, and all equally secured by, a mortgage or deed of tr
dated August 1st, 1899, executed by the Railway Company to t
United States Trust Company of New York, as trustee, of all t
property and franchises of the Railway Company conveyed
390 trust in said mortgage or deed of trust, to which reference
hereby made for a statement of the property and franchi
mortgaged, the nature and extent of the security, and the rights
the holders of said bonds under the same, and the terms and co
tions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in p
son, or by attorney duly authorized, on the books of the Railw
Company at its office or agency in the city of New York upon s
render and cancellation of this bond; and thereupon a new re
tered bond will be issued to the transferee in exchange therefor
provided in said mortgage or deed of trust, and on payment, if
Railway Company shall so require, of the charge therein provi
for.

This bond shall not become obligatory for any purpose until
shall have been authenticated by the certificate, hereon endorsed,
the Trustee under said mortgage or deed of trust.

In witness whereof the Central Pacific Railway Company h
caused these presents to be signed by its president or one of its v
presidents, and its corporate seal to be hereunto affixed, and to
attested by its secretary or an assistant secretary this
of .

391 (The mortgage or deed of trust securing this bond has b
duly stamped according to law.)

CENTRAL PACIFIC RAILWAY COMPANY,

[L. S.] By

Vice President.

Attest:

Assistant Secretary.

[Form of trustee's certificate.]

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Central Pacific Railway Company to the undersigned.

UNITED STATES TRUST COMPANY OF NEW YORK, Trustee,

By ,
Vice President.

And whereas, in pursuance of such authority and of all and every legal power and authority in it vested, the Railway Company proposes now to make and execute, and from time to time hereafter to issue and to deliver bonds hereby secured; and in this indenture to declare the terms and conditions upon which every such bond is and shall be issued and secured:

92 Now, therefore, this indenture witnesseth: That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds are issued and received, the Railway Company, party of the first part, in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof and of the sum of one dollar to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents, and has granted, bargained, sold, released, conveyed, assigned, transferred, and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer, and set over unto the Trustee, party of the second part, its successors and assigns forever:

All and singular the railroads, estates, rights, properties, privileges and franchises, lands, notes, sinking funds, and moneys described as follows, to wit:

First. The lines of railroad owned by the Railway Company extending from a point about five miles west of Ogden, in the 93 State of Utah, through the States of Utah, Nevada, and California, to and into the city of Sacramento, in the State of California, and from said Sacramento to San Jose, in said last-mentioned State, and from Niles to Oakland, and from Lathrop to Goshen, all in the State of California, and from Roseville, in said State of California, to the California and Oregon boundary;

Second. All the railways belonging to the party of the first part in San Francisco, Oakland, and Alameda, in the State of California, and the terminals belonging to the party of the first part, used in connection therewith, including wharves, piers, docks, embankments, ferries, steamers, and transfer and ferry boats;

Third. All roadbeds, superstructures, rights of way, rails, tra
sidetracks, bridges, viaducts, terminals, buildings, depots, stati
warehouses, car houses, engine houses, freight houses, coal hou
wood houses, machine shops and other shops, turntables, water
tions, fences, docks, structures, erections and fixtures, and all ot
things of whatever kind, now owned or hereafter acquired by
Railway Company or its successors, which shall in any wis
394 at any time belong or appertain to, or be provided for
upon, or for the purposes of any of said lines of railr
hereby mortgaged or intended to be mortgaged, and any and all ot
property, real or personal, of every kind and description, now
hereafter acquired by the Railway Company or its successors
use upon or for the purposes of such lines of railroad or termin
or any of them;

Fourth. Any and all locomotives, engines, cars, and other roll
stock, equipment, machinery, instruments, tools, implements,
terials, furniture, and other chattels of the Railway Company n
owned or hereafter held, acquired, or provided by the Railway Co
pany, or its successors, for use upon any of such lines of railroad
terminals or other property hereby mortgaged;

Fifth. Any and all other railroads, equipment, and termin
owned by the Central Pacific Railroad Company on the eighth d
of February, one thousand eight hundred and ninety-nine;

Sixth. Any and all corporate or other rights, privileges, and fr
chises which the Railway Company now has, or which the Railw
Company, or its successors, hereafter shall acquire, possess, or beco
entitled to for, or appertaining to, the construction, mainte
395 ance, use or operation of, such lines of railroad or termin
or other property hereby mortgaged; and

Seventh. Any and all the rents, issues, profits, tolls, and other i
come of such lines of railroad or terminals or other property n
or at any time hereafter subject to the lien of this indenture;

Eighth. All and singular the several sections of land granted
the United States to the Central Pacific Railroad Company of Ca
fornia by an act of Congress approved on the first day of July, 18
entitled "An act to aid in the construction of a railroad and te
graph line from the Missouri River to the Pacific Ocean, and
secure to the Government the use of the same for postal, military, a
other purposes", and an act amendatory thereof, approved on t
second day of July, 1864; also all the lands granted to the Californ
and Oregon Railroad Company by an act of Congress approved
the twenty-fifth day of July, 1866, entitled "An act granting lan
to aid in the construction of a railroad and telegraph line from t
Central Pacific Railroad in California, to Portland, in Oregon"; a
also all the estate, right, title, interest, claim, and demand whats

ever, at law or in equity, of, in, or to the same, or any part or
96 parcel thereof, which the said Railway Company now has,
holds, owns, or is entitled to, or hereafter may or shall acquire,
ave, hold, own, or be or become entitled to by force or virtue of
he said acts of Congress, saving and excepting all parts and parcels
f said lands which were sold prior to the execution of the mortgage
rom the Central Pacific Railroad Company to Charles Crocker and
ilas W. Sanderson, dated the first day of October, A. D. 1870, secur-
ng the land bonds of said last-mentioned company, and all such
arts and parcels of said lands as shall have been released from the
id mortgage securing such land bonds in accordance with the provi-
ons thereof before such mortgage securing said land bonds is satis-
ed and discharged, and saving, excepting, and reserving all parts
nd parcels of said lands which are or shall be included in the rights
f way of the said railroads and telegraph lines of the said Railway
ompany or used for the construction or operation thereof, or for the
rack, yards, depot grounds, buildings, or erections thereon.

Ninth. All notes given in payment for lands covered by such mort-
age of the Central Pacific Railroad Company, dated October 1,
1870, securing said land bonds, which shall be outstanding at
97 the time when such last-mentioned mortgage is satisfied and
discharged.

Tenth. All securities and moneys which on the 8th day of Febru-
ry, 1899, were or have since been or shall be held in any sinking
und created or existing by or under any mortgage existing on said
th day of February, 1899, whether of the Central Pacific Railroad
ompany or any divisional company by the consolidation whereof
t was formed, the lien hereof to attach to such securities and moneys
hen and as they are respectively released and discharged from the
ien of the mortgage or mortgages under which they are or shall be
o held, whereupon they shall be deposited with the Trustee of this
ndenture as security for the bonds issued hereunder to be held, ad-
inistered, dealt with, and disposed of as hereinafter provided.

To have and to hold the premises, railroads, properties, real or per-
onal, rights, franchises, estates and appurtenances, lands, land notes
nd securities, and moneys hereby conveyed and assigned, or intended
o be conveyed or assigned, unto the Trustee and to its successors and
ssigns forever, but subject in respect of all thereof which are cov-
red thereby to the mortgage from the said Railway Company to
the Central Trust Company of New York, dated August 1,
98 1899, securing the Railway Company's first refunding mort-
gage bonds.

But in trust for the equal and proportionate benefit and security
f all present and future holders of the bonds and interest obligations

issued and to be issued under and secured by this indenture, and the enforcement of the payment of said bonds and interest obli tions when payable, and the performance of and compliance with covenants and conditions of this indenture without preference, ority, or distinction as to lien or otherwise of any one bond over other bond issued hereunder by reason of priority in the issue or gotiation thereof or otherwise howsoever.

And it is hereby covenanted and declared that all such bonds, the coupons for interest thereon, are to be issued and certified delivered, and that the mortgaged premises are to be held by Trustee, subject to the further covenants, conditions, uses, and tr hereinafter set forth, and it is covenanted between the parties he and for the benefit of the respective holders from time to time bonds issued hereunder, as follows, viz:

399 ARTICLE ONE.

Issue and appropriation of bonds.

SECTION 1. All bonds to be secured hereby from time to time sh be executed and delivered by the Railway Company to the Trus hereunder for certification, and thereupon the said Trustee sh certify and deliver the same as provided in this article, and not oth wise. Any of such bonds from time to time, at the option of t Railway Company, may be executed, certified, and issued original either as coupon bonds or as registered bonds. The aggreg amount of the bonds issued and outstanding under this indent shall never at any one time exceed the principal sum of twenty-f million dollars ($25,000,000).

Only such bonds as shall bear thereon endorsed such certificate the said Trustee by it duly executed under the hand of its preside vice president, or second vice president shall be secured by this i denture or shall be entitled to any lien or benefit hereunder; a every such certificate of the said Trustee upon any bond executed behalf of the Railway Company shall be conclusive evidence that t bond so certified has been duly issued hereunder and is entitled to t benefit of the trust hereby created.

400 Before certifying or delivering any coupon bond here secured the said Trustee shall cut off and cancel all coupo thereof then matured, and the said Trustee shall not certify or d liver any registered bond bearing interest from any date more th six months prior to such certification or delivery.

SEC. 2. All of the bonds authorized to be issued under and secu by this indenture, viz, bonds to the aggregate amount of twenty-f million dollars ($25,000,000), immediately upon the execution a

elivery hereof or as soon thereafter as from time to time may be equired by the Railway Company, shall by the said Trustee be certified and delivered to the Railway Company or upon its order in riting under its corporate seal.

SEC. 3. Whenever any coupon bond or bonds issued under and ecured by this indenture, together with all unmatured coupons hereto belonging, shall be surrendered for exchange for registered onds the Railway Company shall issue and the said Trustee shall ertify and deliver in exchange for such coupon bond or bonds a ike amount of registered bonds without coupons. Such registered onds shall be for $1,000, or for such multiples thereof as from time to time the Railway Company may prescribe, and shall bear
01 interest at the same rate as the surrendered coupon bonds and from the date of maturity of the last matured coupon thereof. n every case of such exchange the said Trustee forthwith shall cancel he surrendered bond or bonds and coupons and shall deliver the same o the Railway Company.

Whenever any such registered bond shall be surrendered for transfer, the Railway Company shall issue, and the said Trustee shall certify and deliver to the transferee, upon surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for $1,000, or for such multiples of $1,000 as the Railway Company from time to time may authorize, and bearing interest at the same rate as the surrendered registered bond; but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the Railway Company, at its option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

SEC. 4. Upon surrender by the Railway Company to the Trustee for cancellation of any coupon or registered bonds issued here-
402 under and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the Trustee shall certify and deliver to the Railway Company bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than three and one-half per cent per annum, payable semiannually, as the Railway Company may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

SEC. 5. In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway Company, in its discretion, may issue, and thereupon the said Trustee shall certify

and deliver, a new bond of like tenor and date, bearing the same d
tinguishing number, in exchange and substitution for, and upon c
cellation of, the mutilated coupon bond and its coupons, or
mutilated registered bond, or in lieu of, and substitution for,
coupon bond and its coupons, or the registered bond so destroy
upon receipt of satisfactory evidence of the destruction of s
403 coupon bond and its coupons, or of such registered bond,
upon receipt also of satisfactory indemnity.

SEC. 6. Nothing in this article, or in any other article, of t
indenture, expressed or implied, is intended, or shall be constru
to enlarge the security of the holders of any of said outstandi
old bonds, or to create any trust in their favor, or to give
any person or corporation, other than the parties hereto and t
holders of bonds issued under and secured by this indenture, a
legal or equitable right, remedy, or claim, under or in respect of th
indenture, or any covenant, condition, or provision herein co
tained; all its covenants, conditions, and provisions being intend
to be, and being, for the sole and exclusive benefit of the parti
hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.

Particular covenants of the Railway Company.

The Railway Company covenants as follows:

SEC. 1. It will duly and punctually pay, or cause to be paid,
every holder of any bond issued and secured hereunder the princip
and interest accruing thereon at the dates and place and in the ma
ner mentioned in such bonds, or in the coupons thereto belongin
according to the true intent and meaning thereof, without deducti
from either principal or interest for any tax or taxes imposed by th
United States, or any State or county or municipality thereo
404 which the Railway Company may be required to pay or
retain therefrom under or by reason of any present or futu
law. When, and as paid, all such coupons forthwith shall be ca
celled.

SEC. 2. Whenever required by the Trustee, the Railway Compan
will grant, convey, confirm, assign, transfer, and set over unto th
Trustee the estate, right, title, and interest of the Railway Compan
in or to all real and personal estate, corporate rights, and franchis
which in any way or manner it shall acquire as appurtenant to o
for the use of the railroads hereby mortgaged; and also it will d
execute, acknowledge, and deliver, or it will cause to be done, ex
cuted, acknowledged, and delivered all and every such further act
deeds, transfers, and assurances for the better assuring, conveying

nd confirming unto the Trustee all and singular the premises, states, and property hereby conveyed, or intended so to be, as they r either of them shall reasonably require for better accomplishing he provisions and purposes of this indenture and for securing pay- ent of the principal and interest of the bonds intended to be ereby secured.

But nothing in this indenture, expressed or implied, is intended or shall be construed to limit the right or power of the Railway 03 Company, hereby expressly reserved, to own and hold, or to construct, or to acquire, other lines of railroad, or branches or xtensions, or interests therein, or other property free from the lien ereof.

SEC. 3. The Railway Company at an office or agency to be main- ained by it in the city of New York will keep a sufficient register r registers of bonds issued hereunder, which registers at all reason- ble times shall be open to the inspection of the Trustee; and, upon resentation for such purpose, it will, under such reasonable regula- ions as it may prescribe, register therein any coupon bonds and any onds without coupons issued under the provisions hereof.

Upon presentation of any such registered coupon bond bearing a ritten power to transfer the same executed by the registered holder, or the time being, in a form approved by the Railway Company, uch bond shall be transferred upon such register. The registered older of any such registered coupon bond also shall have the right o cause the same to be registered as payable to bearer, in which case ransferability by delivery shall be restored, and thereafter the prin- pal of such bond shall be payable to any person presenting the me; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with 06 the same effect as a first registration thereof. Successive reg- istrations and transfers as aforesaid may be made from time time as desired; and each registration shall be noted by the bond gistrar on the bond.

Any registered bond without coupons may be transferred by in- rument in writing executed by the registered holder, upon the sur- nder of such bond, and the payment of the charge for such trans- r, in which case new registered bonds for an equivalent amount ill be issued to the transferee or transferees, as provided in section of article one hereof.

As to all bonds so registered, the person in whose name the same all be registered shall, for all purposes of this indenture, be deemed d be regarded as the owner thereof, and thereafter payment of or account of the principal of such bond, if it be a registered coupon nd, and of the principal and interest, if it be a registered bond ithout coupons, shall be made only to or upon the order of such

registered holder thereof, but such registration may be changed
above provided. All such payments so made shall be valid, a
effectual to satisfy and to discharge the liability upon such bonds
the extent of the sum or sums so paid.

407 Registration of any coupon bond shall, however, not restr
the negotiability of any coupon thereto belonging, but ev
such coupon shall continue to pass by delivery and shall remain p
able to bearer.

SEC. 4. The Railway Company will well and truly pay and d
charge upon presentation thereof for payment at or after maturi
or will acquire and will deposit with the Trustee of said mortg
securing said first refunding mortgage bonds, all of the outstandi
old bonds of the issues above mentioned; and it will punctually p
or cause to be paid, or, upon demand of the Trustee hereunder, v
provide to its satisfaction for the payment of the interest on all s
outstanding old bonds of said issues not acquired and deposi
under said mortgage securing said first refunding mortgage bo
as and when such interest shall become due and payable, until
bonds of said issues shall have been finally paid and discharged
shall have been acquired and deposited under said mortgage se
ing said first refunding mortgage bonds, and it will not extend
of such outstanding old bonds and will not cause or suffer the s
to be extended.

SEC. 5. The Railway Company will not voluntarily creat
408 suffer to be created any lien or charge (except under such m
gage securing the Railway Company's first refunding m
gage bonds) having priority to or preference over the lien of t
presents upon the mortgaged premises, or any part thereof, or u
the income thereof; and, within three months after the same s
accrue, it will pay or cause to be discharged, or will make adeq
provision for the satisfaction or discharge of, all lawful claims
demands of mechanics, laborers, and others which, if unpaid, m
by law be given precedence to this indenture as a lien or ch
upon the mortgaged premises or any part thereof or the inc
thereof.

SEC. 6. The Railway Company from time to time will pay
discharge all taxes, assessments, and governmental charges lawf
imposed upon the lines of railroad and other premises hereby m
gaged, or upon any part thereof, or upon the income and pr
thereof, the lien of which would be prior to the lien hereof, so
the priority of this indenture shall be fully preserved in respe
such properties; provided, however, that nothing contained in
section shall require the Railway Company to pay any such
assessment, or charge so long as the Railway Company in good
shall contest the validity thereof.

409 SEC. 7. The Railway Company will not issue, negotiate, sell, or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained.

SEC. 8. So long as any of the bonds issued hereunder or any of the first refunding mortgage bonds of the Railway Company issued under and secured by its mortgage to the Central Trust Company of New York, dated August 1, 1899, or any of the four per cent bonds of the Southern Pacific Company issued under the mortgage of the last-mentioned company to the Union Trust Company of New York, dated August 1, 1899, are outstanding no other new mortgage shall be made of the properties covered by this mortgage or by the mortgage securing such first refunding mortgage bonds (except to refund such first refunding mortgage bonds and the bonds issued under and secured by this mortgage or either of such issues), and no other new mortgage except as aforesaid shall be made except with the assent of the holders of 75 per cent of the preferred stock and a majority of the common stock of the Railway Company at the time outstanding, and there shall be no increase of the preferred or common stock of the Railway Company without the like assent.

410 ARTICLE THREE.

The lands, notes, securities, and moneys described in subdivisions eighth, ninth, and tenth of the granting clause.

The lands, notes, securities, and moneys described in articles eighth, ninth, and tenth of the granting clause hereof and the income and earnings therefrom shall be administered, dealt with, and disposed of as follows:

SECTION 1. While no default exists in respect to principal or interest of the bonds issued hereunder and secured hereby the Railway Company, at its discretion, may at any time or from time to time sell such lands and securities (free of and discharged from the lien hereof) and receive the proceeds thereof and collect the income from such lands and any amounts collectible on or on account of the principal of or interest on such securities or such notes, applying the proceeds thereof and collections therefrom (except so far as the same or any of them may be subject to any other lien or trust) as follows:

(a) The proceeds of the sale of such lands or securities, and of any other securities held on deposit under this mortgage, and collections on or on account of the principal of such securities or such
411 notes, and any moneys held as security for the bonds issued hereunder (other than income from said lands or collections on or on account of interest on such securities or such notes) shall

be forthwith applied by the said Railway Company to the purch
and cancellation of the bonds issued hereunder, while the same sh
be purchasable at not above par and accrued interest; otherwise
the purchase and cancellation, at the discretion of the Railway Co
pany, either of the bonds issued hereunder, or of the said first
funding mortgage bonds of the Railway Company, or of bonds
cured by prior lien upon any of its properties, and the Railway Co
pany shall forthwith deliver to the Trustee a certificate duly sign
by its president or vice president and treasurer showing the app
cation made thereof and submit to the inspection of the Trustee
bonds so purchased and canceled. Upon default of the Railw
Company in its obligation to promptly make such application
such proceeds the Railway Company will pay such proceeds to
Trustee upon its demand therefor, and the Trustee shall thereup
apply the same to the purchase and cancellation of bonds here
before prescribed to be made by the Railway Company.

(b) All income from said lands or collections on or
412 account of interest on such securities or such notes shall
applied primarily to the payment of the current interest
the bonds issued hereunder, and, when all such current interest sh
have been paid or provided for, to the payment of any fixed charg
secured by a lien prior to the lien of this mortgage upon the prop
ties of the Railway Company, or any of them (including interest
the promissory notes in favor of the United States, executed
issued under the settlement agreement between the United Sta
of America, the Central Pacific Railroad Company, and Speyer
Company, dated February 1, 1899, hereinbefore referred to).

In the case of every application made by the Railway Compa
under this section it shall deliver to the trustee a certificate sign
by its president or vice president and treasurer stating the facts
to the transaction.

SEC. 2. In order to facilitate the sales, collections, and applicati
hereinbefore prescribed, the Trustee hereunder shall, while no
fault exists in respect to the principal or interest of the bonds iss
hereunder—

(a) Release from the lien hereof such of said lands as shall h
been sold by said Railway Company, when and as such sa
413 thereof shall have been reported to it by the president
vice president and treasurer of the Railway Company, w
full particulars as to the price and terms upon which such sales sh
have been respectively made.

(b) Deliver (free of and discharged from the lien hereof) s
securities to or upon the order of said Railway Company, upon
ing advised by the president or vice president and treasurer of s

ompany of the sale thereof and the price and terms upon which such ales shall have been made.

(c) Deliver (free of and discharged from the lien hereof) such ecurities, or coupons or interest obligations appertaining thereto, r such notes (if in possession of the Trustee) to or upon the order f said Railway Company, upon the written request of the presi- ent or vice president and treasurer of the Railway Company there- or for collection.

(d) Deliver (free of and discharged from the lien hereof) such oneys to the Railway Company upon the request of the president r vice president and treasurer of the Railway Company therefor and ie promise of said Railway Company, signed by its president or ice president and treasurer, to forthwith apply the proceeds thereof prescribed in section 1 of this article hereof.

SEC. 3. In case default should be made in respect to principal or interest of the bonds issued hereunder or secured hereby, then and in that event all income from said lands, and l collections on or on account of principal of or interest on such curities or such note, and any moneys held as security for the bonds sued hereunder, shall be applied by the Trustee to and for the pur- oses to and for which the same would have been applicable by the ailway Company in case such default had not taken place; but the curities or lands mortgaged hereby shall, while such default exists, sold only under and in pursuance of the provisions of article four this indenture, and while such default exists the power of sale ereof by the Railway Company shall be wholly suspended.

ARTICLE FOUR.

Remedies of trustee and bondholders.

SECTION 1. The Railway Company covenants and agrees that it ll not, directly or indirectly, extend or assent to the extension of e time for payment of any coupon or claim for interest upon any nd secured hereby, and that it will not, directly or indirectly, be a rty to any arrangement therefor by purchasing or funding said cou- ns or claims for interest on registered bonds or in any other manner. case the payment of any such coupon or claim for interest should so extended by or with the consent of the Railway Company, h coupon or claim for interest so extended shall not be entitled in e of default hereunder to the benefit or security of this indenture, cept subject to the prior payment in full of the principal of all nds issued hereunder and outstanding, and of all coupons and claims for interest on such bonds, the payment of which has not been so extended; the intention of this agreement being to

prevent any accumulation after maturity of coupons or cla
for interest upon registered bonds.

SEC. 2. In case (1) default shall be made in the payment of
interest on any bond or bonds secured by this indenture, or in
performance of any of the covenants of the Railway Company co
tained in section 5 of article two hereof, and any such default sh
have continued for a period of six months; or in case (2) defa
shall be made in the due and punctual payment of the principal
any bond hereby secured; or in case (3) default shall be made
the due observance or performance of any other covenant or con
tion herein required to be kept or performed by the Railway Co
pany, and any such default under clause (3) hereof shall have co
tinued for a period of six months after written notice thereof fr
the Trustee or from the holders of five per cent in amount of
bonds hereby secured, then, and in each and every such case, the Tr
tee personally, or by its agents or attorneys, may enter into and up
all or any part of the railways, rolling stock, property and premi
lands, rights, interest, and franchises hereby conveyed, and each
every part thereof, and may exclude the Railway Company,
417 agents and servants, wholly therefrom, and, having and ho
ing the same, may use, operate, manage, and control said r
ways and other premises, regulate the tolls for the transportation
passengers and freight thereon, and conduct the business there
either personally or by their superintendents, managers, receiv
agents, and servants or attorneys, to the best advantage of the ho
ers of the bonds hereby secured; and upon every such entry
Trustee, at the expense of the trust estate, from time to time, eit
by purchase, repairs, or construction, may maintain and restore,
insure or keep insured, the rolling stock, tools, and machinery
other property, buildings, bridges, and structures erected or p
vided for use in connection with said railways and other premi
and whereof they shall become possessed, as aforesaid, in the s
manner and to the same extent as is usual with railway compan
and likewise from time to time, at the expense of the trust est
may make all necessary or proper repairs, renewals, and replacem
and useful alterations, additions, betterments, and improvem
thereto and thereon as to them may seem judicious; and in
case the Trustee shall have the right to manage the mortg
418 premises, and to carry on the business and exercise all ri
and powers of the Railway Company (except the power
sale of the lands and securities above referred to), either in
name of the Railway Company or otherwise, as the Trustee sh
deem best; and it shall be entitled to collect and to receive all t
earnings, incomes, rents, issues, and profits of the same and ev
part thereof; and after deducting the expenses of operating

railways and other premises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges, upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants, and other employees by it properly engaged and employed it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of three and a half per cent per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference,

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of three and a half per cent per annum) in the order of the maturity of the installments, and then to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons entitled to such payment, without any discrimination or preference,

These provisions, however, not being intended in any wise to modify the provisions of section 1 of this article.

SEC. 3. In case default shall be made in the payment of any interest on any bond or bonds hereby secured, or in the performance of any of the covenants of the Railway Company contained in section 5 of article two hereof, and any such default shall have continued for a period of six months, then and in every case of such continuing default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railway Company, shall declare the principal of all bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that, if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of three and a half per cent per annum on overdue installments of interest, and the expenses of the Trustee, shall either be paid by the Railway Company, or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made,

then and in every such case the holders of a majority in amount
the bonds hereby secured then outstanding, by written notice to
Railway Company and to the Trustee, may waive such default
its consequences; but no such waiver shall extend to or affect
subsequent default, or impair any right consequent thereon.

421 In case the Trustee shall have proceeded to enforce
right under this indenture, by foreclosure, entry, or oth
wise, and such proceedings shall have been discontinued or ab
doned because of such waiver, or for any other reason,

422 shall have been determined adversely to the Trustee, then,
in every such case, the Railway Company and the Trustee
be restored to their former position and rights hereunder in respect
the mortgaged premises and all rights, remedies, and powers of
Trustee shall continue as though no such proceedings had b
taken.

SEC. 4. In case (1) default shall be made in the payment of
interest on any bond at any time issued under and secured by
indenture or in the performance of any of the covenants of
Railway Company contained in section 5 of article two hereof,
any such default shall have continued for a period of six mont
or in case (2) default shall be made in the due and punctual p
ment of the principal of any bond hereby secured; or in case
default shall be made in the due observance or performance of
other covenant or condition herein required to be kept or perfor
by the Railway Company, and any such default under clause
hereof shall have continued for a period of six months after writ
notice thereof from the Trustee or from the holders of five per c
in amount of the bonds hereby secured, then, and in each and ev
such case of default, provided, however, in respect of each of

423 two cases so indicated, that such default shall have contin
for six months, as above provided, the Trustee, with or with
entry, personally or by attorney, in its discretion (a) may sell to
highest and best bidder all and singular the mortgaged property
premises, rights, franchises and interests, and appurtenances,
other real and personal property of every kind, and all right,
and interest, claim and demand therein, and right of redempt
thereof, in one lot and as an entirety, except so far as a sale in p
cels shall be required under the provisions of section 6 of this art
to which extent such sale shall be made in parcels as in said sec
provided; which sale or sales shall be made at public auction at
place in the city of Ogden, in the State of Utah, or at such o
place and at such time and upon such terms as the Trustee may
and briefly specify in the notice of sale to be given as herein p
vided; or (b) immediately upon the expiration of the six mon
in the two cases so indicated, and immediately upon default in p

ent of principal in the other case, may proceed to protect and en-
rce their rights and the rights of bondholders under this indenture
y a suit or suits in equity or at law, whether for the specific perform-
ance of any covenant or agreement contained herein or in aid
24 of the execution of any power herein granted, or for the fore-
closure of this indenture, or for the enforcement of any other
ppropriate legal or equitable remedy as the Trustee, being advised
r counsel learned in the law, shall deem most effectual to protect and
force any of their rights or duties hereunder.

Upon the written request of the holders of twenty-five per cent in
nount of the bonds hereby secured, in case of any such continuing
fault, it shall be the duty of the Trustee, upon being indemnified
hereinafter provided, to take all needful steps for the protection
d enforcement of their rights and the rights of the holders of the
nds hereby secured, and to exercise the powers of entry or sale
rein conferred, or both, or to take appropriate judicial proceed-
gs by action, suit, or otherwise, as the Trustee, being advised by
unsel learned in the law, shall deem most expedient in the interest
the holders of the bonds hereby secured.

SEC. 5. Anything in this indenture contained to the contrary not-
ithstanding, the holders of seventy-five per cent in amount of the
nds hereby secured and then outstanding, from time to time shall
ve the right to direct and to control the method and place of con-
ducting any and all proceedings for any sale of the premises
5 hereby conveyed, mortgaged, or pledged, or for the foreclosure
of this indenture, or for the appointment of a receiver, or of
y other proceedings hereunder.

SEC. 6. In the event of any sale, whether made under the power
sale hereby granted and conferred, or under or by virtue of
dicial proceedings, or of some judgment or decree of foreclosure
d sale, the whole of the property hereby mortgaged (excepting
ly the lands, notes, securities, and moneys described in subdivisions
ghth, ninth, and tenth of the granting clause hereof) shall be sold
one parcel and as an entirety, including all the rights, titles,
ates, railroads, equipment, franchises, contracts, and other real
d personal property of every name and nature (except as afore-
d), unless the holders of a majority in amount of the bonds hereby
ured then outstanding shall in writing request the Trustee to
se said premises to be sold in parcels, in which case the sale shall
made in such parcels as may be specified in such request or peti-
n, or unless such sale as an entirety is impracticable by reason
some statute or other cause; the lands, notes, and securities ex-
ted from the foregoing provision are to be sold in such lots or
rcels as may be determined by the Trustee hereunder, except that

each class of such securities must be sold separately, and this p
vision shall bind the parties hereto and each and every of the h
ers of the bonds and coupons hereby secured or intended so to be

SEC. 7. Notice of any such sale pursuant to any provis
426 of this indenture shall state the time and place when
where the same is to be made, and shall contain a brief g
eral description of the property to be sold, and shall be sufficie
given if published once in each week for four successive weeks pr
to such sale in a newspaper published in the city of New York, in
State of New York, and a newspaper published in the city of Og
in the State of Utah, and otherwise as may be required by law.

SEC. 8. The Trustee from time to time may adjourn any sale to
made by it under the provisions of this indenture by announcem
at the time and place appointed for such sale, or for such adjour
sale or sales, and without further notice or publication it may m
such sale at the time and place to which the same shall be so
journed.

SEC. 9. Upon the completion of any sale or sales under this
denture the Trustee shall execute and deliver to the accepted p
chaser or purchasers a good and sufficient deed, or good and s
cient deeds, of conveyance of the property and franchises s
And the Trustee and its successors are hereby appointed the t
and lawful attorneys or attorney, irrevocable, of the Railway C
pany, in its name and stead to make all necessary deeds and con
ances of property thus sold; and for that purpose they m
427 execute all necessary acts of assignment and transfer,
Railway Company hereby ratifying and confirming all that
said attorney or attorneys shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indent
whether under the power of sale hereby granted and conferred
under or by virtue of judicial proceedings, shall operate to dives
right, title, interest, claim, and demand whatsoever, either at
or in equity, of the Railway Company of, in, and to the prem
sold, and shall be a perpetual bar, both at law and in equity, ag
the Railway Company, its successors and assigns, and against
and all persons claiming or to claim the premises sold, or any
thereof, from, through, or under the Railway Company, its succe
or assigns.

The personal property and chattels conveyed, or intended to
conveyed, by or pursuant to this indenture (excepting only
lands, notes, securities, and moneys described in subdivisions eig
ninth, and tenth of the granting clause hereof), shall be real e
for all the purposes of this indenture, and shall be held and take
be fixtures and appurtenances of the said railroads and part the

d are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

8 SEC. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property, or any part thereof d as aforesaid, for the purchase money, and no such purchaser, or s representatives, grantees, or assigns, after paying such purchase oney and receiving such receipt, shall be bound to see to the appli- ion of such purchase money upon or for any trust or purpose of is indenture, or in any manner whatsoever be answerable for y loss, misapplication, or nonapplication of any such purchase oney, or any part thereof, or be bound to inquire as to the authori- ion, necessity, expediency, or regularity of any such sale.

SEC. 11. In case of such sale, whether under the power of sale reby granted or pursuant to judicial proceedings, the principal of the bonds hereby secured, if not previously due, immediately there- on shall become and be due and payable, anything in said bonds in this indenture contained to the contrary notwithstanding.

SEC. 12. The purchase money, proceeds, and avails of any such sale reunder, whether under the power of sale hereby granted or pur- nt to judicial proceedings, together with any other sums which n may be held by the Trustee under any of the provisions of this lenture as part of the trust estate or of the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, orneys, and counsel, and of all expenses, liabilities, and advances de or incurred by the Trustee in managing and maintaining the operty hereby conveyed, and to the payment of all taxes, assess- nts, or liens prior to the lien of these presents, except any taxes, essments, or other superior liens to which such sales shall have been de subject.

Second. To the payment of the whole amount then owing or unpaid on the bonds hereby secured for principal and interest, with interest the rate of three and a half per cent per annum on the overdue tallments of interest, and in case such proceeds shall be insuffi- nt to pay in full the whole amount so due and unpaid upon the l bonds, then to the payment of such principal and interest, with- preference or priority of principal over interest, or of interest r principal, or of any installment of interest over any other tallment of interest, ratably, to the aggregate of such principal the accrued and unpaid interest, subject, however, to the provi- sions of section 1 of this article.

Third. To the payment of the surplus, if any, to the Rail- way Company, its successors or assigns, or to whomsoever be lawfully entitled to receive the same.

SEC. 13. In case of any sale hereunder any purchaser, for the pu
pose of making settlement or payment for the property purchas
shall be entitled to turn in any bonds and any matured and unpa
coupons hereby secured, in order that there may be credited, as pa
thereon, the sums payable out of the net proceeds of such sale to t
holder of such bonds and coupons, as his ratable share of such n
proceeds, after allowing for the proportion of the total purcha
price required to pay the costs and expenses of the sale, or otherwi
and such purchaser shall be credited, on account of the purchase pri
of the property purchased, with the sums payable out of such n
proceeds on the bonds and coupons so turned in; and, at any su
sale, any bondholders may bid for and purchase such property, a
may make payment on account thereof as aforesaid; and, upon co
pliance with the terms of sale, may hold, retain, and dispose of su
property without further accountability therefor.

SEC. 14. The Railway Company will not at any time ins
431 upon or plead, or in any manner whatever claim, or take t
benefit or advantage of any stay or extension law now or
any time hereafter in force in any locality where the mortgag
premises, or any part thereof, may or shall be situate, nor will
claim, take, or insist on, any benefit or advantage from any law n
or hereafter in force, providing for the valuation, or appraisem
of the mortgaged premises, or any part thereof, prior to any s
or sales thereof to be made pursuant to any provision herein co
tained, or to the decree of any court of competent jurisdiction; n
after any such sale or sales will it claim or exercise any right un
any statute enacted by any State, to redeem the property so sold
any part thereof; and it hereby expressly waives all benefit a
advantage of any such law or laws; and it covenants that it will n
hinder, delay, or impede the execution of any power herein gran
and delegated to the Trustee, but that it will suffer and permit t
execution of every such power, as though no such law or laws h
been made or enacted.

SEC. 15. In case the Railway Company shall make default in a
of the respects mentioned in section 3 of article four hereof, and the
shall be any judgment outstanding against the Railway Co
432 pany unsecured by bond on appeal; or in case any judicial pr
ceeding by any party other than the Trustee, a receiver shall b
appointed of the Railway Company, or a judgment or order be e
tered for the sequestration of its property, the Trustee shall the
upon be entitled forthwith to exercise the right of entry herein co
ferred, and also any and all other rights and powers herein conferr
and provided to be exercised by the Trustee upon the occurrence a
continuance of default as hereinbefore provided, and as mat

f right the Trustee shall thereupon be entitled to the appointment
f a receiver of the premises hereby mortgaged, and of the earnings,
ncome, revenue, rents, issues, or profits thereof, with such powers
s the court making such appointment shall confer.

SEC. 16. The Railway Company, at any time before full payment
f the bonds hereby secured and whenever it shall deem it expedient
or the better protection and security of such bonds, although there
e then no default entitling the Trustee to enter into possession, with
he consent of the Trustee may surrender and deliver to the Trustee
ull possession of the whole or any part of the property, premises,
nd interests hereby conveyed or intended so to be for any period,
fixed or indefinite. Upon such surrender and delivery to the
33 Trustee, with its consent, the Trustee shall enter into and upon
the premises so surrendered and delivered and shall take and
eceive possession thereof for such period, fixed or indefinite, as
foresaid, without prejudice, however, to their right at any time
ubsequently, when entitled thereto by any provision hereof, to insist
pon and to maintain such possession, though beyond the expiration
f any prescribed period. Upon any such voluntary surrender and
elivery of said property and premises or of any part thereof the
Trustee, from the time of its entry, shall work, maintain, use, man-
ge, control, and employ the same in accordance with the provisions
f this indenture, and shall receive and apply the income and reve-
ues thereof as provided in section 2 of this article.

SEC. 17. No holder of any bond or coupon hereby secured shall
ave any right to institute any suit, action, or proceeding in equity
r at law for the foreclosure of this indenture or for the execution of
ny trust thereof or for the appointment of a receiver or for any
ther remedy hereunder, unless such holder previously shall have
iven to the Trustee written notice of such default and of the con-
inuance thereof, as hereinbefore provided; nor unless, also, the
holders of twenty-five per cent in amount of the bonds
34 hereby secured then outstanding shall have made written re-
quest upon the Trustee, and shall have afforded to it reason-
ble opportunity, either to proceed to exercise the powers herein-
efore granted or to institute such action, suit, or proceeding in its
wn name; nor unless, also, they shall have offered to the Trustee
dequate security and indemnity against the costs, expenses, and
abilities to be incurred therein or thereby; and such notification,
equest, and offer of indemnity are hereby declared in every such
ase, at the option of the Trustee, to be conditions precedent to the
xecution of the powers and trusts of this indenture and to any
ction or cause of action, for foreclosure or for the appointment of a
eceiver or for any other remedy hereunder, it being understood and

intended that no one or more holders of bonds and coupons shall h
any right in any manner whatever to affect, disturb, or prejudice
lien of this indenture by his or their action, or to enforce any ri
hereunder, except in the manner herein provided, and that all p
ceedings at law or in equity shall be instituted, had, and maintai
in the manner herein provided and for the equal benefit of all hold
of such outstanding bonds and coupons.

435 SEC. 18. Except as herein expressly provided to the co
trary, no remedy herein conferred upon, or reserved to,
Trustee or to the holders of bonds hereby secured is intended to
exclusive of any other remedy, but each and every such remedy sh
be cumulative and shall be in addition to every other remedy gi
hereunder, or now or hereafter existing at law or in equity or
statute.

SEC. 19. No delay or omission of the Trustee, or of any holder
bonds hereby secured, to exercise any right or power accruing up
any default continuing as aforesaid shall impair any such right
power, or shall be construed to be a waiver of any such default,
an acquiescence therein; and every power and remedy given by t
article to the Trustee or to the bondholders may be exercised fr
time to time and as often as may be deemed expedient by the Tru
or by the bondholders severally and respectively.

SEC. 20. Notwithstanding any entry of any trustee or trustees,
receiver or receivers, into possession of the properties, rights, fr
chises, and premises hereby mortgaged, or any of them, the Uni
States shall be entitled to have and enjoy the provisions embod
in article sixth of the settlement agreement between the Uni
States of America, the Central Pacific Railroad Company, a

436 Messrs. Speyer & Company, dated February 1, 1899, herein
fore referred to, whereby it is provided as follows:

"Until the notes to be given by the Central Pacific Railroad Co
pany under article second of this agreement shall have been paid
full, principal and interest, all amounts due to the Central Pac
Railroad Company or its successor company from the United St
subsequent to the date of this agreement in respect of services to
United States, upon the bond-aided lines from a point about f
miles west of Ogden to Sacramento and from Sacramento to S
Jose, above referred to, shall, as audited and allowed, be applied
the United States pro rata on account of the amounts remain
unpaid on such of said notes as shall not have been purchased
Messrs. Speyer & Co. hereunder, such application being first m
to the payment of accrued interest thereon and thereafter on acco
of the principal thereof."

37 ARTICLE FIVE.

Immunity of officers, directors, and stockholders.

No recourse under or upon any obligation, covenant, or agreement f this indenture, or of any bond or coupon hereby secured, shall be ad against any incorporator, stockholder, officer, or director of the Railway Company, or of any successor corporation, either directly r through the Railway Company, by the enforcement of any assess- ent or by any legal or equitable proceeding by virtue of any statute r otherwise, it being expressly agreed and understood that this ortgage and the obligations hereby secured are solely corporate bligations and that no personal liability whatever shall attach to or e incurred by the incorporators, stockholders, officers, or directors f the Railway Company, or of any successor corporation, or any f them, under or by reason of any of the obligations, covenants, or greements contained in this indenture, or in any of the bonds or oupons hereby secured or implied therefrom, and that any and all ersonal liability of every name and nature, either in common law r in equity or by statute or constitution, of every such incorporator, tockholder, officer, or director is hereby expressly waived as a con- ition of and consideration for the execution and issue of this mort- age and such bonds and coupons.

38 ARTICLE SIX.

Bondholders' acts, holdings, and apparent authority.

SECTION 1. Any request or other instrument required by this in- enture to be signed and executed by bondholders may be in any umber of concurrent instruments of similar tenor and may be igned or executed by such bondholders in person or by agent ap- ointed in writing. Proof of the execution of any such request or ther instrument or of a writing appointing any such agent and of he holding by any person of coupon bonds transferable by delivery hall be sufficient for any purpose of this indenture if made in the ollowing manner:

SEC. 2. The fact and date of the execution by any person of any uch request or other instrument or writing may be proved by the ertificate of any notary public or other officer authorized to take cknowledgments of deeds to be recorded in New York, that the erson signing such request or other instrument acknowledged to im the execution thereof or by an affidavit of a witness of such exe- ution.

SEC. 3. The amount of coupon bonds transferable by delivery held y any person executing any such request or other instrument as a

bond holder, and the amounts and issue numbers of the bo
439 held by such person, and the date of his holding the same, m
be proved by a certificate executed by any trust compa
bank, bankers, or other depositary (wherever situated) if such c
tificate shall be deemed by the Trustee to be satisfactory, show
that at the date therein mentioned such person had on deposit w
such depositary the bonds therein described. The ownership of r
istered coupon bonds or of registered bonds without coupons sh
be proved by the registers of such bonds as provided in section 3
article two hereof. Such proof shall be conclusive in favor of
Trustee with regard to any action by them taken under such req
or other instrument.

SEC. 4. The bearer of any coupon bond hereby secured, which
the time shall not be registered as hereinbefore authorized, and t
bearer of any coupon for interest on any such bond, whether t
same shall be registered or not, may be deemed and treated by t
Railway Company and the Trustee as the absolute owner of su
bond or coupon, as the case may be, for the purpose of receiving pa
ment thereof, and for all other purposes, and no notice to the co
trary shall affect the Railway Company or the Trustee.

440 ARTICLE SEVEN.

Releases of mortgaged property.

SEC. 1. Upon the written request of the Railway Company, a
proved by resolution of its board of directors or executive co
mittee, the Trustee, from time to time while the Railway Compa
is in possession of the mortgaged premises, but subject to the co
ditions and limitations in this section prescribed, and not otherwi
shall release from the lien and operation of this indenture any pa
of the mortgaged premises then subject thereto (except the lan
notes, securities, and moneys described in subdivisions eighth, nint
and tenth of the granting clause hereof, the administration a
disposition of which are dealt with in article three hereof); provid
(1) that no part of the lines of track or of the rights of way sh
be released, unless the same shall no longer be of use in the operati
of any of the mortgaged lines of railway, and no part of such lin
of track or rights of way shall be so released if thereby the co
tinuity of the lines of railway of the Railway Company betwe
the several termini above mentioned shall be broken; and (2) th
no partof the mortgaged railways or other property shall
released hereunder, unless at the time of such release it shall
441 longer be necessary or expedient to retain the same for t
operation, maintenance, or use of such lines of railway or f
use in the business of the Railway Company.

No such release shall be made under this section unless the Railway Company shall have sold, or shall have contracted to exchange for other property, or to sell the property so to be released; and unless some other disposition thereof be required by some prior mortgage (and except as provided in article three hereof in respect to the lands, notes, securities, and moneys therein referred to) the proceeds of any and all such sales and all moneys received as compensation for any property subject to this indenture, taken by exercise of the power of eminent domain, shall be set apart and held in trust and applied, with approval of the said Trustee, to the purchase of other property, real or personal, or in betterments of or additions to or rolling stock for any part of the mortgaged premises. Any new property acquired by the Railway Company to take the place of any property released under this section, ipso facto, shall become and be subject to the lien of this indenture as fully as if specifically mortgaged hereby; but, if requested by the said Trustee, the Railway Company will convey the same to the Trustee by
42 appropriate deeds upon the trusts and for the purposes of this indenture.

SEC. 2. The Railway Company, while in possession of the mortgaged premises, shall also have full power, in its discretion from time to time, to dispose of any portion of the machinery, equipment, and implements, at any time held subject to the lien hereof, which may have become unfit for such use, replacing the same by new machinery, equipment, or implements, which shall become subject to this indenture.

SEC. 3. In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this article be required to see to the application of the purchase money.

SEC. 4. In case the mortgaged premises shall be in the possession of a receiver lawfully appointed, the powers in and by this article conferred upon the Railway Company may be exercised by such receiver with the approval of the Trustee; and if the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers by this article conferred upon the Railway Company may be exercised by the Trustee in its discretion.

SEC. 5. The Railway Company from time to time may
43 make changes or alterations in or substitutions of any leases or trackage rights subject to this indenture; but in any such event any modified, altered, or substituted leases or trackage rights forthwith shall become bound by, and be subject to, the terms of this indenture in the same manner as those previously existing.

SEC. 6. A certificate signed by the president, or a vice president, and the chief engineer of the Railway Company may be received by the said Trustee as conclusive evidence of any of the facts mentioned

in this article, and shall be full warrant to the said Trustee for
action on the faith thereof; but the said Trustee, in its discret
may require such further and additional evidence as to it may
reasonable.

ARTICLE EIGHT.

Concerning the trustee.

SECTION 1. The Trustee shall not be answerable for the defa
or misconduct of any agent or attorney appointed by it in pursua
hereof if such agent or attorney shall have been selected with reas
able care; or for anything whatever in connection with this tr
except willful misconduct or gross negligence. The Trus
444 shall not be personally liable for any debt contracted by it,
for damages to persons or property carried or injured, or
salaries or nonfulfillment of contracts during any period wher
the Trustee shall manage the trust property or premises upon en
or voluntary surrender as aforesaid. The Trustee shall not be un
any obligation to take any action toward the execution or enfor
ment of the trusts hereby created, which, in its opinion, shall
likely to involve it in expense or liability, unless one or more of
holders of the bonds hereby secured shall, as often as required
the Trustee, furnish it reasonable indemnity against such expens
liability; nor shall the Trustee be required to take notice of any
fault hereunder unless notified in writing of such default by
holders of at least five per cent in amount of the bonds hereby secu
then outstanding, or to take any action in respect of any defa
unless requested to take action in respect thereof by a writing sig
by the holders of not less than twenty-five per cent in amount of
bonds hereby secured then outstanding, and tendered reasona
indemnity as aforesaid, anything herein contained to the contr
notwithstanding; but neither any such notice or request nor
provision therefor shall affect any discretion herein given
445 the Trustee to determine whether or not it shall take actio
respect of such default, or to take action without such requ
The Trustee shall not be responsible for the recording of this
denture and shall not be required to file the same as a chattel m
gage.

The Railway Company covenants that it will cause record of
instrument as a mortgage of real estate to be made with all c
venient speed; on request of the Railway Company the Trustee h
under may certify and deliver bonds hereunder to the amount
within the limit hereinbefore prescribed in advance of registrat
or record of this indenture, or delivery of the notes, securities
moneys mortgaged or to be mortgaged hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created.

SEC. 2. The Trustee or any trustee hereafter appointed may resign, and be discharged of the trusts created by this indenture by giving notice thereof to the Railway Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in the city of New York,
46 in the State of New York, and one newspaper published in the city of Ogden, in the State of Utah, and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument in writing under the hands of three-quarters in amount of the holders of the bonds hereby secured and then outstanding.

SEC. 3. In case at any time the said United States Trust Company of New York, or any trustee hereafter appointed, shall resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys in fact duly authorized: Provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Railway Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The Railway Company shall thereupon publish notice of such appointment once a week for six successive weeks in a newspaper published in the city of New York, in the State of New York, and a newspaper published
47 in the city of Ogden, in the State of Utah, and any new trustee so appointed by the Railway Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured prior to the expiration of six months after such publication of notice. Every such trustee appointed in place of the United States Trust Company of New York, or its successor in the trust, shall always be a trust company in good standing, doing business in the city of New York, and having a capital and surplus aggregating at least $2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute,
48 acknowledge, and deliver to the trustee last in office and also to the Railway Company an instrument accepting such appointment hereunder, and thereupon such new trustee without any further act, deed, or conveyance shall become vested with all the estates, properties, rights, powers, and trusts of its predecessor in

the trust hereunder with like effect as if originally named as tru herein; but the trustee ceasing to act shall, nevertheless, on the w ten request of the new trustee, execute and deliver an instrum transferring to such new trustee, upon the trusts herein expressed, the estates, properties, rights, powers, and trusts of the truste resigning or removed, and shall duly assign, transfer, and deli any property and moneys held by such trustee to the new truste appointed in its place.

Should any deed, conveyance, or instrument in writing from Railway Company be required by any new trustee, for more f and certainly vesting in and confirming to such new trustee s estate, rights, powers, and duties, any and all such deeds, conveyan and instruments in writing shall, on request, be made, executed, knowledged, and delivered by it.

449 ARTICLE NINE.

The Railway Company will create a sinking fund, to be specia applied to the redemption and payment on or before their m turity of the bonds to be issued under and secured by this indentu by setting apart out of the net income derived by it from the lines railroad herein mortgaged the sum of twenty-five thousand dol in the year 1900, and in each year thereafter, until all of said bo principal and interest, shall be redeemed or paid, in trust to be u to redeem said bonds as follows: Notice shall be published in daily paper in the city of New York for such length of time as board of directors may order, not less than twice a week for f weeks, that bonds will be redeemed therewith, and inviting bids the surrender of such bonds at prices to be named by the bidde and, upon reception of said bids, the lowest bid or bids shall be cepted, and bonds redeemed to the extent of the money in the sinki fund and all bonds so redeemed shall be forthwith canceled, and trustee or trustees hereunder notified by the party of the first part the distinguishing numbers of the bonds so redeemed and cance

450 ARTICLE TEN.

Railway Company's possession till default.

SECTION 1. Until some default shall have been made in the and punctual payment of the interest, or of the principal of bonds hereby secured, or some part of such interest or princi or in the due and punctual performance and observance of s covenant or condition hereof obligatory upon the Railway Comp and until such default shall have continued beyond the period grace, if any, herein provided in respect thereof, the Railway C

any, its successors and assigns, shall be suffered and permitted to tain actual possession of all the premises hereby mortgaged (except the securities and moneys referred to in subdivision tenth of he granting clause hereof), and to manage, operate, and use the me and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use, and enjoy the tolls, rnings, income, rents, issues, and profits thereof.

SEC. 2. If, when the bonds hereby secured shall have become due nd payable, the Railway Company shall well and truly pay, or shall cause to be paid, the whole amount of the principal 31 moneys and the interest due upon all of the bonds and the coupons for interest thereon, hereby secured, and then outanding. or shall provide for such payment by depositing with the rustee hereunder for the payment of such bonds and coupons the ntire amount due thereon for principal and interest, then and in at case all property, rights, and interests hereby conveyed shall vert to the Railway Company, and the estate, right, title, and inrest of the trustee or trustees shall thereupon cease, determine, and come void, and the trustee or trustees in such case, on demand of he Railway Company and at its cost and expense, shall enter satisction of this indenture upon the records, and deliver to the Railay Company, its successors and assigns, all securities, moneys, or her property held by it as trustee hereunder.

32

ARTICLE ELEVEN.

Sundry provisions.

SECTION 1. All the covenants, stipulations, promises, and agreements in this indenture contained, by or in behalf of the Railway ompany, shall bind its successors and assigns, whether so expressed r not.

SEC. 2. Nothing contained in this indenture, or in any bond here secured, shall prevent any consolidation or merger of the Railway mpany with any other corporation, or any conveyance and transer, subject to the continuing lien of this indenture and to all the rovisions thereof, of all the mortgaged premises as an entirety to a railroad corporation at that time existing under and by 33 virtue of the laws of any State or States or the United States, and entitled to acquire the same; provided, however, that ch consolidation, merger, or sale shall not impair the lien and serity of this indenture, or any of the rights or powers of the rustee, or of the bondholders hereunder, and that upon any such nsolidation, merger, or sale the due and punctual payment of the rincipal and interest of all of said bonds according to their tenor,

and the due and punctual performance and observance of all the c
enants and conditions of this indenture, shall be assumed by
corporation formed by such consolidation or merger or purcha
as aforesaid.

SEC. 3. In case the Railway Company, pursuant to section 2
this article, shall be consolidated or merged with any other c
poration, or shall sell, convey, and transfer, subject to this indent
all the mortgaged premises as an entirety as aforesaid, the succes
corporation formed by such consolidation or into which the Railw
Company shall have been merged, or which shall have purcha
and received a conveyance and transfer as aforesaid—upon exec
ing, and causing to be recorded, an indenture with the Trustee, s
isfactory to the Trustee, whereby such successor corporati
454 shall assume the due and punctual payment of the princip
and interest of said bonds and the performance of all t
covenants and conditions of this indenture—shall succeed to and
substituted for the Railway Company, party of the first part here
with the same effect as if it had been named herein as such pa
of the first part, and such successor corporation thereupon m
cause to be signed and may issue, either in its own name or in t
name of the Central Pacific Railway Company, any or all of s
bonds which shall not theretofore have been signed by the Railw
Company and certified by the Trustee; and upon the order of s
successor corporation in lieu of the Railway Company, and subj
to all the terms, conditions, and restrictions herein prescribed, t
Trustee shall certify and deliver any of such bonds which sh
have been previously signed and delivered by the officers of t
Railway Company to the Trustee for certification, and any of s
bonds which such successor corporation shall thereafter cause to
signed and delivered to the said Trustee for that purpose. All t
bonds so issued shall in all respects have the same legal rank a
security as the bonds theretofore or thereafter issued in accorda
with the terms of this indenture.

SEC. 4. For every purpose of this indenture, includi
455 the execution, issue, and use of any and all bonds hereby a
cured, the terms "Railway Company" and "The Cent
Pacific Railway Company" include and mean not only the party
the first part hereto, but also any such successor corporation. Ev
such successor corporation shall possess and from time to time m
exercise each and every right and power hereunder of the Cent
Pacific Railway Company, in its name or otherwise.

SEC. 5. Any act or proceeding by any provision of this indent
required to be done or performed by any board or officer of t
Railway Company shall and may be done and performed with li
force and effect by the like board or officer of any railroad corpo

ion that shall at the time be such lawful sole successor of the Railway Company.

SEC. 6. Except when otherwise indicated, the words "the trustee", r any other equivalent term, as used in this indenture shall be held nd construed to mean the trustee or trustees for the time being, whether original or successor, and the words "trustee," "bond," bondholder," and "holder" shall include the plural as well as the ingular number, and the term "majority" shall signify "majority in amount."

56 The United States Trust Company of New York, trustee, party hereto of the second part, hereby accepts the trusts in his indenture declared and provided and agrees to perform the ame upon the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture the same may be imultaneously executed in counterparts, each of which so executed hall be deemed to be an original; and such counterparts shall ogether constitute but one and the same instrument.

In witness whereof the Central Pacific Railway Company, the arty hereto of the first part, has caused this indenture to be signed nd acknowledged or proved by its president, and its corporate seal o be hereunto affixed, and the same to be attested by the signature f its secretary, and the United States Trust Company of New York, he party of the second part, has caused its corporate seal to be ereunto affixed and attested by its secretary, and these presents to e signed and acknowledged or proved by its president or vice presi-dent the day and year first above written.

57 CENTRAL PACIFIC RAILWAY COMPANY,
By THOMAS MARSHALL, *President.*

Signed, sealed, and delivered in the presence of—
JONATHAN C. ROYLE.

Attest:
DAVID B. HEMPSTEAD, *Secretary.*

[Corporate seal of the Central Pacific Railway Company.]

UNITED STATES TRUST COMPANY OF NEW YORK,
By J. S. CLARK, *Second Vice President.*

Signed, sealed, and delivered in the presence of—
GEO. H. COREY.

Attest:
H. L. THORNELL, *Secretary.*

[Corporate seal of the United States Trust Company of New York.]

58 STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghegan, notary public in and for the county of Salt Lake, State of Utah,

duly appointed and qualified, personally appeared the within-na
Thomas Marshall, president of the Central Pacific Railway C
pany, and David B. Hempstead, secretary of the Central Pa
Railway Company, personally known to me to be the said officer
the said corporation respectively and the individuals describe
and who executed the within instrument as such officers of
company, and they each severally and personally then and t
acknowledged to me that they executed the said instrument as
free act and deed of the said Central Pacific Railway Company fr
and voluntarily and for the uses and purposes therein mentione

In witness whereof I have hereunto set my hand and affixed
official seal as such notary public at my office in said county of
Lake and State of Utah, the day and year last above written.

[SEAL.] LULA GEOGHEGAN,
Notary Publi

459 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp canceled.]

STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, personally appeared bef
me Thomas Marshall and David B. Hempstead, who, being by
respectively, duly sworn, each for himself says that the said Tho
Marshall is the president of the Central Pacific Railway Compa
and the said David B. Hempstead is the secretary of said compa
one of the corporations named in the foregoing instrument, and t
said instrument was signed in behalf of said corporation by
president and secretary, respectively, under and in pursuance o
resolution of its board of directors; and the said Marshall
Hempstead, respectively, acknowledged to me that said corporati
executed the same.

In witness whereof I have hereunto set my hand and affixed
official seal in said county of Salt Lake, State of Utah, on this
day of August, A. D. 1899.

[SEAL.] LULA GEOGHEGAN,
Notary Publi

460 My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp canceled.]

STATE OF UTAH,
County of Salt Lake, ss:

On this 1st day of August, A. D. 1899, before me, Lula Geoghe
a notary public in and for the county of Salt Lake, State of Ut
duly commissioned and qualified, personally appeared Thomas M
shall, known to me to be the president, and David B. Hempste

nown to me to be the secretary, of the Central Pacific Railway Company, the corporation described in and which executed the within-nnexed instrument, and acknowledged to me that said corporation xecuted the same.

In witness whereof I have hereunto set my hand and affixed my fficial seal at my office in the city and county of Salt Lake, State of tah, the day and year in this certificate first above written.

[SEAL.] LULA GEOGHEGAN,
Notary Public.

My commission expires Sept. 17th, 1901.
[10-cent int. rev. stamp canceled.]

TATE OF NEW YORK,
County of New York, ss:

On this eighth day of August, A. D. 1899, personally appeared be-ore me, a notary public in and for the county of New York, in he State of New York, and a commissioner of deeds for the State of ew York, duly appointed under the laws of the State of Utah to ake acknowledgments of deeds, James S. Clark and Henry L. hornell, who, being by me respectively duly sworn, each for him-lf says that the said James S. Clark is the vice president of the nited States Trust Company of New York and the said Henry L. hornell is the secretary of said company, one of the corporations amed in the foregoing instrument, and that said instrument was gned in behalf of said corporation by said vice president and secre-ry, respectively, under and in pursuance of a resolution of its board directors; and the said James S. Clark and Henry L. Thornell, re-ectively, acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seals in said county of New York, State of New ork, on this eighth day of August, 1899.

[L. S.] GEO. H. COREY,
Notary Public.

My commission as notary public expires March 30, 1901.

[L. S.] GEO. H. COREY,
Commissioner of Deeds of the State of Utah in and for the State of New York.

My commission as commissioner of deeds expires January 5, 1902.
[10-cent int. rev. stamp canceled.]

TATE OF NEW YORK,
County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also rk of the supreme court for the said county, the same being a

court of record, do hereby certify that Geo. H. Corey, whose
is subscribed to the certificate of the proof or acknowledgme
the annexed instrument, and thereon written, was at the ti
taking such proof or acknowledgment a notary public i
463 for the county of New York, dwelling in the said county,
missioned and sworn and duly authorized to take the
And, further, that I am well acquainted with the handwriti
such notary, and verily believe that the signature to the said c
cate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixe
seal of the said court and county the 9th day of August, 1899.

[L. S.] WM. SOHMER, *Cl*

[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK,
County of New York, ss:

On this eighth day of August, A. D. 1899, before me, Geor
Corey, a notary public in and for the county of New York,
of New York, duly appointed and qualified, and a commissio
deeds for the State of New York, duly appointed under the la
the State of Nevada to take acknowledgments of deeds, perso
appeared the within-named James S. Clark, vice president o
United States Trust Company of New York, and Henry L. Tho
secretary of the United States Trust Company of New
464 personally known to me to be the said officers of the said
poration, respectively, and the individuals described in
who executed the within instrument as such officers of said com
and they each severally and personally then and there acknowle
to me that they executed the said instrument as the free act
deed of the said United States Trust Company of New York, f
and voluntarily, and for the uses and purposes therein mentione

In witness whereof I have hereunto set my hand and affixe
official seals as such notary public and commissioner of deeds a
office in said county of New York and State of New York the da
year last above written.

[L. S.] GEO. H. COREY,
Notary Pub

My commission as notary public expires March 30, 1901.

[L. S.] GEO. H. COREY,
Commissioner of Deeds of the State of Nevada
in and for the State of New Yo

My commission as commissioner of deeds expires January 23,

[10-cent int. rev. stamp cancelled.]

65 STATE OF NEW YORK,
County of New York, ss:

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Geo. H. Corey, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And, further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of August, 1899.

[L. S.] WM. SOHMER, *Clerk*.

[10-cent int. rev. stamp cancelled.]

66 STATE OF NEW YORK,
County of New York, ss:

On this eighth day of August, A. D. 1899, before me, GEORGE H. COREY, a notary public in and for the county of New York, State of New York, duly commissioned and qualified, and a commissioner of deeds for the State of New York duly appointed under the laws of the State of California to take acknowledgments of deeds, personally appeared James S. Clark, known to me to be the vice president, and Henry L. Thornell, known to me to be the secretary, of the United States Trust Company of New York, the corporation described in and which executed the within-annexed instrument, and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seals at my office in the city and county of New York, State of New York, the day and year in this certificate first above written.

[L. S.] GEO. H. COREY,
Notary Public.

My commission as notary public expires March 30, 1901.

67 [L. S.] GEO. H. COREY,
Commissioner of deeds of the State of California in and for the State of New York.

My commission as commissioner of deeds expires October 28, 1899.

[10-cent int. rev. stamp cancelled.]

STATE OF NEW YORK, *County of New York*, ss:

I, William Sohmer, clerk of the county of New York, and al clerk of the supreme court for the said county, the same being court of record, do hereby certify that Geo. H. Corey, whose na is subscribed to the certificate of the proof or acknowledgment the annexed instrument and thereon written, was, at the time taking such proof or acknowledgment, a notary public in and for t county of New York, dwelling in the said county, commissioned a sworn, and duly authorized to take the same. And, further, that am well acquainted with the handwriting of such notary, and veri believe that the signature to the said certificate of proof or acknow edgment is genuine.

468 In testimony whereof I have hereunto set my hand a affixed the seal of the said court and county the 9th day August, 1899.

[L. S.] WM. SOHMER, *Clerk*.

[10-cent int. rev. stamp cancelled.]

469 DEFENDANTS' EXHIBIT (MARSHALL) No. 29, APRIL 15, 1915.

Central Pacific Railway Company, Southern Pacific Company, a United States Trust Company of New York, as Trustee.

Indenture dated March 1, 1911.

Four per cent thirty-five year European loan of 1911 uncondition ally guaranteed by Southern Pacific Company.

Total issue limited to French francs 250,000,000 or £9,875,000, pa able March 1, 1946.

Central Pacific Railway Company four per cent thirty-five ye European loan of 1911, unconditionally guaranteed by Southern P cific Company.

Indenture.

470 This indenture, made at the city of New York, in the St of New York, this first day of March, A. D. one thousand ni hundred and eleven, by and between the Central Pacific Railw Company, a corporation created and organized under and by virt of the laws of the State of Utah (hereinafter called the "Railw Company"), party of the first part, and the Southern Pacific Co pany, a corporation created and organized under and by virtue of t laws of the State of Kentucky (hereinafter called the "Company" party of the second part, which corporations are hereinafter call collectively the "Pacific Companies", and the United States Tru Company of New York, a corporation organized and existing und

nd by virtue of the laws of the State of New York (hereinafter alled the "Trustee"), party of the third part, witnesseth:

Whereas the Railway Company is the owner of a continuous railroad xtending from a connection with the Union Pacific Railroad Company ear Ogden, in the State of Utah, to San Francisco and other cities nd towns in the State of California, and holding franchises under cts of the Congress of the United States, and is, by its articles of association and by the laws of the State of Utah, empowered to
71 borrow money, and from time to time to issue bonds for the same, payable at such times and places and drawing interest at uch rate as the directors of the Railway Company may deem proper, nd to execute trust deeds or indentures to secure the same; and

Whereas the Company is empowered by its charter to contract for nd acquire by purchase or otherwise bonds, stocks, obligations, and ecurities of any corporation, and to enter into contracts with any orporation in respect of its bonds, stocks, obligations, and securities, nd is also empowered by its charter to buy, hold, sell, and deal in ll kinds of bonds and securities, and to borrow and loan money, ssue its own bonds or other evidences of indebtedness, and sell and egotiate and pledge the same to such amounts and on such terms nd in such manner as may from time to time be determined by its oard of directors, and to mortgage or pledge all or any of its prop- rty, assets, and franchises to secure its obligations, and is the owner f all of the capital stock of the Railway Company, except directors' ualifying shares, and is also the lessee of the railroad of the Rail- ay Company and as such is in possession thereof and operating the same; and

72 Whereas the board of directors of the Railway Company, at meetings lawfully held, duly adopted certain resolutions, and ereby, among other things, determined to borrow moneys for the onstruction or purchase of property, for double tracking and other nprovement, betterment and extension of its railroads, and for other orporate purposes, and resolved to make, create, and sell an issue f its bonds to an aggregate principal amount limited to two hun- red and fifty million French francs (fcs. 250,000,000) or nine illion eight hundred and seventy-five thousand pounds sterling £9,875,000) face value of its four per cent thirty-five-year European an of 1911, to be dated March 1, 1911, to be payable March 1, 1946, nd to bear interest from March 1, 1911, at the rate of four per cent 4%) per annum, payable semiannually on the first day of March nd of September of every year; said bonds to be issued and authenti- ated under and in conformity with the terms and provisions of an ndenture of even date therewith; and also duly determined and re- olved to sell said bonds to the Company; and

Whereas the board of directors of the Company, at meetings h
fully held, duly adopted certain resolutions, and thereby, amo
other things, determined that it was for the advantage, bene
473 and interest of the Company, as the stockholder and lessee
the railroads of the Railway Company that the Railway Co
pany should succeed in procuring the said moneys desired by it
the purposes aforesaid, and also that it was for the advantage, bene
and interest of the Company to purchase the said bonds of the Ra
way Company and sell the same, and in order to effect such sale
conditionally to guarantee the payment of the principal and inter
of said bonds and the due and punctual performance by the Railw
Company of its covenants in said bonds and indenture contained, a
to execute an indenture to secure the same; and whereby it was al
resolved to make such purchase and guaranty and to execute su
indenture, and a contract for such purchase has been made; and

Whereas this indenture was duly submitted to and approved a
its execution directed by said board of directors of the Railway Co
pany at meetings duly and lawfully held and the resolutions appro
ing the same and directing its execution and the issue of said bon
have been duly assented to by the holders of all the shares of pr
ferred and of common stock of the Railway Company; and this i
denture was duly submitted to and approved, and its execution a
the guaranty of said bonds directed by said board of directo
474 of the Company at such meetings; and

Whereas the forms in English of the said temporary
interim bonds, of the definite engraved bonds and coupons, and
the certificate of the Trustee to be endorsed on all such bonds s
mitted to and approved by the respective boards of directors of t
Pacific Companies, are substantially as follows (subject to su
changes, if any, in the definite engraved bonds and coupons as may
made pursuant to section 4 of article one of this indenture), to wit:

(Form of temporary or interim bond.)

No. ———. Fcs. 2,500,
£98,750.

United States of America.

Central Pacific Railway Company four per cent thirty-five-y
European loan of 1911, unconditionally guaranteed by South
Pacific Company. Total issue limited to French francs, 250,000,
or £9,875,000.

Temporary or interim bond.

The Central Pacific Railway Company, for value received, pr
ises to pay to the bearer, upon the surrender hereof, on the

75 day of March, 1946, the sum of two million five hundred thousand French francs, in the city of Paris, France, at the entral banking houses of the Banque de Paris et des Pays-Bas or of he Societe Generale pour favoriser le Developpement du Commerce t de l'Industrie en France or elsewhere in France at the offices of he branches and agencies of said banks or of correspondents which hey may designate, or, at the option of the holder, in Belgium or in witzerland at the offices of the branches and agencies of either of the foresaid banks or of correspondents which they may designate, at he then current rate of exchange for sight francs on Paris or, at the ption of the holder, in London or elsewhere in England at the bank- ng house of Baring Brothers & Co. (Ltd.), or at the offices of the ranches and agencies of any of the aforesaid banks or of corre- pondents which they may designate, at the fixed rate of exchange of inety-eight thousand seven hundred and fifty pounds, sterling oney of Great Britain, for two million five hundred thousand rench francs; and to pay interest thereon from the first day of larch, 1911, at the rate of four per centum per annum, payable upon presentation of this bond for notation of such payment here- on) semiannually on the first day of March and of September 76 in each year, in French francs at said offices in Paris and else- where in France, or, at the option of the holder, at said offices n Belgium or in Switzerland at the then current rate of exchange or sight francs on Paris, or at said offices in England at the afore- aid fixed rate of exchange. Said principal and interest are payable ithout deduction for any tax or taxes which the said Railway Com- any may be required to pay or retain therefrom under any present r future law of the United States of America, or of any State, ounty, or municipality therein, and without deduction for any rench duties or taxes in respect of the principal and interest of this ond, it being understood that the aggregate amount of such French uties and taxes chargeable to the said Railway Company shall never xceed the aggregate amount of such duties and taxes in respect of he principal and interest of this bond as result from the present pplication of the laws of the French Republic in force on March 1, 911; and any French duties or taxes in addition to such last men- ioned aggregate amount shall be deducted from the principal or the nterest when payable.

This bond is one of 100 temporary bonds, without coupons, of the denomination of 2,500,000 French francs each, numbered 1 77 to 100, both inclusive, and is issued in lieu of an equal prin- cipal amount of a series of engraved coupon bonds of the de- omination of 500 French francs each, such bonds (both temporary nd engraved) being all of like date and effect except as to amount, nd without priority, preference, or distinction whatsoever of one

over another, for the aggregate principal sum of two hundred
fifty million French francs, or nine million eight hundred and
enty-five thousand pounds sterling, and all issued and to be is
under an indenture dated the first day of March, 1911, between
said Railway Company and Southern Pacific Company and Uni
States Trust Company of New York, as Trustee, to which indent
reference is hereby made.

This bond will be exchangeable for an equal principal amount
said bonds in the denomination aforesaid, when engraved, with c
pons for all unmatured interest payable thereon.

This bond is subject to redemption at the option of the Railw
Company or its successors at par and accrued interest on March
1921, or on any semiannual interest date thereafter, upon six mont
notice as provided in said indenture, or on any semiannual inter
date under the special conditions and upon the notice there
478 set forth; under the proviso that in either case redempti
must be of the total amount of the issue then outstanding.

The Railway Company, ten days before this bond becomes d
either according to the tenor thereof or by redemption as above pr
vided, and ten days before any interest installment thereon becom
due, will deposit with the two French banks herein named, or eith
of them, for distribution and payment to the respective holders of
such bonds, a sum in French francs at least sufficient to pay as afo
said the principal and interest then to become due, and such depo
shall, when and as such bonds and interest installments respectiv
become due, be deemed payment thereof; all as provided in said i
denture.

If this bond be not presented for payment within thirty years
any matured interest installment thereon be not demanded with
ten years, after this bond or such interest installment, as the case m
be, becomes due and payable, the same shall be barred and outla
for the benefit of the Railway Company and Southern Pacific Co
pany.

All questions concerning the terms, provisions, and effect of sa
bonds and coupons and the rights of the holders thereof sha
479 be exclusively construed and determined according to law
the United States and be adjudicated by the proper judici
tribunals therein.

This bond shall be negotiable and pass by delivery.

This bond shall not become obligatory for any purpose until
shall have been authenticated by the certificate hereon indorsed
the Trustee under said indenture.

In witness whereof the Central Pacific Railway Company h
caused its corporate name and the signature of its president or
of its vice presidents to be hereunto subscribed and its corporate

be hereunto affixed, duly attested by its secretary or by one of its sistant secretaries, at the city of New York, the first day of March, 11.

CENTRAL PACIFIC RAILWAY COMPANY.
By ——— ———, *Vice President.*

Attest:
———— ———, *Assistant Secretary.*

(Form of definite engraved bond.)

United States of America.

o. ———. Fcs. 500.
£19.15.

Central Pacific Railway Company four per cent thirty-five year uropean loan of 1911, unconditionally guaranteed by Southern acific Company. Total issue limited to French francs 250,000,000 £9,875,000.

The Central Pacific Railway Company, for value received, prom-es to pay to the bearer, upon the surrender hereof, on the first day f March, 1946, the sum of 500 French francs, in the city of Paris, rance, at the central banking houses of the Banque de Paris et des ays-Bas or of the Societe Generale pour favoriser le Developpement u Commerce et de l'Industrie en France or elsewhere in France the offices of the branches and agencies of said banks or of cor-espondents which they may designate, or, at the option of the holder, Belgium or in Switzerland at the offices of the branches and gencies of either of the aforesaid banks or of correspondents which they may designate, at the then current rate of exchange for 31 sight francs on Paris or, at the option of the holder, in London or elsewhere in England, at the banking house of Baring rothers & Co. (Ltd.), or at the offices of the branches and gencies of any of the aforesaid banks or of correspondents hich they may designate, at the fixed rate of exchange of nineteen ounds, fifteen shillings, sterling money of Great Britain, for five undred French francs; and to pay interest thereon from the first ay of March, 1911, at the rate of four per centum per annum, pay-ble semiannually on the first day of March and of September in ch year, in French francs at said offices in Paris and elsewhere in rance, or, at the option of the holder, at said offices in Belgium or Switzerland at the then current rate of exchange for sight francs n Paris, or at said offices in England at the aforesaid fixed rate f exchange, on presentation and surrender of the respective coupons ereunto attached as the same become due. Said principal and in-erest are payable without deduction for any tax or taxes which the

said Railway Company may be required to pay or retain there
under any present or future law of the United States of Ameri
of any State, county, or municipality therein, and without ded
for any French duties or taxes in respect of the principal
482 interest of this bond, it being understood that the aggr
amount of such French duties and taxes chargeable t
said Railway Company shall never exceed the aggregate amou
such duties and taxes in respect of the principal and interest of
bond as result from the present application of the laws of the Fr
Republic in force on March 1, 1911; and any French duties or tax
addition to such last-mentioned aggregate amount shall be ded
from the principal or the interest when payable.

This bond is one of 500,000 bonds, of the denomination of
French francs each, numbered 1 to 500,000, both inclusive, a
like date, tenor, and effect, and without priority, preference, or
tinction whatsoever of one over another, for the aggregate prin
sum of two hundred and fifty million French francs, or nine mi
eight hundred and seventy-five thousand pounds sterling, and
issued and to be issued under an indenture dated the first da
March, 1911, between the said Railway Company and Southern
cific Company and United States Trust Company of New Yo
Trustee, to which indenture reference is hereby made.

This bond is subject to redemption at the option of the Rail
Company, or its successors, at par and accrued interest
483 March 1, 1921, or on any semiannual interest date there
upon six months' notice, as provided in said indenture, o
any semiannual interest date under the special conditions and
the notice therein set forth, under the proviso that in either
redemption must be of the total amount of the issue then outstan

The Railway Company, ten days before this bond becomes
either according to the tenor thereof or by redemption as above
vided, and ten days before any coupon thereunto appertaining
comes due, will deposit with the two French banks herein name
either of them, for distribution and payment to the respective ho
of all such bonds and coupons, a sum in French francs at
sufficient to pay as aforesaid the principal and interest then t
come due, and such deposit shall, when and as such bonds and cou
respectively become due, be deemed payment thereof; all as pro
in said indenture.

If this bond be not presented for payment within thirty yea
any coupon hereunto attached be not presented for payment w
ten years, after this bond or such coupon, as the case may be, bec
due and payable, the same shall be barred and outlawed fo
benefit of the Railway Company and Southern Pacific Compan

All questions concerning the terms, provisions, and effect of said bonds and coupons and the rights of the holders thereof ll be exclusively construed and determined according to law in United States and be adjudicated by the proper judicial tribunals erein. While this bond and the interest coupons are in both the glish and French languages, the English form shall prevail in nstruction.

This bond and each coupon hereunto appertaining shall be negoble and pass by delivery.

This bond shall not become obligatory for any purpose until it all have been authenticated by the certificate hereon indorsed of the rustee under said indenture.

In witness whereof the Central Pacific Railway Company has used its corporate name and the engraved facsimile signature of its esident or one of its vice presidents to be hereunto subscribed and corporate seal to be hereunto affixed, duly attested by its secretary one of its assistant secretaries, and coupons for said interest auenticated by the engraved facsimile signature of its treasurer, to be reunto attached, at the city of New York, the first day of March, 1911.

CENTRAL PACIFIC RAILWAY COMPANY,

By ------ ------,

President.

Attest:

------ ------,

Assistant Secretary.

(Form of coupon.)

o. --------

Fcs. 10.

£0:7:10–3/4.

Central Pacific Railway Company 4% 35-year European loan of 11 unconditionally guaranteed by Southern Pacific Company.

The Central Pacific Railway Company will pay to bearer on the rst day of ----------, 19--, the sum of ten French francs at the fices, branches, or agencies of the Banque de Paris et des Pays-Bas r of the Societe Generale pour favoriser le Developpement du Comerce et de l'Industrie en France (or correspondents which they ay designate) in France, Belgium, Switzerland, or England, or of aring Brothers & Co. (Ltd.) in England—payable in Belgium and witzerland at the then current rate of exchange for sight francs on Paris and in England at the fixed rate of exchange of 7 86 shillings 10–3/4 pence sterling for 10 fcs., being six months' interest then due on its bond No. ----, dated March 1, 1911,

without deduction for present or future taxes in the United Sta
French taxes in respect to this coupon to the aggregate am
resulting from laws in force March 1, 1911, all as provided in
bond.

------ ------,
Treasu

(Form of certificate of Trustee.)

This bond is one of the bonds described in the within-mentio
indenture.

UNITED STATES TRUST COMPANY OF NEW YORK,
Trust

By ——— ———.

And whereas each of said bonds, both temporary and definiti
to have upon it the following endorsement by the company, duly
cuted by it, viz:

(Form of guaranty.)

The Southern Pacific Company, for value received, hereby u
ditionally guarantees to the bearer of the within bond a
487 the Trustee therein named the due and punctual payme
the principal and interest thereon as the same mature, ac
ing to the tenor of said bond and the indenture therein refer
and itself agrees punctually to pay the said principal and in
as therein provided if default in the payment thereof be made b
Central Pacific Railway Company; and also guarantees to the h
hereof and to said Trustee that said Railway Company will
and punctually perform all the terms, covenants, and conditio
its part to be performed under said indenture; and that in cas
Railway Company shall default in performing or carrying ou
of the terms, covenants, and conditions of said indenture an
bond said Southern Pacific Company itself will duly and punc
perform and comply with the same without notice or demand.

In witness whereof the Southern Pacific Company has cau
corporate name and the signature or the engraved facsimile
ture of its president or one of its vice presidents to be hereunt
scribed and its corporate seal to be hereunto affixed, duly attes
its secretary or one of its assistant secretaries, at the city o
York this first day of March, 1911.

488 SOUTHERN PACIFIC COMP
By ——— ———,
Presi

Attest:

——— ———
Secretary.

And whereas this indenture was submitted to and approved by respective boards of directors of the Pacific Companies; and all ngs necessary to make such bonds when executed by the Railway mpany, guaranteed by the Company and certified by the Trustee, valid, binding and legal obligations of the Railway Company the Company, and to constitute these presents a valid inden- e to provide for the certification and the enforcement of the pay- nt of said bonds, have been done and performed and have hap- ed, and the execution and issue of said bonds and guaranty and this indenture have in all respects been duly authorized; now, refore, this indenture witnesseth:

That in order to promote the equal and proportionate benefit of all present and future takers and holders of the bonds and coupons issued and to be issued and outstanding under this indenture and the performance of all the covenants and con- ons herein and therein contained, and in consideration of the mises and of the purchase and acceptance of such bonds by the ders thereof, severally and respectively, and of the sum of one lar to each of the Pacific Companies duly paid by the Trustee at execution and delivery of these presents, the receipt whereof is eby acknowledged, the Pacific Companies severally have cove- ted and declared, and by these presents severally do covenant and lare that each and every of the said bonds is to be issued, guar- eed, authenticated, negotiated, sold and held upon and subject to following trusts, uses, conditions, covenants, and agreements, ch are accepted and assented to by the taker and holder of each every of said bonds, so that each and every such holder shall have al and proportionate rights and claims against the Pacific Com- ies, without preference, priority or distinction as to one or the r of said bonds by reason of priority in the issue, sale or negotia- thereof, or otherwise; and so that each and every bond issued as resaid shall have equal and proportionate rights, as though all had been duly issued, sold and negotiated simultaneously with the execution and delivery of this indenture; and each and every of said bonds shall be authenticated by the Trustee and be enforced by the Trustee, except as otherwise expressly de- ed in said bonds or in this indenture.

ARTICLE ONE.

Authentication and issue of bonds.

ECTION 1. From time to time the bonds issued hereunder shall be cuted by the Railway Company and shall be guaranteed by the mpany, and by the Railway Company shall be delivered to the

Trustee for authentication; and thereupon, as provided in article, and not otherwise, the Trustee shall authenticate and deliver the same. Said temporary or interim bonds may be pr or lithographed and shall be numbered from 1 to 100, both incl and said engraved bonds shall be numbered from 1 to 500,000, inclusive.

The amount of bonds issued hereunder, which may be execut the Railway Company and which may be authenticated by the tee, is limited so that never at any time shall there be outsta bonds hereunder for an aggregate principal sum exceeding two dred and fifty million French francs (Fcs. 250,000,000) or nine lion eight hundred and seventy-five thousand pounds ste (£9,875,000).

Before authenticating or delivering any coupon
491 issued hereunder the Trustee shall detach and shall canc coupons thereof then matured.

Only such of said bonds as shall bear thereon the said certi of the Trustee shall be issued under this indenture. No such nor any coupon thereunto appertaining, shall be valid for any pose until such certificate shall have been duly indorsed on such Every such certificate of the Trustee upon any bond executed b Railway Company and guaranteed by the Company shall be clusive evidence that the bond so authenticated was duly issued u this indenture.

SEC. 2. The entire issue of said bonds, to wit, two hundred fifty million French francs, or nine million eight hundred and enty-five thousand pounds sterling, authorized to be issued under indenture, both the said temporary or interim bonds and the d tive engraved bonds (except engraved bonds to the amount of porary bonds turned in to be canceled under section 7 of a four), shall be duly executed by the Railway Company and guaranty of the Company shall be duly executed and indorsed the

and so executed and guaranteed shall be delivered to the
492 tee for authentication and shall be so authenticated by Trustee and delivered to the Railway Company, or upo order, without further order, authority, or direction; and full thority to the Trustee for such authentication and delivery of hundred and fifty million French francs, or nine million eight dred and seventy-five thousand pounds sterling, face value, of bonds is hereby given; but engraved bonds shall be authenti and delivered by the Trustee only against the surrender to the Tr for cancellation of a like amount of temporary bonds.

SEC. 3. In case any of the officers who shall have signed or se or whose facsimile signature shall be affixed to, any of said bon the guaranty indorsed thereon, or whose facsimile signature

affixed to the coupons appertaining to the engraved bonds, shall
ase to be such officer or officers of the Pacific Companies, respec-
ely, before the bonds so signed and sealed shall have been ac-
ally authenticated by the Trustee, or delivered or sold or otherwise
ued, such bonds may, nevertheless, be adopted by the Pacific Com-
nies, and upon the written request of the Railway Company shall
authenticated and delivered, subject to the provisions of section 2
of this article; and may be sold or otherwise issued as though
3 none of the persons who signed or sealed, or whose facsimile
signature is affixed to such bonds or the guaranty indorsed
ereon, or whose facsimile signature is affixed to the coupons apper-
ining to the engraved bonds, had ceased to be such officer of the
ailway Company, or, as the case may be, of the Company.

SEC. 4. The Railway Company agrees duly to prepare and execute
s engraved bonds and coupons and the Company agrees to guarantee
e same in the form hereinbefore set forth, in the English and
rench languages, and to deliver the same in exchange for such tem-
orary or interim bonds (except engraved bonds to the amount of
mporary bonds turned in to be canceled under section 7 of article
our) with such changes, if any, as to the places and manner of pay-
ent of the principal and interest of such bonds as shall be approved
y Messrs. Sullivan & Cromwell, of New York. Such definitive en-
raved bonds, together with the coupons for interest thereto attached,
e guaranty indorsed thereon, and the certificate of the Trustee,
all be in both the English and French languages, but it is agreed
at the English form shall prevail in construction.

SEC. 5. The Pacific Companies severally agree that if, at any
94 time, because of their mutilation or other material condition,
any of such bonds and coupons shall not be a good delivery
pon any exchange or bourse where the same may be listed, they
ill, upon surrender of the same and upon payment of the actual
xpense, execute and guarantee hereunder, respectively (and there-
pon the Trustee shall certify and deliver), in exchange for and
pon cancellation of such bonds and coupons a new bond or bonds
nd coupons of like aggregate amount, in like form and bearing a
ke number or numbers; and that if any such bonds and coupons
e lost or destroyed, then, upon request of the owner thereof, and
pon proof of ownership and of such loss or destruction and also
pon indemnity, all to the satisfaction of the Pacific Companies and
he Trustee, and also upon the payment of the actual expense, they
ill execute and guarantee hereunder, respectively (and thereupon
he Trustee shall certify and deliver), in place thereof, a new bond or
onds and coupons of like aggregate amount, in like form and bear-
ng a like number or numbers; and if any coupon appertaining to

any bond issued hereunder be lost or destroyed, then, upon re
of the owner thereof and upon proof of ownership and of such
or destruction, and also upon indemnity, all to the satisfac
495 of the Pacific Companies and of the Trustee, the Pacific C
panies, or one of them, will thereupon pay the same, if
or, if not due, will pay the same upon the maturity thereof.

ARTICLE TWO.

Particular covenants by the Railway Company.

The Railway Company covenants and agrees that it will duly
punctually pay the principal and interest of every bond issued un
this indenture at the dates and the places and in the manner m
tioned in such bonds or in the coupons thereto belonging, accord
to the true intent and meaning thereof, without deduction for
tax or taxes which the Railway Company may be required to pa
retain therefrom under any present or future law of the Un
States of America, or of any State, county, or municipality ther
and without deduction for any French duties or taxes in respect
the principal and interest of the bonds, it being understood that
aggregate amount of such French duties and taxes chargeable to
Railway Company shall never exceed the aggregate amount of
duties and taxes in respect of the principal and interest of the b
as result from the present application of the laws of the Fre
Republic in force on March 1, 1911; and any French duti
496 taxes in addition to such last-mentioned aggregate amo
shall be deducted from the principal or the interest w
payable. The interest on temporary bonds shall be payable only
presentation thereof for notation of such payment thereon, and
interest on the engraved bonds shall be payable only upon presen
tion and surrender of the several coupons for such interest as t
respectively mature, and when paid such coupons shall forthwith
canceled. From time to time thereafter the Railway Company s
deliver such canceled coupons to the Trustee for destruction and
Trustee shall thereupon cremate the same and furnish the Rail
Company with a certificate specifying the coupons so cremated.

The deposit by the Railway Company with the French banks
either of them, ten days prior to any interest date, of a sum in Fr
francs sufficient to pay as aforesaid the interest becoming du
such date, together with such additional sum as may be require
pay the expenses and compensation of the French banks in connec
with the payment of such interest to the holders of coupons there
or, as the case may be, to the holders of temporary bonds, shall
between each of the Pacific Companies and the Trustee, on

one hand, and the holders of said bonds and coupons, on the other hand, be deemed, at such interest date, a payment, satisaction, and discharge of the said interest.

ARTICLE THREE.

Particular covenants by the Company.

In consideration of the benefits and advantages to be derived by he Company, as the owner of all the capital stock of the Railway Company, except directors' qualifying shares, and as the lessee of he railroads of the Railway Company, from the procuring by the Railway Company of the funds needed by it for its corporate purposes and the betterment, improvement, and extension of its lines with and out of the proceeds of the bonds to be issued under and secured by this indenture, and in view of the purchase by the Company of the bonds of the Railway Company issued hereunder and as an inducement to the purchase by others from it of the bonds so purchased by it, and in consideration also of the sum of one dollar to it paid by the party of the third part, the receipt whereof is hereby acknowledged, and of other good and valuable considerations to it moving, the Company has covenanted and agreed, and by these presents does covenant and agree, to and with each and every of the bearers of the bonds to be issued under and secured by this indenture, and to and with the Trustee for the benefit of such bearers, from time to time, of such bonds, as follows:

SEC. 1. The Company unconditionally guarantees to the bearer of each of the bonds issued hereunder and to the Trustee the due and punctual payment of the principal and interest thereon as the same mature according to the tenor of said bonds and this indenture, and itself agrees punctually to pay the said principal and interest as herein and therein provided if default in the payment thereof be made by the Railway Company; and also guarantees to the bearer of each of said bonds and to the Trustee that the Railway Company will duly and punctually perform all the terms, covenants, and conditions on its part to be performed under this indenture; and that in case the Railway Company shall make default in performing or carrying out any of the terms, covenants, and conditions of this indenture and of said bonds, the Company itself will duly and punctually perform and comply with the same without notice or demand.

SEC. 2. The Company hereby waives the presentation to the Railway Company for payment of the bonds issued hereunder and the coupons attached thereto and waives demand for payment upon the Railway Company and all protest and notice of dishonor; and no action or inaction of the holders of said bonds, or of the Trustee, with respect to the Railway Company or its prop-

erty, shall release the Company or affect or impair any of the ri
of the bondholders or the Trustee hereunder against the Compan

SEC. 3. The Company covenants and agrees that so long as an
the said bonds are outstanding and unpaid the Southern Pa
Company will not sell or hereafter pledge any of shares of
capital stock of the Central Pacific Railway Company (except
provided by the Company's Central Pacific stock collateral m
gage), Southern Pacific Railroad Company, the Galveston, Ha
burg, and San Antonio Railway Company, or Southern Pacific T
minal Company (known as the Galveston Terminal); nor will
sell or suffer to be sold any of the shares of the capital stock of Ho
ton and Texas Central Railroad Company, the Houston East a
West Texas Railway Company, Houston and Shreveport Railr
Company, Texas and New Orleans Railroad Company, Louisi
Western Railroad Company, Morgan's Louisiana and Texas Railr
and Steamship Company, South Pacific Coast Railway Company,
Oregon and California Railroad Company, nor sell the prope
known as the Bay Shore Line, in San Francisco (otherw
500 known as the San Francisco Terminal); and the Compa
will not sell, or suffer to be sold, transferred, canceled, or s
rendered, the leases of any of the railroad lines of said compa
(except that the Company may subordinate any such lease to a
mortgage to be made by such lessor not in violation of the provis
of this indenture); nor will the Company suffer the railroad lines
any of said companies to be sold or leased, nor will it or any of s
companies enter into any merger or consolidation, except (in the e
of any such sale, lease, merger, or consolidation) inter se or to
with a corporation all of whose stock other than directors' qualify
shares shall at the time be held hereunder or to or with the Compa
nor except as aforesaid will it or they be dissolved or liquidated; a
that, except as aforesaid, it and the said companies will severa
maintain, renew, or extend their corporate existence; but the Sou
ern Pacific Railroad Company may at any time sell and convey th
portion of its lines of railroad extending from a point at or n
Mojave, in Kern County, to Needles, on the Colorado River, in S
Bernardino County, California, now in the possession of and op
ated by the Atchison, Topeka and Santa Fe Railway Compa
501 as lessee for a term extending to July 1st, 1979, under and s
ject to the conditions of a contract and indenture of lease da
July 15th, 1898:

Provided, That any such acts or matters covenanted not to be d
or to be done (as the case may be) may be done or not done (as th
case may be) upon the approval in writing by the French ban
filed with the Trustee after specific statement in writing by th
Company to the French banks of the action proposed; and that

y case of the refusal of the French banks to assent to the action so
oposed, or their failure to assent thereto within thirty days after
esentation to them in writing of such proposal, the Railway Com-
ny shall have and is hereby expressly accorded the right and op-
n (to be exercised within forty days from the date of such refusal
within forty days from the expiration of said thirty days in
spect of the failure to assent, as the case may be) to declare the
tire principal of said bonds then outstanding to be due and pay-
le at the next ensuing interest date (whether before, on, or after
arch 1, 1921) not less than sixty days from the date of such declara-
on, and to redeem and pay all such bonds, with accrued interest,
such date, with the same force and effect and in the same manner
as is provided in respect of its right of redemption on or after
2 March 1, 1921, in article eight of this indenture, except that
the first publication of notice in respect of the redemption in
is section 3 provided for shall be not less than sixty days, instead
six months, preceding such redemption.

SEC. 4. The Pacific Companies severally agree that the Company,
e Railway Company, the Southern Pacific Railroad Company, the
alveston, Harrisburg and San Antonio Railway Company, the
outhern Pacific Terminal Company, and any corporation the stock
bonds of which shall be held on deposit hereunder, will severally
ly and punctually make upon demand at or after maturity all
yments to be by them respectively made in, by, or under any
nd, mortgage, pledge, lease, or other fixed obligation or guaranty
retofore or hereafter respectively made by them; and that no decree
foreclosure or sequestration, or any order or orders, decree or
dgment, appointing a receiver of them or their railroads shall be
ntered against any of said corporations, nor shall any of them vol-
ntarily or otherwise go into insolvency or suffer itself to be de-
ared insolvent or be voluntarily or otherwise dissolved, except as
in section 3 of this article provided; and that if any final
03 judgment or decree (other than as aforesaid) be entered
against any of said corporations the same shall forthwith be
id or performed and satisfied and discharged of record or stayed
on appeal: *Provided, however*, That nothing contained in this
ction shall require the said companies to make any payment, or
erform or satisfy and discharge any judgment, order, or decree, so
ng as they or either of them shall by appropriate legal proceedings
otherwise contest the same, and prevent, stay, or otherwise avoid
nforcement thereof.

SEC. 5. No corporation the capital stock of which shall be at any
me pledged under this indenture shall, while such stock shall be
eld hereunder and without the consent of the French banks, (1) de-
rease its capital stock or issue stock preferred to that held hereunder,

or (2) issue additional stock of the same or an inferior class to
held hereunder, unless in the case of such additional stock the
rata share of the same to be delivered to the Trustee as additi
collateral hereunder, or (3) create any mortgage upon any rail
now owned by it, or (4) create any new lease, except to the C
pany, or (5) sell any of its railroads to, or consolidate with,
other company, except a company all of whose stock ex
504 directors' qualifying shares shall be at the time deposited h
under, or (6) suffer its franchises or corporate existence t
terminated, except by sale, merger, or consolidation as aforesaid
with the Company, except, however, (1) that the Southern Pa
Railroad Company may create an additional mortgage upon
properties or any part thereof upon condition that the capital st
of said Southern Pacific Railroad Company then on deposit un
this indenture shall previously be reappraised in the manner he
provided for appraisements and reappraisements in cases of w
drawals and substitutions of collateral; and if it shall be determi
upon such reappraisement that said deposited stock is or will be
less value by reason of such mortgage or otherwise than the amo
at which it then stands appraised under this indenture, then s
deficiency in value shall be made entirely good and whole by
deposit of additional collateral (of a value and character like
appraised and determined) to the amount of any such deficie
and except (2) that any of said corporations may issue any bo
authorized to be issued under any mortgage or mortgages now ex
ing, and may extend any bonds issued or to be issued the
505 under, and may create a mortgage or mortgages to secure bo
to refund, or in lieu of bonds issued or issuable under
such existing mortgage or mortgages to a maximum amount not
exceed the bonds to be refunded or replaced; and except (3) that
Houston and Texas Central Railroad Company, which has already
action of its directors and stockholders, authorized an issue of bo
to be secured by mortgage upon its recently constructed line fr
the junction of its line at Nelleva to another junction with its m
line at or near Mexia, may create a mortgage to secure an issu
such bonds to the amount which may have been authorized and
proved by the Railroad Commission of Texas; and except (4) t
the Galveston, Harrisburg and San Antonio Railway Company m
create a mortgage upon that portion of its lines formerly owned
the San Antonio and Gulf Railroad Company and subsequently e
tended by construction from San Antonio to Cuero, upon the li
formerly owned by the Gulf, Western Texas and Pacific Rail
Company extending from Cuero to Beeville and from Port Lava
Victoria, upon the lines formerly owned by the New York, Te

d Mexican Railway Company extending from Victoria to Rosen-
rg, with various branches, and upon the line formerly owned by
the Galveston, Houston and Northern Railway Company ex-
6 tending from a junction with the Texas and New Orleans
Railroad near Houston to Galveston, and upon the line for-
erly owned by the Gonzales Branch Railroad Company extending
om Harwood to Gonzales: *Provided*, That in connection therewith
e mortgage bonds of the Gulf, Western Texas and Pacific Railway
ompany, the New York, Texas and Mexican Railway Company,
d the Galveston, Houston and Northern Railway Company now
tstanding and held by the Southern Pacific Company, or by com-
nies in which it is interested as a majority stockholder, shall be
tired and canceled.

Nothing in this indenture contained shall be construed as prevent-
g the Railway Company from mortgaging any property at any
me owned by it.

SEC. 6. The Company hereby states and represents that it is the
ssee of the railroads of the Railway Company, and is the owner of all
the shares of capital stock of the Railway Company, except direc-
rs' qualifying shares; and that as such stockholders and lessee it has
ly assented, and does hereby duly assent, that the Railway Com-
ny make, issue, and sell its bonds herein described and execute and
liver this indenture.

07 ARTICLE FOUR.

eposit by the Company of securities, and rights and remedies relat-
ing thereto.

SECTION 1. In consideration of the various matters and things
cited in article three hereof, and in order to secure the payment of
e principal and interest of all bonds at any time issued and out-
nding under this indenture, according to the tenor, purport, and
fect thereof, and to secure the due and punctual performance and
servance of all the covenants, conditions, and provisions herein
ntained on the part of the Railway Company, and to secure the
e and punctual performance of its own guaranties of the same
d also of all of its own obligations under its own covenants or
nder any other provisions herein contained, and also to induce the
rchase by others from itself of the said bonds to be issued here-
nder, the Company, in consideration of the premises and of the
m of one dollar to it in hand paid by the Trustee, receipt whereof
hereby acknowledged, has deposited, assigned, transferred, and
edged, and by these presents does deposit, assign, transfer, and
edge, to the Trustee upon the trusts and subject to the terms and

conditions in this indenture expressed, the following-described
508 securities, viz:

	Appraised value per share of $100 per bond of $1,000.	Aggregate appraised value
450 bonds Houston & Texas Central Railroad Company, first mortgage on Lampasas extension	$1,000	$450,000
19,995 shares Southern Pacific Terminal Company	100	1,999,500
100,000 shares Morgan's Louisiana & Texas Railroad & Steamship Company	50	5,000,000
119,910 shares 7% noncumulative preferred stock of the Oregon & California Railroad Company	60	7,194,600
99,983 shares Houston & Texas Central Railroad Company	50	4,999,150
1,000 second mortgage bonds, eastern division, the Galveston, Harrisburg & San Antonio Railway Company	1,000	1,000,000
4,728 first mortgage bonds, eastern division, the 509 Galveston, Harrisburg & San Antonio Railway Company	1,000	4,728,000
350,000 shares Southern Pacific Railroad Company	100	35,000,000
Total		60,371,250

It is understood and agreed that the present appraised value
the said deposited securities is as aforesaid.

The Company covenants and agrees that it is the lawful owner
said securities, and that the same have been lawfully created a
issued, are fully paid, and are not subject to any prior pledg
charge, or equity.

SEC. 2. The Company shall have the right at any time (if the
be then no default in respect of any provision in this indenture
in the bonds issued hereunder contained or upon said bonds o
dorsed) to withdraw all (but not less than all) the stocks, bonds
other securities of any one issue then on deposit under this indentu
except the capital stock of the Southern Pacific Railroad Compa
and to substitute other securities of not less appraised value than t
last previously appraised value of the securities so to be withdra
and the Trustee shall from time to time on request of the Co
510 pany (to be followed by appraisement as hereinafter pr
vided), and upon receipt of the substituted securities
liver and transfer to it, or upon its order, such of the said stoc
bonds, or other securities then held hereunder (except said st
of the Southern Pacific Railroad Company) as shall be reques
and indicated by the Company in writing, addressed to the Trus
and the French banks: *Provided, however*, That upon each
every withdrawal and substitution the securities offered in s
stitution in each instance shall be (1) of a character approved
the appraisers appointed hereunder and shall be (2) equal in a
praised value at the time of the proposed substitution hereunder

he last previously appraised value of the securities to be with-
drawn; and also that (3) the securities offered in substitution and
hose remaining on deposit (in each instance) shall be equal in value
s appraised or reappraised at the time of such proposed substitution
o one hundred and twenty per centum (120%) of the amount of bonds
hen outstanding hereunder: *And provided further*, (4) That the
ggregate interest and dividends during each of the two years im-
mediately prior to the proposed substitution actually paid
511 upon the securities offered in substitution and upon the other
securities remaining on deposit hereunder shall have been
qual to at least 120% of the interest payable on the bonds then out-
standing hereunder. No reappraisement of the securities remaining
on deposit shall be made or required in connection with the with-
drawal of securities (not exceeding $5,000,000 in the aggregate of
appraised value) requested prior to September 1, 1911.

SEC. 3. In all cases of substitutions, appraisements, and reapraise-
ments, anywhere provided for under this indenture, the appraise-
ments shall be made by two appraisers, one of whom shall be ap-
pointed by the Company and one by the French banks, or in case of
the failure of either party to appoint an appraiser within ten days
after request, then such appointment shall be promptly made by the
Trustee. In case the two appraisers so appointed can not promptly
agree upon the appraisement they shall appoint a third impartial
appraiser, or failing such appointment within ten days after dis-
agreement, then the Trustee shall promptly appoint the third ap-
praiser; and the appraisement of the two appraisers, or of a majority
of the three appraisers, as the case may be, shall be binding and con-
clusive upon all parties hereto. In case of any request made
512 prior to September 1, 1911, for the withdrawal of securities
of appraised value of not more than $5,000,000, the appraisal
and approval of the securities to be substituted may be made by joint
certificate of the Company and the French banks instead of by ap-
praisers appointed as aforesaid.

SEC. 4. Upon all appraisements, reappraisements, and substitu-
tions under any provision of this indenture the French banks shall be
accorded full opportunity to be heard (promptly after notice to
them) in person or through agents and counsel before determina-
tion thereon; and the appraisers shall take into consideration all
facts, circumstances, and conditions then existing in each case, in-
cluding the probable results or effects of any proposed mortgage or
other matter.

SEC. 5. All certificates for shares of stock and all registered bonds,
now or hereafter deposited and pledged hereunder, shall be, at the
time of the delivery thereof, duly endorsed in blank for transfer or

accompanied by irrevocable powers of attorney authorizing
transfer of the same, and the Trustee shall from time to time tran
into its name as Trustee all such shares of stock and registered bon
and the Pacific Companies will pay to the Trustee the amo
of any transfer tax necessary to be paid upon or in conn
513 tion with any such transfers. Until and unless default sh
be made by the Railway Company and the Company in
payment at maturity of the principal or the interest of any of
bonds issued hereunder, or until and unless default shall be ma
in the due and punctual observance or performance of any other
the terms, covenants, conditions, or requirements contained in
bonds and this indenture, and any such last-mentioned default sh
have continued for the period of three months after notice there
by the Trustee to the Company and the Railway Company, the Co
pany (a) shall have the right to vote or to consent in respect of
and all of the shares of stock now or hereafter deposited or pledg
hereunder, and from time to time the Trustee, upon the request of
Company, shall execute and deliver, or cause to be executed and d
livered, to the Company suitable powers of attorney or proxies f
so voting or consenting in respect of said stock; and the Compan
(b) shall be entitled to receive all interest paid in respect of an
bonds now or hereafter deposited and pledged hereunder, and a
dividends, except stock dividends, on all shares of stock now
hereafter deposited and pledged hereunder; and the Trustee sha
deliver to the Company from time to time hereafter, upon re
514 quest of the latter, suitable orders in favor of the Company o
its nominee for the payment of interest upon any registere
bonds and of said dividends upon shares of stock then deposited an
pledged hereunder, and shall from time to time upon request of th
Company (not more than thirty days prior to the date when such
interest shall be payable) deliver to the Company or its nominee an
and all coupons upon bonds then held hereunder; and the Truste
shall upon demand pay over to the Company any such interest and
dividends which may be collected or be received by it. The Compan
covenants that such powers to vote or consent in respect of any stock
now or hereafter pledged hereunder shall not be used in favor of, or
to further the doing of, any act or thing in violation of any of the
provisions of this indenture.

The Trustee also is fully empowered to do whatever may be neces
sary to maintain, renew, or extend the corporate existence of any
company, stock of which may be held at the time hereunder, and
may sell and transfer stock necessary to qualify directors.

SEC. 6. In case default shall be made in the payment upon demand
of any installment of interest then due upon any bond issued

hereunder and then outstanding and such default shall have continued for the period of three months, or in case default ll be made in the payment of the principal of any of said bonds ether upon maturity of said bonds or upon declaration as au- rized by this indenture), then, and in every such case, the Trustee , in its discretion, upon the written request of the holders of nty per cent in amount of the bonds then outstanding, and shall, n the written request of the holders of twenty-five per cent in ount of the bonds then outstanding, proceed, upon thirty days' ice to the Company, and notice by publication at least once a week four successive weeks in a daily newspaper of general circulation lished in the city of New York, to sell at public sale in said city, for the best price that can be obtained therefor, the whole of the rities held by the Trustee at the time of such default, or as much reof as may in the judgment of the Trustee be necessary to pay principal of said bonds, if due, and all overdue coupons and ars of interest thereon, the compensation, advances, liabilities, expenses of the Trustee and all expenses pertaining as well to execution of the trust as to said sale and any other costs and charges incurred in consequence of such sale, as well as any taxes or charges upon said securities in connection with such sale, in such lots or parcels as the Trustee may deem most eficial to the holders of such bonds; and the Trustee is authorized djourn from time to time, in its discretion, the sale of the whole ny part of said securities.

he action of the Trustee, whether with or without demand or uest of the holders of any specified amount of said bonds then tanding, in the exercise of any duties and powers anywhere in indenture provided for, shall at all times be subject to the direc- and control of a majority in amount of the bonds then issued outstanding, whenever such majority shall give direction and rcise such control; provided that any action taken by the Trustee, n this indenture provided, before such majority shall give such ction or exercise any such control shall be sufficient.

pon any sale under this indenture, or under or pursuant to judi- proceedings, of the stocks, bonds, or other securities deposited under, the purchaser or purchasers thereof shall be entitled in ing payment of the purchase price to turn in and apply to the ment of the purchase price any of the said bonds issued hereunder and any matured and unpaid coupons, reckoning such bonds and coupons for that purpose at a sum equal to that which would be payable out of the net proceeds of said sale to the ler of said bonds and coupons so turned in as his or their proper e thereof, after allowing for the compensation, advances, lia- ies and expenses of the Trustee and all expenses pertaining as

well to the execution of the trust as to said sale, and any othe
and charges incurred in consequence of such sale, as well a
taxes or charges upon said securities. Said bonds, if so paid i
shall be canceled; but if the amount which would be so payable
said net proceeds upon an accounting, apportionment, or distri
to the holder of said bonds and coupons so turned in be less th
amount for which the Railway Company and the Company
be liable on such bonds and coupons, then the receipt endorsed th
by the Trustee or its agents for the amount so allowed or cr
thereon shall be sufficient as to such payment.

The Trustee, after having received request as aforesaid, sh
entitled in its discretion, in lieu of proceeding to sell by it
action the securities deposited hereunder, to bring suit befor
court in the United States of competent jurisdiction to procur
sale by the court in, or in the course of, such suit. The p
518 sions herein made with respect to the payment for any
erty sold by the Trustee shall apply *mutatis mutandis* t
sale made by or under the direction of the court in any such su

SEC. 7. If the Company shall at any time present to the T
tee for cancellation (and not in exchange for engraved bonds
than all of the outstanding issue of temporary or interim bond
Trustee shall receive and cancel said temporary or interim bond
thereupon the Trustee will surrender, assign, transfer, and d
to the Company the stocks, bonds, and other securities dep
hereunder, successively in the order of their enumeration in s
1 of this article (securities substituted upon withdrawal
deemed to take the place, in the order of such enumeration, of t
curities so withdrawn), to an amount which shall be proport
at the then appraised value (without reappraisement for the
pose) to the amount of bonds so canceled, but in such manne
the shares of the Southern Pacific Railroad Company shall n
encroached upon until all the other collateral is exhausted; and
vided that if bonds to the amount of one hundred and twen
million French francs (Fcs. 125,000,000) remain issued and
standing hereunder, then in that event no part of the
519 shares of the Southern Pacific Railroad Company sh
retired and withdrawn, but all thereof shall remain and
tinue under such deposit and pledge, subject to the provisions o
indenture; and provided, further, that said order of enume
may be varied and altered from time to time with the appro
the French banks.

SEC. 8. In case any corporation the stock of which shall be pl
hereunder shall hereafter make any distribution of surplus by
dend or otherwise which shall be payable in stock, there shall b
posited with, or retained by, the Trustee hereunder, for the f

urity of the bonds secured hereby, such an amount of stock as ll be so distributed in respect of the shares of stock at the time dged hereunder.

SEC. 9. At any sale made by the Trustee or pursuant to judicial oceedings, of any stocks, bonds or other securities deposited here-der the Trustee, or any bondholder or his agent, may bid for and rchase such stocks, bonds, or other securities, and may make pay-nt therefor as in section 6 hereof provided, and upon compliance th the terms of sale may hold, retain, and dispose of such stocks, bonds, or other securities without further accountability; and any such sale shall divest all the right, title, and interest at law or in equity of the Pacific Companies, or either of them, in, and to the stocks, bonds, or other securities sold and shall a perpetual bar against the Pacific Companies, and each of them, eir successors, and assigns. In case of any such sale, the Pacific mpanies shall join in any deed or other writing which the Trustee the purchaser may reasonably require as necessary or proper to idence such sale or to confirm the title acquired thereat.

ARTICLE FIVE.

Other remedies of Trustee and bondholders.

SECTION 1. In case default shall be made in the payment upon de-nd of any installment of interest then due upon any bond issued reunder and then outstanding, and such default shall have contin-d for the period of three months, or in case default shall be made in e due and punctual observance or performance of any of the terms, venants, conditions, or requirements contained in said bonds and is indenture, and any such last-mentioned default shall have con-nued for the period of three months after notice thereof by the rustee to the Company and the Railway Company—then, and in any and every such case, the Trustee, in its discretion, may, l upon the written request of the holders of twenty per cent in amount of the bonds issued and then outstanding hereunder, d shall, upon the written request of the holders of twenty-five per nt in amount of the bonds issued hereunder and then outstanding, notice in writing delivered to the Railway Company and the Com-ny, declare the principal of all bonds issued hereunder and then tstanding to be due and payable immediately; and upon any such claration the same shall become and be due and payable to the rustee immediately, anything in this indenture or in said bonds to e contrary notwithstanding.

This provision, however, is subject to the condition that (1) if at y time after the principal of said bonds shall have been so declared

due and payable for default in the payment of interest thereo
arrears of interest upon all such bonds, with interest at the ra
four per cent per annum on overdue installments of interest, an
expenses of the Trustee, and all other sums which shall have be
due and payable by the Pacific Companies hereunder other tha
principal of such bonds, shall either be paid by the Pacific C
panies or actually be collected by the Trustee out of the ple
522 stocks, bonds, and other securities before any sale of any
of said stocks, bonds, or other securities shall have been m
or (2) if the principal of said bonds shall have been declared
and payable because of one or more of the other defaults in this
tion 1 specified, and thereafter such default or defaults shall
been cured before any sale of any part of the stocks, bonds, or o
securities pledged hereunder shall have been made, then, and
every such case, the holders of a majority in amount of the bo
issued hereunder and then outstanding, by written notice to
Trustee, may waive such default or defaults and its or their
sequences and rescind the declaration making the principal of
bonds become due; and thereupon the bonds issued hereunder sh
again be of their original terms, tenor, and effect. But no
waiver shall extend to or affect any subsequent default or impair
right or remedy consequent thereon.

SEC. 2. The Pacific Companies severally covenant that in case
fault shall be made in the payment upon demand of any installm
of interest then due on any bond at any time outstanding under
indenture and the same be continued for the period of three mon
or in case default shall be made in the payment of the pri
523 pal of any such bond when the same shall become paya
whether upon maturity of said bonds or upon declaration
authorized by this indenture, then in either and every such c
upon demand of the Trustee, the Pacific Companies will pay to
Trustee, for the benefit of the holders of the bonds and coup
issued hereunder and then outstanding, the whole amount that
shall have become due and payable on all such bonds and coup
then outstanding for interest or principal, or both, as the case
be, with lawful interest upon the overdue principal and installm
of interest; and, in addition thereto, such further amount as shal
sufficient to cover the costs and expenses of collection, including
reasonable compensation of the Trustee, its agents, attorneys,
counsel, and any expenses or liabilities incurred by the Trustee h
under. The Trustee in its own name and as Trustee of an exp
trust shall be entitled and empowered to institute such action or p
ceedings at law or in equity as may be advised by counsel for
collection of the whole sums so due and unpaid or for any o
relief, and may prosecute any such action or proceedings to j

nt or final decree, and shall be entitled to recover judgment and
l decree for the whole amount due and unpaid in respect of all
of said bonds and coupons then outstanding and for deficien-
cies and for any other appropriate relief.

SEC. 3. The Trustee may, except when expressly restricted
the provisions of this indenture, take and prosecute all such
asures and remedies at law or in equity, including specific per-
rmance, as may be afforded by the laws of the United States or
y State thereof to enforce any provision of this indenture or said
nds or to prevent or restrain or redress any breach of any term,
venant, condition, or requirement in this indenture or in said bonds
ntained as it may deem conducive to the interests of the holders of
h bonds.

All rights of action under this indenture, or under any of said
nds or coupons, may be enforced by the Trustee without the pos-
sion of any of the bonds or coupons or the production thereof on
y trial or other proceedings relative thereto, and any such suit or
oceedings instituted by the Trustee shall be brought in its name as
ustee, and any recovery of judgment, including any judgments for
ficiencies, shall be for the ratable benefit of the holders of said
nds and coupons.

Any moneys collected by the Trustee under any provision of
this indenture after default (including income from or the
proceeds of sale of the securities referred to in article four)
ll be applied, at the date fixed by the Trustee for the distribution
such moneys and upon presentation of the several bonds and cou-
ns and stamping thereon the payment if only partially paid, and
on surrender thereof if fully paid, as follows: First, to the pay-
nt of costs and expenses, including reasonable compensation to the
ustee, its agents, attorneys, and counsel, and of all expenses, lia-
ities, and advances made or incurred by the Trustee, and, second,
the principal of the bonds issued and outstanding hereunder shall
have become due and payable either by the terms thereof or by
claration as hereinbefore provided or otherwise, then to the pay-
nt of the whole amount then owing for interest upon the bonds
ued and outstanding hereunder, with lawful interest on the over-
e installments of interest without preference or priority of any in-
llment of interest over any other installment of interest, and,
rd, if the principal of the bonds issued and outstanding here-
der shall have become due and payable either by the terms thereof
by declaration as hereinbefore provided or otherwise, then to the
payment of the amount then owing or unpaid upon the bonds
issued hereunder for principal and interest, with lawful in-
terest on the overdue principal and installments of interest,

without preference or priority of principal over interest, or of i
terest over principal, or of any installment of interest over any o
installment of interest.

SEC. 4. Neither the Railway Company nor the Company will at
time insist upon or plead, or in any manner whatever claim, or t
the benefit or advantage of, any stay or extension law now or at
time hereafter in force, and each of them hereby expressly waive
benefit and advantage of any such law or laws; and they sever
covenant that they will not hinder, delay, or impede the execution
any power herein granted and delegated to the Trustee (or to
bondholder in the cases stated), but that they will suffer and pe
the execution of every such power as though no such law or laws
been made or enacted.

SEC. 5. No holder of any bond or coupon issued hereunder s
have any right to institute any suit, action, or proceeding at la
in equity to enforce any covenant or provision of this indenture
for the execution of any trust hereunder, or for the appointment o
receiver or for any other remedy under this indenture, un
527 the holders of twenty-five per cent in amount of the bo
issued hereunder and then outstanding first shall have m
written request to the Trustee and shall have afforded to it reasona
opportunity to institute such action, suit, or proceeding in its na
nor unless also such holders shall have offered to the Trustee adeq
security and indemnity against the costs, expenses, and liabilities
be incurred therein or thereby, and unless the Trustee shall have
fused or neglected to comply with such request; and such notic
tion, request, and offer of indemnity are hereby declared in every
case, at the option of the Trustee, to be conditions precedent to
bringing of any suit, action, or proceeding by any bondholder u
this indenture; it being understood and intended that no one or m
holders of bonds or coupons shall have any right in any manner w
ever to affect, disturb, or prejudice the security of this indenture
his or their action, or to enforce any right under this indenture ex
in the manner herein provided, and that all proceedings at law o
equity under this indenture shall be instituted, had, and maintai
in the manner herein provided and for the equal benefit of all hol
of such outstanding bonds and coupons.

528 SEC. 6. Except as herein expressly provided to the contr
no remedy in this indenture conferred upon or reserved to
Trustee or to the bondholders is intended to be exclusive of any o
remedy; but every remedy provided in this indenture shall be cu
lative and shall be in addition to every other remedy given here
or now or hereafter existing at law or in equity or by statute; an
particular (but without limiting the application of this section to

ier cases) all the rights and remedies in this article mentioned are nulative to the rights and remedies referred to in article four reof, and all the respective remedies in this article and in said icle mentioned may be pursued independently or simultaneously, the Trustee may deem expedient. No delay or omission of the ustee, or of any holders of bonds issued hereunder, to exercise any ht or power accruing upon any default shall impair any such ht or power or shall be construed to be a waiver of any such de- lt or acquiescence therein; and every power and remedy given by s article to the Trustee or to the bondholders may be exercised m time to time and as often as may be deemed expedient by the ustee or by the bondholders, as the case may be. All the obliga- tions, covenants, and conditions on the part of the Pacific Companies, or either of them, herein contained shall be spe- cifically enforceable.

ARTICLE SIX.

Exemption of liability of stockholders, directors, and officers.

o recourse under or upon any obligation, covenant, or agreement ained in this indenture, or in any bond or coupon issued here- er, or because of the creation of any indebtedness hereunder, shall ad against any incorporator, stockholder, officer, or director of Pacific Companies or either of them or of any successor corpora- , either directly or through the Pacific Companies or either of n, by the enforcement of any assessment or by any legal or table proceeding by virtue of any statute or otherwise; it being ressly agreed and understood that this indenture, and the obliga- s issued hereunder, are solely corporate obligations, and that no onal liability whatever shall attach to or is incurred by the in- orators, stockholders, officers, or directors of the Pacific Com- es or either of them, or of any successor corporation, or any of , because of the incurring of the indebtedness hereby author- or under or by reason of any of the obligations, guaranties, cove- nants, or agreements contained in this indenture or in any of the bonds or coupons issued hereunder or implied therefrom; and that any and all personal liability of every name and nature, any and all rights and claims against every such incorporator, holder, officer, or director, whether arising at common law or in y, or created by statute or constitution, are hereby expressly sed and waived as a condition of and as part of the considera- for the execution of this indenture and the issue of the bonds and est obligations hereunder.

ARTICLE SEVEN.

Bondholders' declarations.

SECTION 1. Any request, declaration, or other instrument req
by this indenture to be signed and executed by bondholders ma
in any number of concurrent writings of similar tenor, and ma
signed or executed by such bondholders in person or by agen
pointed in writing. Proof of the execution of any such requ
other instrument, or of the writing appointing any such agent,
of the ownership of bonds, if made in the following manner, sha
sufficient for any purpose of this indenture and shall be conclusi
favor of the Trustee and the Pacific Companies with regard to
action taken under such request or other instrument, na
531 (a) The fact and date of the signing or execution by
person of any such writing may be proved by (1) the ce
cate of any officer in any jurisdiction who, by the laws thereof
power to take acknowledgments within said jurisdiction, that the
son signing such writing acknowledged before him the exec
thereof, or by (2) an affidavit taken before the like officer or by
an officer who has power to administer oaths, of a witness to
execution.

(b) The fact of the holding of any bond or coupon hereunde
any party, and the amount and issue number of any such bond,
the date of his holding the same, may be proved by a certificat
cuted by any trust company, bank, bankers, or other depos
(wherever situated), showing that at the date therein menti
such person had on deposit with such trust company, bank, ban
or other depository the bonds described in such certificate; pro
that such certificate shall be deemed by the Trustee to be satisfa

SEC. 2. Whenever in this or any other article in this indentu
is provided that any action be taken by the holders of twenty
cent or any other portion of the bonds then outstanding, said a
may be taken by the holders of such portion acting as a
532 or by or through such representative or representatives a
be by the holders of such portion thereunto duly authori
from time to time.

SEC. 3. The Pacific Companies and the Trustee may deem and
treat the bearer of any bond or coupons issued hereunder a
absolute owner of such bonds or coupons, as the case may be, fo
purpose of receiving payment thereof and for all other purp
and neither the Railway Company nor the Company nor the Tr
shall be affected by any notice to the contrary.

ARTICLE EIGHT.

Redemption of bonds.

The Railway Company, at its option, may redeem all (but not less
an all) of the bonds at any time outstanding hereunder, at the
nount of the principal thereof, with accrued interest, on March 1,
21, or thereafter on any interest date, provided that notice of in-
ntion so to redeem shall be given by the Railway Company, by
blication in at least one newspaper of general circulation published
the city of New York and one newspaper of general circulation
blished in the city of Paris, France, at least once in each week for
four successive weeks prior to the half-yearly interest date on
3 which such redemption is to be made, the first publication to be
not less than six months preceding such redemption date.
ch notice shall state that all the bonds then outstanding will be
id off at par and accrued interest at the interest date specified in
e notice, at the places and in the manner herein provided with
spect to the payment of the bonds at their maturity, and that the
terest on the bonds shall cease on and after the interest date so fixed
r such redemption.

The Railway Company covenants that after the first publication of
ch notice of redemption, and at least ten days before the redemp-
n date, it will deposit with the French banks, or either of them,
r distribution and payment to the holders of bonds and coupons on
e redemption date at the places where the bonds are payable, a
m in French francs sufficient to pay, as in said bonds and in this
denture provided, the principal amount of all of the bonds and
atured coupons then outstanding and the coupons maturing on said
demption date, together with such additional sum as may be re-
ired to pay the expenses and compensation of the French banks
connection with such distribution and payment. Said deposit
shall, as between each of the Pacific Companies and the Trus-
4 tee, on the one hand, and the holders of said bonds and coupons,
on the other hand, be deemed at such redemption date a pay-
nt of such bonds.

Notice of election to redeem having been given as aforesaid, the
nds shall become due and payable on the interest date designated
r redemption.

If said bonds, with accrued interest to such date, shall be duly
id, or if provision for the payment thereof shall be made by de-
sit with the French banks, as hereinbefore provided, interest on
e bonds shall cease on such redemption date, and all coupons
turing after such date shall be null and void. The bonds presented

for payment must bear the coupons maturing after the redem date.

On delivery to the Trustee on or before the time fixed for red tion, of proof by affidavit to the satisfaction of the Trustee that tice of redemption has been given by publication in the manner this article provided, and of proof by certificate or certificates executed and acknowledged by the French banks, or either of th before the ambassador of the United States of America to Franc the consul general or vice consul general of the United States France, or of other proof satisfactory to the Trustee, that dep of the cash for the purposes of redemption has been mad
535 in this article provided, and on payment to the Trustee of its costs and expenses, including reasonable compensation the Trustee, its agents, attorneys, and counsel, and of all liabili and advances made or incurred by it, the Trustee shall cancel satisfy this indenture and shall assign, or cause to be assigned, shall deliver to the Company, its successors or assigns, all mon stocks, bonds, and other securities held by the Trustee hereunder.

ARTICLE NINE.

The Trustee.

The Trustee, for itself and its successors, hereby accepts the tr and assumes the duties herein created and imposed upon it, but upon the following terms and conditions, to wit:

SECTION 1. The Trustee shall be protected in acting upon notice, request, consent, certificate, bond, or other paper or docum believed by it to be genuine and to have been signed by the pro party; it may select and employ in and about the execution of trust suitable agents and attorneys, whose reasonable compensa shall be paid to the Trustee by the Railway Company. Save for gross negligence or willful default, it shall not be liable
536 any loss or damage, and it shall be under no obligation or to perform any act hereunder or defend any suit in res hereof, unless reasonably indemnified as herein provided. Trustee may assume that there has been no default under indenture unless and until it shall have been specifically noti thereof in writing by the holders of not less than one per cent amount of the bonds then outstanding hereunder. Excepting herein expressly otherwise provided, the Trustee shall not be bo to recognize any person as a bondholder unless or until his bonds submitted to the Trustee for inspection, if required, and his satisfactorily established, if disputed. The recitals of facts in indenture and in said bonds contained shall be taken as state

y the Pacific Companies, or one of them, and shall not be construed
s made by the Trustee, nor does the Trustee make any representa-
on as to the validity of this indenture or of the bonds issued here-
nder and it shall not incur any responsibility in respect of the
remises. It shall not be concerned with or accountable for the use
f any of the bonds issued hereunder or for the application of the
roceeds thereof; and it shall not be answerable for the de-
fault or misconduct of any agent or attorney appointed by it
7 in pursuance hereof, if such agent or attorney shall have been
selected with reasonable care, nor for anything whatever in
nnection with this trust, except for gross negligence or willful
efault.

The Trustee shall be entitled to reasonable compensation for all
rvices rendered by it in the execution of the trusts hereby created,
nd shall have a first lien upon the property covered by this in-
nture and the proceeds thereof for such compensation and for its
asonable expenses, liabilities, and counsel fees in such execution.

SEC. 2. The Trustee, or any successor hereafter appointed, may
sign by giving written notice of such resignation to the Pacific
ompanies and by publication of such notice at least once in each
eek for six successive weeks in a daily newspaper published in the
y of New York, and for a like number of times in a daily news-
per published in the city of Paris, France; and upon the assign-
nt, transfer, and delivery of the property by it then held in trust
reunder to its successor in the trust (as in sections 4 and 5 of this
ticle provided) shall be discharged of the trusts hereby created.

SEC. 3. The Trustee, or any successor, or any trustee
8 hereafter appointed, may be removed at any time by an in-
strument in writing signed by the holders of not less than
ree-fourths in amount of the bonds issued hereunder and then
tstanding and by notice thereof to the Pacific Companies.

SEC. 4. In case at any time the Trustee, or any Trustee hereafter
pointed, shall resign or shall be removed or otherwise shall become
capable of acting, a successor may be appointed in the manner
llowing:

The Company shall by resolution of its board of directors appoint
new Trustee, which shall be a trust company of the city of New
rk in good standing, having a capital and surplus aggregating
least two million dollars, if there be such trust company willing
d able to accept the trusts upon customary terms, which Trustee
ll be subject to the approval of the French banks; and in case
disapproval by the French banks of the new Trustee so appointed
r of their failure to act), within twenty days after request by the
mpany for such approval, then the appointment of the new

Trustee hereunder shall be made by a judge of the United States C
cuit Court for the Second Circuit, upon reasonable notice
539 the French banks, who shall have full right to be heard there
before said judge. The Company shall publish notice of
such appointment of a new Trustee once in each week for six
cessive weeks in a daily newspaper of general circulation publishe
the city of New York, State of New York.

SEC. 5. Any new Trustee appointed hereunder shall execute,
knowledge, and deliver to the Trustee last in office and also to
Pacific Companies an instrument accepting such appointment he
under, and thereupon such new Trustee, without any further
or writing, shall become vested with all the rights, powers, tru
duties, and obligations of its predecessor in the trust, with like e
as if originally named as such Trustee herein; but the Trustee c
ing to act, shall, nevertheless, on the written request of the C
pany or of the new Trustee, assign, transfer, and deliver to
new Trustee, upon the trusts herein expressed all the moneys, sto
bonds, and other securities held by such retiring Trustee, and
cute and deliver an instrument transferring to such new Tru
upon the trusts herein expressed, all the rights, powers, and tr
of the Trustee so ceasing to act. Should any instrument in wri
from the Pacific Companies, or either of them, be required
540 any new Trustee for more fully and certainly vesting in
conferring upon such new Trustee such rights, powers,
duties, any and all such instruments in writing shall on reques
made, executed, acknowledged, and delivered.

SEC. 6. Any action taken by the Trustee pursuant to any of
powers herein conferred shall be conclusive and binding upon
the then owners and holders and all future owners and holders
such bonds and coupons.

SEC. 7. The Pacific Companies will accord to the Trustee such
formation, data, and records and such inspection of properties
may reasonably require from time to time.

ARTICLE TEN.

General covenants.

SECTION 1. The Pacific Companies severally agree to make, exe
and deliver upon request of the Trustee from time to time such
and further instruments or assurances as the Trustee may deem
sary to carry out the purposes hereof, including all and every
further acts, deeds, transfers, and assurances for the better ass
transferring, and pledging to the Trustee all and singular
541 shares of stock deposited hereunder or intended so to be
ferred and pledged as the Trustee shall reasonably require

SEC. 2. The Pacific Companies respectively agree that their and ch of their obligations and liability hereinbefore provided shall ntinue in respect of the principal of such bonds and the guaranty ereof for the period of thirty years, and in respect to the several upons and interest installments and the guaranty thereof for the riod of ten years, from the date when the same respectively be- me due and payable, any law or statute of the United States or of y State thereof or of any other country to the contrary notwith- anding; and any of such bonds which shall not be presented for yment or the payment of the guaranty thereof be demanded within irty years after the same become due and payable, and any coupons pertaining to engraved bonds issued hereunder and any matured terest upon temporary or interim bonds and the payment of any aranty of such coupons and interest that shall not be demanded, ithin ten years after such coupons and interest installments, re- ectively, become due and payable, shall be barred and outlawed r the benefit of the Pacific Companies or either of them, as the case may be.

2 SEC. 3. It is mutually covenanted and agreed that all ques- tions concerning the terms, provisions, and effect of this in- nture and of such bonds and coupons, and the rights of the holders ereof, shall be exclusively considered and determined according law in the United States of America and be adjudicated by the oper judicial tribunals therein.

SEC. 4. All the covenants and obligations herein contained upon e part of any of the parties hereto are, and are intended to be, for e sole and exclusive benefit of the parties hereto and the holders of nds and coupons issued hereunder. No other person or persons all have or be entitled to any rights or remedies at law or in equity der the same or for the enforcement of any thereof.

SEC. 5. All requests or other notices required by any provision of is indenture to be given by the Pacific Companies or the Trustee the French banks, shall be given by being delivered in writing to representative of the French banks in the city of New York, to be all times designated and maintained by them for the purpose (by ritten appointment to be lodged with the Trustee) at the office of ch representative in the city of New York, and when so given shall be sufficient. Such notice shall be given (except where other-

3 wise expressly provided in this indenture) at least twenty days before the proposed or contemplated action or event re- rred to therein; and if at any time no such appointment be in force en such notice may be given by lodging the same with the Trustee ldressed to the French banks. To enable the French banks to act on or in respect of any notice, request, or demand which may be ade by the Company in respect of any matter provided for under

this indenture, the Pacific Companies will furnish the French b
such information, data, and records and accord to it such inspec
of properties as they may reasonably require from it in connec
therewith.

SEC. 6. The Pacific Companies severally covenant and agree
they will not, directly or indirectly, extend or assent to the ex
sion of the time for payment of any coupon or interest installm
on any bond issued hereunder, and will not, directly or indirec
be a party to or approve of any such arrangement by purchasing
funding such coupons or interest installments or in any other man

ARTICLE ELEVEN.

Defeasance.

If (1) the Railway Company and the Company shall at a
time deliver to the Trustee for cancellation all the bonds a
544 coupons then issued and outstanding hereunder, or if (2) t
Railway Company or the Company shall not more than s
months before the maturity of the bonds issued hereunder depo
with the French banks, or either of them, for distribution and pa
ment to the holders of bonds and coupons on the date of maturity at
places where the bonds are payable a sum in French francs suffic
to pay, as in said bonds and in this indenture provided, the princip
amount of all of the bonds and coupons outstanding, matured, a
then to mature, together with such additional sum as may be r
quired to pay the expenses and compensation of the French ba
in connection with such distribution and payment, and shall deli
to the Trustee proof thereof as provided in article eight hereof in t
case of redemption, then in either of such cases the Trustee shall a
will account for all moneys that may be in its hands as such Trus
and upon payment to the Trustee of all its costs and expenses, i
cluding reasonable compensation to the Trustee, its agents, att
neys, and counsel, and of all liabilities and advances made or i
curred by it, the Trustee shall assign, transfer, and deliver to t
Company or its nominee or nominees all moneys, stocks, bonds, a
other securities held by it for the purposes of this trust.

545 Said deposit made with the French banks as aforesaid sha
as between each of the Pacific Companies and the Trustee
the one hand and the holders of bonds and coupons issued hereun
on the other hand, be deemed at their maturity a payment, satisfa
tion, and discharge of such bonds and coupons; and upon such pa
ment or proof of such payment, certified as above set forth, t
Trustee shall be released and discharged of all further liability
accountability to the holder of any such bonds or coupons.

From time to time thereafter the Railway Company shall submit its office in the city of New York such bonds and coupons as re- ived by it canceled from the French banks to the Trustee for in- ection and verification.

ARTICLE TWELVE.

SECTION 1. Whenever in this indenture the term "French banks" employed it shall signify the Banque de Paris et des Pays-Bas and e Societe Generale pour favoriser le Developpement du Commerce de l'Industrie en France, both of Paris, France, and their respec- ve successor or successors for the time being. If at any time one said banks shall cease to exist, leaving no successor, then the said term shall be construed to mean the other of said banks, or its 6 successor or successors for the time being; and if at any time both of said banks shall cease to exist and neither of them shall ve a successor, then in such case the holders of twenty per centum amount of the bonds then outstanding may, by instrument in iting filed with the Trustee and with the Pacific Companies, desig- te, constitute, and appoint another bank or banks in France, each ving a capital and surplus at least equal to the present capital and rplus of either of the said named French banks, to act hereunder place and stead of said named French banks as fully in every re- ect as if originally named hereunder; and pending or failing such ppointment in the case stated, but not after such appointment, any otice, request, demand, deposit, or payment herein authorized, per- itted, or provided to be served or made upon, delivered or paid to e French banks may be served or made upon or delivered or paid the Trustee, and any powers or authority herein given to or con- rred upon the French banks may be exercised by the Trustee until ch appointment be made in the manner stated.

SEC. 2. All the covenants, stipulations, promises, undertakings, and agreements herein contained by or on behalf of the Pacific 7 Companies shall bind their and each of their successors and assigns, whether so expressed or not. For every purpose of is indenture, including the execution, issue, and use of the bonds ereby secured, the terms "Railway Company" and "Company" and Trustee" include and mean not only the respective parties of the rst, second, and third parts hereto, but also their and each of their ccessors and assigns.

SEC. 3. The word "bondholder" shall include the plural as well the singular number, unless otherwise expressly indicated. The ord "coupons" refers to the interest coupons attached to the en- aved bonds issued hereunder. The words "holder" and "bearer" re used interchangeably herein.

In witness whereof the said parties hereto have caused their co
rate names to be hereunto subscribed and their respective corpo
seals, duly attested, to be affixed, and these presents to be subscribe
their duly authorized officers in four parts, at the city of New Y
the first day of March, A. D. 1911.

CENTRAL PACIFIC RAILWAY COMPAN
By ——— ———,
Second Vice Presiden

548 Attest:
———— ————,
Assistant Secretary.

Witness:
———— ————.

SOUTHERN PACIFIC COMPAN
By ——— ———,
Vice Presiden

Attest:
———— ————,
Secretary.

Witness:
———— ————.

UNITED STATES TRUST COMPANY OF NEW YOR
By ——— ———,
Presiden

Attest:
———— ————,
Secretary.

Witness:
———— ————.

549 STATE OF NEW YORK,
County of New York, ss:

On this ——— day of March, A. D. 1911, before me, the un
signed, a notary public in and for the State and county afore
personally appeared William Mahl, to me known, who, being by
duly sworn, did depose and say: That he resides in New York C
New York; that he is the second vice president of the Central Pa
Railway Company, one of the corporations described in and wh
executed the foregoing instrument; that he knows the seal of s
corporation; that the seal affixed to said instrument is such corpo
seal; that it was so affixed by order of the board of directors of s
corporation, and that he signed his name thereto by like order.

And I do certify that on the same day the foregoing instrum
was produced to me in my county by the parties thereto, and

owledged and delivered before me by said William Mahl as sec-
d vice president and Charles C. Stillman as assistant secretary
the said Central Pacific Railway Company, to be the act and deed
said corporation by them as second vice president and assistant
secretary, respectively, and the seal of said corporation as
affixed to said deed was attested and proven before me by said
Charles C. Stillman as assistant secretary of said corporation.
And I do further certify that the said William Mahl and Charles
Stillman duly acknowledged that the said corporation executed the
d instrument.
Given under my hand and seal of office.

———— ————,
Notary Public, New York County, New York.
My commission expires ————.

ATE OF NEW YORK,
County of New York, ss:

On this ——— day of March, A. D. 1911, before me, the under-
ned, a notary public in and for the State and county aforesaid,
rsonally appeared William V. S. Thorne, to me known, who being
me duly sworn, did depose and say: That he resides in New York
ty, New York; that he is a vice president of the Southern Pacific
mpany, one of the corporations described in and which executed
the foregoing instrument; that he knows the seal of said cor-
poration; that the seal affixed to said instrument is such cor-
porate seal; that it was so affixed by order of the board of
rectors of said corporation; and that he signed his name thereto
like order.
And I do hereby certify that on the same day the foregoing instru-
nt was produced to me in my county by the parties thereto and
knowledged and delivered before me by said William V. S. Thorne,
vice president, and Alexander Millar, as secretary of the said
uthern Pacific Company, to be the act and deed of said corporation
them as vice president and secretary, respectively, and the seal
said corporation as affixed to said deed was attested and proven
fore me by said Alexander Millar, as secretary of said corporation.
And I do further certify that the said William V. S. Thorne and
exander Millar duly acknowledged that the said corporation ex-
ited the said instrument.
Given under my hand and seal of office.

———— ————,
Notary Public, New York County, New York.
My commission expires ————.

552 STATE OF NEW YORK,
County of New York, ss:

On this ——— day of March, A. D. 1911, before me, the undersi
a notary public in and for the State and county aforesaid, perso
appeared Edward W. Sheldon, to me known, who, being by me
sworn, did depose and say: That he resides in New York City,
York; that he is the president of the United States Trust Com
of New York, one of the corporations described in and which
cuted the foregoing instrument; that he knows the seal of said
poration; that the seal affixed to said instrument is such corp
seal; that it was so affixed by order of the board of directors of
corporation; and that he signed his name thereto by like order.

And I do certify that on the same day the foregoing instru
was produced to me in my county by the parties thereto, and ackn
edged and delivered before me by Edward W. Sheldon as presi
and ——— ——— as secretary of the said United States Trust C
pany of New York, to be the act and deed of said corporation
them as president and secretary, respectively, and the seal of
corporation as affixed to said deed was attested and pro
553 before me by said ——— ——— as secretary of said corp
tion.

And I do further certify that the said Edward W. Sheldon
——— ——— duly acknowledged that the said corporation exec
the said instrument.

Given under my hand and seal of office.

——— ———,
Notary Public, New York County, New Yor
My commission expires ———.

554 DEFENDANTS' EXHIBIT NO. 30, APRIL 15, 1915.

(Settlement agreement between the United States and the Cen
Pacific Railroad Company, being an extract from pages 378
3804, Volume VIII, Union Pacific merger suit record.)

Agreement made and entered into the first day of February, 1
by and between the United States of America, acting by Honora
Lyman J. Gage, Secretary of the Treasury; Honorable Cornelius
Bliss, Secretary of the Interior; and Honorable John W. Grig
Attorney General, appointed by act of Congress approved July
1898, a commission with full power to settle the indebtedness to
United States growing out of the issue of bonds in aid of the c
struction of the Central Pacific and Western Pacific bond-aided r
roads, of the first part; the Central Pacific Railroad Company
corporation created, organized, and existing under the laws of

te of California and of the United States of America, of the nd part, and Messrs. Speyer & Company, bankers, of the city of v York, of the third part.

Whereas the Central Pacific Railroad Company, as now existing, was formed by the successive consolidations hereinafter mentioned, that is to say:

a) Consolidation of the Central Pacific Railroad Company of ifornia and the Western Pacific Railroad Company into a coration named the Central Pacific Railroad Company, under articles ssociation and consolidation dated June 22, 1870.

b) Consolidation of the last-mentioned Central Pacific Railroad npany, the California and Oregon Railroad Company, the San ncisco, Oakland and Alameda Railroad Company, and the San quin Valley Railroad Company into a corporation named the tral Pacific Railroad Company, under articles of association and solidation dated August 20, 1870.

nd whereas the said Central Pacific Railroad Company, party the second part hereto, is the owner of the following lines of road with their appurtenances, which are known as and called bond-aided lines, viz:

. The line of railroad (about 737.50/100 miles in length) from oint about five miles west of Ogden to Sacramento, to aid in the struction of which bonds were from time to time issued by the ited States to the Central Pacific Railroad Company of California to the amount in the aggregate of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars ($25,885,120) under and in pursuance of the visions of the act of Congress of the United States, entitled "An to aid in the construction of a railroad and telegraph line from Missouri River to the Pacific Ocean, and to secure to the Governnt the use of the same for postal, military, and other purposes," roved July 1, 1862, the act to amend the last mentioned act, apved July 2, 1864, and the act to amend the above-mentioned acts, roved March 3, 1865.

. The line of railroad (about 123.14/100 miles in length) from ramento to San Jose, to aid in the construction of which bonds e from time to time issued by the United States to the Western ific Railroad Company to the amount in the aggregate of one lion nine hundred and seventy thousand five hundred and sixty lars ($1,970,560) under and in pursuance of the provisions of the e acts of Congress under which bonds were issued to the Central ific Railroad Company of California, as above stated.

nd whereas the said Central Pacific Railroad Company is also the ner of the following lines of railroad in the State of California,

with their appurtenances, which are known as and called the
bond-aided lines, viz:

557 C. The line of railroad (about 24.31/100 miles in le
from Oakland to Niles.

D. The line of railroad (about 146.8/100 miles in length)
Lathrop to Goshen.

E. The line of railroad (about 296.50/100 miles in length)
Roseville to the Oregon boundary.

And whereas the said bond-aided lines of railroad are covere
the following mortgages and liens, viz:

First. The bond-aided line from Sacramento to the eastern
dary of California by the first mortgage of the Central Pacific
road Company of California to D. O. Mills and William E. Ba
trustees, dated July 25, 1865, under which bonds are now outsta
to the amount at their face value of six million three hundred
seventy-eight thousand dollars ($6,378,000), of which bonds to
amount of three million and seven thousand dollars ($3,007,000)
now overdue, and bonds to the amount of three million three
dred and seventy-one thousand dollars ($3,371,000) will matur
cember 1, 1899.

Second. The bond-aided line from the eastern boundary of C
fornia to a point about five miles west of Ogden by
first mortgage of the Central Pacific Railroad Compan
558 California to D. O. Mills and William E. Barron, tru
dated January 1, 1867, under which bonds are now outsta
to the amount at their face value of nineteen million five hu
and three thousand dollars ($19,503,000), of which bonds to
amount of eighty thousand dollars ($80,000) are now overdue
bonds to the amount of three million nine hundred and eighty-
thousand dollars ($3,988,000) will mature June 1, 1900, and
to the amount of fifteen million four hundred and thirty-five
sand dollars ($15,435,000) will mature June 1, 1901.

Third. The bond-aided line from Sacramento to San Jose by
first mortgage of the Western Pacific Railroad Company to D
Mills and William E. Barron, trustees, dated October 28, 186
der which bonds are now outstanding to the amount at their
value of one million nine hundred and seventy thousand do
($1,970,000), and will mature July 1, 1899.

Fourth. The bond-aided line from a point about five miles
of Ogden to Sacramento by the statutory lien in favor of the U
States under the acts of Congress approved July 1, 1862, Ju
1864, and March 3, 1865, above mentioned, securing the
559 ance of the indebtedness to the United States (amountin
of the date of this agreement to the sum of $53,389,03

ulting from the issue of bonds to the Central Pacific Railroad mpany of California, as aforesaid, to aid in the construction of l bond-aided line, such statutory lien being by said acts subordie to the liens of the first mortgages of the Central Pacific Raild Company of California, described in the preceding subdivins first and second of this recital.

Fifth. The bond-aided line from Sacramento to San Jose by the utory lien in favor of the United States under the acts of Conss approved July 1, 1862, July 2, 1864, and March 3, 1865, above ntioned, securing the balance of the indebtedness to the United tes (amounting as of the date of this agreement to the sum of 423,662.74), resulting from the issue of bonds to the Western ific Railroad Company, as aforesaid, to aid in the construction aid bond-aided line, such statutory lien being by said act subordie to the lien of the first mortgage of the Western Pacific Raild Company described in the preceding subdivision third of this ital.

And whereas the said nonbond-aided lines of railroad are covered by the following mortgages and liens, viz:

First. The nonbond-aided line from Oakland to Niles by first mortgage from the Western Pacific Railroad Company to O. Mills and William E. Barron, trustees, dated October 28, 1869, der which bonds are now outstanding to the amount at their face ue of seven hundred and sixty-five thousand dollars ($765,000) l will mature July 1, 1899.

Second. The nonbond-aided line from Lathrop to Goshen by first rtgage from the Central Pacific Railroad Company to D. O. Mills l W. C. Ralston, trustees, dated October 1, 1870, under which nds are now outstanding to the amount at their face value of six llion and eighty thousand dollars ($6,080,000) and will mature tober 1, 1900.

Third. The nonbond-aided line from Roseville to the Oregon undary by first mortgage from the California and Oregon Raild Company to David S. Dodge and Eugene Kelly, trustees, dated nuary 1, 1868, and the supplemental mortgage from the Central cific Railroad Company as successor of the California and Oregon ilroad Company (by consolidation as aforesaid) to Eugene Kelly d Philo C. Calhoun, trustees, dated January 1, 1872, under which t-mentioned mortgages bonds are now outstanding to the amount at their face value of ten million three hundred and forty thou- sand dollars ($10,340,000), the date of maturity of such last- mentioned bonds having been extended to January 1, 1918, by tue of extension agreements dated September 27, 1887, and Sepnber 25, 1891, respectively;

And whereas all the said bond-aided and nonbond-aided
above referred to are further covered by mortgage from the C
Pacific Railroad Company to the Metropolitan Trust Compa
the city of New York, trustee, dated April 1, 1889, under which
are now outstanding fifty-year five per cent bonds of said C
Pacific Railroad Company maturing April 1, 1939, to the amo
their face value of twelve million two hundred and eighty-three
sand dollars ($12,283,000), of which bonds to the amont at their
value of $2,038,000 are now held by the Metropolitan Trust C
pany of the city of New York as security for the outstanding
bonds hereinafter mentioned;

And whereas it is claimed by the United States, but not con
by the other parties hereto, that under and by virtue of the p
sions of an act entitled "An act to alter and amend the act en
'An act to aid in the construction of a railroad and telegraph
from the Missouri River to the Pacific Ocean, and to sec
562 the Government the use of the same for postal, military,
other purposes,' approved July first, eighteen hundred
sixty-two," and also to alter and amend the act of Congress
proved July second, eighteen hundred and sixty-four, in amend
of said first-named act, approved May 7, 1878, the balances of in
edness to the United States hereinbefore referred to, amounting
the aggregate as of the date of this agreement to the sum
$58,812,715.48, are also secured by lien declared in said last-ment
act upon all the railroad lines above mentioned whether aid
nonaided;

And whereas the lands granted to the Central Pacific Rail
Company of California, by the act of Congress of July 1, 1862, a
mentioned, and the lands granted to the California and O
Railroad Company by act of Congress approved July 25, 1866,
the exceptions and reservations mentioned in the mortgage
inafter mentioned, were mortgaged by the Central Pacific Rail
Company to Charles Crocker and Silas W. Sanderson, by mort
dated October 1, 1870, to secure an issue of land bonds of the
tral Pacific Railroad Company which matured October 1, 18
part of which were by extension agreement dated September
1890, extended to October 1, 1900, and of which there
563 now outstanding bonds to the amount at their face valu
$2,134,000;

And whereas by act of Congress entitled "An act making ap
priations to supply deficiencies in the appropriations for the
year ending June 30th, eighteen hundred and ninety-eight, and
prior years and for other purposes," approved July 7, 1898, it
among other things provided as follows, viz: "That the Secr

the Treasury, the Secretary of the Interior, and the Attorney neral, and their successors in office, be, and they are hereby, ap- nted a commission with full power to settle the indebtedness to Government growing out of the issue of bonds in aid of the con- uction of the Central Pacific and Western Pacific bond-aided roads, upon such terms and in such manner as may be agreed n by them, or by a majority of them, and the owners of said rail- ds: *Provided*, That any and all settlements thus made shall be mitted in writing to the President for his approval or disap- val, and unless approved by him shall not be binding.

That said commission shall not agree to accept a less sum in lement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: *And also provided*, That said com- sion are hereby empowered to grant such time or times of pay- nt by installment, and at such rates of interest, to be not less n three per centum per annum, payable semiannually, and with h security as to said commission may seem expedient: *Provided, ever*, That in any settlement that may be made the final payment full discharge of said indebtedness shall not be postponed to ed ten years, and the whole amount, principal and interest, ll be paid in equal semiannual installments within the period so ited, and in any settlement made it shall be provided that if de- lt shall be made in any payment of either principal or interest ny part thereof then the whole sum and all installments, prin- l and interest, shall immediately become due and payable, not- hstanding any other stipulation of said settlement: *Provided ther*, That unless the settlement herein authorized be perfected hin one year after the passage of this act, the President of the ited States shall at once proceed to foreclose all liens now held the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

That there is hereby appropriated, out of any money in the Treas- not otherwise appropriated, the sum of twenty thousand dol- to defray the expenses of said commission in making the said lement."

nd whereas it has been agreed by and between the commission ointed by said act and the owners of the railroads above described the indebtedness to the United States growing out of the issue onds in aid of the construction of the Central Pacific and West- Pacific bond-aided railroads shall be settled upon the terms and

in the manner hereinafter agreed to, subject to the approval of President of the United States, as provided in said last-mentioned act;

And whereas Messrs. Speyer & Company from time to time negotiated the sale of large amounts of the bonds secured by mortgages upon the railroads of the Central Pacific Railroad Company above mentioned and are desirous of cooperating in a settlement of matters relating to or affecting the indebtedness of said company and the adjustment of its affairs;

And whereas of the first mortgage bonds of the Central
566 Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate at their face value to twenty-five million eight hundred and eighty-one thousand dollars ($25,881,000), there have been already deposited and still remain on deposit subject to the order of Messrs. Speyer & Company bonds to the amount at their face value of twenty-five million six hundred and thirteen thousand dollars ($25,613,000) under a bondholders' agreement, dated August 14, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas of the Central Pacific Railroad Company's fifty-year five per cent bonds, issued under the mortgage to the Metropolitan Trust Company of the city of New York, dated April 1, 1889, above mentioned, amounting in the aggregate (after deducting said bonds so as aforesaid held as security for the said land bonds) to the sum of ten million two hundred and forty-five thousand dollars ($10,245,000), there have been deposited and still remain on deposit subject to the order of Messrs. Speyer & Company bonds to the amount at their face value, of eight million six hundred and eighty-six thousand dollars ($8,686,000) under a bondholders' agreement
567 dated October 1, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas the owners of the bonds deposited under each of the aforesaid agreements of August 14, 1897, and October 1, 1897, have thereby authorized Messrs. Speyer & Company, in their behalf, to negotiate with any other committees or representatives of holders of other securities of said Railroad Company, or with the Government of the United States, or otherwise, for participation in the deposit of the deposited bonds in any plan of readjustment or reorganization or otherwise;

And whereas there have been deposited with committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks, and Joseph Price, in London, and August Belmont, Hon. John G. Carlisle, and George Coppell, in New York, under agreements, copies of which have been furnished to the

the first part, certificates of the capital stock of the Central Pacific ilroad Company to the amount, at their face value, of at least rty-eight million four hundred and one thousand eight hundred llars ($38,401,800) out of a total outstanding capital stock of said company, amounting, at its par value, to sixty-seven million 8 two hundred and seventy-five thousand five hundred dollars ($67,275,500), and the said committees have authorized and uested the said Speyer & Company to negotiate on their behalf th the commission appointed by the act of Congress of July 7, 98, above referred to, the basis of a settlement under and in pur- ance of the said act of the indebtedness to the United States grow- out of the issue of bonds in aid of the construction of said Cen- l Pacific and Western Pacific bond-aided railroads above men- ned;

Now, therefore, this agreement witnesseth, that in consideration of premises the parties hereto have undertaken, covenanted, and reed, and do hereby undertake, covenant, and agree to and with h other as follows, that is to say:

That the indebtedness to the United States growing out of the ue of bonds in aid of the construction of the Central Pacific and stern Pacific bond-aided railroads shall be, and it hereby is, set- d upon the terms and in the manner following, that is to say:

First.—The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reim- burse the United States for moneys paid for interest or other- wise, is hereby found and agreed to be, on the day of the date this agreement, the sum of fifty-eight million eight hundred and lve thousand seven hundred and fifteen dollars and forty-eight ts ($58,812,715.48).

Second.—Within thirty days after this settlement shall become ding, by the submission thereof in writing to the President, and approval thereof, the Central Pacific Railroad Company shall iver to the Treasurer of the United States its twenty promissory es, bearing even date herewith, payable respectively on or before expiration of each successive six months for ten years, counting m the date of this agreement, each note being for one-twentieth the foregoing sum of $58,812,715.48, and bearing interest at the e of three per cent per annum, payable semiannually.

Provided, however, that if default shall be made in any payment either principal or interest of any of said notes or any part thereof, n all of said notes then outstanding, principal and interest, shall mediately become due and payable, nothwithstanding any other pulation of this agreement of settlement.

570 Each of the said notes shall be in the following form, \$2,940,635.78.

SAN FRANCISCO, CAL., *February 1, 19*

On or before ———— the Central Pacific Railroad Com will pay to the order of the United States of America two mil nine hundred and forty thousand six hundred and thirty-five 78 dollars, with interest meantime at the rate of three per cent per num, payable semiannually, for value received.

This is one of a series of twenty notes given by said railroad c pany to the United States of America, each for the same princi sum and bearing interest at the same rate but maturing at diffe dates, that is to say, on or before the expiration of each succes six months for ten years counting from the date hereof. If defa shall be made in any payment of either principal or interest of of said notes or any part thereof, then all of said notes then standing, principal and interest, shall immediately become due payable.

Third.—The payment of the principal and interest of

571 said notes and of the indebtedness represented thereby, s be secured by the pledge of \$58,820,000, face value, first funding mortgage four per cent gold bonds issued by the Cen Pacific Railroad Company, or its successor company having title the aforesaid railroads, such bonds to be part of an issue hereinaf described not exceeding \$100,000,000 in all, one-twentieth part such pledged bonds to be held as security for each of said notes.

Fourth.—The said refunding bonds so to be pledged as secu for the payment of the said notes and interest shall be delivered the Treasurer of the United States within a reasonable time after settlement becomes binding, for obtaining the deposit of securi the assent of security owners, and the carrying out of such plan reorganization or readjustment as may be necessary to enable Central Pacific Railroad Company, or its successor company, to i said refunding bonds and make the mortgage to secure the s a valid lien upon the railroads aforesaid in accordance with requirements herein expressed. A period of ten months from delivery of said notes is hereby declared to be prima facie

572 reasonable time, but the Central Pacific Railroad Comp agrees to use its best efforts to perfect such mortgage deliver such bonds before the expiration of that time; and, on other hand, should such reorganization or readjustment be delay by the pendency of judicial proceedings for the purpose of enabli the company which is to make the new mortgage to execute deliver refunding bonds secured as provided herein or be delayed adverse litigation, such period is to be correspondingly extend provided, however, that such period shall not be extended for

use whatever for more than three years from the date of this agreement, except with the written approval of the President of the United States.

If default shall be made in the delivery of the said bonds so to be pledged within the period hereinabove prescribed for such delivery thereof, including any extension which there may have been under the foregoing provisions, then the whole amount of the said notes then outstanding, principal and interest, shall immediately become due and payable.

The said first refunding mortgage four per cent gold bonds referred to in article third and this article of this agreement are to run for at least forty-five years, and to bear interest at the rate of four per cent per annum, payable semianually, and are to be payable, principal and interest, in gold coin of the United States, and are to be a part of an issue not exceeding one hundred million dollars face value secured by mortgage upon all the railroads, equipment, and terminals now owned by the Central Pacific Railroad Company. Such mortgage shall be the first lien upon the said railroads, equipment, and terminals, or shall be secured by deposit as collateral security therefor of at least ninety per cent of the now outstanding first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs first, second, and third in the recitals to this agreement describing the mortgages and liens on bond-aided lines, and of at least seventy-five per cent of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of the now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the $2,038,000 fifty-year five per cent bonds held as security for the outstanding land bonds, as above stated, shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds, dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said refunding bonds. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured by that mortgage; provided that the $2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be cancelled or deposited as security for such refunding bonds.

The mortgage securing such refunding bonds shall be prior in
to any lease of the railroads of said Central Pacific Railroad C
pany or their appurtenances or any portion thereof, and shall b
the form agreed upon by the parties hereto and now identified by
signature of the Attorney General of the United States, unless
form thereof should be hereafter modified with the con
574 of the Attorney General of the United States and the p
of the second part, or its successor company, and the party
the third part hereto.

Upon the satisfaction of record of any existing mortgage
securities or funds held in any sinking fund created or existing
or under any such mortgage shall be surrendered to the Railr
Company or its successor company.

The lands granted to the Central Pacific Railroad Company
California and to the California and Oregon Railroad Company
above stated are not to be covered by the mortgage securing s
refunding bonds. Until the delivery to the Treasurer of the Un
States of the refunding bonds to be pledged to it under article th
hereof, secured as aforesaid, all rights of the United States in resp
to said granted lands shall remain in full force and effect, but sh
not be enforced unless the Central Pacific Railroad Company, or
successor company, shall make default under this agreement; a
upon such delivery of said refunding bonds secured as aforesaid
rights, interest and claims of the United States in, to, and in resp
to such lands shall cease and determine.

From time to time, as the principal or any part of
576 principal of said notes shall be paid, the United States
other holders of said notes shall return to said Railroad C
pany or its successors an equal amount, at their face value, of the
refunding bonds with all unmatured coupons appertaining there
and, as interest shall be paid upon said notes, the United States
other holders of said notes shall detach and return to said Railr
Company or its successors the coupons appertaining to said bo
representing interest thereon to the date to which interest shall h
been paid upon said notes, which coupons shall thereupon be for
with canceled.

Fifth.—Until the refunding bonds hereinbefore provided f
secured as aforesaid, shall have been delivered to the Treasurer of
United States as security for the said notes, the lien in favor of t
United States, reserved in the acts of Congress above mentioned
secure the repayment to the United States of the above-mentio
indebtedness, as such lien now exists, shall remain in full force a
effect to the extent of such indebtedness as security for the no
representing such indebtedness; and nothing herein contained sh
be deemed to prevent the United States from intervening for

protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or herwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said funding bonds secured as aforesaid, then the lien in favor of the nited States above referred to as then existing shall immediately st in, and it is hereby, upon the happening of that event, transrred to, the Trustee of the mortgage securing such refunding bonds security for the entire issue of such bonds.

Sixth.—Until the notes to be given by the Central Pacific Railroad mpany under article second of this agreement shall have been paid full, principal and interest, all amounts due to the Central Pacific ilroad Company or its successor company from the United States bsequent to the date of this agreement in respect of services to the nited States upon the bond-aided lines from a point about five miles st of Ogden to Sacramento and from Sacramento to San Jose, ove referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being st made to the payment of accrued interest thereon and thereafter account of the principal thereof.

Seventh.—Messrs. Speyer & Company, within one month after the livery to the United States of the notes referred to in article second reof, will, against delivery to them of the four earliest maturing tes endorsed to their order by the Secretary of the Treasury on half of the United States without recourse to it, pay to the United ates the face value of such notes, viz: Eleven million seven hun-ed and sixty-two thousand five hundred and forty-three dollars d twelve cents ($11,762,543.12), with accrued interest thereon to te of payment. From and after the time when such payment all have been made by Messrs. Speyer & Company they shall, until delivery of such refunding bonds, be entitled to share pro rata th the United States in the lien and all proceeds of the lien in vor of the United States to secure the indebtedness above referred Upon delivery of the said refunding bonds Messrs. Speyer & Company shall be entitled to receive such bonds to the amount at their face value of the principal of said notes then remaining unpaid which are then held by said Speyer & Company.

Within ten days after the maturity of each of said notes held by essrs. Speyer & Company the said Speyer & Company shall notify e Secretary of the Treasury of the United States whether such tured note and the matured interest on all the notes held by them ve been paid to them or not.

Until the refunding bonds hereinbefore provided for secure aforesaid shall have been delivered to the Treasurer of the U States as security for the said notes, all rights of the United S in or to or in respect of the said lien, and in or to or in respect o lands granted as aforesaid, shall remain unaffected by the tra of the said notes to Speyer & Company, and all right and title o United States in the said lien, and in respect of the said lands, s be deemed to continue in the United States as fully as if the notes remained in its possession and ownership, save only that said right and title shall be deemed to be held by the United S for the pro rata benefit of itself and said Speyer & Company, the United States may bring and maintain any and all actions, s and proceedings which it might have brought or maintai
580 and may do any and all acts and things which it might h done had all the said notes remained in its possession ownership, provided that all recoveries, benefits, and advantages rived or obtained through or by means of such actions, suits, ceedings, and acts for the enforcement of such lien and rights s inure to the pro rata benefit of the United States and said Speyer Company. In case of any default in payment of the principa interest of any of said notes, the United States will thereupon p ceed for the enforcement of the said lien.

In witness whereof, this agreement has been executed on behalf the United States of America by Honorable Lyman J. Gage, Se tary of the Treasury, Honorable Cornelius N. Bliss, Secretary of Interior, and Honorable John W. Griggs, Attorney General, pointed by the act of Congress a commission as hereabove stated; the Central Pacific Railroad Company by its president and under corporate seal attested by its secretary; and by Messrs. Speyer Company under their hands the day and year first above writ Executed in triplicate.

LYMAN J. GAGE,
Secretary of the Treasury
581
CORNELIUS N. BLISS,
Secretary of the Interior
JOHN W. GRIGGS,
Attorney General

Approved:

WILLIAM MCKINLEY

CENTRAL PACIFIC RAILROAD COMPANY.
By ISAAC L. REQUA, *President.*

(Central Pacific Railroad Company seal.)

Attest:

W. M. THOMPSON,
Secretary Speyer & C

2 DEFENDANTS' EXHIBIT No. 31, APRIL 15, 1915.

(Report of the United States Pacific Railway Commission of De-
mber 1, 1887, and a message of President Grover Cleveland trans-
itting the same, January 7, 1888; 50th Congress, first session; be-
g an extract from volume 2, Senate executive documents, first ses-
on, 50th Congress, 1887–1888.)
(Pursuant to agreement of counsel at pages 1898 and 1899 of the
stimony, this exhibit may be referred to in the original printed doc-
ments, without being copied into the record.)

3 DEFENDANTS' EXHIBIT No. 32, APRIL 15, 1915.

(Senate Report No. 293, 51st Congress, first session, submitted Feb-
ary 17, 1890, to accompany S. 2680, being a report from the com-
ittee on the President's message transmitting report of the Pacific
ilway Commission; especially that part thereof beginning with
ge 25 of the report, relating to the Central Pacific Railroad Com-
ny, being pages 25 to 78, inclusive, of said report.)
(Pursuant to agreement of counsel at page 1899 of the testimony,
is exhibit may be referred to in the original printed documents,
ithout being copied into the record.)

4 DEFENDANTS' EXHIBIT No. 33, APRIL 15, 1915.

(Senate Report No. 830, 53rd Congress, third session, submitted
nuary 28, 1895, from the Committee on Pacific Railroads, entitled
Partial report," especially that part thereof relating to the Central
acific Railroad Company, pages 93 to 108, inclusive, of said report.)
(Pursuant to agreement of counsel at page 1900 of the testimony,
is exhibit may be referred to in the original printed documents,
ithout being copied into the record.)

5 DEFENDANTS' EXHIBIT No. 34, APRIL 15, 1915.

(House of Representatives Report No. 1290, 53rd Congress, second
ssion, submitted by Mr. Reidy, from the Committee on Pacific Rail-
oads, July 21, 1894, to accompany H. R. 7798.)
(Pursuant to agreement of counsel at page 1900 of the testimony
is exhibit may be referred to in the original printed documents
ithout being copied into the record.)

586 DEFENDANTS' EXHIBIT No. 35, APRIL 15, 1915.

(Senate Report No. 778, 54th Congress, first session, subm
May 1, 1896, by Mr. Gear, from the Committee on Pacific Railr
to accompany S. 2894, which is defendants' Exhibit No. 36.)

(Pursuant to agreement of counsel at page 1901 of the testi
this exhibit may be referred to in the original printed docum
without being copied into the record.)

587 DEFENDANTS' EXHIBIT No. 36, APRIL 15, 1915.

United States Senate.

I, James M. Baker, Secretary of the Senate of the United St
of America, do hereby certify that the hereto attached printed
entitled "S. 2894, A bill to amend an act entitled 'An act to aid
the construction of a railroad and telegraph line from the Miss
River to the Pacific Ocean, and to secure to the Government the
of the same for postal, military, and other purposes,' approved J
first, eighteen hundred and sixty-two; also to amend an act appro
July second, eighteen hundred and sixty-four, and also an act
proved May seventh, eighteen hundred and seventy-eight, both
amendment of said first-mentioned act and other acts amendat
thereof and supplemental thereto, and to provide for the settlem
of claims growing out of the issue of bonds to aid in the construc
of certain railroads, and to secure the payment of all indebted
to the United States of certain companies therein mentioned," i
true and correct printed copy of the original thereof as found in
files of this office, which bill was reported by Mr. G
588 from the Committee on Pacific Railroads, April 17, 189
the first session of the 54th Congress.

In testimony whereof I hereunto subscribe my name and affix
seal of the Senate of the United States of America this twenty-th
day of October, A. D. 1914.

[Seal United States Senate.] JAMES M. BAKER,
Secretary of the Senate of the United State

[54th Congress, 1st session. Calendar No. 778.]

S. 2894.

In the Senate of the United States.

April 17, 1896.

. Gear, from the Committee on Pacific Railroads, reported the following bill, which was read the first and second times by unanimous consent:

BILL To amend an act entitled "An act to aid in the construction of a ailroad and telegraph line from the Missouri River to the Pacific Ocean, and o secure to the Government the use of the same for postal, military, and ther purposes," approved July first, eighteen hundred and sixty-two; also o amend an act approved July second, eighteen hundred and sixty-four, and lso an act approved May seventh, eighteen hundred and seventy-eight, both n amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United tates of certain companies therein mentioned.

Be it enacted by the Senate and House of Representatives of the nited States of America in Congress assembled, That the Secretary the Treasury be, and he is hereby, authorized and directed to ertain the amounts of the respective indebtedness of the Union cific Railroad Company and the Kansas Pacific Railway Company, which the subsidy bonds of the United States were advanced in of the construction of the Pacific railroads and branches as of first day of January, eighteen hundred and ninety-seven, upon same principle as if the whole sum of said bonds and interest id and to be paid by the United States thereon, and not thereto- re repaid by credits on account thereof, were to be paid to the ited States in cash on said day; and the said sum shall be computed l ascertained as follows:

First. To the whole of the principal of said subsidy bonds at- butable to each of said companies shall be added the interest paid to be paid by the United States upon the same, so as to ascertain the total amounts that would have been due the United States for principal and interest paid on the bonds issued to each of said companies at their maturity if no payments or reimburse- nts had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted any yments or reimbursements made by or on behalf of either of said mpanies upon their indebtedness at any time before the first day of

January, eighteen hundred and ninety-seven, as shall appear in
bond and interest accounts of the said companies, respectively,
the United States.

Third. Compute the present worths of the amounts so found
of the first day of January, eighteen hundred and ninety-seven,
the basis that money is worth two per centum per annum dur
the period between the date of average maturity of the said bo
and the first day of January, eighteen hundred and ninety-se
From the sums so ascertained there shall be deducted the amo
in the sinking fund applicable to the said companies, respectiv
computing the value of any bonds in the said sinking fund at t
market value at the time of such computation, as estimated by
Secretary of the Treasury; and said sinking fund shall thereupo
applied as a payment upon the debt of such company to the Un
States. The aggregate amounts so arrived at shall
592 deemed the sums that would be required to be paid on the
first day of January, eighteen hundred and ninety-seven,
said companies for the purpose of completely discharging their e
debts to the United States.

SEC. 2. That the Union Pacific Railway Company, successor
the Union Pacific Railroad Company and the Kansas Pacific R
way Company, be, and it is hereby, authorized to make, issue,
deliver to the Secretary of the Treasury, who is hereby author
and directed to receive the same, its certain indenture of mortg
which shall bear date the first day of January, eighteen hund
and ninety-seven, covering and embracing all the lines of railw
rights of way, terminals, terminal properties, bridges, rolling st
lines of telegraph, and all the then unsold land grant and o
lands, and all the then outstanding land and town lot contracts,
all property appurtenant thereto embraced in and covered by e
ing mortgages of the Union Pacific Railway Company, including
its unsubsidized as well as subsidized lines of railway and
branches and spurs connected therewith now owned by the U
Pacific Railway Company, the mail lines whereof extend from C
cil Bluffs, in the State of Iowa, to a point about five m
593 west of Ogden, in the State of Utah, and from Kansas C
in the State of Missouri, to Denver, in the State of Colora
and from Denver to Cheyenne, in the State of Wyoming, and f
Leavenworth to Lawrence, in the State of Kansas, together with
appurtenances thereto belonging, and all rights, franchises and pr
leges owned by the Union Pacific Railway Company in connec
therewith or with the operation thereof. Said mortgage shall c
stitute a lien upon said properties, junior and subject only to
new first mortgage hereinafter provided for, and shall cover
embrace all the lines of railway, property, franchises, and ri

braced in and covered by the said first mortgage. A proper and mplete description and inventory of all the property affected by ch mortgage shall be prepared under the direction of the Secretary the Treasury, which, when approved by him, shall be filed in his ice; and such mortgage on the property therein described shall be ld as security for the payment of the principal and interest of the nds issued thereunder and authorized by this act; but this section such mortgage shall not be construed to prevent the said company om using or disposing of any of its property or assets, in the ordinary, proper, and lawful course of its current business, in good faith and for valuable consideration, and said company may sell and convey for valuable consideration any lands included its land grant and apply the proceeds thereof as required by the ovisions of the new first mortgage hereinafter provided for: Provided, That every such disposition of any stocks, bonds, securities, other property owned by said company, whether by sale, pledge, otherwise, shall be reported to the Secretary of the Treasury within irty days after such disposition has been made, and that the bonds, cks, obligations, or other property acquired, with the proceeds of e property so disposed of, shall, except as hereinbefore provided, like manner and with the same power to dispose of the same, be bject to the lien of the said mortgage, and that true and proper scriptions and lists of the same shall be from time to time prepared d filed with the Secretary of the Treasury.

SEC. 3. That the said Union Pacific Railway Company is hereby thorized to make, execute, and issue, under its mortgage aforesaid, the Secretary of the Treasury of the United States its bonds in an nount equal to the said aggregate amount arrived at as above provided, each of which bonds shall be for the principal sum of one thousand dollars and shall be payable as provided for in this act. Said bonds shall be dated on January first, eighteen ndred and ninety-seven, and shall bear interest at the rate of two r centum per annum, payable semiannually on the first days of ly and January in each year, beginning on the first day of July, ghteen hundred and ninety-seven, and continuing until said bonds all be paid. The said bonds shall at the time of the execution and livery of the said mortgage be delivered to the Secretary of the reasury, and shall be received by and on behalf of the United States provisional payment of said aggregate amounts of indebtedness rived at, as provided in section one of this act.

SEC. 4. That the Union Pacific Railway Company shall execute d deliver its mortgage and bonds to the United States for the debts the Union Pacific Railroad Company and of the Kansas Pacific ilway Company to the United States, and the said bonds shall be mbered consecutively from one to a number which will include the

whole amount thereof, and shall be payable in lawful money of
United States. Said company shall, on the first day of Januar
each year, for a period of ten years, commencing on the
day of January, eighteen hundred and ninety-eight, pay
596 the Secretary of the Treasury of the United States, in a
tion to the interest which shall then be due on its said b
so to be issued and delivered to him, the sum of three hundred
sixty-five thousand dollars per annum; and for ten years commen
on the first day of January, nineteen hundred and eight, shall pa
the Secretary of the Treasury, in addition to the interest which
then be due on its said bonds, the sum of five hundred and fifty t
sand dollars per annum; and thereafter, commencing on the firs
of January, nineteen hundred and eighteen, said company shall
to the Secretary of the Treasury, in addition to the interest w
shall then be due on its said bonds, the sum of seven hundred
fifty thousand dollars per annum until the whole amount of
bonds shall have been fully paid. The payments of principal
be applied in payment of the bonds of said company to an amo
equal to such payment and in the order of the number of such bo
beginning with the highest unpaid number. Each of said bonds
spectively, when paid, shall thereupon be canceled and surrend
to the company, and no other bonds under said mortgage shal
issued by said company in lieu thereof. When the said bonds
mortgage securing the same shall be delivered to the Secre
597 of the Treasury, then, in case the lien thereof is subject
to the lien securing the new first-mortgage bonds referred t
clause one of section five hereof, the lien of the United States upon
of the railroad and property embraced in said mortgage and all cl
or claim of the United States upon any part of the revenues of
property under or by virtue of any existing laws shall cease and
termine. When the bonds issued under section three of this act
have been paid in full as herein provided, the indebtedness re
sented thereby shall be wholly discharged and the Secretary of
Treasury shall cancel and discharge the mortgage given to secure
same under this act.

SEC. 5. That for the purpose of refunding its mortgage indeb
ness upon such terms as it may be able to agree upon with its secu
holders and as will enable it to effect the settlement of its indeb
ness to the United States as herein provided, the said Union Pa
Railway Company is hereby authorized and empowered to issue
new mortgage bonds and stock within the limitations defined in
section: *Provided, however*, That out of the use or proceeds of
of the new securities hereby authorized to be made and issued
otherwise, all existing bonds secured by mortgages upon
598 part of the railway property and lands of the Union Pa

ilway Company shall be retired and extinguished and the rtgages securing the same shall be satisfied and discharged, with effect that the new mortgages herein authorized to be made shall the only liens upon the entire railway property, equipment, lands, franchises of the Union Pacific Railway Company covered by said existing mortgages, and that the second mortgage herein horized to be executed to the Secretary of the Treasury of the ited States shall upon said entire mortgaged premises be junior subject to no other lien and charge than the new first mortgage ein authorized securing new bonds to the amount hereinafter ited.

First. It may make, issue, and negotiate its bonds dated January t, eighteen hundred and ninety-seven, and maturing January first, eteen hundred and forty-seven, and bearing interest at a rate not eeding four per centum per annum, payable semiannually on the t days of January and July of each year until maturity thereof, to face amount of all outstanding first-mortgage bonds prior in lien to the lien of the United States on the subsidized part of its railway and those secured by mortgages constituting first liens upon parts of the unsubsidized railway, terminal properties, ipment, or upon lands of the said company, and those secured by rtgages upon the Omaha bridge, amounting in all to the sum of y-four million seven hundred and thirty-one thousand dollars, to secure the payment of said bonds by a first mortgage upon the lines of railway, rights of way, terminals, terminal proper-, bridges, rolling stock, and equipment, and all the then unsold l-grant lands and all the then outstanding land and town-lot con-ts and upon all other property embraced in such existing mort-es of the Union Pacific Railway Company, and upon all of its hts, privileges, and franchises.

Second. It may make and issue its preferred stock to an amount exceeding its present outstanding stock: *Provided*, *however*, t no dividends for any one year shall be paid upon such pre-ed stock in excess of the rate of four per centum, nor except out uch net or surplus earnings as shall be acquired by said company hat year and as shall remain after the payment of operating ex-ses, and the interest upon said new first-mortgage bonds, and the rest and fixed annual sums required to be paid upon said second-mortgage bonds hereinbefore authorized to be issued.

SEC. 6. That in the event that the railroad and property of the Union Pacific Railway Company contemplated to be em-ced in the new mortgage in this act authorized shall be sold er pending foreclosure proceedings or other proceedings now or after instituted, but subject to all the existing liens of the United

States thereon or on any parts thereof, the purchasers of said
way and property, who shall have acquired the same subject to
liens of the United States and who shall have filed with the S
tary of the Treasury of the United States their written acce
of the provisions of this act applicable to the Union Pacific Ra
Company within the time hereinafter limited for the filing of
acceptance by the said Union Pacific Railway Company, or w
such extended time not exceeding six months, as may for good
be prescribed by the President of the United States, shall be
they are hereby, together with their associates and their succe
created a corporation by the name and style of "Union Pacific
road Company". Such purchasers and their associates shall
with the Secretary of the Treasury of the United States a wr
instrument, executed by them as incorporators, designa
601 fifteen persons to act as directors of the said corpora
and such persons so designated, or a majority of them,
meet within thirty days after the filing of such instrument at
place where the annual meetings of the stockholders of the U
Pacific Railway Company are held, and shall elect officers of
new company under the same conditions and requirements a
procedure and character of official organization as are prescribe
law and the by-laws of the Union Pacific Railway Company, in
spect of a meeting of the directors of said last-named company
for like purpose.

Said new corporation shall have the power to acquire all or
part of the railways and properties of the Union Pacific Rail
Company and to provide for the said indebtedness of the said
named company to the United States by the issue to the Secreta
the Treasury of the United States of bonds of the same char
and amount as those herein authorized to be made by the Un
Pacific Railway Company, secured by mortgage of the same na
extent, and relative lien as that authorized to be made by it in sa
two hereof, and shall have and be entitled to enjoy and exercise rig
powers, privileges, franchises, and immunities equal in d
602 acter, extent, and duration to those which the Union Pa
Railway Company would have had and enjoyed had it
cepted and carried out the provisions of this act as herein empow
to do, and shall have power to make, issue, negotiate, and deliv
bonds, mortgages, and stock corresponding in character and exte
the like securities which, in such event, the Union Pacific Rail
Company would have been entitled to retain in existence and to m
and issue, and in all its relations and duties to the Government an
the public and in the regulation and management of its corpo
affairs it shall be substituted to and governed by the provisio

which would in such event have been applicable to the Union cific Railway Company.

SEC. 7. That the statutory lien created and subsisting under and virtue of the act of Congress approved July first, eighteen hun- d and sixty-two, and the act of July second, eighteen hundred and ty-four, and the act of May seventh, eighteen hundred and enty-eight, to secure the payment of said subsidy bonds issued to Union Pacific Railroad Company and the Kansas Pacific Railway mpany, and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien shall be and re- main in full force for security for the debts owing by each of said companies to the United States until the issue and de- ery to the Secretary of the Treasury of the United States of the ds and mortgage hereinbefore provided for, to be subject only the new first mortgage and to the bonds secured thereby and until sting mortgages shall have been satisfied and discharged as here- efore provided.

SEC. 8. That the Secretary of the Treasury be, and he is hereby, horized and directed to ascertain the amount of the respective ebtedness of the Central Pacific Railroad Company of California l the Western Pacific Railroad Company, to which the subsidy ds of the United States were advanced in aid of the construction the Pacific railroads and branches, as of the first day of January, hteen hundred and ninety-seven, upon the same principle as if whole sum of said bonds and interest paid and to be paid by the ited States thereon and not theretofore repaid by credits on ac- nt thereof were due and payable to the United States in cash on l day; and the said sum shall be computed and ascertained as lows:

First. To the whole of the principal of the said subsidy bonds at- tributable to each of said companies shall be added the interest paid or to be paid by the United States upon the same, so as to ascertain the total amounts that would have been due the ited States for principal and interest paid on the bonds issued to h of said companies at their maturity if no payments or reim- rsements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted any yments or reimbursements made by or on behalf of either of said panies upon their indebtedness at any time before the first day January, eighteen hundred and ninety-seven, as shall appear in bond and interest accounts of the said companies, respectively, h the United States.

Third. Compute the present worths of the amounts so found as of first day of January, eighteen hundred and ninety-seven, on the

basis that money is worth two per centum per annum during
period between the date of average maturity of the said bonds
the first day of January, eighteen hundred and ninety-seven. F
the sums so ascertained there shall be deducted the amounts in
sinking fund applicable to the said companies, respectively,
puting the value of any bonds in said sinking fund at their
ket value, at the time of such computation, as estimated
605 the Secretary of the Treasury, and said sinking fund
thereupon be applied as a payment upon the debt of such
panies to the United States. The aggregate amounts so arrive
shall be deemed the sums that would be required to be paid in
on the said first day of January, eighteen hundred and ninety-s
by said companies for the purpose of completely discharging
entire debts to the United States.

SEC. 9. That the Central Pacific Railroad Company, successo
the Central Pacific Railroad Company of California and the We
Pacific Railroad Company, be, and is hereby, authorized to
issue, and deliver to the Secretary of the Treasury, who is he
authorized and directed to receive the same, its certain indentu
mortgage, which shall bear date the first day of January, eigh
hundred and ninety-seven, covering and embracing the entire p
erty of such company, as at present consolidated, real, personal
mixed, including all the right, title, and interest of such compan
any stocks, bonds, or securities, or lands of any branch lines or
iary companies in which such company has now any interest, an
beneficial interest which it may have in a certain lease
606 property to the Southern Pacific Company, as herein
provided, and all railroads now owned or hereafter acquir
constructed by said Central Pacific Railroad Company, and all
franchises, telegraph lines, rolling stock, fixtures, and proper
every kind and description, as well as those which it, its successo
assigns, may hereafter acquire, subject to any bona fide, lawf
prior, and paramount lien, claim, or mortgage upon any railro
franchises, or property now owned by such company or which
company may hereafter acquire. A proper and complete descrip
and inventory of all the property affected by such mortgage sha
prepared under the direction of the Secretary of the Treasury, w
when approved by him shall be filed in his office; and such mort
on the property therein described shall be held as security for
payment of the principal and interest of the bonds issued thereu
and authorized by this act; but this section or such mortgage
not be construed to prevent said company from using and dispo
of any of its property or assets in the ordinary, proper, and la
course of its current business in good faith and for valuable co
eration, nor to prevent said company from applying the rentals

rived from said lease to the payment of dividends to its stockholders to the extent that dividends are permitted by this act; and said company may sell and convey for valuable considera- n any lands included in its land grant and apply the proceeds reof as required by the provisions of any mortgage or liens thereon or to the mortgage given by this act: *Provided*, That every such position of any stocks, bonds, securities, or other property owned said company, whether by sale, pledge, or otherwise, shall be re- ted to the Secretary of the Treasury by said company within ty days after such disposition has been made, and that the bonds, cks, obligations, or other property acquired with the proceeds of property so disposed of shall, except as hereinbefore provided, in manner and with the same power to dispose of the same, be sub- t to the lien of the said mortgage, and that true and proper de- iptions and lists of the same shall be from time to time prepared filed with the Secretary of the Treasury.

EC. 10. That the said Central Pacific Railroad Company is hereby horized to make, execute, and issue under its mortgage aforesaid bonds in an amount equal to the said aggregate amount arrived at as above provided, each of which bonds shall be for the principal sum of one thousand dollars and shall be payable as provided in this act. Said bonds shall bear interest at the of two per centum per annum, payable semiannually on the first s of January and July in each year, beginning on the first day July, eighteen hundred and ninety-seven, and continuing until bonds shall be paid. The said bonds shall, at the time of execu- and delivery of the said mortgage, be delivered to the Secretary he Treasury, and shall be received by and on behalf of the United tes as provisional payment of said aggregate amounts arrived at provided in section seven of this act, and the corporate character the Central Pacific Railroad Company shall continue until the ds authorized to be issued under this act shall have been fully d.

EC. 11. That the Central Pacific Railroad Company shall execute deliver its mortgage and bonds to the United States for the s of the Central Pacific Railroad Company of California and Western Pacific Railroad Company to the United States, and said bonds shall be numbered consecutively from one to a num- which will include the whole amount thereof and shall be pay- in lawful money of the United States. Said company shall, on the first day of January of each year, for a period of ten years, commencing on the first day of January, eighteen hundred and ninety-eight, pay to the Secretary of the Treasury he United States, in addition to the interest which shall then be on its indebtedness, the sum of three hundred and sixty-five thou-

sand dollars per annum, and for ten years commencing on the
day of January, nineteen hundred and eight, said company shall
to the Secretary of the Treasury, in addition to the interest w
shall then be due on its indebtedness, the sum of five hundred
fifty thousand dollars per annum, and thereafter, commencing
the first day of January, nineteen hundred and eighteen, said c
pany shall pay to the Secretary of the Treasury, in addition to
interest which shall then be due on its indebtedness, the sum of
hundred and fifty thousand dollars per annum until the w
amount of said bonds shall have been fully paid. The said payme
of principal shall be applied in payment of the bonds of said c
pany to an amount equal to such payment and in the order of
numbers of such bonds, beginning with the highest unpaid numb
Each of said bonds, respectively, when paid, shall thereupon be
celed and surrendered to the company, and no other bonds
said mortgage shall be issued by said company in lieu the
610 When such bonds shall have been paid in full as herein
vided, the indebtedness of the said companies hereinbefore
ferred to shall be wholly discharged, and the Secretary of the Tr
ury shall cancel and discharge the mortgage given to secure the
under this act.

SEC. 12. That the statutory lien created and subsisting under
by virtue of the act of Congress approved July first, eighteen h
dred and sixty-two, and the act of July second, eighteen hundred
sixty-four, and the act of May seventh, eighteen hundred and seve
eight, to secure the payment of said subsidy bonds issued to
Central Pacific Railroad Company of California and the Wes
Pacific Railroad Company and the interest thereon, as set forth
said acts, and upon all the property subject to said statutory
shall be and remain in full force for security for the debts owing
each of said companies to the United States until all the liens on
property affected by the said mortgage and existing at the time
its delivery and which were created subsequent to the said statu
lien shall have been paid, satisfied, and discharged of record.

SEC. 13. That whenever in the opinion of the President
611 the United States it shall be deemed necessary to the protec
of the interests and the preservation of the security of
United States in respect of its lien, mortgage, or other interes
any of the property of the several companies named in this act
which a lien, mortgage, or other incumbrance paramount to
right, title, or interest of the United States in the same property
any part of the same, may exist and be then lawfully liable to
enforced, the Secretary of the Treasury shall, under the direction
the President, redeem or otherwise clear off such paramount
mortgage, or other incumbrance by paying the sums lawfully

respect thereof out of the Treasury, and the United States shall reupon become and be subrogated to all rights and securities retofore pertaining to the debt, mortgage, lien, or other incumnce in respect of which such payment shall have been made· ovided, That whenever it shall become necessary for the United tes to pay off any part of such paramount incumbrance as afore-d, the Secretary of the Treasury may require the repayment of money paid for such purpose, with costs, expenses, and interest, and upon the failure of the company for whom such payment shall have been made to make such repayment, with all costs, expenses, and interest thereon, within one year after ng notified so to do, the whole indebtedness of said company to United States shall, at the discretion and option of the President the United States, become due and payable at any day thereafter, all the rights of the United States shall thereupon be enforced.

EC. 14. That said Central Pacific Railroad Company shall be mitted, without impairing the present lien thereof, to extend the e of payment of or refund, by issuing new bonds secured by rtgage, any of the principal of its indebtedness authorized by the th section of the act approved July second, eighteen hundred and y-four, as amended by act approved March third, eighteen hun-d and sixty-five, at a lower rate of interest than it now bears t to exceed five per centum per annum, payable semiannually).

EC. 15. That each of the mortgages authorized by provisions of ions two and nine of this act shall contain a covenant providing t, in the event of any default continuing for six months in the regular payment of interest on the bonds secured thereby or of the payments of principal required by sections four and eleven of this act, the entire debt due to the United States n the company making such default shall, at the option of the sident of the United States, immediately mature, and the United tes shall be thereupon entitled to enter upon and take possession he mortgaged properties of such defaulting company without lying to the courts or to Congress for authority so to do, or may ts option institute and maintain appropriate proceedings at law n equity in any court or courts of competent jurisdiction for the orcement of its claims or liens under said bonds or mortgage; and n mortgages shall also contain such other terms and stipulations onformity with the provisions of this act as may be deemed neces-y efficiently to secure the said bonds and the application thereto he moneys paid to the Secretary of the Treasury for retiring the ncipal thereof, and as may be approved by the Secretary of the asury of the United States. The said mortgages shall be delivered he Secretary of the Treasury of the United States, and upon the very thereof shall respectively be valid and subsisting mort-

gages each of all the property of said mortgagor company, r
personal, and mixed, embraced, covered, or required by
614 terms of this act, and such delivery shall have all the e
of recording the same in any place. Said mortgages, or co
thereof certified by the Secretary of the Treasury, shall at all ti
be open to public inspection under such rules and regulations a
said Secretary may prescribe, and for the greater publicity of
contents of said mortgages, copies thereof, certified by the Secre
of the Treasury, shall, as soon as may be after their respective
livery, be deposited with and recorded by each of the clerks of
circuit courts of the United States and the clerks of the supe
courts of the Territories of the United States in which the roadbe
any part thereof of said companies respectively is situated, wh
copies and records shall at all times be open to public inspect
All such copies and recording thereof shall be at the expense of
company.

SEC. 16. That in case default should be made at any time in
payments on account of principal or interest prescribed herein t
made upon the bonds issued under sections three and ten of this
no money shall be paid from the United States Treasury for or
account of services rendered to the United States or any departm
of the Government thereof over or upon the said railroad
615 telegraph lines heretofore aided by the advance of subs
bonds or upon any railroads or telegraph lines owned, le
or operated by the said company that issued such bonds until
amounts so in default upon such bonds shall have been fully p
but the compensation for such services shall be credited upon
amounts so in default.

SEC. 17. That hereafter, so long as any of the bonds authorized
the third and tenth sections of this act shall remain outstanding
unpaid, no dividend shall be paid by the company whose bonds
so outstanding unless the same shall have been actually earned
unless said company shall have paid all interest due on its bo
debt having a lien prior to the Government and all matured ins
ments of principal and interest then due and payable on its deb
the United States under this act, nor unless the said earnings,
deducting all interest accrued, but not payable at the time of
declaration of such dividends, shall be sufficient to warrant the p
ment thereof. In no event shall either of said companies wh
bonds are so outstanding pay any dividend exceeding the rat
four per centum per annum unless the said company shall, at the
of declaring such dividends in excess of four per centum
616 annum, so long as any of the said bonds are held by the Un
States, pay an amount equal to the excess over four per cen

r annum so declared to the Secretary of the Treasury, to be ap-
ied to payment of the principal of the highest numbered bonds of
ch company issued to the Government as herein provided, and un-
s the earnings of the said company shall suffice to warrant the pay-
ent of such excess and also the payment to the Government. Any
rector or officer who shall declare or pay or aid in declaring or pay-
g a dividend prohibited by this act shall, upon conviction of any
urt of competent jurisdiction, be punished by imprisonment not
ceeding two years or by a fine not exceeding five thousand dollars,
by both such fine and imprisonment.

SEC. 18. That this act shall take effect as to each of the said com-
nies and their branches, respectively, as hereinbefore described,
on the acceptance of the terms by the board of directors of such
mpany in writing, over the corporate seal of such company, signed
its president and attested by its secretary, being filed or deposited
th the Secretary of the Treasury, in the case of the Union Pacific
ilway Company, on or before January first, eighteen hundred
and ninety-seven, and in the case of the Central Pacific
7 Railroad Company within three months after the passage of
this act, subject, however, as to the Central Pacific Railroad
mpany, to the requirements of section nineteen hereof, and, as to
ch company, to the completion of the settlement and adjustment
this act proposed and provided, but any company which shall not
file its acceptance shall take no benefit from this act. Upon the
ng of said acceptance and the execution and delivery of the mort-
ge and bonds referred to in the second, third, ninth, and tenth
tions of this act to the Secretary of the Treasury he is authorized
d directed to sell any securities held in the sinking fund for said
mpany so accepting and pay the proceeds of such sale to the amount
their value, as estimated under the first and eighth sections of this
, into the Treasury of the United States. Any excess realized from
h sale above the value of such securities as estimated under the
st and eighth sections of this act shall be paid to the company;
y deficiency below such value shall be paid by the said com-
ny upon demand made by the Secretary of the Treasury after such
e.

SEC. 19. That the said Central Pacific Railroad Company
8 shall arrange for having the lease now existing between it and
the Southern Pacific Company modified so that the Southern
cific Company shall guarantee the payment by the Central Pacific
ilroad Company during the continuation of such lease of the in-
est on and the installments on account of principal of the bonds
ued under the tenth section of this act, as prescribed in the tenth
d eleventh sections hereof, and so that in case the Southern Pacific

Company should consent to the termination of such lease befo
maturity of all such installments payable on account of princi
said bonds, it shall in that event guarantee the payment b
Central Pacific Railroad Company of such interest and install
on account of principal while any bonds issued under the tenth
tion of this act shall remaining outstanding, and so that said S
ern Pacific Company shall consent that the sums, amounting i
aggregate to about two million four hundred and thirty-nine
sand dollars, standing credited on the books of the Treasury o
United States to the Central Pacific Railroad Company as
pensation for services upon nonaided lines (a portion of whi
now in judgment in favor of the Southern Pacific Com
619 shall be forthwith applied to the payment and cancell
of the highest numbered bonds of the Central Pacific Rail
Company issued under the provisions of said tenth section of thi
and the filing with the Secretary of the Treasury of a dupli
original of such modified lease, duly executed by the officers of
said companies by authority of their boards of directors, shall
stitute an essential part of the acceptance by the Central Pacific
road Company of this act. In the event of the termination of
lease by act of the parties thereto, or any abrogation or cancell
of such lease, the principal of the bonds issued under the tenth
tion of this act shall, at the option of the President of the U
States, immediately mature.

SEC. 20. That either of said companies may, at any time after
execution and delivery of their said bonds, pay the whole or
portion of said bonds, by paying the amount thereof, together
the accrued interest thereon, to the Secretary of the Treasury,
shall thereupon cancel the bonds so paid and deliver the bond
canceled to the said company. No bonds so canceled shall be
issued, but the Secretary of the Treasury may, by direction of
President of the United States, sell any of the said b
620 which may be unpaid at any time, and the purchase price
be paid in lawful money of the United States.

SEC. 21. That as to such companies as shall accept the provi
of this act, and in the manner and within the time herein prov
as to it, from and after the completion of the said adjustment
settlement, all provisions of law relating to the appointment of
ernment directors shall be, and the same are hereby, repealed,
the said office is hereby abolished, and all provisions of law rela
to the collection of any percentage of net earnings, and to the
holding or application of any moneys due or to become due
the United States for any services rendered by either of the
companies or any of its branches or auxiliaries or leased lines,

an as hereinbefore provided, are hereby repealed, and all such nounts shall (provided the said company shall not be in default the payment of the interest of the bonds or in the payments re- ired by this act) be paid to the said company as soon as amounts all have been ascertained; and all provisions of law forbidding ther of said companies from mortgaging or pledging its property shall be repealed, and either of said companies shall, after the 1 acceptance of the terms of this act, as hereinbefore provided, have and possess all the usual powers of borrowing money its credit or on security of any of its assets, and of constructing extending its railway by consolidation, lease, or otherwise, and of asing its railway and property or parts thereof, and of acquiring le to land by condemnation proceedings, and such other powers are or may be granted to and exercised by railway corporations the respective States and Territories in which the said railway is may be situated.

SEC. 22. That each of the companies accepting the provisions of is act shall keep its railroad and telegraph line in repair and use, d shall at all times transmit dispatches over said telegraph line, d transport mail, troops, and munitions of war, supplies, and pub- stores upon said railroad for the Government whenever required do so by any department thereof, and that the Government shall at l times have the preference in the use of the same for all the pur- ses aforesaid at fair and reasonable rates of compensation, not to ceed the amounts paid by private parties for the same kind of rvice; and that said companies hereinbefore mentioned, their suc- cessors, lessees, and assigns, shall cooperate in making track 2 connections with all railroads of other companies now or hereafter built to points of junction with their roads; and at y point where two or more railroads shall connect with their roads, either of them, they and their successors, lessees, and assigns shall ford to all such connecting roads equal times, terms, rates, and cilities for the interchange of traffic, both passenger and freight, tween such connecting roads and their respective roads and every rt thereof. And any contract, arrangement, or device by sale, ase, consolidation, through-car service, or otherwise, intended for resulting in any preference or advantage whatsoever to any such ilroad so connecting at such common point, or which shall subject y such railroad so connecting at any such common point to any rejudice or disadvantage whatsoever, is hereby declared to be nlawful.

SEC. 23. That it shall be the duty of the Attorney General to cause e provisions of this act to be enforced, and he shall take all steps edful to that end, and shall make report to the President each

year or oftener thereon, which report shall be laid before Con
and until the execution and delivery of the bonds and mortg
in this act provided for shall be completed all existing
623 visions of law relating to said companies, respectively,
remain in force.

SEC. 24. That this act and each and every provision thereof
severally and respectively be deemed, taken, and held as in alter
and amendment of said act of eighteen hundred and sixty-two
of said act of eighteen hundred and sixty-four and of said a
eighteen hundred and seventy-eight, respectively, and acts am
tory thereof or supplementary thereto, and of all of said act
far as they are inconsistent with this act, nor shall anything in
act be construed or taken in anywise to affect or impair the righ
Congress at any time hereafter further to alter, amend, or repeal
said acts hereinbefore mentioned, and this act shall be subject
alteration, amendment, or repeal, as in the opinion of Cong
justice or the public welfare may require, and nothing herein c
tained shall be held to deny, exclude, or impair any right or rem
in the premises now existing in favor of the United States. T
act shall be published and printed as a public act and in all proc
ings may be cited as such.

624 (Endorsement): 54th Congress, *1st session*, S. 2894. Cal
dar No. 778. A bill to amend an act entitled "An act to aid
the construction of a railroad and telegraph line from the Miss
River to the Pacific Ocean and to secure to the Government the us
the same for postal, military, and other purposes," approved July
eighteen hundred and sixty two; also to amend an act approved J
second, eighteen hundred and sixty-four, and also an act appro
May seventh, eighteen hundred and seventy-eight, both in amend
of said first-mentioned act and other acts amendatory thereof
supplemental thereto, and to provide for the settlement of cl
growing out of the issue of bonds to aid in the construction of cer
railroads and to secure the payment of all indebtedness to the Un
States of certain companies therein mentioned. By Mr. Gear. A
17, 1896, read twice.

625 DEFENDANTS' EXHIBIT NO. 37, APRIL 15, 1915.

(House of Representatives Report No. 1497, 54th Congress, f
session, submitted April 25, 1896, by Mr. Powers, from the Commi
on Pacific Railroads; to accompany H. R. 8189, which is Defend
Exhibit No. 38.)

(Pursuant to agreement of counsel, at page 1901 of the testim
this exhibit may be referred to in the original printed docum
without being copied into the record.)

DEFENDANTS' EXHIBIT No. 38, APRIL 15, 1915.

[54th Congress, 2d session. H. R. 8189.]

(Report No. 1497.)

In the House of Representatives.

April 14, 1896.

r. Powers introduced the following bill; which was referred to the Committee on Pacific Railroads and ordered to be printed.

April 25, 1896.

mmitted to the Committee of the Whole House on the state of the Union and ordered to be printed.

January 7, 1897.

dered that one thousand copies, as amended by the Committee on Pacific Railroads, be printed for the use of the House.

(Omit the part struck through and insert the part printed in italics.)

A BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of certain railroads, and to secure the payment of all indebtedness to the United States of certain companies therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to ascertain the amounts of the respective indebtedness of the Union Pacific Railroad Company and the Kansas Pacific Railway Company, to which the subsidy bonds of the United States were advanced in aid of the construction of the Pacific railroads and branches, as of the first day of ~~January~~ *July*, eighteen hundred and ninety-seven, upon the same principle as if the whole sum of said bonds and interest paid and to be paid by the United States thereon, and not theretofore repaid by credits on account

thereof, were to be paid to the United States in cash on said
and the said sum shall be computed and ascertained as follows:

First. To the whole of the principal of said subsidy bonds
utable to each of said companies shall be added the interest
or to be paid by the United States upon the same, so as to
tain the total amounts that would have been due the United S
for principal and interest paid on the bonds issued to each of
companies at their maturity if no payments or reimbursements
been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted
payments or reimbursements made by or on behalf of either
said companies upon their indebtedness at any time before
first day of ~~January~~ *July*, eighteen hundred and ninety-seven,
shall appear in the bond and interest accounts of the
629 companies, respectively, with the United States *and*
amounts heretofore forming part of the sinking fund ap
cable to the said companies, which shall have been applied to
payment or satisfaction of such subsidy bonds or reimbursement
the United States of amounts paid in respect thereof.

Third. Compute the present worths of the amounts so found
the first day of ~~January~~ *July*, eighteen hundred and ninety-seven,
the basis that money is worth two per centum per annum during
period between the date of average maturity of the said bonds and
first day of ~~January~~ *July*, eighteen hundred and ninety-seven. F
the sums so ascertained there shall be deducted the amounts in
sinking fund applicable to the said companies, respectively, com
ing the value of any bonds in the said sinking fund at their ma
value at the time of such computation, as estimated by the Secre
of the Treasury; and said sinking fund shall thereupon be applie
a payment upon the debt of such company to the United States.
aggregate amounts so arrived at shall be deemed the sums that w
be required to be paid on the said first day of ~~January~~ *July*, eigh
hundred and ninety-seven, by said companies for the purpo
completely discharging their entire debts to the U
630 States.

SEC. 2. That the Union Pacific Railway Company, succe
to the Union Pacific Railroad Company and the Kansas Pacific
way Company, be, and it is hereby, authorized to make, issue,
deliver to the Secretary of the Treasury, who is hereby author
and directed to receive the same, its certain indenture of mort
which shall bear date the first day of ~~January~~ *July*, eighteen
dred and ninety-seven, covering and embracing all the lines of
way, rights of way, terminals, terminal properties, bridges, ro
stock, lines of telegraph, and all the then unsold land grant and

nds, and all the then outstanding land and town-lot contracts, and
property appurtenant thereto embraced in and covered by existing
rtgages of the Union Pacific Railway Company, including all its
subsidized as well as subsidized lines of railway and the branches
d spurs connected therewith now owned by the Union Pacific Rail-
y Company, the main lines whereof extend from Council Bluffs, in
e State of Iowa, to a point about five miles west of Ogden, in the
ate of Utah, and from Kansas City, in the State of Missouri, to
nver, in the State of Colorado, and from Denver to Cheyenne,
in the State of Wyoming, and from Leavenworth to Law-
rence, in the State of Kansas, together with all appurtenances
thereto belonging, and all rights, franchises, and privileges
ned by the Union Pacific Railway Company in connection there-
th or with the operation thereof. Said mortgage shall constitute a
n upon said properties junior and subject only to the new first
rtgage hereinafter provided for, and shall cover and embrace all
e lines of railway, property, franchises, and rights embraced in and
vered by the said first mortgage. A proper and complete descrip-
n and inventory of all the property affected by such mortgage shall
prepared under the direction of the Secretary of the Treasury,
ich, when approved by him, shall be filed in his office; and such
rtgage on the property therein described shall be held as security
r the payment of the principal and interest of the bonds issued
reunder and authorized by this act; but this section or such mort-
ge shall not be construed to prevent the said company from using
disposing of any of its property or assets, in the ordinary, proper,
l lawful course of its current business, in good faith and for valu-
le consideration, and said company may sell and convey, for valu-
le consideration, any lands included in its land grant and apply
the proceeds thereof as required by the provisions of the new
first mortgage hereinafter provided for: *Provided*, That every
such disposition of any stocks, bonds, securities, or other prop-
y owned by said company, whether by sale, pledge, or otherwise,
ll be reported to the Secretary of the Treasury within thirty days
er such disposition has been made, and that the bonds, stocks, ob-
ations, or other property acquired, with the proceeds of the prop-
y so disposed of, shall, except as hereinbefore provided, in like
nner and with the same power to dispose of the same, be subject to
e lien of the said mortgage, and that true and proper descriptions
l lists of the same shall be from time to time prepared and filed
h the Secretary of the Treasury.

Sec. 3. That the said Union Pacific Railway Company is hereby
horized to make, execute, and issue, under its mortgage afore-
d, to the Secretary of the Treasury of the United States, its bonds
n amount equal to the said aggregate amount arrived at as above

provided, each of which bonds shall be for the principal sum o
thousand dollars, and shall be payable as provided for in this
Said bonds shall be dated on ~~January~~ *July* first, eighteen hun
and ninety-seven, and shall bear interest at the rate of two
633 centum per annum, payable semiannually on the first day
July and January in each year, beginning on the first da
~~July, eighteen hundred and ninety seven,~~ *January, eighteen hun*
and ninety-eight, and continuing until said bonds shall be paid.
said bonds shall at the time of the execution and delivery of the
mortgage be delivered to the Secretary of the Treasury, and shal
received by and on behalf of the United States as provisional
ment of said aggregate amounts of indebtedness arrived at, as
vided in section one of this act.

SEC. 4. That the Union Pacific Railway Company shall exe
and deliver its mortgage and bonds to the United States for
debts of the Union Pacific Railroad Company and of the Kansas
cific Railway Company to the United States, and the said bo
shall be numbered consecutively from one to a number which
include the whole amount thereof, and shall be payable in law
money of the United States. Said company shall, on the first
of ~~January~~ *July* of each year, for a period of ten years, commen
on the first day of ~~January~~ *July*, eighteen hundred and nin
eight, pay to the Secretary of the Treasury of the United State
addition to the interest which shall then be due on its
634 bonds so to be issued and delivered to him, the sum of
hundred and sixty-five thousand dollars of principal per
num; and for ten years, commencing on the first day of Ja
July, nineteen hundred and eight, shall pay to the Secretary of
Treasury, in addition to the interest which shall then be due o
said bonds, the sum of five hundred and fifty thousand dollars
principal per annum; and thereafter, commencing on the first da
~~January~~ *July*, nineteen hundred and eighteen, said company
pay to the Secretary of the Treasury, in addition to the int
which shall then be due on its said bonds, the sum of seven hun
and fifty thousand dollars of principal per annum until the w
amount of said bonds shall have been fully paid. The payment
principal shall be applied in payment of the bonds of said com
to an amount equal to such payment and in the order of the num
of such bonds, beginning with the highest unpaid number. Each
said bonds, respectively, when paid, shall thereupon be canceled
surrendered to the company, and no other bonds under said m
gage shall be issued by said company in lieu thereof. When
said bonds and mortgage securing the same shall be delivered to
Secretary of the Treasury, then, in case the lien thereof is

ject only to the lien securing the new first-mortgage bonds referred to in clause one of section five hereof, the lien of the ited States upon any of the railroad and property embraced in l mortgage, and all charge or claim of the United States upon part of the revenues of such property under or by virtue of any sting laws, shall cease and determine. When the bonds issued un- section three of this act shall have been paid in full, as herein vided, the indebtedness represented thereby shall be wholly dis- rged and the Secretary of the Treasury shall cancel and discharge mortgage given to secure the same under this act.

SEC. 5. That for the purpose of refunding its mortgage indebted- s upon such terms as it may be able to agree upon with its security ders and as will enable it to effect the settlement of its indebtedness he United States as herein provided, the said Union Pacific Rail- y Company is hereby authorized and empowered to issue its new rtgage bonds and stock within the limitations defined in this tion: *Provided, however*, That out of the use or proceeds of sale the new securities, hereby authorized to be made and issued, or otherwise, all existing bonds secured by mortgages upon any part of the railway property and lands of the Union Pacific Railway Company shall be retired and extinguished, and the rtgage securing the same shall be satisfied and discharged, with effect that the new mortgages herein authorized to be made shall the only liens upon the entire railway property, equipment, lands, l franchises of the Union Pacific Railway Company covered by said existing mortgages, and that the second mortgage herein horized to be executed to the Secretary of the Treasury of the ited States shall upon said entire mortgaged premises be junior l subject to no other lien and charge than the new first mortgage ein authorized, securing new bonds to the amount hereinafter lim- d.

First. It may make, issue, and negotiate its bonds dated ~~January~~ *July* first, eighteen hundred and ninety-seven, and maturing ~~Janu-~~ *July* first, nineteen hundred and forty-seven, and bearing interest a rate not exceeding four per centum per annum, payable semi- nually on the first days of January and July of each year until maturity thereof, to the face amount of all outstanding first- rtgage bonds prior in lien to the lien of the United States on the subsidized part of its railway, and those secured by mortgages constituting first liens upon parts of the unsubsidized railway, terminal properties, equipment, or upon lands of the said com- ny, and those secured by mortgages upon the Omaha bridge, ounting in all to the sum of fifty-four million three hundred and hty-eight thousand dollars, and to secure the payment of said

bonds by a first mortgage upon all the lines of railway, right-
way, terminals, terminal properties, bridges, rolling stock, and eq-
ment, and all the then unsold land-grant lands, and all the
outstanding land and town-lot contracts, and upon all other prop-
embraced in such existing mortgages of the Union Pacific Rail-
Company, and upon all of its rights, privileges, and franchises.

Second. It may make and issue its preferred stock to an amo-
not exceeding its present outstanding stock: *Provided, however,* T
no dividends for any one year shall be paid upon such preferred st
in excess of the rate of four per centum nor except out of such ne
surplus earnings as shall be acquired by said company in that y
and as shall remain after the payment of operating expenses and
interest upon said new first-mortgage bonds and the interest and fi
annual sums required to be paid upon said second-mortgage bo
hereinbefore authorized to be issued.

638 SEC. 6. That in the event that the railroad and prope
of the Union Pacific Railway Company contemplated to
embraced in the new mortgage in this act authorized shall be s
under pending foreclosure proceedings or other proceedings now
hereafter instituted, but subject to all the existing liens of the Uni
States thereon or on any parts thereof, the purchasers of said r
way and property who shall have acquired the same subject to s
liens of the United States and who shall have filed with the Se
tary of the Treasury of the United States their written accepta
of the provisions of this act applicable to the Union Pacific Rail
Company within the time hereinafter limited for the filing of s
acceptance by the said Union Pacific Railway Company or wi
such extended time not exceeding six months as may for good ca
be prescribed by the President of the United States shall be,
they are hereby, together with their associates and their succes
created a corporation by the name and style of "Union Pacific R
road Company." Such purchasers and their associates shall
with the Secretary of the Treasury of the United States a wri
instrument executed by them as incorporators designa
639 fifteen persons to act as directors of the said corporation,
such persons so designated, or a majority of them, shall m
within thirty days after the filing of such instrument at the pl
where the annual meetings of the stockholders of the Union Pa
Railway Company are held and shall elect officers of said new c
pany under the same conditions and requirements as to proce
and character of official organization as are prescribed by law
the by-laws of the Union Pacific Railway Company in respect
meeting of the directors of said last-named company held for
purpose.

Said new corporation shall have the power to acquire all or any rt of the railways and properties of the Union Pacific Railway mpany and to provide for the said indebtedness of the said last-med company to the United States by the issue to the Secretary of Treasury of the United States of bonds of the same character and ount as those herein authorized to be made by the Union Pacific ilway Company, secured by mortgage of the same nature, extent, l relative lien as that authorized to be made by it in section two reof; and shall have and be entitled to enjoy and exercise rights, powers, privileges, franchises, and immunities equal in character, extent, and duration to those which the Union Pacific Railway Company would have had and enjoyed had it acted and carried out the provisions of this act as herein empowered do, and shall have power to make, issue, negotiate, and deliver its nds, mortgages, and stock corresponding in character and extent to like securities which, in such event, the Union Pacific Railway mpany would have been entitled to retain in existence and to make l issue, and in all its relations and duties to the Government and the public, and in the regulation and management of its corporate airs it shall be substituted to and governed by the provisions of which would in such event have been applicable to the Union cific Railway Company.

SEC. 7. That the statutory lien created and subsisting under and virtue of the act of Congress approved July first, eighteen hun-d and sixty-two, and the act of July second, eighteen hundred and ty-four, and the act of May seventh, eighteen hundred and seventy-ht, to secure the payment of said subsidy bonds issued to the Union cific Railroad Company and the Kansas Pacific Railway Com-y, and the interest thereon, as set forth in said acts, and upon all the property subject to said statutory lien shall be and remain in full force for security for the debts owing by each of said companies to the United States until the issue and delivery to Secretary of the Treasury of the United States of the bonds and rtgage hereinbefore provided for, to be subject only to the new t mortgage and to the bonds secured thereby, and until existing rtgages shall have been satisfied and discharged as hereinbefore vided.

SEC. 8. That the Secretary of the Treasury be, and he is hereby, horized and directed to ascertain the amount of the respective in-tedness of the Central Pacific Railroad Company of California l the Western Pacific Railroad Company, to which the subsidy nds of the United States were advanced in aid of the construction the Pacific railroads and branches, as of the first day of ~~January~~ y, eighteen hundred and ninety-seven, upon the same principle

as if the whole sum of said bonds and interest paid and to be pa
the United States thereon and not theretofore repaid by credi
account thereof were due and payable to the United States in
on said day; and the said sum shall be computed and ascertain
follows:

First. To the whole of the principal of the said subsidy b
attributable to each of said companies shall be added th
642 terest paid or to be paid by the United States upon the
so as to ascertain the total amounts that would have been
the United States for principal and interest paid on the bonds
to each of said companies at their maturity if no payments o
imbursements had been made thereon by the companies.

Second. From said amounts so ascertained shall be deducted
payments or reimbursements made by or on behalf of either of
companies upon their indebtedness at any time before the first d
~~January~~ *July*, eighteen hundred and ninety-seven, as shall appe
the bond and interest accounts of the said companies, respecti
with the United States *and any amounts heretofore forming par
the sinking fund applicable to the said companies which shall h
been applied toward payment or satisfaction of such subsidy b
or reimbursements to the United States of amounts paid in re
thereof.*

Third. Compute the present worths of the amounts so found
the first day of ~~January~~ *July*, eighteen hundred and ninety-s
on the basis that money is worth two per centum per annum du
the period between the date of average maturity of the said b
and the first day of ~~January~~ *July*, eighteen hundred
643 ninety-seven. From the sums so ascertained there sha
deducted the amounts in the sinking fund applicable to
said companies, respectively, computing the value of any bond
said sinking fund at their market value, at the time of such co
tation, as estimated by the Secretary of the Treasury, and said
ing fund shall thereupon be applied as a payment upon the de
such companies to the United States. The aggregate amount
arrived at shall be deemed the sums that would be required t
paid in cash on the said first day of ~~January~~ *July*, eighteen hun
and ninety-seven, by said companies for the purpose of compl
discharging their entire debts to the United States.

SEC. 9. That the Central Pacific Railroad Company, successo
the Central Pacific Railroad Company of California and the We
Pacific Railroad Company, be, and is hereby, authorized to
issue, and deliver to the Secretary of the Treasury, who is he
authorized and directed to receive the same, its certain indentu
mortgage, which shall bear date the first day of ~~January~~

hteen hundred and ninety-seven, covering and embracing the ire property of such company, as at present consolidated, real, personal, and mixed, including all the right, title, and interest of such company in any stocks, bonds, or securities, or lands of any branch lines or auxiliary companies in which h company has now any interest, and all beneficial interest which ay have in a certain lease of its property to the Southern Pacific mpany, as hereinafter provided, and all railroads now owned or eafter acquired or constructed by said Central Pacific Railroad mpany, and all their franchises, telegraph lines, rolling stock, ures, and property of every kind and description, as well as those ich it, its successors or assigns, may hereafter acquire, subject to bona fide, lawfully prior, and paramount lien, claim, or mort- e upon any railroads, franchises, or property now owned by such pany or which such company may hereafter acquire. A proper complete description and inventory of all the property affected such mortgage shall be prepared under the direction of the Secre- of the Treasury, which, when approved by him, shall be filed his office; and such mortgage on the property therein described ll be held as security for the payment of the principal and rest of the bonds issued thereunder and authorized by this act; this section or such mortgage shall not be construed to pre- vent said company from using and disposing of any of its property or assets in the ordinary, proper, and lawful course of its current business in good faith and for valuable con- ration, nor to prevent said company from applying the rentals ved from said lease to the payment of dividends to its stock- lers to the extent that dividends are permitted by this act; and company may sell and convey for valuable consideration any ls included in its land grant and apply the proceeds thereof as ired by the provisions of any mortgage or liens thereon prior to mortgage given by this act: *Provided*, That every such disposi- of any stocks, bonds, securities, or other property owned by company, whether by sale, pledge, or otherwise, shall be reported he Secretary of the Treasury by said company within thirty days r such disposition has been made, and that the bonds, stocks, gations, or other property acquired with the proceeds of the perty so disposed of shall, except as hereinbefore provided, in manner and with the same power to dispose of the same, be ject to the lien of the said mortgage, and that true and proper riptions and lists of the same shall be from time to time prepared filed with the Secretary of the Treasury.

SEC. 10. That the said Central Pacific Railroad Company is hereby authorized to make, execute, and issue under its

mortgage aforesaid its bonds in an amount equal to the aggregate amount arrived at as above provided, each of which bonds shall be for the principal sum of one thousand dollars and shall be payable as provided in this act. Said bonds shall bear interest at the rate of two per centum per annum, payable semiannually on the first days of January and July in each year, beginning with the first day of ~~July, eighteen hundred and ninety seven~~ *January, eighteen hundred and ninety-eight*, and continuing until said bonds shall be paid. The said bonds shall, at the time of execution and delivery of the said mortgage, be delivered to the Secretary of the Treasury, and shall be received by and on behalf of the United States as provisional payment of said aggregate amounts arrived at as provided in section seven of this act, and the corporate charter of the Central Pacific Railroad Company and its franchises derived from the United States shall continue until the bonds authorized to be issued under this act shall have been fully paid.

SEC. 11. That the Central Pacific Railroad Company shall execute and deliver its mortgage and bonds to the United States to pay
647 the debts of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company to the United States, and the said bonds shall be numbered consecutively from one to a number which will include the whole amount thereof and shall be payable in lawful money of the United States. Said company shall, on the first day of ~~January~~ *July* of each year, for the period of ten years commencing on the first day of ~~January~~ *July*, eighteen hundred and ninety-eight, pay to the Secretary of the Treasury of the United States, in addition to the interest which shall then be due on its indebtedness, the sum of three hundred and sixty thousand dollars of principal per annum, and for ten years commencing on the first day of ~~January~~ *July*, nineteen hundred and eight, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its indebtedness, the sum of five hundred and fifty thousand dollars of principal per annum, and thereafter, commencing on the first day of ~~January~~ *July*, nineteen hundred and eighteen, said company shall pay to the Secretary of the Treasury, in addition to the interest which shall then be due on its indebtedness, the sum of seven hundred and fifty thousand dollars of principal per annum until the whole amount of
648 bonds shall have been fully paid. The said payments of principal shall be applied in payment of the bonds of said company to an amount equal to such payment and in the order of the numbers of such bonds, beginning with the highest unpaid number. Bonds of said bonds, respectively, when paid, shall thereupon be canceled and surrendered to the company, and no other bonds under said

re shall be issued by said company in lieu thereof. When such
ds shall have been paid in full as herein provided, the indebted-
s of the said companies hereinbefore referred to shall be wholly
charged, and the Secretary of the Treasury shall cancel and dis-
rge the mortgage given to secure the same under this act.

EC. 12. That the statutory lien created and subsisting under and
virtue of the act of Congress approved July first, eighteen hun-
d and sixty-two, and the act of July second, eighteen hundred
sixty-four, and the act of May seventh, eighteen hundred and
enty-eight, to secure the payment of said subsidy bonds issued to
Central Pacific Railroad Company of California and the Western
ific Railroad Company, and the interest thereon, as set forth in
l acts, and upon all the property subject to said statutory lien,
shall be and remain in full force for security for the debts ow-
ing by each of said companies to the United States until all
the liens on the property affected by the said mortgage and
ting at the time of its delivery and which were created subsequent
he said statutory lien shall have been paid, satisfied, and dis-
rged of record.

EC. 13. That whenever in the opinion of the President of the
ited States it shall be deemed necessary to the protection of the
rests and the preservation of the security of the United States
espect of its lien, mortgage, or other interest in any of the prop-
of the several companies named in this act upon which a lien,
rtgage, or other incumbrance paramount to the right, title, or
rest of the United States in the same property or any part of the
e may exist and be then lawfully liable to be enforced, the Secretary
he Treasury shall, under the direction of the President, redeem or
erwise clear off such paramount lien, mortgage, or other incum-
nce by paying the sums lawfully due in respect thereof out of the
asury, and the United States shall thereupon become and be subro-
ed to all rights and securities theretofore pertaining to the debt,
rtgage, lien, or other incumbrance in respect of which such pay-
ment shall have been made: *Provided*, That whenever it shall
become necessary for the United States to pay off any part of
such paramount incumbrance as aforesaid, the Secretary of the
asury may require the repayment of all money paid for such pur-
, with costs, expenses, and interest, and upon the failure of the
pany for whom such payment shall have been made to make
repayment, with all costs, expenses, and interest thereon, within
year after being notified so to do, the whole indebtedness of said
pany to the United States shall, at the discretion and option of
President of the United States, become due and payable at any
thereafter, and all the rights of the United States shall there-
be enforced.

SEC. 14. That said Central Pacific Railroad Company shall b
mitted, without impairing the present lien thereof, to extend th
of payment of or refund by issuing new bonds secured by mor
any of the principal of its indebtedness authorized by the tenth
tion of the act approved July second, eighteen hundred and
four, as amended by act approved March third, eighteen hu
and sixty-five, at a lower rate of interest than it now bears (n
exceed five per centum per annum, payable semiannually).

SEC. 15. That each of the mortgages authorized by
651 sions of sections two and nine of this act shall contain a
nant providing that in the event of any default continuin
six months in the regular payment of interest on the bonds se
thereby or of the payments of principal required by sections
and eleven of this act, the entire debt due to the United States
the company making such default shall, at the option of the P
dent of the United States, immediately mature, and the United S
shall be thereupon entitled to enter upon and take possession o
mortgaged properties of such defaulting company without appl
to the courts or to Congress for authority so to do or may
option institute and maintain appropriate proceedings at law
equity in any court or courts of competent jurisdiction for th
forcement of its claims or liens under said bonds or mortgage;
such mortgages shall also contain such other terms and stipula
in conformity with the provisions of this act as may be de
necessary efficiently to secure the said bonds and the applic
thereto of the moneys paid to the Secretary of the Treasury fo
tiring the principal thereof, and as may be approved by the S
tary of the Treasury of the United States. The said mortgages
be delivered to the Secretary of the Treasury of the Un
States, and upon the delivery thereof shall respectively
652 valid and subsisting mortgages each of all the property
said mortgagor company, real, personal, and mixed, embra
covered, or required by the terms of this act, and such delivery
have all the effect of recording the same in any place. Said m
gages or copies thereof certified by the Secretary of the Trea
shall at all times be open to public inspection under such rules
regulations as the said Secretary may prescribe, and for the gre
publicity of the contents of said mortgages copies thereof certi
by the Secretary of the Treasury shall, as soon as may be after t
respective delivery, be deposited with and recorded by each of
clerks of the circuit courts of the United States and the clerks of
supreme courts of the Territories of the United States in which
roadbed or any part thereof of said companies, respectively, is s
ated, which copies and records shall at all times be open to p

spection. All such copies and recording thereof shall be at the
xpense of the company.

SEC. 16. That in case default should be made at any time in the
yments on account of principal or interest prescribed herein to
be made upon the bonds issued under sections three and ten of
3 this act, no money shall be paid from the United States Treas-
ury for or on account of services rendered to the United States
any department of the Government thereof over or upon the
id railroads or telegraph lines heretofore aided by the advance
subsidy bonds or upon any railroads or telegraph lines owned,
ased, or operated by the said company that issued such bonds,
ntil all amounts so in default upon such bonds shall have been
lly paid; but the compensation for such services shall be credited
on the amounts so in default.

SEC. 17. That hereafter, so long as any of the bonds authorized
the third and tenth sections of this act shall remain outstanding
d unpaid, no dividend shall be paid by the company whose bonds
e so outstanding, unless the same shall have been actually earned,
r unless said company shall have paid all interest due on its bonded
bt having a lien prior to the Government and all matured install-
ents of principal and interest then due and payable on its debt
the United States under this act, nor unless the said earnings,
ter deducting all interest accrued, but not payable at the time of
e declaration of such dividends, shall be sufficient to warrant the
payment thereof. In no event shall either of said companies
4 whose bonds are so outstanding pay any dividend exceeding
the rate of four per centum per annum unless the said com-
ny shall, at the time of declaring such dividends in excess of four
r centum per annum, so long as any of the said bonds are held
the United States, pay an amount equal to the excess over four
r centum per annum so declared to the Secretary of the Treasury,
be applied to payment of the principal of the highest numbered
nds of such company issued to the Government as herein pro-
ded, and unless the earnings of the said company shall suffice to
rrant the payment of such excess and also the payment to the
overnment. Any director or officer who shall declare or pay
aid in declaring or paying a dividend prohibited by this act
all, upon conviction of any court of competent jurisdiction, be
nished by imprisonment not exceeding two years or by a fine not
ceeding five thousand dollars, or by both such fine and imprison-
nt.

SEC. 18. That this act shall take effect as to each of the said com-
nies and their branches, respectively, as hereinbefore described,
on the acceptance of the terms by the board of directors of such

company in writing over the corporate seal of such company, sig
by its president and attested by its secretary, being filed
655 deposited with the Secretary of the Treasury, in the cas
the Union Pacific Railway Company, on or before Janu
July first, eighteen hundred and ninety-seven, and in the cas
the Central Pacific Railroad Company within three months af
the passage of this act, subject, however, as to the Central Pa
Railroad Company, to the requirements of section nineteen her
and, as to each company, to the completion of the settlement a
adjustment in this act proposed and provided, but any compa
which shall not so file its acceptance shall take no benefit from
act. Upon the filing of said acceptance and the execution and d
livery of the mortgage and bonds referred to in the second, thi
ninth, and tenth sections of this act to the Secretary of the Treas
he is authorized and directed to sell any securities held in the sinki
fund for said company so accepting and pay the proceeds of s
sale to the amount of their value, as estimated under the first a
eighth sections of this act, into the Treasury of the United Stat
Any excess realized from such sale above the value of such securi
as estimated under the first and eighth sections of this act shall
paid to the company; any deficiency below such value shall be p
by the said company upon demand made by the Secretary
656 the Treasury after such sale.

SEC. 19. That the said Central Pacific Railroad Comp
shall arrange for having the lease now existing between it and
Southern Pacific Company modified so that the Southern Pa
Company shall guarantee the payment by the Central Pacific R
road Company during the continuation of such lease of the inte
on and the installments on account of principal of the bonds is
under the tenth section of this act, as prescribed in the tenth
eleventh sections hereof, and so that in case the Southern Pa
Company should consent to the termination of such lease before
maturity of all such installments payable on account of principa
said bonds, it shall, in that event, guarantee the payment by the C
tral Pacific Railroad Company of such interest and installments
account of principal while any bonds issued under the tenth sec
of this act shall remain outstanding, and so that said Southern
cific Company shall consent that the sums amounting in the ag
gate to ~~two million four hundred and nine thousand eight hun~~
~~and eighteen dollars and twenty cents~~ *two million four hundred*
fourteen thousand three hundred and twenty-six dollars
657 *twenty-one cents*, standing credited on the books of the Tr
ury of the United States to the Central Pacific Railroad C
pany as compensation for services upon nonaided lines (a portion

hich is now in judgment in favor of the Southern Pacific Company), gether with interest *to the first day of July, eighteen hundred and inety-seven*, upon the constituent parts of said aggregate sum to be llowed, but only at the rate of two per centum per annum from the ates of the respective settlements thereof by the accounting officers f the Treasury, *except that on amounts ascertained to be due on ac-ount of services for the Post Office Department, interest to be com-uted from the dates of the respective certificates of the Post Office epartment*, shall be forthwith applied to the payment and cancel-ation of the highest numbered bonds of the Central Pacific Rail-oad Company issued under the provisions of said tenth section of his act, and the filing with the Secretary of the Treasury of a dupli-ate original of such modified lease, duly executed by the officers of oth said companies by authority of their boards of directors, shall onstitute an essential part of the acceptance by the Central Pacific ailroad Company of this act. In the event of the termination of such lease by act of the parties thereto, or any abrogation or cancellation of such lease, the principal of the bonds issued under the tenth section of this act shall, at the option of the resident of the United States, immediately mature.

SEC. 20. That either of said companies may, at any time after the xecution and delivery of their said bonds, pay the whole or any ortion of said bonds, by paying the amount thereof, together with e accrued interest thereon, to the Secretary of the Treasury, who all thereupon cancel the bonds so paid and deliver the bonds so anceled to the said company. No bonds so canceled shall be reissued, ut the Secretary of the Treasury may, by direction of the President f the United States, sell any of the said bonds which may be unpaid any time, and the purchase price shall be paid in lawful money of e United States.

SEC. 21. That as to such companies as shall accept the provisions f this act, and in the manner and within the time herein provided to it, from and after the completion of the said adjustment and ttlement, all provisions of law relating to the appointment of Gov-nment directors shall be, and the same are hereby, repealed, and e said office is hereby abolished and all provisions of law relating to the collection of any percentage of net earnings and to the withholding or application of any moneys due or to become due from the United States for any services rendered by either the said companies or any of its branches or auxiliaries or leased es, other than as hereinbefore provided, are hereby repealed, and l such amounts shall (provided the said company shall not be in fault in the payment of the interest of the bonds or in the pay-nts required by this act) be paid to the said company as soon as ounts shall have been ascertained; and all provisions of law for-

bidding either of said companies from mortgaging or pledging
property shall be repealed, and either of said companies shall,
the acceptance of the terms of this act, as hereinbefore prov
have and possess all the usual powers of borrowing money on
credit or on security of any of its assets, and of constructing or
tending its railway by consolidation, lease, or otherwise, and of
ing its railway and property or parts thereof, and of acquiring
to land by condemnation proceedings, and such other powers as
or may be granted to and exercised by railway corporations in
respective States and Territories in which the said railway is or
be situated.

SEC. 22. That each of the companies accepting the
660 visions of this act shall keep its railroad and telegraph
in repair and use, and shall at all times transmit dispat
over said telegraph line, and transport mail, troops, and muni
of war, supplies, and public stores upon said railroad for the Gov
ment whenever required to do so by any department thereof,
that the Government shall at all times have the preference in
use of the same for all the purposes aforesaid at fair and reasona
rates of compensation not to exceed the amounts paid by pri
parties for the same kind of service; ~~and said companies shall a~~
~~times afford to all other lines of railroad now built or hereafte~~
~~be built equal and reasonable facilities for making connections~~
~~them, or either of them, and equal and reasonable facilities for~~
~~transportation of freight and passengers thereon.~~ *and that*
companies hereinbefore mentioned, their successors, lessees, and
signs, shall cooperate in making track connections with all railr
of other companies now or hereafter built to points of junction
their roads; and at any point where two or more railroads shall
nect with their roads, or either of them, they and their succes
lessees, and assigns shall afford to all such connecting r
661 *equal times, terms, rates, and facilities for the interchang*
traffic, both passenger and freight, between such connec
roads and their respective roads and every part thereof; and
contract, arrangement, or device, by sale, lease, consolidat
through-car service, or otherwise, intended for or resulting in
preference or advantage whatsoever to any such railroad so con
ing at such common point, or which shall subject any such rail
so connecting at any such common point to any prejudice or
advantage whatsoever, is hereby declared to be unlawful.

SEC. 23. That it shall be the duty of the Attorney General to c
the provisions of this act to be enforced, and he shall take all
needful to that end and shall make report to the President each
or oftener thereon, which report shall be laid before Congress,
until the execution and delivery of the bonds and mortgages in

t provided for shall be completed all existing provisions of law
lating to said companies, respectively, shall remain in force.
SEC. 24. That this act and each and every provision thereof shall
erally and respectively be deemed, taken, and held as in alteration
and amendment of said act of eighteen hundred and sixty-two
and of said act of eighteen hundred and sixty-four and of said
act of eighteen hundred and seventy-eight, respectively, and
s amendatory thereof or supplementary thereto, and of all of said
s so far as they are inconsistent with this act, nor shall anything
this act be construed or taken in anywise to affect or impair the
ht of Congress at any time hereafter further to alter, amend, or
eal the said acts hereinbefore mentioned, and this act shall be
ject to alteration, amendment, or repeal as in the opinion of Con-
ss justice or the public welfare may require, and nothing herein
tained shall be held to deny, exclude, or impair any right or
edy in the premises now existing in favor of the United States.
s act shall be published and printed as a public act and in all pro-
lings may be cited as such.

Endorsement): 54th Congress, 2d session. H. R. 8189. Report No. 1497. A bill to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Gov-nent the use of the same for postal, military, and other purposes," roved July first, eighteen hundred and sixty-two; also to amend ct approved July second, eighteen hundred and sixty-four, and an act approved May seventh, eighteen hundred and seventy-t, both in amendment of said first-mentioned act and other acts ndatory thereof and supplemental thereto, and to provide for the ement of claims growing out of the issue of bonds to aid in the truction of certain railroads and to secure the payment of all in-edness to the United States of certain companies therein men-d. By Mr. Powers. April 14, 1896, referred to the Committee Pacific Railroads and ordered to be printed. April 25, 1896, committed to the Committee of the Whole House on the state of the Union and ordered to be printed. January 7, 1897, ordered that one thousand copies, as amended by the Com-ee on Pacific Railroads, be printed for the use of the House. h Trimble, Clerk.

HOUSE OF REPRESENTATIVES,
Clerk's Office, Washington, D. C.

ereby certify that the attached and foregoing document headed . 8189 is a true and correct copy of the House bill, numbered introduced by Mr. Powers in the 54th Congress, 2nd session, rom time to time pending as shown in the caption on said bill.

In testimony whereof witness my hand and seal this the 20
of October, 1914.

[SEAL.] SOUTH TRIMBLE,
Clerk of the House of Representat

665 DEFENDANTS' EXHIBIT No. 39, APRIL 15, 1915.

(Senate Report No. 20, 55th Congress, first session, sub
April 1, 1897, by Mr. Gear from the Committee on Pacific Rail
to accompany S. 119, which is Defendants' Exhibit No. 40.)

(Pursuant to agreement of counsel at page 1902 of the testi
this exhibit may be referred to in the original printed docu
without being copied into the record.)

666 DEFENDANTS' EXHIBIT No. 40, APRIL 15, 1915.

United States Senate.

I, James M. Baker, Secretary of the Senate of the United S
of America, do hereby certify that the hereto attached printe
and amendment thereto entitled, respectively, "S. 119. A bi
amend an act entitled 'An act to aid in the construction of a ra
and telegraph line from the Missouri River to the Pacific O
and to secure to the Government the use of the same for postal,
tary, and other purposes,' approved July first, eighteen hundre
sixty-two; also to amend an act approved July second, eighteen
dred and sixty-four, and also an act approved May seventh, eig
hundred and seventy-eight, both in amendment of said first-
tioned act and other acts amendatory thereof and supplem
thereto, and to provide for the settlement of claims growing o
the issue of bonds to aid in the construction of Central Pacific
Western Pacific Railroads," and "Amendment reported by Mr. C
from the Committee on Pacific Railroads, to the bill (S. 11

667 amend an act entitled 'An act to aid in the construction
railroad and telegraph line from the Missouri River to
Pacific Ocean, and to secure to the Government the use of
same for postal, military, and other purposes,' approved July
eighteen hundred and sixty-two; also to amend an act approved
second, eighteen hundred and sixty-four, and also an act appr
May seventh, eighteen hundred and seventy-eight, both in am
ment of said first-mentioned act and other acts amendatory the
and supplemental thereto, and to provide for the settlement of cl
growing out of the issue of bonds to aid in the construction of C
tral Pacific and Western Pacific Railroads, viz: Insert the follow

id bill and amendment having been introduced and reported, re-pectively, by Mr. Gear in the 54th Congress are true and correct rinted copies of the originals thereof as found in the files of this fice.

In testimony whereof I hereunto subscribe my name and affix the al of the Senate of the United States of America this twenty-third y of October, A. D. 1914.

[Seal, United States Senate.] JAMES M. BAKER,
Secretary of the Senate of the United States.

[55th Congress, 1st session. Calendar No. 1.]

S. 119.

In the Senate of the United States.

March 16, 1897.

Mr. Gear introduced the following bill; which was read twice and referred to the Committee on Pacific Railroads.

March 18, 1897.

Reported by Mr. Gear, without amendment.

A BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific Railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President, for his approval or disapproval, and unless approved by him shall not be binding.

SEC. 2. That said commission, or any member of the same, is hereby authorized and empowered to administer oaths, to summon and

compel the attendance and take the testimony of witnesses, and
to be produced all papers and documents needed in the course of
negotiations.

670 SEC. 3. That the said commission shall, within sixty
after the assembling of any session of Congress, report
action to it.

SEC. 4. That in any such settlement made by the said commi
with the owners of the said bond-aided Pacific railroads it sha
the duty of the said commission to require the owners of the
bond-aided railroads, as a condition of the settlement, to accept
following as part of the settlement:

That each of the companies accepting the provisions of thi
shall keep its bond-aided railroad and telegraph lines in repair
use, and shall at all times transmit dispatches over said telegr
line and transport mail, troops, and munitions of war, supplies,
public stores upon said railroad for the Government, whenever
quired to do so by any department thereof, and that the Goverm
shall at all times have the preference in the use of the same for
the purposes aforesaid, at fair and reasonable rates of compensati
not to exceed the amounts paid by private parties for the same li
of service; and that said companies hereinbefore mentioned, th
successors, lessees, and assigns, shall cooperate in making tra

671 connections with all railroads of other companies now or h
after built to points of junction with their bond-aided ro
and at any point where two or more railroads shall connect with th
bond-aided roads, or either of them, they, and their successors, les
and assigns, shall afford to all such connecting roads equal ti
terms, rates, and facilities for the interchange of traffic, both p
senger and freight, between such connecting roads and their resp
tive roads, and every part thereof. And any contract, arrangem
or device, by sale, lease, consolidation, through-car service, or oth
wise, intended for or resulting in any preference or advantage wh
soever to any such railroad so connecting at any such common po
to any prejudice or disadvantage whatsoever, is hereby declared
be unlawful. That said commissioners, in making any settlem
under this act, shall reserve to Congress any and all right now ex
ing to regulate or prescribe the rates of tolls or charges for t
transportation of freights or passengers to be charged on any or
of said railroads and all other rights and powers, in respect of s
railroads and railroad companies, as they now exist.

SEC. 5. That the sum of twenty thousand dollars, or so m

672 thereof as may be necessary, be, and is hereby, appropria
out of any funds in the Treasury not otherwise appropri

defray the expenses of said commission in carrying out the pro-
sions of this act.

(Endorsement): 55th Congress, 1st session. Calendar No. 1, S. 119.
bill to amend an act entitled "An act to aid in the construction of
railroad and telegraph line from the Missouri River to the Pacific
ean, and to secure to the Government the use of the same for postal,
ilitary, and other purposes", approved July first, eighteen hundred
d sixty-two; also to amend an act approved July second, eighteen
ndred and sixty-four, and also an act approved May seventh,
ghteen hundred and seventy-eight, both in amendment of said
st-mentioned act and other acts amendatory thereof and supple-
ental thereto, and to provide for the settlement of claims growing
out of the issue of bonds to aid in the construction of Central
3 Pacific and Western Pacific railroads. By Mr. Gear. March
16, 1897, read twice and referred to the Committee on Pacific
ilroads. March 18, 1897, reported without amendment.

[55th Congress, 2d session. S. 119.]

In the Senate of the United States.

March 22, 1898.

Ordered to be printed.

mendment reported by Mr. Gear, from the Committee on Pacific
Railroads, to the bill (S. 119) to amend an act entitled "An act
to aid in the construction of a railroad and telegraph line
4 from the Missouri River to the Pacific Ocean, and to secure to
the Government the use of the same for postal, military, and
other purposes", approved July first, eighteen hundred and sixty-
two; also to amend an act approved July second, eighteen hundred
and sixty-four, and also an act approved May seventh, eighteen
hundred and seventy-eight, both in amendment of said first-men-
tioned act and other acts amendatory thereof and supplemental
thereto, and to provide for the settlement of claims growing out
of the issue of bonds to aid in the construction of Central Pacific
and Western Pacific railroads, viz: Insert the following:
That said commission shall not agree to accept a less sum in settle-
ent of the amount due the United States than the full amount of
e principal and unpaid interest due at the time of said settlement:
d also provided, That said commission are hereby empowered to
ant such time or times of payment by installment, and at such
tes of interest, and with such security, as to said commission may
em expedient.

675 (Endorsement): 55th Congress, 2d session. S. 119. Amendment reported by Mr. Gear, from the Committee on Pacific Railroads, to the bill (S. 119) to amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure the Government the use of the same for postal, military, and other purposes", approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four, and also an act approved May seventh, eighteen hundred and seventy-eight, both amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of Central Pacific and Western Pacific railroads. March 22, 1[illegible] ordered to be printed.

676 DEFENDANTS' EXHIBIT No. 41, APRIL 15, 1915.

(Senate Document No. 61, 54th Congress, second session, presented by Mr. Gear, being a communication from C. P. Huntington transmitting a copy of a lease by the Central Pacific Railroad to the Southern Pacific Company and amendments thereof to date, including the amendment of 1894. See page 903 of the testimony.)

677 DEFENDANTS' EXHIBIT No. 42, APRIL 15, 1915.

(Senate Document No. 227, 56th Congress, second session, being letter of May 12, 1900, from the Secretary of the Treasury, Lyman J. Gage, relating to the question of interest upon certain allowed claims for transportation services, being a copy of Exhibit C to defendants' answer.)

678 DEFENDANTS' EXHIBIT No. 43, APRIL 15, 1915.

[61st Congress, 2d session. House of Representatives. Document No. 690.

Transportation of the Army and Its Supplies.

(Letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War submitting an estimate of deficiency appropriation for transportation of the Army and supplies. February 7, 1910, referred to the Committee on Appropriations and ordered to be printed.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 4, 1910.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Secretary of War, of the 29th ultimo, submitting an estimate of deficiency in the appropriation for transportation of the Army and its supplies, for the fiscal year ended June 30, 1909, amounting to $396,317.46.

Respectfully,

CHARLES D. HILLES,
Acting Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

WAR DEPARTMENT,
Washington, January 29, 1910.

SIR: I have the honor to forward herewith, for transmission to Congress, a deficiency estimate of an appropriation of $396,317.46 required by the War Department for the service of the fiscal year ended June 30, 1909, for "Transportation of the Army and its supplies."

Very respectfully,

J. M. DICKINSON,
Secretary of War.

The SECRETARY OF THE TREASURY.

* * * * * * * *

The deficiency is due to the following causes:

1. Cash payments for transportation over the Southern Pacific es from July 1, 1908, to January 31, 1909, not anticipated when the imate for this appropriation for the fiscal year 1909 was prepared, 15,445.48.

Prior to July 1, 1908, no cash payments were made for transporta- n over the lines of the Southern Pacific, but all charges for such vices were reported to the Treasury and credited on the debt of t road to the Government. Final settlement of that debt was e February 12, 1909, and this office included in its estimates for ransportation of the Army and its supplies" for the fiscal year 9 the sum of $230,000, to pay transportation charges over those s from February 1, 1909, to the close of the fiscal year, June 30, 9.

The Southern Pacific Company, however, settled its indebtedness July, 1908, in advance of the date when due, necessitating payment ash of all charges for transportation over its lines for the entire al year. Transportation charges paid and remaining due the thern Pacific Company for the fiscal year 1909 aggregate

681 $445,445.48, or $215,445.48 in excess of the sum it was estim
would be required to make cash payments.

The transportation charges for the period from July 1, 190
January 31, 1909, which this office anticipated would be credite
the company's indebtedness to the Government, aggregated $
747.16. Had these charges been credited, as was naturally an
pated, instead of having to be paid in cash, the deficiency now e
ing would be that amount less. This is, therefore, simply ma
available to this department the sum of $270,747.16 in cash, w
the department estimated, and under the law had a right to estim
that it had available on credit to apply on the debt of this comp
In other words, of the amount here estimated the foregoing su
not a real deficiency, but reappropriating in cash an amount w
would have been available in credit had conditions remained
when the estimate for the fiscal year 1909 was prepared, and
deficiency would have been $125,570.30.

* * * * * * *

682 DEFENDANTS' EXHIBIT NO. 44, APRIL 15, 1915.

United States Senate.

I, James M. Baker, Secretary of the Senate of the United St
of America, do hereby certify that the hereto attached printed b
entitled "S. 3522. A bill to amend an act entitled 'An act to aid
the construction of a railroad and telegraph line from the Missou
River to the Pacific Ocean, and to secure to the Government the
of the same for postal, military, and other purposes,' approved Ju
first, eighteen hundred and sixty-two; also to amend an act appro
July second, eighteen hundred and sixty-four; and also an act
proved May seventh, eighteen hundred and seventy eight, both
amendment of said first-mentioned act and other acts amendat
thereof and supplemental thereto, and to provide for the settlem
of claims growing out of the issue of bonds to aid in the construct
of certain railroads, and to secure the payment of all indebted
to the United States of certain companies therein mentioned," is
true and correct printed copy of the original thereof, as found in
files of this office, which bill was introduced by Mr. Ca
683 January 13, 1897, referred to the Committee on Pacific R
roads, and reported from that committee January 22, 1897
the second session of the 54th Congress.

In testimony whereof I hereunto subscribe my name and affix
seal of the Senate of the United States of America this twenty-th
day of October, A. D. 1914.

[Seal of the United States Senate.] JAMES M. BAKER,
Secretary of the Senate of the United State

[54th Congress, 2d session. S. 3522. Calendar No. 1442.]

In the Senate of the United States.

January 13, 1897.

Gear introduced the following bill; which was read twice and referred to the Committee on Pacific Railroads.

January 22, 1897.

Reported by Mr. Gear, with amendments.

mit the part struck through and insert the part printed in italics.)

A BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific ean, and to secure to the Government the use of the same for postal, mili- ry, and other purposes," approved July first, eighteen hundred and sixty- o; also to amend an act approved July second, eighteen hundred and sixty- r, and also an act approved May seventh, eighteen hundred and seventy- ht, both in amendment of said first-mentioned act and other acts amenda- y thereof and supplemental thereto, and to provide for the settlement of ims growing out of the issue of bonds to aid in the construction of cer- n railroads, and to secure the payment of all indebtedness to the United tes of certain companies therein mentioned.

e it enacted by the Senate and House of Representatives of the ed States of America in Congress assembled, That the Secretary he Treasury, the Secretary of the Interior, and the Attorney eral, and their successors in office be, and they are hereby, ap- ted a commission with full power to settle the indebtedness of any and all the bond-aided Pacific railroads to the Govern- ment, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of railroads: *Provided*, That any and all settlements thus made be submitted in writing to the President for his approval or pproval, and unless approved by him shall not be binding.

c. 2. That said commission, or any member of the same, is hereby orized and empowered to administer oaths, to summon and com- he attendance and take the testimony of witnesses, and cause to roduced all papers and documents needed in the course of their tiations.

c. 3. That the said commission shall, within sixty days after the nbling of ~~th next regular~~ *any* session of Congress, report their n to it.

c. 4. That in any such settlement made by the said commission the said bond-aided Pacific railroads it shall be the duty of the

said commission to require said bond-aided railroads, as a c
of the settlement, to accept the following as part of the settl
That each of the companies accepting the provisions of
shall keep its railroad and telegraph lines in repair and use a
at all times transmit dispatches over said telegraph l
686 transport mail, troops, and munitions of war, suppl
public stores upon said railroad for the Government, w
required to do so by any department thereof, and that the
ment shall at all times have the preference in the use of the s
all the purposes aforesaid, at fair and reasonable rates of co
tion, not to exceed the amounts paid by private parties for t
kind of service; and that said companies hereinbefore me
their successors, lessees, and assigns, shall cooperate in makin
connections with all railroads of other companies now or h
built to points of junction with their roads; and at any poin
two or more railroads shall connect with their roads, or e
them, they and their successors, lessees, and assigns shall affo
such connecting roads equal times, terms, rates, and facilities
interchange of traffic, both passenger and freight, between su
necting roads and their respective roads, and every part
And any contract, arrangement, or device, by sale, lease, co
tion, through-car service, or otherwise, intended for or resul
any preference or advantage whatsoever to any such railroad
necting at any such common point to any prejudice o
687 vantage whatsoever, is hereby declared to be unlawful
said commissioners, in making any settlement under t
shall reserve to Congress the right to regulate or prescribe th
of tolls or charges for the transportation of freights or passe
be charged on any or all of said railroads and all other rig
powers, in respect of said railroads and railroad companies,
now exist.

SEC. 5. That the sum of twenty thousand dollars, or so
thereof as may be necessary, be, and is hereby, appropriated,
any funds in the Treasury not otherwise appropriated, to defr
expenses of said commission in carrying out the provisions
act.

(Endorsement): 54th Congress, 2d session. S. 3522. Calend
1442. A bill to amend an act entitled "An act to aid in the const
of a railroad and telegraph line from the Missouri River to the
Ocean, and to secure to the Government the use of the same for
military, and other purposes," approved July first, eighteen h
and sixty-two; also to amend an act approved July s
688 eighteen hundred and sixty-four, and also an act ap
May seventh, eighteen hundred and seventy-eight, be

nendment of said first-mentioned act and other acts amendatory ereof and supplemental thereto, and to provide for the settlement claims growing out of the issue of bonds to aid in the construction certain railroads, and to secure the payment of all indebtedness the United States of certain companies therein mentioned. By r. Gear. January 13, 1897, read twice and referred to the Committee on Pacific Railroads. January 22, 1897, reported with amendents.

9 DEFENDANTS' EXHIBIT No. 45, APRIL 15, 1915.

[55th Congress, 1st session. H. R. 3750.]

In the House of Representatives.

July 12, 1897.

r. Hepburn introduced the following bill; which was referred to the Committee on Pacific Railroads and ordered to be printed.

BILL To amend an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July first, eighteen hundred and sixty-two; also to amend an act approved July second, eighteen hundred and sixty-four; and also an act approved May seventh, eighteen hundred and seventy-eight, both in amendment of said first-mentioned act and other acts amendatory thereof and supplemental thereto, and to provide for the settlement of claims growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific Railroads.

Be it enacted by the Senate and House of Representatives of the nited States of America in Congress assembled, That the Secretary the Treasury, the Secretary of the Interior, and the Attorney neral and their successors in office be, and they are hereby, apinted a commission with full power to settle the indebtedness to e Government growing out of the issue of bonds in aid of the conuction of the Central Pacific and Western Pacific bond-aided lroads upon such terms and in such manner as may be agreed on by them or by a majority of them and the owners of said railds: *Provided*, That any and all settlements thus made shall be bmitted in writing to the President for his approval or disapval, and unless approved by him shall not be binding.

SEC. 2. That said commission or any member of the same is hereby thorized and empowered to administer oaths, to summon and com the attendance and take the testimony of witnesses and cause to produced all papers and documents needed in the course of their otiations.

691 SEC. 3. That the said commission shall within sixty
after the assembling of any session of Congress report
action to it.

SEC. 4. That in any such settlement made by the said commis
with the owners of the said bond-aided Pacific railroads it sha
the duty of the said commission to require the owners of the
bond-aided railroads, as a condition of the settlement, to accep
following as part of the settlement:

That each of the companies accepting the provisions of this
shall keep its bond-aided railroad and telegraph lines in repair
use and shall at all times transmit dispatches over said telegraph
and transport mail, troops, and munitions of war, supplies, and
lic stores upon said railroad for the Government whenever requ
to do so by any department thereof, and that the Government s
at all times have the preference in the use of the same for all
purposes aforesaid at fair and reasonable rates of compensa
not to exceed the amounts paid by private parties for the same k
of service, and that said companies hereinbefore mentioned, t
successors, lessees, and assigns shall cooperate in making n
692 connections with all railroads of other companies now or h
after built to points of junction with their bond-aided ro
and at any point where two or more railroads shall connect w
their bond-aided roads, or either of them, they and their succes
lessees, and assigns shall afford to all such connecting roads eq
times, terms, rates, and facilities for the interchange of traffic, b
passenger and freight, between such connecting roads and the
spective bond-aided roads, and every part thereof. And any c
tract, arrangement, or device, by sale, lease, consolidation, throu
car service or otherwise intended for or resulting in any prefer
or advantage whatsoever to any such railroad so connecting at
such common point to any prejudice or disadvantage whatsoev
hereby declared to be unlawful. That said commissioners, in mak
any settlement under this act, shall reserve to Congress any and
now existing rights to regulate or prescribe the rates of tolls or cha
for the transportation of freights or passengers to be charged on
or all of said bond-aided railroads and all other rights and po
in respect of said railroads and railroad companies as they now e

SEC. 5. That the sum of twenty thousand dollars, or so m
thereof as may be necessary, be, and is hereby, ap
693 priated, out of any funds in the Treasury not otherwise
priated, to defray the expenses of said commission in carry
out the provisions of this act.

(Endorsement): 55th Congress, 1st session. H. R. 3750. A bi
amend an act entitled "An act to aid in the construction of a rail

d telegraph line from the Missouri River to the Pacific Ocean, and secure to the Government the use of the same for postal, military, d other purposes," approved July first, eighteen hundred and sixty-o; also to amend an act approved July second, eighteen hundred and xty-four, and also an act approved May seventh, eighteen hundred d seventy-eight, both in amendment of said first-mentioned act and her acts amendatory thereof and supplemental thereto, and to pro-de for the settlement of claims growing out of the issue of bonds to aid in the construction of the Central Pacific and Western 4 Pacific Railroad. By Mr. Hepburn. July 12, 1897.—Referred to the Committee on Pacific Railroads and ordered to printed. South Trimble, Clerk.)

HOUSE OF REPRESENTATIVES,
Clerk's Office, Washington, D. C.

I hereby certify that the foregoing and attached document is a e copy of H. R. 3750, introduced by Mr. Hepburn in the House Representatives July 12, 1897, 55th Congress, 1st session.
Witness my hand and seal this the 23d day of October, 1914.
[SEAL.]
SOUTH TRIMBLE,
Clerk, House of Representatives.

DEFENDANTS' EXHIBIT (RUHLENDER) NO. 45A, APRIL 16, 1915.

(Plan of readjustment of the debt of the Central Pacific Railroad mpany, which is Exhibit B in the answer of the defendants. Pur-nt to agreement of counsel at page 1913 of the testimony, this hibit may be referred to in the answer without being copied into record.)

DEFENDANTS' EXHIBIT NO. 46, APRIL 16, 1915.

Central Pacific Railway Company.

icles of association and amendments. Original articles filed July 9, 1899. Amendment filed April 2, 1900. Amendment filed ebruary 27, 1912.

Original articles of association. (Filed July 29, 1899.)

TE OF UTAH,
County of Salt Lake, ss:
ow all men by these presents:
That we, the undersigned, whose names are hereunto subscribed, ereby certify and declare that we have, under and in pursuance

of an act of the Legislature of the State of Utah, entitled "An a
provide for the formation of railroad corporations for
697 purpose of purchasing, owning, maintaining, operating,
extending railroad lines, franchises, properties, and ap
tenances; authorizing the issue of bonds, making deeds of trust
mortgages, and defining the rights and powers of such corporati
approved January 22, 1897, and the other laws of the State of U
applicable thereto, associated ourselves together as a corporation
the purpose of buying, owning, maintaining, operating, and fur
extending the railroads, rights, property, and franchises hereina
described; and we further certify and declare that we have ado
and do hereby adopt the following

ARTICLES OF ASSOCIATION.

ARTICLE 1. The corporate name of the corporation hereby for
shall be "Central Pacific Railway Company." By that name
persons subscribing these articles of association, and all persons w
may from time to time become shareholders in the corporation he
formed, shall have perpetual succession, with power to adopt a c
mon seal, sue and be sued; to acquire, hold, mortgage, and con
property; to make contracts, fix and prescribe tariffs and rate
compensation for the carriage of persons and property, and g
erally to do all acts necessary or proper to carry into effect
698 powers and purposes of said corporation.

ART. 2. Said corporation shall continue in existence for
period of fifty years from the date of the filing of these article
association in the office of the secretary of state of the State
Utah.

ART. 3. Said corporation shall possess all of the powers, rig
and franchises specified, referred to, or provided for in these arti
of association; and, also, all of the powers which, by said act a
entitled, approved January 22, 1897, and such other laws of the S
of Utah, corporations formed under, and pursuant to, the
act and laws, are entitled to have, possess, and enjoy as fully as i
of the provisions of the said act in this behalf were herein set forth
large; and, also, all of the powers, rights, privileges, and franch
of railroad corporations organized under the laws of the State
Utah, or under the laws of other States or Territories of the Uni
States, as hereinafter provided.

ART. 4. The amount of the capital stock of the said corpora
shall be eighty-seven million two hundred and seventy-five thous
five hundred dollars ($87,275,500), which shall be div
699 into and represented by eight hundred and seventy-two t
sand seven hundred and fifty-five (872,755) shares of the

lue of one hundred dollars ($100) each, and each of which shares
ll be entitled to one vote at any meeting of stockholders.

Of such capital stock two hundred thousand (200,000) shares of
e hundred dollars ($100) each may be issued as preferred stock,
d six hundred and seventy-two thousand seven hundred and fifty-
e (672,755) shares of one hundred dollars ($100) each may be
ued as common stock.

Such preferred stock shall be entitled, in preference and priority
r the common stock of said corporation, to accumulative prefer-
ial dividends from August 1, 1899, up to four per cent per annum
d, payable semiannually, out of net profits of the corporation, as
same shall be declared by the board of directors thereof, and
ll be entitled to a preference and priority over said common stock
respect of capital in case of liquidation or dissolution. Subject to
preferential rights above described, dividends up to four per cent
annum out of net profits of the corporation, as the same shall be
lared by the board of directors thereof, shall be paid upon the
common stock of the corporation, and the balance of dividends
payable out of net profits of the corporation, as the same shall
be declared by the board of directors thereof, shall be paid *pro*
upon the preferred and common stock. The directors may adopt
per by-laws to carry into effect the provisions of this article.

ART. 5. The number of directors to manage and control the affairs
this corporation shall be seven, a majority of whom shall be suffi-
nt to form a quorum for the transaction of business. The names
residences of those who shall serve as directors for the first year
until their successors are chosen and qualified are:

Thomas Marshall, Salt Lake City, Utah.
Jonathan C. Royle, Salt Lake City, Utah.
David B. Hempstead, Salt Lake City, Utah.
Douglas O. Morgan, New York City, N. Y.
Henry Ruhlender, New York City, N. Y.
Charles J. Dodd, New York City, N. Y.
Richard R. Rogers, New York City, N. Y.

ART. 6. The said corporation is organized and formed for and shall
e the power to purchase, own, hold, enjoy, maintain, operate,
and further extend the railroads, property, rights, and fran-
chises, or any part thereof, belonging to the Central Pacific
Railroad Company, a corporation heretofore organized under
laws of the State of California and invested with franchises
ler acts of Congress of the United States and under the laws of
States of Utah and Nevada.

The said corporation hereby formed shall have the power to
uire, possess, and enjoy the lands and land grants, or any part

thereof, and all rights with respect thereto, of the said Ce
Pacific Railroad Company or any or either of its constituent c
panies; and the said corporation hereby formed shall have po
to construct or acquire by lease, purchase, consolidation, owners
of capital stock or otherwise, branches, extensions, and connec
or auxiliary lines, within or without this State, as the board
directors may from time to time deem expedient and as may
authorized by law.

The termini of the said railroad which the said corporation he
formed is authorized to acquire, enjoy, and operate as now c
structed, and the States and counties through which the said r
road passes are as follows, to wit:

The railroads extending from a point about five miles west
Ogden, in the county of Weber, in the State of Utah, thro
702 the counties of Weber and Box Elder, in said State of Ut
and the counties of Elko, Eureka, Lander, Humbo
Churchill, Lyon, and Washoe, in the State of Nevada, and the co
ties of Sierra, Nevada, Placer, and Sacramento, in the State of C
fornia, to and into the city of Sacramento, in said last-mentio
county and State; and from said Sacramento through the coun
of Sacramento, San Joaquin, Alameda, and Santa Clara, in the St
of California, to San Jose in the last-mentioned county and St
and from Niles, in the county of Alameda and State of Califor
through the county of Alameda, in the State of California, to Oa
land, in said last-mentioned county and State, and from the w
front to Mission Bay, in the city and county of San Francisco
said State; and from Lathrop, in the county of San Joaquin, in
State of California, through the counties of San Joaquin, Stanis
Merced, Madera, Fresno, and Tulare, in the State of California
Goshen, in said last-mentioned county and State; and from Rosev
in the county of Placer, in the State of California, through
counties of Placer, Yuba, Sutter, Butte, Tehama, Shasta, and
kiyou, in said State of California, to the boundary between
States of California and Oregon in the last-mentioned county;
the leasehold of the railroad from a point about five m
703 west of Ogden to Ogden, in the county of Weber, in the St
of Utah.

The railroads situated in the cities of Oakland and Alameda
the county of Alameda, in the State of California, between
following termini, that is to say:

(1) From a point in the city of Oakland, county of Alameda
State of California, on the line hereinbefore described, runn
from Niles to Oakland, and near the intersection of First and Br
way Streets, curving towards and crossing the estuary of

Antonio, to the city of Alameda, in said county and State; thence running northeasterly through the city of Alameda via Masticks Station to junctions with said first-mentioned line at Fruitvale and Melrose Stations, and also from Masticks Station aforesaid via Pacific Avenue to the shore of the Bay of San Francisco.

(2) From Brooklyn Station upon said line from Niles to Oakland westerly through said city of Oakland via Seventh Street to the shore of the Bay of San Francisco.

(3) From a point of junction of the Oakland Mole of said line from Niles to Oakland with the wharf known as "Long Wharf," to the western end of said wharf.

The said railroads above described being the railroads
1904 which on the 28th day of July, 1899, were the property of the Central Pacific Railroad Company herein referred to, and being 1,367.78 miles in length.

Together with such branches and extensions of said railroad or railroads, or any part thereof, as the company hereby formed may from time to time be authorized by law to construct, operate, acquire, and maintain.

ART. 7. The corporation hereby formed shall be vested with and entitled to exercise and enjoy all the powers, rights, privileges, and franchises which at the time of the acquisition of the said railroads by the corporation hereby formed, or at the time of the sale thereof, belonged to, or were vested in, the Central Pacific Railroad Company, or in the corporation or corporations last owning the said railroads and properties, as well as all the rights, privileges, and franchises of railroad corporations organized under the laws of the State of Utah, including the aforesaid act of the Legislature of the State of Utah, approved January 22, 1897, and said other laws of the State of Utah; and said corporation shall also possess in each State or Territory, as respects its railroads, or any branches or extensions thereof situate therein, all of the powers, rights, privileges,
1905 and franchises of railroad corporations organized under the laws of such State or Territory or of the United States.

ART. 8. The corporation hereby formed may construct or acquire by lease, purchase, consolidation, ownership of capital stock, or otherwise, branches, extensions, and connecting lines, within or without this State, and for such purposes or any of them, as well as the purchase or acquisition of the railroads described in article 6 hereof, may from time to time create and issue its stock, common or preferred, or both, and execute bonds and mortgages, for such sum or sums, and payable at such times and places, and drawing such rate of interest as the directors may deem proper; and may use such stock and bonds or any part thereof in payment of property to be purchased by such corporation, or the improvement or extension thereof,

upon such terms as the directors may deem expedient; may gua
the bonds or obligations of extensions, branches, or connecti
auxiliary lines of railroad; and in exercising its corporate p
it may make such leases, purchases, contracts, conveyances, and
solidations, and do such acts as the directors may deem necessa
expedient, not inconsistent with these articles or with the
706 stitution and laws of the State of Utah. The company h
formed may also consolidate with or merge itself into
other railway company or companies in this or other States or
ritories pursuant to law; it may also from time to time amend
articles of association by filing amended articles of associatio
creasing the capital stock, or otherwise, agreeably with law, en
ing or changing the powers of the corporation hereby formed.

ART. 9. The board of directors of said corporation may from
to time adopt and change by-laws not inconsistent with the
visions of these articles or the constitution and laws of the Sta
Utah. Said by-laws shall provide for annual elections of dire
by the stockholders and for the election by the directors of a presi
and vice president and for the election or appointment of such o
vice presidents or other officers as shall be prescribed in such by-l
Shareholders' or other corporate meetings may be held at such
or places in the United States as the by-laws may prescribe.

ART. 10. Stockholders shall not be individually liable for the d
of the corporation.

In testimony whereof we have hereunto subscribed our names
twenty-sixth day of July, 1899.

707

CHARLES STEELE.
THOMAS MARSHALL.
ROBERT C. CHAMBE
JONATHAN C. ROLL
DAVID B. HEMPSTEA
JOHN E. DOOLY.
GEO. B. BRASTOW.
HARRY T. DUKE.
GEORGE M. DOWNE
DOUGLAS O. MORGA

STATE OF UTAH,
County of Salt Lake, ss:

On this 26th day of July, 1899, before me, the undersigned not
public, personally appeared Charles Steele, Jonathan C. Ro
Thomas Marshall, David B. Hempstead, Harry T. Duke, John
Dooly, George B. Brastow, George M. Downey, Douglas O. Morg
and Robert C. Chambers, to me known, and known to me to be t
identical persons named and described in and who subscribed t

regoing instrument, and they acknowledged to me that they signed e foregoing articles of association for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

LULA GEOGHEGAN,
Notary Public.

[Notarial seal.]
My commission expires Sept. 17, 1901.

(Amendment filed April 2, 1900.)

Special stockholders' meeting.

On this, the second day of April, A. D. 1900, the stockholders of he Central Pacific Railway Company, at twelve o'clock noon, met special meeting at the office of said company, No. 125 Main Street, ver Wells Fargo & Company's Bank, in the city of Salt Lake, State f Utah, in pursuance of a call by the president and secretary of said mpany after notice duly given.

Thereupon, on motion duly seconded, Jonathan C. Royle was se-cted as chairman of said meeting and David B. Hempstead as sec-tary.

Thereupon the secretary of said corporation, in accordance with the y-laws of said corporation and from the stock book of said corporation, presented to said meeting an alphabetical list of the stockholders of the company, showing the amount of stock held by each, which list showed that there had been issued and as then outstanding 792,755 shares of the capital stock of said com-any, and said list having been duly called, the holders of 792,728 hares of said stock responded to said call either in person or by ritten proxies filed with the secretary.

Thereupon the chairman caused the call for said meeting to be ead, and the same was in words and figures following, to wit:

Special stockholders' meeting.

Notice is hereby given that a special meeting of the stockholders of he Central Pacific Railway Company will be held on Monday, April d, A. D. 1900, at twelve o'clock noon, at the office of said company, o. 125 Main Street, over Wells Fargo & Company's Bank, Salt Lake ity, Utah, for the purpose of amending Article V of the articles of ncorporation of said company by increasing the number of directors f said company from seven to nine directors, and by providing by id amendment that "the board of directors to manage and control

the affairs of this corporation shall be nine, a majority of whom
be sufficient to form a quorum for the transaction of busine
710 and at such meeting will be transacted such other busines
may properly come before the same.

THOMAS MARSHALL,
President Central Pacific Railway Compan
DAVID B. HEMPSTEAD,
Secretary Central Pacific Railway Compan

Thereupon proofs of publication of said notice in accordance w
law having been made the same were ordered to be filed with the
retary of said company.

Thereupon, on motion duly seconded, it was by said meeti
unanimously

Resolved, That the articles of incorporation of this company
and they are hereby, so amended as that Article V thereof shall
as follows, to wit:

"ARTICLE V. The number of directors to manage and control
affairs of this corporation shall be nine, a majority of whom shall
sufficient to form a quorum for the transaction of business."

On the presenting of said resolution to the said meeting by
chairman the votes of the stockholders present in person and
proxies were received, counted, and canvassed by the inspect
711 heretofore appointed by the board of directors, and said
spectors reported and certified the result thereof in writi
to the meeting, thereby certifying that said resolution was voted
favor thereof by the stockholders owning 792,728 shares of said c
tal stock, being the entire stock represented at said meeting, and
ing over two-thirds of all the stock of said corporation issued
outstanding.

Thereupon the chairman announced and declared the said amen
ment duly adopted.

On motion, the said meeting thereupon adjourned.

JONATHAN C. ROYLE,
Chairman
DAVID B. HEMPSTEAD,
Secretary

STATE OF UTAH,
County of Salt Lake, ss:

We, the undersigned, Thomas Marshall and David B. Hempste
president and secretary, respectively, of the Central Pacific Railw
Company, do hereby, in pursuance of the statute in such case ma
and provided, certify that the foregoing is a full, true, and corr

py of the amendment and proceedings adopted at said stockholders' eeting, and do subscribe our names hereto as such president and secretary, respectively.

2 THOMAS MARSHALL,
President.
DAVID B. HEMPSTEAD,
Secretary.

[Corporate seal.]
(10c. rev. stamp.)

(Amendment filed February 27, 1912.)

mendment to articles of incorporation of Central Pacific Railway Company.)

TATE OF UTAH,
County of Salt Lake, ss:

Know all men by these presents, that Central Pacific Railway ompany, a corporation organized and existing under the laws of e State of Utah, does hereby amend its articles of incorporation adding to article 6 thereof, immediately preceding the last para-aph of said article as now existing, the following:

"The corporation hereby formed shall have the power to acquire by purchase or otherwise, own, hold, enjoy, maintain, operate
3 and further extend the railroads, rights, property and franchises, or any part thereof, belonging to the Central California ilway Company, Chico and Northern Railroad Company, Fern- and Lassen Railway Company, Goose Lake and Southern Rail-ay Company, Modoc Northern Railway Company, Nevada and lifornia Railway Company, and Sacramento Southern Railroad ompany, respectively, corporations organized under the laws of e State of California, and the Oregon Eastern Railway Company, corporation organized under the laws of the State of Oregon, and construct and complete any and all of said railroads which shall t be completed at the time of their purchase, and to construct, own, ld, enjoy, maintain, operate and further extend the additional rail-ads hereinafter described. The termini of the said railroads, re-ectively, and the States and counties through which the same re-ectively pass are as follows, to wit:

(1) The railroad now owned by Central California Railway Com-ny extending from Niles, in the county of Alameda, in the State of lifornia, through Newark, in said county, and across San Fran-sco Bay to Redwood City in the county of San Mateo, in said State California, a length of about 16.316 miles.

(2) The railroad now owned by Chico and Northern R
714 road Company extending from Chico Junction, about one
south of Chico, to Stirling City, all in the County of Butte
the State of California, a length of about 32 miles.

(3) The railroad projected by Fernley and Lassen Railway C
pany, extending from Fernley, in the county of Lyon, in the State
Nevada, through the county of Lyon, in said State of Nevada,
the county of Lassen, in the State of California, via the vicinity
Amadee and Susanville in said last-mentioned county and State
a point in or near section 19, township 29 north, range 9 east,
Diablo base and meridian, a length of about 135 miles.

(4) The railroads projected by the Goose Lake and Southern R
way Company, extending from a point on the boundary between
States of California and Oregon, on the east side of Goose L
through the counties of Modoc, Lassen, and Shasta, in the State
California, via Alturas, in said county of Modoc, to or near Ander
station in said county of Shasta, a length of about 227 miles; and
tending from Alturas, in the county of Modoc, in the State of C
fornia, through the counties of Modoc, Lassen, Plumas, and Tehama
in the State of California, to or near Vina station in said
715 mentioned county and State, a length of about 179 miles.

(5) The railroad projected by Modoc Northern Railw
Company extending from Alturas, in the county of Modoc, in
State of California, through the said county of Modoc, in the S
of California, and the county of Klamath, in the State of Oregon,
or near Klamath Falls, in said last-mentioned county and State
length of about 100 miles.

(6) The railroads now owned by Nevada and California Railw
Company extending from Hazen, in the county of Churchill, in
State of Nevada, through the counties of Churchill, Lyon, and E
meralda, in the State of Nevada, and the counties of Mono and In
in the State of California, to Keeler, in said last-mentioned co
and State, a length of about 288.64 miles; and from said Hazen
Fallon, all in the county of Churchill, in the State of Nevada,
length of about 15.92 miles; and from Churchill to Mound House,
in the county of Lyon, in the State of Nevada, a length of ab
26.21 miles; and from Filben to Candelaria, all in the county
Esmeralda, in the State of Nevada, a length of about 5.51 miles;
from Owenyo, in the county of Inyo, in the State of California
through the counties of Inyo, San Bernardino, and Kern,
716 the State of California, to Mojave, in said last-mentio
county and State, a length of about 142.68 miles.

(7) The railroad, partly constructed, now owned by the Sacramento Southern Railroad Company, extending from Sacramento to Walnut Grove, all in the county of Sacramento, in the State of California, a length of about 24 miles.

(8) The railroad now owned by the Oregon Eastern Railway Company extending from Weed, in the county of Siskiyou, in the State of California, through the said county of Siskiyou and through the county of Klamath, in the State of Oregon, to Klamath Falls, in said last-mentioned county and State, a length of about 86.09 miles; and the railroad, projected and partly constructed by said Oregon Eastern Railroad Company, extending from said Klamath Falls through the counties of Klamath and Lane, in the State of Oregon, via Odell, in said county of Klamath, to Natron, in the county of Lane, in said State of Oregon, a length of about 191.8 miles.

(9) The railroad extending from a point of connection with the original line of the Central Pacific Railroad Company just north of the Ogden River, in the county of Weber, in the State of Utah, across Promontory Point and Great Salt Lake, through the 717 counties of Weber and Box Elder, in the State of Utah, to another connection with said original line of said Central Pacific Railroad Company, near and immediately west of Grouse Creek, between Lucin and Gartney Stations, in the county of Box Elder, in said State of Utah, a length of about 102.9 miles.

(10) The railroad extending from Derby to Wadsworth, all in the County of Washoe, in the State of Nevada, a length of about 68 miles.

(11) The railroad extending from Halvern to Alvarado, all in the county of Alameda, in the State of California, a length of about 62 miles.

(12) The railroad extending from Elmhurst to Stonehurst, all in the county of Alameda, in the State of California, a length of about 3 mile."

Dated February 24, 1912.

WM. F. HERRIN,
President of Central Pacific Railway Company.
G. L. KING,
Secretary of Central Pacific Railway Company.

Attest:
[Corporate seal.]
G. L. KING,
Secretary of Central Pacific Railway Company.

718 DEFENDANTS' EXHIBIT NO. 47, APRIL 16, 1915.

(Extract from Volume VIII of Union Pacific merger record, pages 3834 to 3839.)

Central Pacific Railroad Company to Central Pacific Railway Company.

Indenture and agreement. Dated July 29, 1899.

An indenture and agreement, made and entered into the twenty-ninth day of July, one thousand eight hundred and ninety-nine, by and between the Central Pacific Railroad Company, a corporation created, organized, and existing under the laws of the State of California, and invested with certain rights and franchises by and under the laws of the United States of America and by and under the laws of the States of Utah and Nevada, party of the first part, and the Central Pacific Railway Company, a corporation created, organized and existing under and by virtue of the laws of the State of Utah, of the second part:

Whereas, the party of the first part is the owner of the lines
719 of railroad, the railways and other properties, rights, privileges and franchises, and the lands and notes and securities and moneys hereinafter in the granting clause hereof described or referred to; and,

Whereas, certain portions of the said lines of railroad and railways and their appurtenances, and said lands, owned by the said party of the first part, are subject to the liens of certain mortgages severally and respectively securing bonds now outstanding (hereinafter called "outstanding old bonds") for the several aggregate principal sums following, to wit:

(a) The Central Pacific Railroad Company of California first mortgage bonds, secured by mortgage dated July 25, 1865, of the several series and for the amounts and now matured or maturing at the dates hereinafter stated, respectively, viz:

Series.	Amount.	Date of maturity.
Series A	$2,995,000	Matured.
B	$1,000	Matured.
	$999,000	December 1, 1899.
C	$4,000	Matured.
	$996,000	December 1, 1899.
720 D	$4,000	Matured.
	$1,379,000	December 1, 1899.
Total	$6,378,000	

(b) The Central Pacific Railroad Company of California first ortgage bonds, secured by mortgage dated January 1, 1867, of the veral series and for the amounts and now matured or maturing at e dates hereinafter mentioned, respectively, viz:

Series.	Amount.	Date of maturity.
ries E	$5,000	Matured.
	$3,990,000	June 1, 1900.
F	$9,000	Matured.
	$3,990,000	June 1, 1901.
G	$13,000	Matured.
	$3,985,000	June 1, 1901.
H	$6,000	Matured.
	$3,993,000	June 1, 1901.
I	$13,000	Matured.
	$3,498,000	June 1, 1901.
Total	$19,502,000	

(c) The Western Pacific Railroad Company first mortgage bonds, secured by mortgage dated July 1, 1869, of the several 1 series and for the amounts and which matured at the date hereinafter mentioned, viz:

ries A for	$1,970,000	Matured July 1, 1899.
B for	765,000	Matured July 1, 1899.
Total	2,735,000	

(d) The California and Oregon Railroad Company, and Central cific Railroad Company, successor, first mortgage bonds, secured mortgages dated January 1, 1868, and January 1, 1872, respecely, of the several series and for the amounts and maturing at the te hereinafter mentioned, viz:

ries A for	$5,982,000	Maturing January 1, 1918.
B for	4,358,000	Maturing January 1, 1918.
Total	10,340,000	

(e) The Central Pacific Railroad Company first mortgage bonds an Joaquin Valley division), secured by mortgage dated October 1870, for the amount of $6,080,000, maturing October 1, 1900.

(f) The Central Pacific Railroad Company fifty-year five per cent nds, secured by mortgage dated April 1, 1889, to the amount of $12,283,000, maturing April 1, 1939, of which bonds the 2 amount of $2,038,000 are held as security for the land bonds next hereinafter mentioned.

(g) The Central Pacific Railroad Company land bonds, secured mortgage dated October 1, 1870, to the amount of $2,134,000 and turing October 1, 1900.

And whereas, heretofore and under date of February 1, 1899, t
said party of the first part (in pursuance of a settlement agreem
between the United States of America, the said party of the fi
part, and Messrs. Speyer & Co., dated February 1, 1899, entered in
under the provisions of an act of Congress, approved July 7, 189
executed its twenty promissory notes in favor of the United Stat
of America for $2,940,635.78 each, maturing on or before the expi
tion of each successive six months from the date thereof; and,

Whereas the said party of the first part is also indebted to th
holders of its bonds to the amount at their face value of $56,0
bearing date October 1, 1886, and payable October 1, 1936, with i
per cent interest, payable semiannually, commonly known and r
ferred to as "Fifty-year bonds of 1936."

And whereas under and by virtue of authority from the Stat
of California, Utah, and Nevada, the party of the first part h
723 sold to the party of the second part hereunder, subject t
the liens now existing thereon, and upon and subject to t
terms and conditions hereinafter prescribed, all the lines of railro
railways, and other properties and rights, privileges and franchis
and lands, notes, securities, and moneys hereinafter in the granti
clause hereof described and referred to, and any and all oth
properties, claims, demands, choses in action, rights, privileges, a
franchises of the said party of the first part:

Now, therefore, this indenture witnesseth that in consideratio
of one dollar, which, simultaneously with the execution hereof, h
been paid by the party of the second part to the party of the fi
part, the receipt whereof by said party of the first part is here
acknowledged, and for and in consideration of the undertaki
covenants, and agreements on behalf of the said party of the sec
part hereinafter contained, said party of the first part has grant
bargained, sold, conveyed, assigned, transferred, and set over, a
hereby grants, bargains, sells, conveys, assigns, transfers, and s
over, unto the party of the second part.

First. The lines of railroad owned by the party of the first p
extending from a point about five miles west of Ogden, in t
724 State of Utah, through the States of Utah, Nevada, and Ca
fornia, to and into the city of Sacramento, in the State
California, and from said Sacramento to San Jose, in said last m
tioned State, and from Niles to Oakland, and from Lathrop
Goshen, all in the State of California, and from Roseville, in s
State of California, to the California and Oregon boundary; a
the leasehold of the railroad from a point about five miles west
Ogden to Ogden, in the county of Weber in the State of Utah.

Second. All the railways belonging to the party of the first p
in San Francisco, Oakland, and Alameda in the State of Calif

l the terminals belonging to the party of the first part used in nection therewith, including wharves, piers, docks, embankments, ries, steamers, and transfer and ferry boats.

Third. All roadbeds, superstructures, rights of way, rails, tracks, tracks, bridges, viaducts, terminals, buildings, depots, stations, ehouses, car houses, engine houses, freight houses, coal houses, dhouses, machine shops and other shops, turntables, water sta-s, fences, docks, structures, erections, and fixtures, and all other things of whatever kind now owned by the party of the first part, which shall in anywise, or at any time, belong or appertain to, or be provided for use upon, or for the purposes of of said lines of railroad, and any and all other property, real ersonal, of every kind and description, now owned by the party he first part for use upon or for the purposes of such lines of road or terminals, or any of them.

Fourth. Any and all locomotives, engines, cars, and other rolling k, equipment, machinery, instruments, tools, implements, ma-ls, furniture, and other chattels of the party of the first part owned for use upon any of such lines of railroad or terminals ther property.

Fifth. Any and all other railroads, equipment, and terminals owned he party of the first part.

Sixth. Any and all corporate or other rights, privileges, and fran-es which the party of the first part now has, or hereafter shall ire, possess, or become entitled to, for, or appertaining to, the truction, maintenance, use, or operation of, such lines of railroad rminals or other property.

Seventh. Any and all the rents, issues, profits, tolls, and other income of such lines of railroad or terminals or other property.

Eighth. All and singular the several sections of land granted by the United States to the Central Pacific Railroad pany of California by an act of Congress approved on the first of July, 1862, entitled "An act to aid in the construction of a oad and telegraph line from the Missouri River to the Pacific n, and to secure to the Government the use of the same for post-military, and other purposes," and an act amendatory thereof, oved on the second day of July, 1864; also all the lands granted e California and Oregon Railroad Company by an act of Con-s approved on the twenty-fifth day of July, 1866, entitled "An granting lands to aid in the construction of a railroad and tele-h line from the Central Pacific Railroad in California to Port-, in Oregon"; and also all the estate, right, title, interest claim demand whatsoever, at law or in equity, of, in, or to the same or part or parcel thereof, which the said party of the first part now owns, or is entitled to, or hereafter may or shall acquire,

have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving and excepting all parts and parcels of said lands which were sold prior to the execution of the mort-
727 gage from the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, dated the first day of October, A. D. 1870, securing the land bonds of said last-mentioned company, and all such parts and parcels of said lands as shall have since been released from the said mortgage securing such land bonds in accordance with the provisions thereof.

Ninth. All notes now outstanding given in payment for lands covered by such mortgage of the Central Pacific Railroad Company dated October 1, 1870, securing said land bonds.

Tenth. All securities and moneys which are held in any sinking fund created or existing by or under any mortgage existing on the 20th day of February, 1899, whether of the party of the first part or any divisional company by the consolidation whereof it was formed.

Eleventh. All other properties, claims, demands, moneys, choses in action, leaseholds, rights, privileges, and franchises owned by or belonging to the party of the first part, or to which it is in any way entitled.

To have and to hold the premises, railroads, railways, properties, real or personal, claims, demands, choses in action, leaseholds, rights, privileges, franchises, estates, and appurtenances, lands, bonds,
728 notes and securities and moneys hereby granted, bargained, sold, conveyed, assigned, transferred or set over, or intended so to be, unto the party of the second part and to its successors and assigns forever, but subject to the liens thereon hereinbefore mentioned and referred to.

And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party of the first part are hereby conveyed), and for the purpose of securing the payment of the amounts becoming due on the notes given by said party of the first part to the United States under said settlement agreement, dated February 1, 1899, as in said settlement agreement prescribed, the party of the second part has assumed and hereby assumes the payment of all the indebtedness and guaranties of said party of the first part, and has undertaken, covenanted, and agreed, and hereby undertakes, covenants, and agrees to and with the party of the first part that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific readjustment plan and agreement dated February 8, 1899, issued by Speyer & Co.,
729 Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mattos Brothers, and the Deutsche Bank of Berlin, as readjustment managers, or as the same may be modified under the terms

hereof and with the assent of the party of the second part, and in certain agreement bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyne Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London committee of Central Pacific shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as readjustment managers as therein stated, and the Southern Pacific Company, and in a certain other agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle, and George Coppell, Esq., as the American committee of Central Pacific shareholders, the said readjustment managers and the Southern Pacific Company, and under arrangements made or to be made with said readjustment managers will carry out such readjustment plan and said agreements.

In witness whereof, the parties hereto have caused these presents to be signed on their behalf respectively by their respective presidents, and their respective corporate seals to be hereunto affixed and attested by their respective secretaries the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,
By ISAAC L. REQUA, *President.*

[Seal of Central Pacific Railroad Company.]

Attest:

W. M. THOMPSON, *Secretary.*

CENTRAL PACIFIC RAILWAY COMPANY,
By THOMAS MARSHALL, *President.*

[Seal of Central Pacific Railway Company.]

Attest:

DAVID B. HEMPSTEAD, *Secretary.*

DEFENDANTS' EXHIBIT NO. 48, APRIL 16, 1915.

(Extract from Volume VIII of Union Pacific merger record, pages 3852 to 3854.)

Southern Pacific Company to Central Trust Company of New York, Trustee.

Indenture Subordinating Lease to Lien of Central Pacific Railway Company's First Refunding Mortgage. Dated August 1st, 1899.

An indenture, made the 1st day of August, 1899, by and between Southern Pacific Company, a corporation of the State of Ken-

tucky, party of the first part, and the Central Trust Company
New York, a corporation of the State of New York, party of
second part.

Whereas, the Central Pacific Railway Company (a corporation
the State of Utah) has, under even date herewith, executed an
denture to the party of the second part to secure the issue of
refunding mortgage gold bonds of the said Central Pacific Ra
way Company, issued and to be issued for an aggregate pri
732 cipal sum not exceeding one hundred million dollars ($10
000,000) at any one time outstanding, as by said mortga
reference thereto being had, will more fully appear; and

Whereas the properties covered by said mortgage have heretof
been and still are in possession of the party of the first part as les
thereof; and

Whereas, in consideration of the benefits and advantages to
derived by said party of the first part from the carrying out of
agreement between the United States of America, the Central P
cific Railroad Company, and Messrs Speyer & Co., dated February
1899, in reference to the settlement of the indebtedness to the Uni
States growing out of the issue of bonds in aid of the construc
of the Central Pacific and Western Pacific, bond-aided railroads,
party of the first part hereto has agreed to subordinate its right
lessee of said railroads to the lien of the said mortgage securing
first refunding mortgage gold bonds;

Now, therefore, this indenture witnesseth, that in consider
of the premises and of the sum of one dollar by the party of
second part to the party of the first part in hand paid, the rec
whereof is hereby acknowledged, the said party of the
733 part has undertaken, covenanted, and agreed and
hereby undertake, covenant, and agree that the said mortg
from the Central Pacific Railway Company to the party of
second part, dated August 1, 1899, securing the said first refund
mortgage gold bonds of said Central Pacific Railway Compa
shall be, and shall be deemed and held to be, prior in lien to
lease of the railroads formerly of the Central Pacific Railroad C
pany (but now transferred to the said Central Pacific Rail
Company), or their appurtenances or any portion thereof, and
the lease of said railroads and their appurtenaces to the party of
first part be, and the same is hereby, subordinated in lien to the
mortgage of the said Central Pacific Railway Company to the p
of the second part securing such first refunding mortgage gold bo

In witness whereof the said party of the first part hereto
caused its corporate seal to be hereunto affixed and attested by

ecretary or assistant secretary, and has caused these presents to be igned on its behalf by its president or one of its vice presidents, the lay and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

34 [Seal of Southern Pacific Company.]
Attest:

I. E. GATES,
Asst. Secretary.

TATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year ne thousand eight hundred and ninety-nine, before me, the under- igned, George H. Corey, a commissioner, resident in the city of New ork, duly commissioned and qualified by the executive authority nd under the laws of the State of Utah, to take acknowledgment of eeds, &c., to be used or recorded therein, personally appeared Collis . Huntington and Isaac E. Gates, who, being by me respectively uly sworn, each for himself, says that he, the said Collis P. Hunt- ngton, is the president of the Southern Pacific Company, and the id Isaac E. Gates is the assistant secretary of said company, one f the corporations named in the foregoing instrument, and that said strument was signed in behalf of said corporation by said president nd assistant secretary, respectively, under and in pursuance of a resolution of its board of directors; and the said Huntington
35 and Gates, respectively, acknowledged to me that said corpora- tion executed the same.

In witness whereof I have hereunto set my hand and affixed my ficial seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]
My commission expires January 5, 1902.

TATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year e thousand eight hundred and ninety-nine, before me, the under- gned, George H. Corey, a commissioner, resident in the city of New ork, duly commissioned and qualified by the executive authority d under the laws of the State of Nevada, to take acknowledgment deeds, &c., to be used or recorded therein, personally appeared

the within-named Collis P. Huntington, president of the Southern Pacific Company, and Isaac E. Gates, assistant secretary of the Southern Pacific Company, personally known to me to be the
736 said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument as such officers of said company, and they each, severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Nevada.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]
My commission expires January 23, 1900.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive
737 authority and under the laws of the State of California to take acknowledgment of deeds, and so forth, to be used or recorded therein, personally appeared Collis P. Huntington, known to me to be the president, and Isaac E. Gates, known to me to be the assistant secretary, of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument and acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of California.
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]
My commission expires October 28, 1899.

738 DEFENDANTS' EXHIBIT NO. 49, APRIL 16, 1915.

(Extract from Volume VIII of Union Pacific Merger record, pages 3855 to 3857.)

Southern Pacific Company to United States Trust Company, trustee.

Indenture subordinating lease to lien of Central Pacific Railway Company's three and one-half per cent mortgage, dated August 1st, 1899.

An indenture made the 1st day of August, 1899, by and between the Southern Pacific Company, a corporation of the State of Kentucky, party of the first part, and the United States Trust Company of New York, a corporation of the State of New York, party of the second part.

Whereas the Central Pacific Railway Company (a corporation of the State of Utah) has, under even date herewith, executed an indenture to the party of the second part to secure the issue of three and one-half per cent mortgage gold bonds of the said Central Pacific Railway Company, issued and to be issued for an aggregate principal sum not exceeding twenty-five million dollars ($25,-
739 000,000) at any one time outstanding, as by said mortgage, reference thereto being had, will more fully appear; and

Whereas the railroads and their appurtenances covered by said mortgage have heretofore been and still are in possession of the party of the first part as lessee thereof; and

Whereas in consideration of the benefits and advantages to be derived therefrom the party of the first part hereto has agreed to subordinate its rights as lessee of said railroads to the lien of the said mortgage securing such three and one-half per cent mortgage gold bonds:

Now, therefore this indenture witnesseth that in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part in hand paid, the receipt whereof is hereby acknowledged, the said party of the first part has undertaken, covenanted, and agreed, and does hereby undertake, covenant, and agree, that the said mortgage from the Central Pacific Railway Company to the party of the second part, dated August 1, 1899, securing the said three and one-half per cent mortgage gold bonds of said Central Pacific Railway Company shall be, and shall be deemed and be held to be, prior in lien to any lease of the railroads formerly of the Central Pacific Railroad Company (but

740 now transferred to the said Central Pacific Railway Company), or their appurtenances or any portion thereof, and that the lease of said railroads and their appurtenances to the party of the first part be, and the same is hereby, subordinated to the lien to the said mortgage of the said Central Pacific Railway Company to the party of the second part securing such three and one half per cent mortgage gold bonds.

In witness whereof the said party of the first part hereto has caused its corporate seal to be hereunto affixed and attested by its secretary or assistant secretary and has caused these presents to be signed on its behalf by its president or one of its vice presidents the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By C. P. HUNTINGTON, *President.*

[Seal of Southern Pacific Company.]
Attest:

I. E. GATES, *Asst. Secretary.*

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in
741 the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Utah to take acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington and Isaac E. Gates, who being by me respectively duly sworn, each for himself, says that he the said Collis P. Huntington, is the president of the Southern Pacific Company and the said Isaac E. Gates is the assistant secretary of said company, one of the corporations named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by said president and assistant secretary, respectively, under and in pursuance of a resolution of its board of directors, and the said Huntington and Gates respectively acknowledged to me that said corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Utah,
Office, 56 Wall Street, N. Y.

742 [Commissioner's seal.]
My commission expires January 5, 1902.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Nevada, to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared the within-named Collis P. Huntington, president of the Southern Pacific Company, and Isaac E. Gates, assistant secretary of the Southern Pacific Company, personally known to be to be the said officers of the said corporation, respectively, and the individuals described in and who executed the within instrument, as such officers of said company, and they each severally and personally then and there acknowledged to me that they executed the said instrument as the free act and deed of the said Southern Pacific Company, freely and voluntarily, and for the uses and purposes therein mentioned.

743 In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of Nevada,
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]
My commission expires January 23, 1900.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 20th day of September, in the year one thousand eight hundred and ninety-nine, before me, the undersigned, George H. Corey, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of California to take acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Collis P. Huntington, known to me to be the president, and Isaac E. Gates, known to me to be the assistant secretary, of the Southern Pacific Company, the corporation described in and which executed the within and annexed instrument, and acknowledged to me that said corporation executed the same.

744 In witness whereof I have hereunto set my hand and affixed my official seal the day and year last aforesaid.

GEO. H. COREY,
Commissioner for the State of California,
Office, 56 Wall Street, N. Y.

[Commissioner's seal.]
My commission expires October 28, 1899.

X

In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 6.

DEFENDANTS' EXHIBITS.

Pages 1990 to 2325, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

745 DEFENDANTS' EXHIBIT No. 50 (PART A), APRIL 16, 1915.

No. 993—In Equity. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company; the Oregon Short Line Railroad Company; the Oregon Railroad & Navigation Company; the San Pedro, Los Angeles & Salt Lake Railroad Company; the Atchison, Topeka & Santa Fe Railway Company; the Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. Volume XII.—Pleadings.

746–748 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of American, complainant, v. the Union Pacific Railroad Company and others, defendants.

Original petition. (Filed February 1, 1908.)

749 United States Circuit Court, District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. In equity.

Petition.

To the judges of the Circuit Court of the United States for the District of Utah.

Now comes the United States of America, by Hiram E. Booth, the United States attorney for the district of Utah, acting under
750 direction of the Attorney General of the United States, and brings this its proceeding by way of petition against the Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Short Line Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Oregon Railroad & Navigation Company, a corporation organized and existing under the laws of the State of Oregon;

The San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and existing under the laws of the State of Utah;

The Atchison, Topeka & Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas;

The Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky;

The Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin;

The Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota;

The Farmers' Loan & Trust Company, a corporation organized and existing under the laws of the State of New York;

751 Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, citizens of the State of New York and residents of New York City;

Henry C. Frick, a citizen of the State of Pennsylvania and resident at Pittsburg, in said State; and

William A. Clark, a citizen of the State of Montana and resident at Butte, in said State, and complains and says:

I. The defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, and Great Northern Railway Company were, at the times hereinafter mentioned, and now are, common carriers employed in the transportation of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce among the several States and with foreign nations.

II. That from and after January 1, 1901, the defendants Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, and James

752 Stillman, with certain other persons who have joined with them from time to time, including the defendants Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company;

That during all of said time the said defendant Edward H. Harriman has been, and still is, the chairman of the executive committee of the board of directors of said company, and since October,

1903, he has likewise been, and still is, the president of said corporation;

That the said Jacob H. Schiff, Otto H. Kahn, and James Stillman were, from a time prior to said January 1, 1901, and until the year 1906, directors of said corporation;

That said James Stillman has continued to be a director thereof, and that during all of said period and until the year 1906 the said Otto H. Kahn and said Stillman were members of the said executive committee of said corporation, and said Stillman is still a member thereof;

That during all of said time the said Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm of the city of New York, doing business under the firm name and style of
753 Kuhn, Loeb & Co., which said banking house is, and during all the times above stated has been, the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases and sales of stocks and bonds hereinafter mentioned have been made;

That said defendant Henry H. Rogers has been a director of said corporation since the year 1902, and that said defendant Henry C. Frick has been a director of said corporation since the year 1904, and both said parties are still members of said board of directors;

That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members to act in such manner as such committee should deem best for the company's interest in all cases in which specific directions shall not have been given by the board; and it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to represent that committee when it is not in session;

That pursuant to such by-laws the said defendant Harriman has, with the concurrence and assistance of said individual defend-
754 ants, other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company.

III. The defendant Union Pacific Railroad Company is, and during all of said times has been, the owner of lines of railway extending from Council Bluffs, Iowa, to Ogden, Utah; from Julesburg, a point on said line, to Denver, Colo.; from Denver to Cheyenne, Wyo.; and a line from Kansas City, Mo., to Denver;

That the predecessor of the said Union Pacific Railroad Company was organized under the act of Congress approved July 2, 1862 (12 Stat., 489). Its charter was thereafter amended by the acts of July

2, 1864 (13 Stat., 356), February 24, 1871 (16 Stat., 430), and other acts. It constructed a line of railway from a point in Council Bluffs, Iowa, through Cheyenne, Wyo., to Ogden, Utah, with a branch from Julesburg to Denver, Colo.;

That the Kansas Pacific Railway Company was previously incorporated by special act of Congress as the Leavenworth, Pawnee & Western Railroad Company (subsequently the Union Pacific
735 Railroad Company, eastern division), and constructed a line of railway from Kansas City, Mo., to Denver;

That the Denver Pacific Railway & Telegraph Company was incorporated under the laws of Colorado, and constructed the line of railroad from Denver to Cheyenne;

That these railways were consolidated under the said act of Congress of 1862 into the Union Pacific Railway Company;

That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, Cal., to Ogden, Utah;

That the Western Pacific Railroad Company was organized also under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, Cal., and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to Ogden, at which point it connected with the main line of said Union Pacific Railroad Company;

That these lines of railroad were constructed by Government aid, consisting of land grants of 10 sections per mile of road, and Government bonds secured by a second mortgage upon the rail-
736 ways in the sum of $16,000 per mile in open country, $48,000 per mile for 300 miles of the railroad most mountainous and difficult of construction, and $32,000 per mile for the balance of the mountainous railroad;

That by the act of Congress approved July 2, 1864, the said lines of railway receiving said aid, to wit, the Central Pacific Railroad Company, the Western Pacific Railroad Company, the Union Pacific Railway Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company, constituting all of the said lines from Council Bluffs and from Kansas City, through Denver, Cheyenne, Ogden, and Sacramento, to San Francisco, were required to operate their lines as one continuous line, without discrimination against or in favor of any or either of said companies;

That in and by section 15 of said act of Congress approved July 2, 1864, it was, among other things, provided "That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all pur-

poses of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal ad-

vantages and facilities as to rates, time, and transportation,
757 without any discrimination of any kind in favor of the road or business of any or either of said companies or adverse to the road or business of any or either of the others";

That by the act of Congress approved June 20, 1874 (18 Stat., 111), this provision was in substance reenacted, and any officer or agent of the companies refusing to operate and use the said railroads for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, without discrimination as aforesaid, was declared to be guilty of a misdemeanor, punishable by fine and imprisonment; and any party injured was authorized to sue for damages or to procure an injunction to enforce its provisions;

That the Oregon Short Line Railroad Company is, and during all of said times has been, the owner of a line of railway extending from a junction with said main line of the Union Pacific at Granger, Wyo., to Huntington, Oreg.; also a line from Salt Lake City, Utah, to Butte, Mont.;

That the defendant Oregon Railroad & Navigation Company is, and during all of said times has been, the owner of a line of railroad

from said Huntington, Oreg., to Portland, Oreg.;
758 That all three of said lines of railway are the owners of important branch lines in various States; that substantially all the stock of said Oregon Short Line Railroad Company is, and during all said times has been, owned by said Union Pacific Railroad Company, and that substantially all the stock of said Oregon Railroad & Navigation Company is, and during all of said times has been, owned by said Oregon Short Line Railroad Company and said Union Pacific Railroad Company, and that by means of such stock ownership said Union Pacific Railroad Company has at all times controlled and managed the said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company, and the lines of said three corporations have composed and still compose through main lines of track from Council Bluffs, Iowa, and Kansas City, Mo., upon the Missouri River, to said city of Portland, Oreg.;

That in the year 1901 said Oregon Railroad & Navigation Company was the owner of a line of steamships plying between said Portland, Oreg., and San Francisco, Cal., by way of the Willamette and Columbia Rivers and the Pacific Ocean; and through the ownership of the stock of a corporation to which said steamship line has been conveyed still owns the same; and also was and still is the owner of the stock of a corporation known as the Portland & Asiatic Steamship

759 Company, which was running and still runs a line of steamships from said Portland to Japan, China, and other points of the Orient, and the said lines of steamships constitute, with said railway lines, through routes for the transportation of property and persons both among the several States and with foreign nations;

That the Southern Pacific Company was on said January 1, 1901, and still is the owner and in control by and through its ownership of the stock of various connecting lines of a line of railway extending from New Orleans, in the State of Louisiana, through said State and the State of Texas, the Territories of New Mexico and Arizona, and the States of California and Oregon, to said Portland;

That said Southern Pacific Company also owned and still owns a line connecting with said through lines ending at Galveston, Tex., upon the Gulf of Mexico, and in connection with its lines of railroad so reaching New Orleans and Galveston it owned and operated and still owns and operates a line of steamships running from said ports to Habana, Cuba, and to the city of New York;

That then and now the said Southern Pacific Company was and is also the owner of all the capital stock of the Central 760 Pacific Railroad Company, a corporation organized and existing under the laws of California, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the corporation of the same name, to wit, Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company then and now in all respects controls the operation and management of the affairs and business of said Central Pacific Railroad Company;

And was and still is also the owner of a majority of the stock of the Pacific Mail Steamship Company, which latter company operates a line of steamships from San Francisco to the Hawaiian and Philippine Islands, China, Japan, and other oriental ports, and also a line of steamers from San Francisco to Panama, which, with the lines of the Panama Railroad Company crossing the Isthmus, and ships running in connection therewith, constitutes a through line from New York to San Francisco;

That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of 761 railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States, both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run

in connection therewith, was in active competition with the lines
said Union Pacific Railroad Company for a large amount of traf
originating in the Atlantic coast and Central States;

That the rail line of said Southern Pacific Company from S
Francisco to Portland was in active competition with the ships plyi
between San Francisco and Portland and owned by said Oreg
Railroad & Navigation Company, as hereinbefore alleged;

That the said ships of the Portland and Asiatic Steamship Co
pany, in connection with the rail lines of said Union Pacific Railro
Company and its subsidiary companies, as hereinbefore alleged, ru
ning from Portland, Oreg., to the East, were in active competiti
with the ships of said Pacific Mail Steamship Company and the ra
of said Southern Pacific Company running to the East from S
Francisco;

That the line of railroad composed of the tracks of sa
762 Oregon Short Line Railroad Company and said Oregon Ra
road & Navigation Company between Ogden, Utah, and Por
land, Oreg., were in active competition with the lines of said Sout
ern Pacific Company between said points;

*That the rail lines of the said Southern Pacific Company were
active competition with the ships and rail lines of the said Oreg
Railroad & Navigation Company for a large amount of traffic betwe
San Francisco and points in Montana, Idaho, and other States.*[1]

That the competition hereinbefore alleged between the system
railroads and steamships owned and controlled by said Union Paci
Railroad Company and the system of railroads and steamships own
and controlled by said Southern Pacific Company was substanti
and included a large volume of traffic, both freight and passenger;

That the Atchison, Topeka & Santa Fe Railway Company has be
for a period of more than eight years last past the owner and in co
trol, by direct ownership and by the ownership of the stock
763 railway companies owning a portion of said lines and by lea
of a line of railway reaching from Chicago, in the State
Illinois, through the States of Illinois, Missouri, Kansas, Colorad
the Territories of New Mexico, Arizona, and the State of Californi
to the city of San Francisco and to tidewater at San Diego, Cal
that said line of railway touches the Union Pacific at Kansas Cit
Mo., and is and during all said times has been competitive with sa
Union Pacific Railroad Company and said Southern Pacific Co
pany for a large traffic to and from the Pacific coast and the Orie
to and from various points in the East and the Mississippi Valley
and in the State of Colorado and other interior States;

[1] Italicized paragraph inserted by amendment under order of court, with the provi
that the said allegation should be considered denied by all of the defendants with
amendment to the several answers.

That the tracks of said Atchison, Topeka & Santa Fe Railway Company cross the continent between those of the Southern Pacific Company and the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles & Salt Lake Railroad, hereinafter referred to, constituted the only outlet to the East by rail from all the territory along the Pacific coast south of Portland, Oreg., to the Mexican border, other than the lines of said Union Pacific Railway Company and said Southern Pacific Company.

That the said Atchison, Topeka & Santa Fe Railway Com-
764 pany was for a number of years engaged in operating a line of steamships to oriental ports from said port of San Diego, Cal., and said line of ships, with its rail connections by way of the tracks of said Atchison, Topeka & Santa Fe Railway Company, was in active competition with the steamship and rail lines of said Union Pacific Railroad Company and the Southern Pacific Company hereinbefore described;

That the traffic that was so competitive between said Southern Pacific and Union Pacific and said Atchison, Topeka & Santa Fe was and is of great volume, both passenger and freight;

That the Northern Pacific Railway Company and the Great Northern Railway Company are each the owners of lines of railway extending from ports upon Lake Superior in the States of Wisconsin and Minnesota, and from the city of St. Paul, in the State of Minnesota, through and across the States of Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon, and said railroad corporations are the joint owners of substantially all the stock and are in control of the Chicago, Burlington & Quincy Railroad Company, a corporation which is the owner of a vast system of rail lines connecting with
765 the lines of the Northern Pacific Railway Company at Billings, Mont., and at St. Paul, and with the lines of the Great Northern Railway Company at St. Paul, running thence to the cities of Chicago, St. Louis, Mo., Kansas City, Denver, and Omaha, Nebr., and crossing portions of the States of Minnesota, South Dakota, Iowa, Illinois, Wisconsin, Missouri, Nebraska, Kansas, Colorado, and Wyoming, and the lines of said Northern Pacific Railway Company and said Chicago, Burlington & Quincy Railroad Company are and have, by the Supreme Court of the United States, been held to be competitive with the lines of the said Union Pacific Railroad Company for a large amount of traffic, both passenger and freight.

That as to an extensive traffic between various points in the Eastern and Central States and the Pacific coast and the Orient the said Northern Pacific and Great Northern Railway Companies, together with their connections and the steamship lines controlled by them,

are and at all times have been competitors for business with s
Union Pacific Railroad Company and its connections so owned by
That the said San Pedro, Los Angeles & Salt Lake Railroad Co
pany is the owner of a line of railroad extending from San Ped
a port on the Pacific Ocean in the State of California, thro
766 by way of Los Angeles through the States of Californi
Nevada, and Utah to the city of Salt Lake in said State
Utah.

That a large part of said line is controlled by said corporation
direct ownership and a small portion thereof in southern Californ
by lease, but the same constitutes a continuous line between s
points, and the same would have been but for the suppression of co
petition hereinafter alleged at all times since its construction
reason of its location and its connection with said Oregon Short Li
Railroad Company at Salt Lake City and its connection with t
lines of the Denver & Rio Grande Railway Company at the sa
place, which latter company owns a line of railway from Salt La
City to Denver, a competitor with said Southern Pacific Compa
and said Union Pacific Railroad Company.

IV. That in the spring of 1901 the said defendants Edward H
Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, and t
defendant Union Pacific Railroad Company, contriving and inten
ing unlawfully to restrain the trade and commerce among the seve
States and between said States and foreign countries carried on
said Union Pacific Railroad Company, said Southern Paci
767 Company and said other competing lines of railway and
ships as hereinbefore alleged and contriving and intendi
unlawfully to monopolize and attempt to monopolize such trade a
commerce, and contriving and intending unlawfully to restrain a
prevent competition among said railway systems and steamship li
in respect to such interstate and foreign trade and commerce, a
contriving and intending unlawfully to deprive the public of the b
cilities and advantages in the carrying on of such interstate a
foreign trade and commerce theretofore enjoyed through the ind
pendent competition of said railway systems and steamship lin
unlawfully entered into a combination or conspiracy to effec
virtual or substantial consolidation of said Union Pacific Railro
Company and said other transcontinental railway companies and a
steamship lines, and to place restraint upon all competitive int
state and foreign trade and commerce carried on by them and
monopolize and attempt to monopolize the same and to suppress
competition theretofore existing between the same in said interst
and foreign trade and commerce through their instrumentality a
by the means following, to wit:

That said firm of Kuhn, Loeb & Co., acting through said defendants Schiff and Kahn, and with the assistance of said
768 defendant Harriman, acquired 750,000 shares of the stock of said Southern Pacific Company, of the par value of $75,000,000, out of a total issue then outstanding of $197,847,788, which said stock was acquired for the purpose of turning the same over to said Union Pacific Railroad Company, so that the same might be held in the treasury of said company and voted by it, for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system;

That said stock was, on or about March 4, 1901, duly delivered to said Union Pacific Company, pursuant to said conspiracy, and said company either by itself or by its subsidiary company, the Oregon Short Line Railroad Company, has since been in possession and ownership thereof, and has voted the said shares of stock at all the stockholders' meetings of said Southern Pacific Company;

That thereafter, with the like purpose of suppressing competition and placing restraint upon all competitive interstate and foreign trade and commerce, and monopolizing and attempting to
769 monopolize the same, and for the purpose of rendering more certain and secure the efforts theretofore made, as above stated, by the acquisition of the said 750,000 shares of said stock, said conspirators further acquired for, and said Union Pacific Railroad Company obtained, an additional 150,000 shares of stock of said Southern Pacific Company, which were likewise placed in the treasury of said company, making an aggregate of 900,000 shares of stock of said Southern Pacific Company so acquired for the purpose and in the manner above stated;

That all of the said stock has since been voted by said Union Pacific Railroad Company, or under its direction, at all meetings of stockholders of said Southern Pacific Company, with the end and for the purpose of restraining trade and commerce and eliminating competition and monopolizing and attempting to monopolize such interstate and foreign commerce, as hereinbefore averred;

That thereafter the said defendants Harriman, Schiff, Kahn, and Stillman and said Union Pacific Railroad Company caused to be issued by said Southern Pacific Company $39,563,300 par value of preferred capital stock of said Southern Pacific Company, which was subscribed for by the various stockholders of said South-
770 ern Pacific Company in proportion to their holdings of common stock;

That said Union Pacific Railroad Company, for the purpose above stated, and with intent to insure the success of said attempt to

restrain interstate and foreign commerce and monopolize the same subscribed for, took, and now has in its possession the proportion or percentage of such preferred stock to which the said 900,000 shares of common stock was entitled under said plan, to wit, $18,000,000 par value thereof, and has since its said issue at all times voted the same at all meetings of said Southern Pacific Company;

That the said 750,000 shares of Southern Pacific common stock was, in the first instance, acquired directly by said Union Pacific Railroad Company, but for convenience in financing, or other reasons unknown to complainant, the said stock was in form turned over to the said defendant Oregon Short Line Railroad Company, and the said additional common stock and the said eighteen millions of preferred stock are now in form in the treasury of said Oregon Short Line Railroad Company, but, as hereinbefore averred, are controlled and voted as directed by said Union Pacific Railroad Company

771 which owns the stock of said Oregon Short Line Railroad Company, and controls the management, operation, and business affairs thereof, and the said stock and all of the same is now in form so voted by said Oregon Short Line Railroad Company but at the dictation and instance of said Union Pacific Railroad Company, the said Harriman, Stillman, Schiff, and Kahn, for the purpose of choosing boards of directors who will act in subservience to the management of said Union Pacific Railroad Company, to the end that competition in interstate and foreign commerce may be restrained and such business be monopolized and attempted to be monopolized, as hereinbefore set forth;

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, the exact number being unknown to complainant, but that by reason of the fact that such stock is so scattered in small blocks the full amount of such stock is not and never has been at any meeting, and, according to ordinary business usage and experience, never will be, voted at any such meeting, for which reason the said stock so controlled by said Union Pacific Railroad Company has constituted a majority of the stock present at each and every meeting of the stockholders of said

Southern Pacific Company since the year 1902, and will con-

772 tinue to constitute such majority if said stock remains the property of said Oregon Short Line Railroad Company, and the said Union Pacific Railroad Company, by and through said Oregon Short Line Railroad Company, has controlled the said meetings and has elected such boards of directors as have been selected by said railroad company and said Harriman, Stillman, Kahn, and Schiff;

That said conspirators, after the acquisition of such control of said Southern Pacific Company, at all times caused to be elected such

essive boards of directors of said company, a majority of whom were lso directors of said Union Pacific Railroad Company; that said Harriman was made the chairman of the executive committee of said outhern Pacific Company and still fills such office;

That said Southern Pacific Company has conferred upon such xecutive committee and upon the chairman thereof the same powers s the like committee and the like officer enjoy in the case of the nion Pacific Railroad Company as hereinbefore set forth; that the id Harriman was by said conspirators caused to be elected and he ill is the president of said Southern Pacific Company;

That the said Union Pacific Railroad Company and Southern
73 Pacific Company have and for several years last past have had common traffic officials, operating officials, purchasing agents, nd commercial agents, and in all respects the said lines of railway ontrolled by said corporations, respectively, as hereinbefore set forth, re operated and have since the year 1901 been operated as one single ntire system;

That the management of the said steamship lines has been amal-amated and that the competition formerly existing between the said wo railway systems, with their steamships, as hereinbefore set forth, as been destroyed, and the said interstate and foreign commerce hich was originally and prior to the acts herein complained of the ubject of competition has been monopolized in the hands and under he control of the said Union Pacific Railroad Company and its sub-idiary corporations and its officials;

That each and every of the acts hereinbefore complained of ere done and performed by the said Harriman, Schiff, Kahn, Still-an, and Union Pacific Railroad Company for the purpose and with he intent and result of monopolizing trade and commerce both mong the States and with foreign nations and with the intent and esult of suppressing and eliminating all competition between said companies.

74 V. Complainant further avers that, pursuant to the said conspiracy so formed to restrain trade and commerce among he several States and with foreign nations and of monopolizing and ttempting to monopolize the same, and to suppress the competition heretofore existing between the various railway systems and water ines hereinbefore described, and for the purpose of further effectu-ting such restraint and creating such monopoly, the said defendants, Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Com-any, and other parties to complainant unknown, did, in the spring f 1901, also cause the said Union Pacific Railroad Company to equire a majority of the stock of said Northern Pacific Railway ompany, meaning and intending thereby to destroy the competition

theretofore existing between said Northern Pacific Railway syst
and said Union Pacific Railroad system and also between the lat
and the lines of the Chicago, Burlington & Quincy Railway Compa
hereinbefore described;

That the said purchase of stock was made in form by said Oreg
Short Line Railroad Company, but said company acted at the in
stance of said Union Pacific Railroad Company and said oth
775 parties, and the money employed in said purchase was fu
nished by the said Union Pacific Railroad Company, and sa
purchase was made solely for the purpose of suppressing compe
tion, restraining trade, and creating monopoly pursuant to the co
spiracy hereinbefore alleged;

That after the acquisition of said stock of the said Northern Paci
Railway Company there was formed under the laws of the State
New Jersey a corporation called the Northern Securities Compa
which latter corporation was organized for the purpose, among oth
things, of taking over as a holding company a majority or all t
stock of said Northern Pacific Railway Company and said Gre
Northern Railway Company;

That, acting in unison and harmony with the parties promoti
said Northern Securities Company, the defendants, Harriman, Schi
Kahn, Stillman, and the Union Pacific Railroad Company, and the
associates, caused said Oregon Short Line Railroad Company to s
to said Northern Securities Company all of the stock in said Nort
ern Pacific Railway Company so acquired, amounting to $37,023,0
par value of the common stock and $41,085,000 par value of the p
ferred stock out of a total issue of $155,000,000 par value, a
776 said Oregon Short Line Railroad Company received from s
Northern Securities Company for said stock so transferred
it, in addition to a certain amount of cash, shares of said North
Securities Company aggregating $82,491,871 par value, which s
shares were issued in the name of the defendant Harriman and
Winslow S. Pierce, who was the counsel for the said Union Pac
Railroad Company, who, however, had no personal interest in t
said shares, but held the same for the benefit and on account of t
said Oregon Short Line Railroad Company and pursuant to the co
spiracy above averred;

That the said preferred stock of the Northern Pacific Rail
Company was, pursuant to the charter and terms upon which s
stock was issued, duly retired and an additional issue of comm
stock in the same amount was made, so that the par value of the st
of said Northern Pacific Railway Company remained at $155,000,0
but the same was all in one class, to wit, common stock;

That thereafter an action was duly brought by the complain
United States of America, against the said Northern Securities C

any and others in the United States circuit court for the district of Minnesota, in which said cause a decree was duly entered, adjudging that the said holding of the stocks of the Northern Pacific Railway Company and the Great Northern Railway Company was illegal, as in restraint of trade and in violation of the act of Congress approved July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," which said decree was affirmed by the Supreme Court of the United States (193 U. S., 197);

That thereafter the board of directors of said Northern Securities Company adopted resolutions for the distribution of the shares of the capital stock of the Northern Pacific Railway Company and of the Great Northern Railway Company among the shareholders of it, the said Northern Securities Company, pro rata, but that the said defendants and their associates who had so caused the shares of said Northern Pacific Railway Company to be acquired for the purposes above stated, opposed and protested against the said proposed distribution among the shareholders of said Northern Securities Company, and the said defendants, Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce, in whose name jointly with said Harriman the said shares had been registered, together with the Equitable Trust Company, a corporation of New York, with whom said shares had been deposited as trustee to secure obligations of said Oregon Short Line Railroad Company, exhibited a bill of complaint against said Northern Securities Company in the circuit court of the United States for the district of New Jersey, praying for an injunction to restrain the said pro rata distribution and a decree that they were entitled to the return and transfer to them by said Northern Securities Company of the shares of common stock of said Northern Pacific Railway Company, which were so delivered to said securities company by said Harriman and Pierce, and the shares of common stock into which the preferred stock of the Northern Pacific Railway Company delivered by them were converted in exchange for the certificates of stock of the Northern Securities Company so issued to and held by the complainants in such suit;

That in said action a decree was entered by the said circuit court granting the injunction prayed (132 Fed. Rep., 464); from this order an appeal was prosecuted to the circuit court of appeals for the third circuit, which in all things reversed the decree of the court below, (134 Fed. Rep., 331); thereupon the said cause was removed to the Supreme Court of the United States by certiorari, and the decree of the circuit court of appeals was affirmed and the cause was remanded to the circuit court with directions to dismiss the bill of complaint;

That the decision by the Supreme Court of the United States, that the said parties were not entitled to relief, was in part placed upon the ground that the said Northern Pacific system, in connection with the system of the Chicago, Burlington & Quincy Railway Company, above referred to, was competitive with the Union Pacific Railroad system, and the delivery to the complainants in said cause of a majority of the total Northern Pacific Railway Company stock would be in violation of said act of July 2, 1890 (197 U. S., 244, 297);

That the said defendants, Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, and their associates, caused the said action last above described to be prosecuted for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States, and with foreign nations, as hereinbefore more fully set forth;

That after the said decision of the Supreme Court of the United States the said Northern Securities Company proceeded with
780 the distribution of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company, as proposed, and said Oregon Short Line Railroad Company received many million dollars, par value, of the shares of said Northern Pacific Railway Company and said Great Northern Railway Company;

That a certain amount of the said stocks have been since disposed of by said Oregon Short Line Railroad Company, but that it is still the owner of large amounts of the same, as complainant is informed and believes, which said shares, and each and all of them are illegally held by said Oregon Short Line Railroad Company as the agent and representative of said conspirators, and are held pursuant to the said conspiracy and not otherwise.

VI. Complainant further avers that prior to the year 1902 the defendant, William A. Clark, together with certain associates, caused to be incorporated the said defendant San Pedro, Los Angeles & Salt Lake Railroad Company for the purpose of acquiring and constructing an independent competing line of railway from tide water at San Pedro, Cal., through Los Angeles, and across the States of California and Nevada and a portion of Utah to the city of Salt Lake;

781 That the said corporation acquired a line of railway from San Pedro to Los Angeles, and was engaged in the construction of the balance of its line when the said defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole purpose of restraining trade and commerce among the States and with foreign nations and monopolizing the same as hereinbefore more particularly set forth and of preventing competition between said railway so

the process of construction, and said Union Pacific Railroad system, including the said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same, put large gangs of men at work to interfere with and prevent construction of the said line, and threatened said Clark, his associates, and said San Pedro, Los Angeles & Salt Lake Railroad, that if said line was completed, the same would be paralleled by said Oregon Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigations, and other interferences were continued for a period of many months, as the result of which
782 the said defendant Clark and his associates were induced to desist from and abandon their proposed independent competing line, and said Harriman and his associates hereinbefore named and said Oregon Short Line Railroad Company on the one part, and the said Clark and his associates upon the other part, combined and confederated together to suppress such proposed competition; and to maintain, continue, and extend the restraint of trade and monopoly heretofore built up and attempted to be built up by said Harriman and his associates, as hereinbefore averred, said Clark joined in said conspiracy to suppress competition in all said territory as hereinbefore set forth, and pursuant to such alliance with said conspirators the said Clark entered into a certain agreement with the defendant Harriman, under date of July 9, 1902, a true and correct copy of which is hereto annexed, marked "Exhibit A," and made a part of this bill as fully as though set forth herein at length;

That pursuant to the said contract made between said defendants Clark and Harriman, certain supplemental deeds, contracts, and agreements in writing were made between the defendant Oregon Short Line Railroad Company, the defendant Union Pacific
783 Railroad Company, the defendant Southern Pacific Company, and said defendant San Pedro, Los Angeles & Salt Lake Railroad Company, in and by which contracts and agreements certain lines of railroad controlled by said Oregon Short Line Railroad Company in southern Utah and the eastern part of Nevada were conveyed to the San Pedro, Los Angeles & Salt Lake Railroad Company, and said Oregon Short Line Railroad Company desisted from its work of constructing a line of railway parallel with the said proposed line of the said San Pedro, Los Angeles & Salt Lake Railroad Company, and withdrew all opposition to the construction of the latter;

That said defendant Harriman secured to said San Pedro, Los Angeles & Salt Lake Railroad Company the use of certain of the tracks owned or controlled by said defendant Southern Pacific Com-

pany and said Atchison, Topeka & Santa Fe Railway Company in southern California, and the balance of the said line of the San Pedro, Los Angeles & Salt Lake Railroad Company between Los Angeles and the tracks of the Southern Pacific Company near Riverside, Cal., between the terminus of and the tracks of the Atchison, Topeka & Santa Fe Railway Company so leased to it near the Cajon Pass, in eastern California, and the terminus of the said line so acquired from the said Oregon Short Line Railroad Company

784 in eastern Nevada were at once constructed by said San Pedro, Los Angeles & Salt Lake Railroad Company, which, by means of said tracks so constructed, leased, and acquired is now engaged in operating a through line from San Pedro to Salt Lake;

That as provided by said contract Exhibit A, and for the purpose of maintaining, extending, and preserving the restraint of trade and commerce among the States and with foreign nations, and monopolizing the same and destroying competition with relation thereto, pursuant to the conspiracy hereinbefore alleged, certain traffic arrangements and contracts were caused by said conspirators Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, William A. Clark, and their associates, to be made between said San Pedro, Los Angeles and Salt Lake Railroad Company, and said Southern Pacific Company, by which it was agreed that upon all local competitive business the said San Pedro, Los Angeles & Salt Lake Railroad Company should adopt the tariffs and schedules of said Southern Pacific Company, and that the same should not be at any time changed without the consent of both parties to said agreement during the period of ninety-

785 nine years thereafter; and certain other contracts were made by which said Oregon Short Line Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company, respectively, bound themselves for a like period of ninety-nine years that they would not build or assist in building any lines of railway in the respective territories served by said companies; that is to say, that the San Pedro, Los Angeles & Salt Lake Railroad Company would not construct any lines of railway north of the parallel of Salt Lake City, Utah, and the Oregon Short Line Railway Company would not construct any lines south of the parallel of Salt Lake City, Utah, except by common consent; it was further agreed between said Union Pacific Railroad Company and said San Pedro, Los Angeles & Salt Lake Railroad Company that the said Union Pacific Railroad Company should have the right to make and establish through rates on all joint business between points reached over the lines of said Union Pacific Railroad Company and points in Utah on the said San Pedro, Los Angeles & Salt Lake Railroad Company; and in many and divers other ways the said San Pedro, Los Angeles & S

Lake Railroad Company surrendered the control of said company and the management of its affairs to the said Harriman and his
86 associates, including said Union Pacific Railroad Company and said Oregon Short Line Railroad Company.

That the said conspirators caused a total issue of $25,000,000 par value of stock of said San Pedro, Los Angeles & Salt Lake Railroad Company to be made, and the same was divided in equal parts between the said Clark, representing himself and his associates, and the said Harriman, representing said Oregon Short Line Railroad Company; and said stock was, with the exception of the shares necessary to qualify the directors of said San Pedro, Los Angeles & Salt Lake Railroad Company, placed in the names of said defendants Harriman and Clark, respectively, and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, under an agreement by which said trust company should hold and vote the same at all stockholders' meetings for a long term of years, in such manner as said company might be directed by said Clark and Harriman, a true and correct copy of which agreement is hereto attached, marked "Exhibit B," and made a part hereof, as fully as though herein set forth at length;

That each and all of the acts hereinbefore last described were done pursuant to said original conspiracy to suppress competition
87 and procure a monopoly of the transportation business throughout the territory hereinbefore described, in which conspiracy the said Clark joined, and to which he united himself as above set forth;

That in pursuance of the said combination, confederation, and conspiracy the said lines of railroad so owned and operated by said San Pedro, Los Angeles & Salt Lake Railroad Company are in all respects managed, operated, and controlled by the said conspirators; and there is not, and can not be, while such control continues, any competition whatsoever between the said San Pedro, Los Angeles & Salt Lake Railroad Company and said Southern Pacific Company, or the other lines of railway owned or controlled by said Union Pacific Railroad Company and said Harriman and his associates, as hereinbefore alleged.

VII. Complainant further avers that, pursuant to the said conspiracy to restrain trade and commerce among the several States and with foreign nations, and to monopolize and attempt to monopolize such trade and commerce, and to unlawfully restrain and prevent competition among said railway systems, the said defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick did, in or
88 about the early part of the year 1904, make large purchases of stock of the said Atchison, Topeka & Santa Fe Railway Com-

pany, aggregating, as complainant is informed and believes, at least
$30,000,000 par value of said stock, and after making said purchase
the said defendants Schiff, Harriman, and Frick demanded of the
officials of the said Atchison, Topeka & Santa Fe Railway Company
who held the proxies of the holders of a majority of the stock of said
company, that certain of said parties so engaged in said conspiracy
should be chosen and elected as directors of said Atchison, Topeka
& Santa Fe Railway Company; that pursuant to said demand, and
by reason of the fact that under the cumulative system of voting
which was provided for in the charter of said railway company, the
holders of the amount of stock so controlled by said defendants Schiff,
Harriman, Kahn, Stillman, Rogers, and Frick would have been able
to elect two directors of said company, the said officials consented and
agreed that said defendants Rogers and Frick, who had united them-
selves with the said conspiracy so originally made by said Harriman,
Schiff, Kahn, and Stillman, and the various railway companies here-
inbefore mentioned, might be elected as directors of said Atchison,
Topeka & Santa Fe Railway Company, and during the said
789 year 1904 the said defendants Frick and Rogers were so elected
as directors of said Atchison, Topeka & Santa Fe Railway
Company, and have since served and are still serving as such di-
rectors, and that by means thereof the said Union Pacific Railroad
Company, of which said Rogers and Frick are, and during all of said
times have been, directors, and in which they are largely interested,
has had knowledge of the affairs and business of said Atchison, To-
peka & Santa Fe Railway Company;

That in the summer of 1906, for the purpose of making more cer-
tain and effective the restraint of trade and elimination of compe-
tition and the monopolization of commerce hereinbefore referred to,
the said Harriman and his co-conspirators, including said Union
Pacific Railroad Company, caused to be purchased by said Union
Pacific Railroad Company $10,000,000 par value of the stock of said
Atchison, Topeka & Santa Fe Railway Company, and said Union
Pacific Railroad Company is still the owner and holder thereof, as
complainant is informed and believes;

That pursuant to said partial control of said Atchison, Topeka &
Santa Fe Railway Company so obtained by said Harriman and his
associates, including said Union Pacific Railroad Company,
790 competition between the system of railways so controlled by
said Union Pacific Railroad Company and said Atchison,
Topeka & Santa Fe Railway Company has to a large extent been
eliminated; that the said conspirators have caused the said Southern
Pacific Company to abandon certain extensions, improvements, and
additions to their said interstate railway in the State of California,
and the said Atchison, Topeka & Santa Fe Railway Company has

been in the same manner caused and induced to abandon extensions and additions to its said interstate railway lines in said State of California, and said extensions so projected and partially completed have been amalgamated, and the title to the said property placed in the name of a new corporation known as the "Northwestern Pacific Railway Company," the stock of which is owned in equal parts by said Southern Pacific Company and said Atchison, Topeka & Santa Fe Railway Company under a contract by which the control of said lines, additions, and extensions is to be in alternate years exercised by said two companies, respectively, but for the common benefit of said two corporations; and the lines of railway of said Union Pacific Railroad Company, said Southern Pacific Company, and said Atchison, Topeka & Santa Fe Railway Company are operated in harmony with each other under agreements and understandings
791 as to rates and divisions of business.

That all of the said acts hereinbefore enumerated have been done pursuant to the said conspiracy so originally formed by certain of the defendants, as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time, as above alleged.

VIII. In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge, and decree that the combination and conspiracy hereinbefore described is unlawful and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants, and each and every one of them, and their officers, directors, stockholders, agents, and servants, and each and every one of them, be perpetually enjoined from doing any action in pursuance of or for the purpose of carrying out the same, and in addition that the several defendants be respectively enjoined as follows:

792 1. That the defendants, the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, and their respective officers, directors, executive committees, and their respective agents and servants, and each and every one of them, be perpetually enjoined from purchasing, acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company, the Great Northern Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, and the Southern Pacific Company.

2. That the defendant Northern Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their
793 interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock unless authorized by this court.

3. That the defendant Great Northern Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of
794 said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest of such stock, unless authorized by this court.

4. That the defendant Atchison, Topeka & Santa Fe Railway Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from per-

mitting said companies or any person or corporation in their interest or acting for them to vote such stock, whether by proxy or otherwise, and be further enjoined from paying dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from
795 recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

5. That the defendant Southern Pacific Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, or any person or corporation whatsoever, in their interest or in the interest of any one of them, as the owner or holder of any shares of its capital stock, and from permitting said companies, or any person or corporation in their interest or acting for them, to vote such stock, whether by proxy or otherwise, and be further enjoined from paying any dividends upon such stock to either of said companies, or any person or corporation acting for them, or any assigns of said companies, or any person or corporation acting for them, unless authorized by this court, and from recognizing as valid any transfer, mortgage, pledge, or assignment by said companies, or any of them, or any person or corporation in their interest, of such stock, unless authorized by this court.

796 6. That the said San Pedro, Los Angeles & Salt Lake Railroad Company, its stockholders, officers, directors, agents, and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the said Oregon Short Line Railroad Company or said Harriman as the nominal holder of the stock in said San Pedro, Los Angeles & Salt Lake Railroad Company, issued for the benefit of said Oregon Short Line Railroad Company, or said Farmers' Loan & Trust Company as the depositary of said one-half of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company, as the owner or holder of any shares of the capital stock of said San Pedro, Los Angeles & Salt Lake Railroad Company; and be further enjoined from permitting such parties, or any of them, or any person or corporation in their interest, to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to any of said parties, or their assigns, unless authorized by this court; and from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line

Railroad Company or said Harriman or said Farmers' Loan & Tru
Company unless authorized by this court.

797 7. That the defendant Farmers' Loan & Trust Company, i
trustees, officers, agents, servants, and all persons acting und
its authority, be perpetually enjoined from voting the said stoc
or any stock of the said San Pedro, Los Angeles & Salt Lake Rai
road Company held by it under the said agreement Exhibit B,
any meeting of the stockholders of said railroad corporation; an
that said Farmers' Loan & Trust Company be perpetually enjoine
from transferring or assigning the said stock, or any of the sam
unless authorized by this court.

8. That said defendant W. A. Clark, his agents, servants, and a
persons acting by, through, or under him, be perpetually enjoine
from in any manner carrying out the said contract Exhibit B, an
from voting, either personally or through any proxy or represent
tive, any of the stock of said San Pedro, Los Angeles & Salt Lak
Railroad Company for the purpose of carrying out the said unlawf
combination in restraint of trade and commerce.

9. That the individual defendants named, and their associat
stockholders, and each and every person combining or conspirin
with them and their trustees, agents, and assigns, present or futur
and each and every one of them, be perpetually enjoined fro

798 doing any and every act or thing in furtherance of the com
bination or conspiracy, or tending to carry out the conspiracy
described in this bill of complaint, or intended or tending to com
plete control or partial control of said competing lines of railwa
by the said Union Pacific Railroad Company, the Oregon Short Lin
Railroad Company, or the Oregon Railroad & Navigation Com
pany, or their officers, directors, and executive committees, or in th
control, legal or practical, of any person or persons, association o
corporations, acting for or in lieu of said Union Pacific Railroa
Company or the Oregon Short Line Railroad Company or the Or
gon Railroad & Navigation Company, in the carrying out of th
unlawful combination or conspiracy hereinbefore alleged.

10. That each and all of the acts and doings of said defendant
in pursuance of said conspiracy be decreed to be in violation of sai
act of Congress approved July 2, 1890, entitled "An act to protec
trade and commerce against unlawful restraint and monopolies,
and the acts amendatory thereof, and that a writ of injunction, man
datory or otherwise, as may be necessary, issue out of this cour
enjoining the said defendants, and each and every one of them, an
commanding the said defendants, and each and every one of them
their officers, directors, servants, and agents to desi

799 from the said unlawful acts, and that they and each of them
and all and each of their respective directors, officers, agents

ervants, employees, and all persons acting under or through them
r either of them, or in their behalf, or claiming so to act, be en-
oined, restrained, and prohibited from entering into, taking part in,
r performing any contract, combination, or conspiracy the pur-
ose or effect of which will be as to said trade and commerce among
he several States and Territories and with foreign nations to re-
train trade or to monopolize and attempt to monopolize said trade
nd commerce in violation of the provisions of the said acts of
Congress.

11. And the complainant, the United States of America, prays for
uch other and further relief as the nature of the case may require
nd the court may deem proper in the premises; to the end therefore
hat the United States of America may obtain the relief to which it
s justly entitled in the premises, may it please your honors to grant
nto it writs of subpœna directed to the said defendants, Union Pa-
ific Railroad Company, Oregon Short Line Railroad Company,
Oregon Railroad & Navigation Company, San Pedro, Los Angeles
& Salt Lake Railroad Company, Atchison, Topeka & Santa
00 Fe Railway Company, Southern Pacific Company, Northern
Pacific Railway Company, Great Northern Railway Company,
Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H.
Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C.
Frick, and William A. Clark, and their co-conspirators whose names
re unknown to the complainant, as such names may become known to
omplainant and the court be advised thereof, and to each of them,
ommanding them and each of them to appear herein and answer
but not under oath) the allegations contained in the foregoing pe-
tion and abide by and perform such order or decree as the court may
ake in the premises; and that pending the final hearing of this case
temporary restraining order and temporary writ of injunction may
ssue enjoining the defendants and their associates, and each of them,
nd their stockholders, directors, officers, agents, and servants, as
ereinbefore prayed.

HIRMAN E. BOOTH,
Attorney for the United States
for the District of Utah.
CHARLES J. BONAPARTE,
Attorney General of the United States.
01 MILTON D. PURDY,
Assistant to the Attorney General.
FRANK B. KELLOGG,
C. A. SEVERANCE,
Special Assistants to the Attorney
General of the United States.

Exhibit A.

Clark-Harriman agreement, July 9, 1902.

This agreement made and entered into this ninth day of July 1902, by and between William A. Clark, hereinafter designated as Clark, trustee, for his own account and upon account of his associates, who are, with himself, owners of approximately seventy per cent of the capital stock of the California Improvement Company hereinafter called the California Company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire Company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro Company, and Los Angeles Terminal Land Company, and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line Company, or such company or companies as he may declare parties to said trust, party of the second part, witnesseth:

802

Whereas said California Company is a corporation existing under the laws of the State of Illinois, having an issued capital stock of $2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of $300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of $3,000,000, all of which capital stock of said two last-named companies is now in the treasury of said California Company; and the said California Company also owns 25,000 shares of the capital stock of the San Pedro Company in the aggregate amount of $2,500,000 par value, which stock of said San Pedro Company is now issued and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California Company, as their interests may appear; said capital stock of all said companies being divided

803

into shares of $100 each; and also owns and claims the right to receive and obtain from said San Pedro Company, to be delivered to W. A. Clark and R. C. Kerens, as trustees for its stockholders as their interests may appear, $2,500,000 par value of the first mortgage bonds of said San Pedro Company when the same shall be hereafter issued; and

Whereas all of the railroad, franchises, rights of way, terminal facilities, and railroad property, and all other property, real, personal, and mixed, acquired by the Los Angeles Terminal Railway Company has been by said company sold and conveyed to the San Pedro Company; and

Whereas the Empire Construction Company is a corporation of
e State of Utah organized for the purpose of providing for the
nancing, construction, and equipment of the railroad of said San
edro Company, with a capital stock of $1,000,000, divided into shares
f $100 each par value, all of which capital stock has been subscribed
r and has been fully paid up and issued; and

Whereas said William A. Clark for himself and his said associ-
es, in whose behalf he now owns or directly controls approximately
seventy per cent of the capital stock of the California Com-
04 pany, the Empire Construction Company, and the San Pedro
Company, and the remainder of said capital stock, being ap-
roximately thirty per cent of said capital stock of said companies,
owned, held, or controlled by others not directly represented by
id Clark; and

Whereas the assets of said Empire Company consist of its claims
gainst and contracts with the said San Pedro Company for money
dvanced, work done, and material furnished on account of the im-
rovement and acquirement of railroad property for said San Pedro
ompany; and

Whereas the San Pedro Company is the owner of the railroad,
uipment, rolling stock, terminal properties, station grounds, and
l real, personal, and mixed property formerly owned by the Los
ngeles Terminal Railway Company, and also owns certain other
ilroads, railroad properties, franchises, rights of way, roadbeds,
ations, station grounds, water stations, equipment, rolling stock,
ols, machines, machinery, supplies, and other property procured
r and intended to be used as a part of the railroad property of the
id San Pedro Company and situated in the States of California,
tah, and Nevada, all of which property is free and clear of any
debts, incumbrance, or charges except the indebtedness to the
05 said Empire Company, and its promise to execute and deliver,
when issued, its said first-mortgage bonds in the aggregate
ar amount of $2,500,000 to William A. Clark and R. C. Kerens,
rustees for said stockholders of said California Company, as afore-
id; and

Whereas the said Los Angeles Terminal Land Company is the
wner of certain real estate situated in Los Angeles County, Cali-
ornia, including a tract of real estate situated on or near the harbor
f San Pedro, in said county and State, all of which property of said
os Angeles Terminal Land Company is free and clear of all incum-
rances, liens, and claims of every kind; and

Whereas said Short Line Company is the owner of and controls and
perates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the
estern boundary of said State, thence across the State of Idaho and

to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the State of Utah, and thence north across the State of Idaho to a termi-
806 nus at Silver Bow, Butte, and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with a branch line extending from Lehi Junction into the Tintic mining district and the branch lines connecting therewith, and also a branch line known as the terminus line, together with various controlled, owned, and auxiliary lines of railroad in the above-named States and the States of Nevada and California.

The Short Line Company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas the said railroads of the Short Line Company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming,
807 Colorado, and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence easterly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas, and Nebraska; and said lines of railroad of the Short Line Company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada and into California and beyond; and

Whereas the San Pedro Company and the Short Line Company and its auxiliary companies under their respective charters each have power to construct a line of railroad between Salt Lake City and San Pedro Harbor in southern California, via Los Angeles; and

Whereas the parties hereto desire to provide for the establishment, construction, ownership, and operation of a line and system of railroad between said termini by using therefor a part of the lines of railroad now owned or controlled by the Short Line Company, and all the railroads and properties of the San Pedro Company now owned by it or owned in its interest or for its use, and by connec-

ing said several lines, either by the construction of a new line
308 or by securing leasehold or trackage rights over other lines of railroad to so connect said lines, and by means thereof to make one connected through line of railroad between said termini, to the end that the same may constitute a new through transportation line for the use of the business of said San Pedro Company and said Short Line Company and their connections, and for the carriage of business which may originate on or be destined to points on or beyond their respective lines, or which may be delivered to them, or either of them, by connecting railroads, and for the carriage of business between stations on their respective lines and between all points on or beyond their respective lines, as well as to all points on or beyond the lines of railroad owned or operated by the connections of said Short Line Company or said San Pedro Company, as aforesaid, upon through tariffs to be jointly made and lawfully published, and upon just and fair divisions of through rates and charges upon interchanged business;

Now, therefore, for the purposes aforesaid and to accomplish the same the parties hereto have covenanted and do hereby mutually covenant and agree to and with each other as follows:

309 Article first.

SECTION 1. The said William A. Clark, for himself and as trustee for his said associates, in consideration of the premises and of the undertakings of said Edward H. Harriman, as trustee as aforesaid, hereby covenants and agrees to and with the said Edward H. Harriman, as trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and within six months after the date hereof cause to be assigned and delivered to said Harriman as such trustee, or otherwise as provided by section 4 of this article, an equal undivided half interest in approximately seventy per cent of the capital stock of each of the companies below named, that is to say:

(a) An undivided half interest in said approximately seventy per cent of the capital stock of the California Improvement Company held by said Clark and his associates as aforesaid, and through the medium of said stock an undivided half interest in said approximately seventy per cent of $2,500,000 par value of the first mortgage bonds of the said San Pedro Company by it agreed to be issued and delivered to said William A. Clark and R. C. Kerens, trustees as aforesaid.

310 (b) An equal undivided half interest in said approximately seventy per cent of the outstanding capital stock of said San Pedro company owned by said Clark and his associates but held in the

names of Clark and Kerens, trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(c) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Empire Construction Company.

(d) An undivided half interest in said approximately seventy per cent of the capital stock of the Los Angeles Terminal Railway Company.

(e) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

811 SECTION 2. In consideration of the foregoing the said Harriman as trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent of said outstanding capital stock of each said California company and said Empire Company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent interest thereon from the time he acquired the same, less any amounts which the said Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments, or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman, as trustee, from the associates of said Clark, the prices and conditions of sale shall be the same as above

812 provided for the purchase of the said Clark's individual stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as trustee, further covenants and agrees that he will join with said Clark, trustee, in the purchase at prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent of said stocks, and that the same when so purchased for joint account of said Clark and himself as such trustees shall be transferred and assigned to and held jointly

in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as trustee as aforesaid, as such trustee, shall own each an equal undivided half of all of the capital stocks of all of the above-named companies.

SECTION 4. It is hereby agreed that all of said capital stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, trustee, under the provision of said sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, trustee for himself and
813 his associates, and Edward H. Harriman, as trustee," and that all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, trustees, together with all of the stock of the San Pedro Company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as trustee for himself and his associates, and Edward H. Harriman, as trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California Company, or said Empire Company, or of said San Pedro Company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro Company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any time without giving said other party hereto the right to pur-
814 chase such holdings, or interest therein, so offered for sale, on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be at the request of either party hereto, divided between said Harriman and Clark, as trustees, according to their respective interests; provided, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, trustee, for himself and his associates, and Edward H. Harriman, as trustee," all of the said several shares of stock and certificates representing the same referred to in this section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in

trust for the parties hereto, in accordance with and subject to
terms of an agreement to be executed between the parties hereto
the said trust company concerning the holding of said shares.

The said last-named agreement shall, among other thi
815 provide, first, that said trust company shall issue to the par
hereto certificates of interest running to the said "William
Clark, trustee, for himself and his associates, and Edward H. Ha
man, trustee," jointly, each party hereto to have possession of cer
cates representing one-half in number of the shares and one-half
par value thereof, which may be deposited with the said trustee; a
second, that said trust company will, from time to time, when join
requested by the said "William A. Clark, trustee, for himself
his associates, and Edward H. Harriman, trustee," give and is
to such person or persons as said parties hereto may direct a pro
or proxies authorizing the person or persons named in said proxy
proxies to vote any and all of said stock at any meeting of
stockholders of said several companies; and, third, that said tr
company shall pay over to the parties hereto, or such persons as th
shall jointly direct, any and all individuals, whether of stocks, bon
moneys, or property of any sort belonging to any of said seve
corporations, and which may be paid to or received by said tr
company in any manner by reason of its holdings of any of s
capital stock as aforesaid, together with such other provisions
may be hereafter agreed upon touching instructions wh
816 may, from time to time, be given to said trustees jointly
the parties hereto, said certificates of interest above named
be held and possessed by the parties hereto, but neither party sh
in any manner dispose of said certificates of interest, or any p
thereof, or of any interest therein, before the full period of ten ye
after the opening for business of said through line of said San Pe
Company, as in this agreement provided, without first obtaining t
consent of the other party hereto to such transfer, nor at any ti
without giving such other party hereto the right to purchase su
holdings or certificates offered for sale on as favorable terms as t
same are offered for sale or agreed to be sold to any other perso
company. At the end of said period of ten years said certific
of interest may be surrendered by the parties hereto, or by the hold
thereof, to said trust company, which shall thereupon assign a
deliver the said stock certificates so held by it to the said holders
said certificates of interest in number and par value of shares nam
in such surrendered certificates of interest, and said shares of sto
may then be transferred upon the corporate books of said seve
companies accordingly. At any time thereafter said certi
817 cates of stock issued jointly to said "Clark, trustee, and Har
man, trustee," may upon demand of either party hereto

ivided between them according to their respective interest, yet ubject, however, to the right of either party hereto to purchase said tock from the other party hereto at the price and on the terms in his section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the arrying out of this agreement no further stock of the California ompany or of the San Pedro Company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the id one undivided one-half of the capital stock of said companies, ow owned by said Clark, trustee, will, whenever requested by said Harriman, trustee, cause one-half of the membership of the direc-orate of each of the several companies to be vacated, and will cause irectors to be nominated and named by the said Harriman, trustee, o be elected to the directorate to fill such vacancies in each and every f said several companies, but said Harriman, trustee, appreciating he advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end distrurbing as 18 little as may be the present organization of said company until the through line of said San Pedro Company in this greement mentioned is completed and in operation, will not exercise he right herein given him to name one-half of the said boards of irectors unless he shall deem the exercise of such right necessary o the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Con-truction Company and the San Pedro Company not having been efinitely agreed to, it is mutually covenanted and agreed between he parties hereto that within six months from the date hereof a ontract shall be entered into between the said Empire company and he said San Pedro company which shall be in terms satisfactory to he parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining o the construction, opening for business, and operation of the rail-oad of the San Pedro Company, including the purchase of equip-ent, the making of contracts for construction, and the purchase of aterial therefor, and any and all contracts establishing relations f trackage or traffic with other railway companies, the parties shall act jointly, and no such contracts or arrangements, or any of 19 them, shall be made, or any corporate action taken by said San Pedro Company, the California Company, or the Empire ompany without the approval of both parties hereto, and that in ll such matters each of the parties hereto may be represented by n agent or agents to be appointed by them respectively with power o act for and in the names of their respective principals, and the id parties shall also act jointly in naming and prescribing the ccounting and other officers and agents to be engaged in the oper-

ation of said companies, and each of them, and the auditor of said Empire Company shall be a person selected by the said Harriman trustee, and upon the request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights, and franchises of each of said several companies.

Article second.

SECTION 1. In consideration of the covenants of the said Clark trustee, for himself and his associates, and also on behalf of the San Pedro Company, in this agreement written, the said Harriman, trustee, as aforesaid, covenants and agrees with said Clark, as trustee, that he will in the time hereinafter stated negotiate with said Short Line Company, and obtain from said Short Line Company the sale and lease to said San Pedro Company of the property hereinafter mentioned, as follows:

(Parcel 1.) A conveyance from said Short Line Company to said San Pedro Company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus Branch of the Short Line Railroad from a point or points beginning at the connection of said branch with the yards of the Short Line Company to be agreed upon when said yards are defined as hereinafter provided, in Salt Lake City, county of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus in the county of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys, and maps thereof, and railroad property, other than equipment, 821 acquired by the Short Line Company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro Company as hereinafter provided.

(Parcel 2.) A conveyance from said Short Line Company to said San Pedro Company by a good and sufficient deed containing a covenant to save and protect that said San Pedro Company harmless from the lien or charge of the consolidated mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from

ens of the income A and income B mortgages of said company, for
ll and singular the following described property: All the line of rail-
oad extending from a point near Sandy and about ten miles south
f Salt Lake City, Utah, to be hereafter definitely fixed by a de-
cription and agreement between the parties hereto, and running from
aid point southerly through Provo, Juab, and Leamington to Mil-
ord, Utah, and thence a further distance of about 17 miles to a
erminus of said line of railroad at Frisco, Utah, and also all those
certain other branch lines of railroad owned by said Short
22 Line Company which extend into what is known as the Tintic
district, and which are generally described as follows: A line
xtending from Lehi Junction to the Tintic district, together with
ll branches and interest in joint tracks connecting therewith.

(Parcel 3.) A lease from the said Short Line Company for the
erm of ninety-nine years, granting to said San Pedro Company
he general and common use for its sole and separate business, in
ommon with the Short Line Company, of that part of the main
ine or lines of the said Short Line Company's railroad extending
rom the northerly yard limit point thereon southerly through the
ity of Salt Lake for a distance of about ten miles south from the
outhern limits of said Salt Lake City to a point on said main line
o be hereafter definitely fixed, but which is to be so fixed as to admit
he Short Line Company and the San Pedro Company to the unob-
tructed use of the side tracks and switches necessary or convenient
or use of and access to the side tracks, switches, and properties of
ither of said companies, or to any or all of the smelters or other
ndustrial institutions now existing or that may be hereafter estab-
shed upon or near to said main tracks, together with all side
tracks, stubs, spurs, switches, crossovers, standing places for
23 cars, stations, signals, buildings, coal chutes, shops, round-
houses, turntables, and every other facility or property used
n connection with or appurtenant to the property or business of the
hort Line Company between said northerly yard limit and said
oint near Sandy about ten miles south of the southerly boundary
f said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line Com-
any to the San Pedro Company, providing for the said use of the
roperties of the said Short Line Company from the north yard
mit in Salt Lake City to the said point near Sandy, including the
rminal facilities of the Short Line Company in Salt Lake City,
tah, shall be upon the consideration that the San Pedro Company
all pay, in monthly installments, a rental based upon a four per
nt interest charge upon an agreed valuation of said property and
e cost of any capital additions thereto hereafter made, apportioned

between said Short Line Company and said San Pedro Compa
upon the basis of use, but with a fixed minimum proportion to b
paid by said San Pedro Company, and also a proportionate amou
of the expense of maintenance, improvement, and operation of sa
property, including taxes, special assessments, and insuranc
824 the amounts of which rental and other payments and the rul
for ascertaining the same, together with rules for governi
extensions and betterments, and the cost, rental, and use thereof, an
rules governing the operation of said yard shall be agreed to by th
operating officials of said Short Line Company and said San Pedr
Company, subject to the approval of the parties hereto, and whic
shall then be incorporated in said contract of lease, together with a
formal provisions usual to such contracts.

The said property, the use of which for its own separate busine
is let to the San Pedro Company, shall be managed and controll
by the Short Line Company, provided, however, that for cause upo
demand of the San Pedro Company, after thirty days' written no
tice, to be given to the general manager of the Short Line Compa
by the San Pedro Company, a competent superintendent for the sa
shall be jointly chosen by the respective presidents of the San Pedr
Company and the Short Line Company, who shall be charged wi
the care, management, and operation of said property, to the e
that the rights and privileges of the said parties thereto under th
agreement shall be fully secured and preserved. Said superintende
shall be removed or discharged upon reasonable notice upo
825 the written demand of either party to said lease given to t
other party.

(Parcel 4.) The Short Line Company is the owner of all of th
capital stock and first-mortgage bonds of the Utah & Pacific Ra
way Company, which owns a line of railroad extending from M
ford, Utah, to the Nevada-Utah State line at a point known
Uvada, and said Short Line Company owns all of the capital sto
of the Utah, Nevada and California Railroad Company, a co
poration of the State of Nevada, which owns a railroad extendi
from the Utah-Nevada State line, at the point aforesaid, southe
to Calientes, in Lincoln County, Nevada, and a right of way a
partially constructed roadbed for a line of railroad extending fr
said Calientes to a point near Pioche, in said Lincoln County, a
also a right of way and partially constructed roadbed for a line
road extending from said Calientes southwesterly across the So
of Nevada to the Nevada-California State line; and said Short L
Company also owns all of the capital stock of the Utah, Nevada
California Railroad Company in California, a corporation of t
State of California, which claims or owns a right of way extendi
from the Nevada-California State line to a point on the railroad

the Santa Fe Company near Ludlow, Cal., and other railroad
926 properties; said Short Line Company also owns all of the capital stock of the New East Tintic Railway Company, which ast-named company owns a line of railroad in the Tintic district.

The said Harriman, trustee, undertakes and agrees to procure from he Short Line Company an agreement to sell to the San Pedro Com- any, upon payment of prices to be fixed as hereinafter provided, all f the capital stock and first-mortgage bonds of each of the follow- ng-named companies: The said Utah & Pacific Railway Company, he said Utah, Nevada & California Railroad Company, the said Utah, Nevada & California Railroad Company in California, and he said New East Tintic Railway Company, and an agreement from he Short Line Company that it will, upon the request of the San Pedro Company, if necessary, act with the said San Pedro Company n procuring from each of the said several companies lastly above amed a cancellation of the first-mortgage bonds and the release and atisfaction of the said first mortgages, and also in procuring con- eyances to said San Pedro Company from each of said four com- anies above named of all the railroad, franchises, and other property wned by said companies, respectively, so as to vest the said San
Pedro Company with the full title to and ownership in all of
927 said railroads, franchises, and other property in this paragraph mentioned.

(Parcel 5.) The said Harriman, trustee, as aforesaid, undertakes nd agrees that said Short Line Company will sell and convey to he San Pedro Company such a proportion of its equipment appro- riate and proper for use upon and heretofore assigned to use upon s lines of railroad south of Salt Lake City above referred to as may etermine between the chief operating officers of said companies, pon being paid therefor, the value of said equipment as the same hall be found and determined by the joint action of the superintend- nt of motive power of the parties hereto, and said Clark, as trustee, ndertakes that said San Pedro Company will buy said equipment nd pay for the same on the delivery thereof at the price so found nd determined.

SECTION 2. The said Clark, trustee as aforesaid, in consideration f the covenants and agreements of the said Harriman, as trustee as foresaid, as written in this article, hereby undertakes and agrees hat he will negotiate with and obtain from said San Pedro Company covenant and agreement on its part that it will buy from the said hort Line Company and pay for all of the properties referred to
and described in this article as parcels 1, 2, 4, 5, and that the
928 value of the said railroads and properties to be conveyed by the Short Line Company described in said parcels shall be as- rtained and determined, except as to said equipment, in the follow-

ing manner: By a fair estimate of the value thereof, to be agreed upon by the parties hereto, based upon the cost, which is to be the minimum factor, and upon the earning power of the said railroads, franchises, and properties, capitalized at four per cent per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro Company to the Short Line Company upon making the conveyance, transfers, and assignments as aforesaid.

Said agreements shall provide that said San Pedro Company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, relocation, construction, and reconstruction upon the premises described in parcel 1 hereof, and will carry out, fulfill, and perform all of the said Short Line Company's obligations in respect to said work, and will use the said new work when completed as part of the San Pedro
829 Company's main line of railroad, and that said San Pedro Company will accept said lease for the property described in parcel 3 on the terms above written.

All said conveyances, assignments, and transfers and said lease to be made and delivered, and considerations therefor paid contemporaneously with the exchange of stock and the execution of the agreement hereinafter mentioned are to be accomplished within six months from the date hereof.

Article third.

SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company, and if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern Pacific Company from the point of its junction with the tracks of the Southern California Company at or near Colton to the point of junction with the tracks of the San Pedro Company at or near Riverside, at a rental that will not exceed four per cent per annum on one-half the valuation of the property of the Southern Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

830 SECTION 2. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, at a rental not exceeding four per cent

per annum on one-half the valuation of the property of the Southern California Company so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 3. Said Harriman, as trustee, further covenants and agrees that he will negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of the said Santa Fe Pacific Company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro Company, at a rental which shall not exceed four per cent per annum on one-half the valuation of the property of the said Santa Fe
331 Pacific Company so used, and a share of the cost of maintenance thereof, including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro Company to pay to each of said lessors for water, fuel, and other supplies, labor or material furnished to and for the sole use of the San Pedro Company while upon the tracks of said several companies, and also the usual conditions and agreements for payment by the San Pedro Company to said several lessors for losses and damages to persons or property arising from the negligence or wrongdoing of its sole employees.

Article fourth.

The parties hereto, as trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro Company and the said Short Line Company shall and will, on or before the date named in section 2 of article second hereof, enter into an agreement, and agreement for a term of ninety-nine years, with each other concerning the new line of transportation and traffic substantially to the effect following:

332 (a) The said new transportation line shall consist of the line of railroad to be created, secured, constructed, and operated under the charter and franchises of the San Pedro Company. Its main line shall commence at the city of Salt Lake, Utah, and run southerly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific Company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Company, the Southern California Company, and the Southern Pacific Company to a connection with the San Pedro Company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.

(b) But if for any reason any of said trackage arrangements referred to in article fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro Company in lieu thereof, making and constituting a through line of railroad from the city of Salt Lake to San Pedro Harbor via Los Angeles in California.

(c) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line
833 Company and described in parcel 2 above mentioned and the branch lines of the San Pedro Company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro Company, it being understood that the San Pedro Company shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(d) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro Company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof, providing, however, that if either party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line
834 Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line Company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line Company shall not build branch lines which will invade the territory of the San Pedro Company South of Salt Lake City or divert business which would be naturally tributary to the San Pedro Company's road south of Salt Lake City.

SECTION 2. The San Pedro Company will in said contract agree to construct the railroad from a junction on the line of the Santa Fe Pacific Company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line Company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed, or to be constructed by the San Pedro Company, and which is to become a portion of the main line thereof, shall be constructed with not less than

seventy-five pound rail and shall be completed and equipped as first class in every respect, the construction and equipment to be of a standard equal at least to that already adopted by the San Pedro Company upon that portion of its road heretofore constructed in southern California.

835 SECTION 3. The Short Line Company will in said contract undertake for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific Company, to join with the San Pedro Company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro Company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and rates, and the maintenance thereof, and the publication thereof, as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

836 "It is agreed that the interchange of traffic by and between the San Pedro road, on the one hand, and the Short Line Company and the Union Pacific Company, on the other hand, as against any competitor of said Short Line Company or said Union Pacific Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific Company; and, in like manner, that the interchange of traffic by and between said Short Line Company and said Union Pacific Company, on the other hand, and the San Pedro Company, on the other hand, as against any competitor of the said San Pedro Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro Company;

"That is to say,

"Whereas the value of the Short Line Company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro Company is hereinbefore provided, consists largely of their relation as feeders of said Short Line Company and said Union Pacific Company, and, whereas it is not practicable to capitalize the value to said Short Line and said Union Pacific Company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line Company and said Union

Pacific Company for the loss which would result from the
837 diversion to other carriers of the traffic moving to and from
points on said lines in Utah south of Salt Lake City.

"Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific Company and their respective connections shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific Company. In consideration whereof said Short Line and said Union Pacific Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro Company exclusively in connection with said San Pedro Company against any and all said San Pedro Company's competitors.

"Whereas the owners of said Short Line and said Union Pacific Company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a railroad already constructed which would give entrance to
838 Los Angeles and other points in southern California; and whereas the value to said Short Line and said Union Pacific Company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line and said Union Pacific Company, or by persons or companies friendly to said Short Line and said Union Pacific Company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line and said Union Pacific Company, or by companies friendly to them; and whereas, by the sale of or by the transfer by lease or purchase to the said San Pedro Company of the line of said Short Line Company south of Salt Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of
839 the line proposed to be built by the San Pedro Company, the said Short Line and said Union Pacific Company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California

which might be lawfully conducted in the interest of said Short Line and said Union Pacific Company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro Company of the ownership or control of the lines of the Short Line Company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro Company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California
340 and the roads of the Short Line and Union Pacific Company, so as to form a through line of transportation service between points in California on the said San Pedro Company's roads and points east of Ogden, Utah, on or to be reached by way of the Union Pacific Company's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be done and profitably that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably, and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in
341 this subdivision which shall be offered for transportation by other connecting carriers, nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions, directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties

hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or which shall have the effect of giving said connection an advantage or preference over said through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

842 "No arrangement, contract, covenant, or agreement for shipment or carriage of persons or property shall be made, permitted, or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line Company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line Company is bound for itself and undertakes to secure a like obligation upon the part of the Union Pacific

843 Company and the roads of said Southern Pacific Company to deal with said San Pedro Company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively, deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro Company."

SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line Company and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their

respective lines, and points on the line of said San Pedro Company in Utah, for business which said Short Line Company or said Union Pacific Company might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company; provided, however, that on demand said Short Line Company and said Union Pacific Company shall join said San Pedro Company in any through rates necessary to meet
844 the rates offered by any competing through line for such business."

SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with or make any convention with a competitor of the other party hereto in any respect designed to or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

845 SECTION 12. Said agreement shall also contain the following provision:

"Said San Pedro Company hereby covenants and grees that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City or in Nevada upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line Company hereby further undertakes and agrees to negotiate with and secure, if possible, from said Southern Pacific Company an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as

said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

"The San Pedro Company covenants and agrees that it will
846 make a covenant or agreement with the Southern Pacific Company for its (said San Pedro Company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs, and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro Company which is or may be subject to competition between said Southern Pacific Company and said San Pedro Company, and that thereafter neither party shall change said rates without the consent of the other party unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific Company to its terminus at Council Bluffs, Iowa, and thence via its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger
service shall be so established and put in operation whenever
847 either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefore shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design and in all respects the equal of superior of that of competing lines. Each party shall furnish its just quota in proportion to length of haul of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided pro rata per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery, and dispatch the same regularly, without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own lines, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business."

848 SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation Company, pro rata per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis: Provided, That neither party shall be required to perform any service other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers
849 shall be divided pro rata per rate; that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed can not be located or arises from concealed or unknown causes the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and be-
850 tween the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties each party shall receive its local rate.

"2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If
851 the two presidents within thirty days after receiving such complaint are unable to settle such differences so submitted, then the same shall, within thirty days thereafter, be referred to a committee of the two boards of directors to be created as provided in this article. Notice of the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee when reduced to writing and signed by them or a majority of them shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

Article fifth.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agree-
852 ment by the party of the second part is subject to ratification and approval by the executive committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,
In Trust for Himself and His Associates.

EDWARD H. HARRIMAN,
As Trustee, as in Above Instrument Recited.

Exhibit B.

William A. Clark, individually and as a trustee.
Edward H. Harriman, as trustee, and
The Farmers' Loan and Trust Company.

Stock trust agreement.

This agreement, made and entered into this 7th day of June, A. D. 903, by and between William A. Clark, of the city of Butte, in the tate of Montana, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, 53 of Arden, New York, as trustee, as party of the second part, and The Farmers' Loan and Trust Company, a corporation reated under the laws of the State of New York, hereinafter called he trustee, as party of the third part, witnesseth:

Article I.

SECTION 1. The parties of the first and second parts, in considera-on of the sum of one dollar to each of them in hand paid, the re-ipt whereof is hereby acknowledged, and in further consideration f the acceptance by the trustee of the trust hereby created, do jointly nd severally sell, assign, deliver, and set over unto said trustee under he terms of this instrument, and to the successor in trust, if any, of id trustee, all and singular the following certificates of capital stock nd the stock interest therein or thereby represented, viz:

1. Twenty-five thousand nine hundred and ninety shares of the pital stock of the California Improvement Company;

2. Ten thousand shares of the capital stock of the Empire Con-ruction Company;

3. Three thousand shares of the capital stock of the Los Angeles erminal Land Company;

4. Two hundred and fifty thousand shares of the capital 54 stock of the San Pedro, Los Angeles and Salt Lake Railroad Company (including those held by the directors of said railroad mpany), subject to the pledge and deposit of all the foregoing ares with Kuhn, Loeb & Co., duly assigned in blank, as part of the llateral for a loan of $25,000,000 made by said Kuhn, Loeb & Co. to id railroad company, and in order to secure the transfer of which reunder the said parties of the first and second parts have executed order to said Kuhn, Loeb & Co. as follows:

NEW YORK, ——, 190

To Messrs. Kuhn, Loeb & Co.:

There have heretofore been deposited and pledged with you under the terms of a certain agreement dated June 3, 1903, between yourselves and the San Pedro, Los Angeles, and Salt Lake Railroad Company, as part of the collateral security for the loan therein provided for, two hundred and fifty thousand shares of the capital stock of the said San Pedro, Los Angeles, and Salt Lake Railroad Company, all except directors' shares being owned by William A. Clark and Edward H. Harriman.

This is to authorize and direct you, upon the payment of the loan described in said agreement with the interest thereon, and
855 upon the satisfaction of the obligations therein contained, to deliver all of the said shares of stock to The Farmers' Loan and Trust Company, of the city of New York, to be held by said trust company under the terms of a certain stock-trust agreement dated June 7, 1903.

If hereafter you decline to make the additional loan described in said first-mentioned agreement, and are called upon to surrender the two-sevenths in par amount of said shares of stock as provided in said agreement, this directs you to deliver the stock so to be surrendered to or upon the joint order of William A. Clark and Edward H. Harriman, their executors and administrators.

San Pedro, Los Angeles, and Salt Lake Railroad Company, by ——— ———, president, and ——— ———, secretary.

WILLIAM A. CLARK.
EDWARD H. HARRIMAN.

Notice of above direction accepted:

KUHN, LOEB & CO.

So soon as the said shares of stock so transferred hereunder shall be received by the trustee, the same shall at once be transferred
856 upon the books of said respective corporations into the name of the trustee, and all of the terms and conditions of this instrument shall at once attach thereto and all property in the said stock shall be deemed vested in the trustee as fully and to the same extent, and with the same force and effect, as if actual transfer and delivery of said shares of stock had been, at the time of the execution of this instrument, duly made to the trustee hereunder.

In case Kuhn, Loeb & Co. shall hereafter decline to make the additional loan of $10,000,000 provided for in their agreement with the San Pedro Company, dated June 3, 1903, and shall surrender to the parties of the first and second parts two-sevenths in par amount of the capital stock of the San Pedro Company, the said parties of the first and second parts hereby covenant with each other that they

e same or so much thereof as may be necessary as part of the col-
teral security to be given to some other lender who shall make a
an of not exceeding $10,000,000 to said San Pedro Company, and
at, upon making said loan by said other lender, the parties of the
st and second parts will execute and deliver to said lender an order
r the delivery of said shares of stock by said lender to the trustee,
in like form as said order hereinbefore set forth, requiring
7 said lender, upon the payment or other satisfaction of the loan
and lien under which said shares may be pledged to him, to
liver said stock to said trustee for said account of said parties of
e first and second parts as such trustees; and that in all other re-
ects any shares of stock so surredered to them by said Kuhn, Loeb
Co. shall be deemed sold, transferred, and delivered to the trustee,
d shall be subject to and bound by all of the terms of this agree-
ent.

SECTION 2. The parties of the first and second parts further cove-
nt and agree to and with each other, and to and with the trustee,
at from time to time, and when, individually or as trustee, they
all or may hereafter jointly secure by purchase or otherwise any
ditional shares of the capital stock of either or any of said several
mpanies named in section 1 of this article, whether such stock be
w issued or hereafter may be issued, they will immediately sell,
sign, deliver, and set over to the trustee any and all such shares of
ock, subject to all the terms and trusts of this agreement.

SECTION 3. The parties of the first and second parts further sev-
erally covenant and agree to and with each other, and to and
8 with the trustee, that in case either of the parties of the first
or second parts or their respective cestuis que trust shall here-
ter secure, by purchase or otherwise, any further or additional
ares of capital stock of any of the said companies mentioned in
ction 1 hereof, and not theretofore deposited with the trustee,
hether such capital stock be now issued or at any time hereafter be
sued by any of said companies, such acquisition, however made,
all be for and upon their joint account, at joint cost, and for the
ual benefit and ownership of the parties of the first and second
rts and their respective cestui que trust, and that the same shall
, whether it be stock now issued or stock which may be at any time
reafter issued by any of the said companies, if and when the cost
ereof shall be borne or paid jointly by the parties of the first and
cond parts hereto, in like manner immediately assigned, trans-
rred, and delivered to the trustee, and shall be and become subject
the terms hereof. But if the other of said first party or said second
rty shall not, on demand of the party who made such acquisition,
for whom such acquisition was made, pay one-half of the cost

thereof to the party acquiring the same, then such party who
acquired the same, may, but not otherwise, hold and own
859 additional shares as his own, and free from the terms of
agreement, and free from any claim of interest therein by
other party hereto.

SECTION 4. The parties of the first and second parts further co
nant to and with each other, and to and with the trustee, that in
they or either of them shall in any manner or at any time hereaf
secure or acquire any of said additional shares of said capital stock
any of said companies, which is now issued or may hereafter be is
by any of said companies, he or they will immediately inform and
vise each of the other parties hereto of the time, manner, terms,
price at which such stock was secured or acquired, with an offer
subject the same to the terms of this agreement, and also that th
will at once cause the trustee to be fully informed of any increas
capital stock of any of said companies which may at any time he
after be authorized or made, and of the terms and conditions u
which the same is provided to be issued or is issued.

SECTION 5. The trustee shall have and hold all of the said shares
said capital stock of each of the companies mentioned in section 1
this article, and the certificates representing the same, and which
on the execution hereof, delivered to said trustee, as well a
860 as any and all such shares of capital stock mentioned in s
tions 2 and 3 of this article, which may hereafter be deliv
to the trustee, its successors or assigns, upon the trusts hereina
specified, from and after the execution hereof and for the term
years from the day when the railroad of the San Pedro, Los Ange
and Salt Lake Railroad Company, or its successor, shall be opened
business from Salt Lake City, Utah, to San Pedro, California.

Article II.

Directors' qualifying shares.

Enough shares of capital stock in each of the said companies m
tioned in Article I hereof to qualify the directorate in each of th
shall be reserved from the disposition of said shares of capital st
hereinafter provided, and the same shall be assigned and transfer
by the trustee to the names of the persons selected to be or who sh
be from time to time elected to such directorate. Such directo
qualifying certificates of shares, however, shall be at once assig
in blank by said directors and be delivered to and held in t
custody of the trustee, to be used for said purpose, but subject to
terms of this instrument.

Article III.

The trustee, its successors and assigns, shall cause all of the said ares of capital stock (except those necessary to qualify the directors aforesaid), and all the certificates thereof mentioned in Article I reof, as well as all other shares of capital stock which may at any me hereafter be delivered to the trustee under this instrument, to be mediately and from time to time transferred to it as trustee, upon e respective transfer books of the said several companies, and there- ter the trustee shall be possessed of and hold all of the said stock d certificates as trustee under this instrument, with full power to ld the same as the owner of the legal title thereto, but subject as tween the parties to this instrument and their assigns to all the usts in this instrument declared.

Article IV.

SECTION 1. The trustee shall issue "certificates of interest" against l of said shares of capital stock, and the certificates of capital stock hich may now be, or which may hereafter be at any time issued by y of said several companies, and by or for the parties of the first and second parts deposited with and assigned to the trustee to be and to become subject to the terms of this instrument, which said certificates of interest shall be issued by it to and the names of "William A. Clark, trustee, and Edward H. Harriman, trustee," duly certified and issued under the hand of its proper ficers and entered upon correct books of record which shall be kept the trustee, showing the details of the issuance and transfers of ch certificates in the usual manner and form of well organized corrations dealing with such matters.

SECTION 2. Said certificates may be in substantially the following rm:

The Farmers Loan and Trust Company,

Certificate of interest

in

(Insert name of proper company.)

o. ——. ——— shares.

This certificate of interest is issued to ——— ———, pursuant to e provisions of a certain stock trust agreement, dated June 7, 1903, ade by and between William A. Clark, contracting for himself and trustee for his associates, as party of the first part; Edward H.

Harriman, as trustee, as party of the second part, and
863 undersigned, as party of the third part, and reference to
agreement, an original of which has been lodged with the
signed, is hereby made.

This certificate of interest is based upon ——— ——— shares
the capital stock of the ——— ——— of the par value of one hu
dred dollars each, which have been sold, assigned, delivered, a
transferred to the undersigned as trustee under said agreement.

This certificate is not negotiable and not transferable, except
the written consent of William A. Clark, trustee, and Edward
Harriman, trustee, in the form of transfer and consent endorsed
this certificate, nor until this certificate shall be surrendered to
undersigned for cancellation, as provided by said agreement.

The holder or holders of this certificate of interest is and are
titled to receive the net proceeds (after paying the cost of col
ing and disbursing the same, including the trustee's fees) of
dividend or dividends declared or to be declared and of any
which may come into the possession of the undersigned as the
or owner of any of the shares of capital stock of the said —
——— Company in respect of which this certificate is
864 At the end of the full term of ten years from the da
which the railroad of the San Pedro, Los Angeles and Salt L
Railroad Company shall be opened for business from Salt Lake C
Utah, to San Pedro, California, the registered holder of this cer
cate may surrender the same to the undersigned, and upon pay
of any sums due or to become due to the trustee under the ter
said agreement shall be entitled to receive from the trustee cer
cates in the name of such holder for the shares of capital stock
respect of which this certificate was issued.

By the acceptance of this certificate the holder thereof shall
bound by all the terms and provisions of said agreement, dated J
7, 1903, as fully and to the same extent as if such holder were a p
thereto and had duly executed an agreement to abide thereby;
no holder thereof, other than "William A. Clark, trustee, and
ward H. Harriman, trustee," whether the cestui que trust of
Clark or of said Harriman, nor any other persons, shall have
interest, legal or equitable, in this certificate or in the shares of
ital stock upon which the same is issued, unless or until the
Clark, trustee, and said Harriman, trustee, shall have each in w
consented thereto.

865 When so assigned, this certificate shall be transferred
upon surrender thereof to the trustee and upon the exec

y the transferee of an agreement in the form prescribed by the said tock trust agreement.

THE FARMERS' LOAN AND TRUST COMPANY,
Trustee.

By ——— ———.

Attest:

———— ————,
Secretary.

There shall be endorsed upon said certificates of interest a form f assignment substantially in the following form:

Assignment.

For value received, —— hereby sell, assign, and transfer unto —— ——— the within certificate of interest based upon ——— — shares of the capital stock of the ——— ———, and all of — interest therein, and do hereby irrevocably appoint ——— — attorney to transfer said certificate upon the books of The armers' Loan and Trust Company, with full power of substitution n the premises.

Dated ———.

No such assignment shall become effectual to pass any title to or right or interest in the said certificate, or in the shares f capital stock upon which the same is based, until there shall have een endorsed in writing thereon a consent substantially in the fol- owing form:

"Consent is hereby given to the above assignment of this certifi- ate, and to the transfer thereof, to ——— ———.

"WILLIAM A. CLARK, *Trustee.*
"EDWARD H. HARRIMAN, *Trustee.*

"In presence of:
———— ————."

Nor shall such assignment or consent be received from any in- ended transferee by the trustee for any purpose until such intended ransferee shall have executed and delivered to the trustee, by en- orsing the same upon such certificate so to be transferred, an under- aking in the following form:

"The undersigned accept this certificate, subject to all the terms nd conditions of the agreement dated June 3, 1903, therein men- ioned, by which the undersigned agree to be fully bound as if a arty thereto, and agree ——— ——— to hold all interest acquired hereby, and by any new certificate of interest, if any, issued in re- pect thereof under and subject to the terms of said agreement."

867 Upon the due execution of all of which and the presentation thereof to the trustee, it may, but not otherwise, cause such transfers to be made and entered of record.

SECTION 3. Said certificates of interest as to the shares of stock in each of said several companies shall be issued and delivered to the parties of the first and second parts in their joint names, in equal amount, so that each of the parties of the first and second parts shall respectively receive from the trustee each one-half in number and one-half in par value of the capital stock in each of said companies now or from time to time transferred or delivered to the trustee and in respect of which said certificates of interest may be issued.

SECTION 4. No transfer of any of such certificates of interest shall be made by the trustee upon its books or otherwise, unless such certificates shall be first surrendered and returned to the trustee for cancellation and shall have been by it canceled; nor unless the same shall each bear endorsed thereon the written consent to such transfer signed by each of said parties of the first and second parts, nor until such proposed transferee shall in writing consent to all the terms of
868 this instrument and agree to be bound thereby as if a party thereto, and to be bound and limited by the terms and conditions written in and endorsed upon said certificates of interest.

SECTION 5. The trustee may from time to time make such reasonable rules respecting the making and issuance of certificates of interest, and the transfer thereof, as it may find necessary; and, upon the written request of all the holders of outstanding certificates of interest, it shall make, adopt, and enforce any rule or regulation concerning the assignment or transfer of such certificates of interest which all of said holders of outstanding certificates of interest may so request.

Article V.

SECTION 1. The trustee may collect any dividends paid or payable declared or to be declared, by any of said companies, and any funds due to any of them from any source whatever, in respect of the said shares of capital stock so held by the trustee, and shall immediately upon such receipt and collection of any such dividends or funds, pay over any such dividends or funds to the parties of the first and second parts, or their successors or assigns, ratably and according
869 to their respective holdings of said certificates of interest representing the stock upon which such dividends or funds have been paid as appears by the records of the trustee, and may also pay over the like ratable proportion of any such dividends or funds to any registered holder of such certificates of interest, whose holding thereof was acquired by any assignment of such certificates of interest, with and upon the written consent of the parties of the first

and second parts, and upon the said transfers, consent, and undertaking, as provided by section 4 of Article IV of this agreement.

SECTION 2. The trustee will at any time, upon the written request of the parties of the first and second parts, or the successor in trust of either of them, issue to the persons jointly named by said parties of the first and second parts, or said successor, its proxy or proxies upon all of the shares of capital stock of each of said several companies then held by it and registered in its name, to be voted at any annual, special, adjourned, or called meeting, of the stockholders of any of the said companies.

SECTION 3. At least sixty days before the day of the annual meeting of the stockholders of any of the said companies, the parties of the first and second parts shall, in writing, either jointly or
870 separately, notify the trustee of the names of the persons to whom the trustee shall issue the proxy or proxies mentioned in section 2 of this article. If the names so notified to the trustee are not identical, the trustee shall transmit to each of the parties a copy of the said notice of the other party, and unless thirty days before the day of such annual meeting the parties of the first and second parts shall have lodged with the trustee an agreement or consent to the names of the same persons to whom said proxies shall issue, it shall then be the duty of the trustee, not less than twenty days before the day of such meeting of the stockholders, to call, in writing, upon each of the parties of the first and second parts to each nominate a number of persons, not more than one-half of the number of persons to be elected as directors at such meeting, and thereupon the trustee shall issue its proxy or proxies to such person or attorney as it may select to appear at such annual meeting, and there to vote all the shares of capital stock in such company so held by said trustee, for directors thereof, one-half of the number of directors to be the persons so nominated to it for such purpose by each of the said parties of the first and second parts, respectively. Any communication provided to be made hereby may be made between the parties
871 or their duly appointed attorney by letter or by telegrams sent at the expense of the trust. In case the number of directors to be chosen for any such company shall be an odd number, then the president of the trustee shall be elected as one of said directors, unless said parties of the first and second parts shall jointly nominate another person to be so elected, and the remaining directors shall be elected, one-half from the persons nominated for such office by the party of the first part, and one-half from the persons nominated for such office by the party of the second part.

SECTION 4. If the said parties shall include in their said nominations of persons to be voted for as directors by the trustee, as provided for in section 3 of this article, the names of the same person or

persons, the trustee shall, by letter or by telegram, notify each of said parties of the first and second parts of the fact of such double nomination, and in such case either of said parties may withdraw the name of the person so twice nominated and substitute the name of another person to be voted for by the trustee or its attorney in fact; but in case either of said parties of the first or second parts shall fail to nominate some person in lieu of the person so nomi-
872 nated by both parties, then the president of the trustee shall select some managing officer of the trustee to be voted for as such director in lieu of one of said double nominations by one of said parties.

SECTION 5. In case it shall happen at any time while the capital stock of the said several companies, or any of them, remains deposited with the trustee, that the stockholders in any of said companies shall be called at any regular or special meeting to act upon any question other than the election of directors, the trustee shall issue its proxy upon said capital stock to the person or persons whom the said parties of the first and second parts may jointly request. In case the said parties shall not agree as to the person so to be appointed, the trustee shall select some discreet and proper person to vote upon such question in such meeting in the manner and as the parties hereto may in writing request; and in case no such request shall be jointly made by said parties, then the trustee shall vote upon such question upon the stock so held by it in the manner and as the president of the trustee shall determine.

SECTION 6. The initiative in all matters in this article provided shall be taken by the parties of the first and second parts
873 hereto, and the trustee shall not be charged with any duty except as in this article provided, in case of a failure of the said parties of the first and second parts to agree in direction to the trustee as in this instrument provided.

Article VI.

SECTION 1. None of the stock held by the trustee under the terms of this agreement and none of the certificates of interest issued thereunder shall, until the end of the full term of the ten years hereinafter created, be in any manner or for any purpose sold, assigned or transferred, or otherwise disposed of, or shall any interest therein or right thereto, legal or equitable, be sold, transferred, or assigned or otherwise disposed of by either the party of the first or the party of the second part hereto except upon the consent in writing of the other of said parties first had and obtained and lodged with the trustee; nor unless the party hereto desiring to effect such sale, assignment, or transfer, or other disposition shall have first offered the

other of said parties hereto the right and opportunity to purchase the same stock certificates, interest, legal or equitable, or right, on as favorable terms, and such party shall neglect to avail himself
874 of such opportunity for the space of thirty days.

SECTION 2. Nothing in this article, however, shall be construed to prohibit either of the said parties of the first and second parts, respectively, from making and delivering to himself or to his cestuis que trust or associates receipts or other instruments, in form negotiable or otherwise, hereinafter termed "certificates of interest," in respect of the number of shares of stock in each of said companies which he has or which such associates or cestuis que trust have deposited under said trust or with their said respective personal trustees under some agreement satisfactory to such personal trustee and to the owners of such capital stock so deposited with the said personal trustee; but such agreement or arrangement shall be so made as to provide that none of the owners of such certificates of interest so issued by either one of the said personal trustees shall, by virtue of such ownership or otherwise, in any manner interfere with the control, ownership, use, custody, and possession of said third party of the capital stock so deposited by said personal trustee with the trustee under this agreement, nor shall any such arrangement or agreement charge the trustee under this agreement
875 with any duty to any holder of any such personal trustee certificate, nor shall the party of the third part be required to recognize any such personal trustee certificate in any manner or for any purpose whatever.

SECTION 3. At the end of the term hereby created the parties of the first and second parts covenant to and with each other and to and with the trustee to surrender to the said trustee any and all certificates of interest issued by the trustee and respectively held by them, or either of them, and thereupon the trustee may, and it hereby covenants and agrees to and with each of the other parties hereto that it will, upon the request of either of said other parties, assign the capital stock or capital-stock certificates represented by said surrendered certificates of interest jointly to and in the names of the parties of the first and second parts, and shall deliver to each of the said parties of the first and second parts the certificates of capital stock in any of said several companies which are represented by the certificates of interest issued against the said capital stock by the trustee, and which shall be surrendered to the trustee by said respective parties, or it may, upon a like surrender by the holders thereof, assign into the names of such holders of its certificates of
876 interest and deliver to such holder or holders of its said certificates of interest the number of shares of capital stock in any of said companies, and in the par value in respect of which the

trustee had issued its said certificates of interest, provided that such holder or holders of said certificates took and held the same under the terms and upon the written consents of the said parties of the first and second parts, and upon the other conditions provided for by this instrument; and upon such assignment and delivery the said capital stock may be transferred upon the books of the said several companies into the names of such assignees. Upon any such assignment and delivery of said shares of capital stock by the trustees to the holders of any certificate of interest issued by the trustee, the trustee shall not thereafter be charged with any duty of liability in respect of any of said capital stock or certificate of interest.

SECTION 4. Each of the parties of the first and second parts covenants with the other that any and all shares of stock and stock certificates received by him, under the terms of section 3 of this article, will not be sold or offered for sale at any time after receiving the same, until the other of said parties shall have been given
877 the right to purchase such shares of capital stock on as favorable terms as the same or any part thereof are offered for sale or agreed to be sold, or sold to any other person, firm, or company, it being the intention of each of the parties hereto to give to the other a preferential right to purchase any of said shares of capital stock upon any sale or other disposition thereof.

Article VII.

SECTION 1. In case the parties of the first and second parts, respectively, may desire to wind up the business, distribute the assets, or otherwise bring about a dissolution of the said California Improvement Company, the Empire Construction Company and the Los Angeles Terminal Land Company, or some of them, or for any other purpose to withdraw the shares of stock of any of said companies from the trust hereby created, then upon the surrender of the certificates of interest issued by the trustee in respect of the shares of the capital stock of any such company, the trustee may, and upon the joint request of the parties of the first and second parts shall, assign the said stock certificate and deliver the same to such person or persons as may be named in such request; and thereupon the
878 trustee shall not be further charged in respect to any stock in or business of such company and this agreement shall no longer affect the same.

Article VIII.

SECTION 1. The provisions of this agreement shall be binding and in full force and effect from the date hereof and for the further full term of ten years from the day on which the railroad of the

San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business between Salt Lake City, Utah, and San Pedro, California; and the parties of the first and second parts covenant and agree that they will cause the San Pedro, Los Angeles and Salt Lake Railroad Company to certify to the trustee the date at which it is so open for business, and that the said certificate shall be conclusive as to the fact so stated.

SECTION 2. It is nevertheless agreed by all the parties hereto that this agreement may at any time be modified, changed, or abrogated, in whole or in part, upon the consent of all of the holders of record of the said certificates of interest issued by the trustee if and when the same is approved in writing by the trustee.

Article IX.

879 SECTION 1. The parties of the first and second parts jointly and severally covenant and agree to and with each other and with the trustee to indemnify it and to save and keep it harmless from any loss, charges, or damages which the trustee may incur by reason of its holding the legal title to or the ownership in and custody of the said several shares of capital stock in any of said several companies.

SECTION 2. They also covenant and agree to pay each one-half of the reasonable compensation to be paid to the trustee for itself and for its agents, servants, or attorneys, for anything done or to be done by them or any of them in the performance of the duties of the trustee under the terms of this instrument, and any costs, damages, or expenses incurred by the trustee in any suit or action which may be brought or conducted by any person having or claiming to have an interest in the subject-matter of the trust estate and in which the trustee may be sued or, if it elect, in which it may voluntarily appear.

Article X.

SECTION 1. In case the said William A. Clark shall at any time die or resign as trustee for his said cestui que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the 880 holder or holders of certificates of interest, issued by said William A. Clark to himself and to the persons who deposited any of said capital stock with said Clark may, by a majority vote of all shares represented in said certificates, select some other person to be trustee in lieu and in place of said William A. Clark; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Clark may

execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Clark to all intents and purposes, as if such person had been originally the party to this instrument instead of said Clark.

SECTION 2. In case the said Edward H. Harriman shall at any time die or resign as trustee for his said cestuis que trust, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest issued by said Edward H. Harriman in respect of said capital stock may, by a majority vote of all of said certificates of interest, select some other person to be trustee in lieu and in place of said Edward H.
881 Harriman; and upon said selection being certified to said trustee by the written certificate of the said holders of said certificates, the cestuis que trust making such selection, the said person so selected in place of said Harriman may execute the copy of said agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions, and matters be substituted for said Harriman to all intents and purposes as if such person had been originally the party to this instrument instead of said Harriman.

In testimony whereof the said party of the first part and the said party of the second part have hereunto subscribed their names and affixed their seals; and the said party of the third part, for the purpose of signifying its acceptance of the trust herein and hereby created, has caused these presents to be signed by its president, sealed with its corporate seal, and attested by its secretary, the day and year first above written.

Signed in triplicate.

W. A. CLARK, [L.S.]
W. A. CLARK, *as trustee.* [L.S.]
EDWARD H. HARRIMAN, *as trustee.* [L.S.]

882 THE FARMERS' LOAN AND TRUST COMPANY, *Trustee.*

[SEAL.] By E. S. MARSTON, *President.*

Attest:

SAM SLOAN, Jr., *Sec'y.*

883 No. 993. United States Circuit Court, District of Utah.

In equity.

The United States of America, complainant, v. Union Pacific Railroad Company et al., defendants. Answer of the defendant, Edward H. Harriman. (Filed April 6, 1908.)

884 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

885 Separate answer of the defendant, Edward H. Harriman, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to himself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as he may be advised it is material or necessary for him to make answer unto, answering, says:

I. He admits that all the corporations mentioned in Subdivision I of the petition were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them respectively are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign nations.

II. (1) He denies that from January 1, 1901, or at any time he and the defendants, Jacob H. Schiff, Otto H. Kahn, and
886 James Stillman, with certain other persons, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that on the 23d day of May, 1898, he became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, he became and ever since has been and still is president of said corporation.

(3) He admits that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898,

and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(4) He admits that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) He admits that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the
887 13th day of February, 1908, when he resigned.

(6) He admits that the said James Stillman was a member of the executive committee of the board of directors of said Union Pacific Railroad Company from the 8th day of December, 1897, until the 13th day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(8) He admits that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of
888 said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted he denies each and every allegation of Subdivision II of the petition.

III. (1) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Council Bluffs, Iowa, to Ogden, Utah, which it acquired in 1897 at a sale made under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in Subdivision III of the petition and foreclosing mortgages securing bonds issued by the company incorporated under said act of Congress approved July 1, 1862, to construct said railroad, and has ever since owned said line.

(2) He admits that defendant Union Pacific Railroad Company owns a line of railroad from Kansas City, Missouri, to Denver, Colorado, which it acquired in 1898 under decrees foreclosing the lien of the Government of the United States thereon arising under the acts of Congress mentioned in said subdivision of the petition and foreclosing mortgages securing bonds issued by the "Union Pacific Railroad Company, eastern division," and the "Kansas Pacific Railway Company," and has ever since owned said line.

(3) He admits that defendant Union Pacific Railroad Company owns a line of railroad extending from Denver to Cheyenne, Wyoming, which it acquired at a sale under foreclosure decrees in 1898, and has ever since owned said line; and that said defendant Union Pacific Railroad Company also owns a line of railroad from Julesburg to La Salle, Colorado, which it acquired by purchase from the owners thereof in 1899, and which it has ever since owned.

(4) He admits the consolidation of "The Union Pacific Railroad Company," incorporated under the act of Congress approved July 1, 1862, the "Kansas Pacific Railway Company," and the "Denver Pacific Railway and Telegraph Company" into and under the name, style, and title of "The Union Pacific Railway Company," and avers that such consolidation occurred on or about January 24, 1880.

(5) He admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and he admits that the Western Pacific Railroad Company was also organized under the laws of said State. He admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." He admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company commenced the construction, and after the consolidation aforesaid the company formed by such consolidation completed the said railroad from Sacramento to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) He refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petitions respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for and to the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts. (13 Stat., 356; 12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat.,

356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79;
891 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 St
430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat.,
20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat.,

(7) He admits that since 1897 the Oregon Short Line Railr
Company, and since 1896 the Oregon Railroad and Navigation C
pany each has owned lines of railroad as alleged in Subdivision
of the petition.

(8) He admits that defendants Union Pacific Railroad Compa
Oregon Short Line Railroad Company, and the Oregon Railro
and Navigation Company each owns and operates important bra
lines of railroad.

(9) He admits that prior to January 1, 1901, the Union Pac
Railroad Company acquired and has ever since owned and still o
substantially all the capital stock of defendant Oregon Short L
Railroad Company, and that prior to said date the Oregon Sh
Line Railroad Company acquired and has ever since owned and s
owns substantially all the capital stock of defendant the Oreg
Railroad and Navigation Company.

(10) He admits that by means of such stock ownership the Un
Pacific Railroad Company has since its acquisition been a
892 to elect, by voting upon such stock through its proxies,
directors of said Oregon Short Line Railroad Company, a
that the latter, by voting upon said stock through its proxies, h
elected the directors of the Oregon Railroad and Navigation Co
pany, but he avers that the railroads and other property of t
Oregon Short Line Railroad Company have at all times been co
trolled, managed, and operated by said Oregon Short Line Railr
Company, in its own name and by its own officers and agents: a
that the railroads and other property of the Oregon Railroad a
Navigation Company have at all times been controlled, managed, a
operated by the Oregon Railroad and Navigation Company in
own name and by its own officers and agents.

(11) He admits that prior to and at all times since the 1st day
January, 1901, the lines of railroad owned by defendant Un
Pacific Railroad Company, Oregon Short Line Railroad Compa
and the Oregon Railroad and Navigation Company, respectiv
have been operated as one system, and that said lines, extending fr
Council Bluffs, Iowa, and Kansas City, Missouri, to Ogden, and S
Lake City, Utah, Butte, Montana, and Portland, Oregon, have co
posed and still compose continuous through lines, operated h
moniously and, so far as affecting the shipping and travel
893 public, practically as if owned and operated by a single co
pany.

(12) He admits that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging about 1,350 net tons each, plying between Portland and San Francisco, by way of the Willamette and Columbia Rivers and the Pacific Ocean; and he avers that in the year 1904, the San Francisco and Portland Steamship Company, a corporation of the State of California, was organized, that all of its stock was acquired by the Oregon Railroad and Navigation Company and two of said steamships were transferred by charter to said San Francisco and Portland Steamship Company, and said San Francisco and Portland Steamship Company has since operated and now regularly operates two steamships, one of 2,317 tons and one of 1,836 tons, between San Francisco and Portland, via the Pacific Ocean and the Willamette and Columbia Rivers.

(13) He denies that the Oregon Railroad and Navigation Company ever operated a line of steamships or any steamships between Portland, Oregon, and Japan and China or other Asiatic ports.

(14) He admits that on or about the 14th day of January, 1901, the Portland and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navigation Company; and he admits that said Portland and Asiatic Steamship Company has sometimes operated steamships between Portland, Oregon, and Asiatic ports under charter; but he denies that said steamship company has ever owned or now owns any steamships or has ever operated or now operates any regular line of steamships.

(15) He denies that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamships operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(16) He admits that the Southern Pacific Company was, on January 1, 1901, and still is, the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans, in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California, and to Portland, Oregon.

(17) He admits that said Southern Pacific Company, in 190 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and New York and Galveston and between New Orleans and Havana which connect at New Orleans and Galveston with said rail lines.

(18) He admits that on the 1st day of January, 1901, the Southern Pacific Company owned, has ever since owned, and now owns all the capital stock of the Central Pacific Railway Company, which he avers is a corporation organized and existing under the laws of the State of Utah, and which acquired and now owns and operates all the railroads and other property formerly owned and operated by the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, the corporations referred to in the aforesaid acts of Congress and by the California corporation into which they were merged by consolidation; and he also avers that said Southern Pacific Company on and prior to the 1st day of January, 190

and ever since that date has held, possessed, and operated

896 and still holds, possesses, and operates the railroads of said Central Pacific Railway Company, with their appurtenances under and by virtue of instruments of lease theretofore made and entered into.

(19) He admits that on January 1, 1901, said Southern Pacific Company owned, has ever since owned, and still owns 100,500 shares out of a total of 200,000 shares, of the capital stock of the Pacific Mail Steamship Company, and that said Pacific Mail Steamship Company during all said period has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands and Chinese and Japanese ports; and also a line of steamships between San Francisco and Panama; but he denies that the said lines of steamships, with the railroad of the Panama Railroad Company and steamships operating on the Atlantic Ocean, form a through line between New York and San Francisco via the Isthmus of Panama.

(20) He denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco were at any time in competition with the said lines of the Union Pacific Railroad Company for the transportation of freight

897 between points in the Mississippi Valley and in the Eastern States or elsewhere and the Pacific Coast and points in Colorado and other interior States.

(21) He denies that the steamship lines of the Southern Pacific Company between New York and New Orleans and New York and Galveston, together with the rail lines in connection therewith, w

n active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic oast and in the Central States.

(22) He avers, on the contrary, that in the transcontinental lines f railroad reaching the Pacific coast south of Portland, Oregon, he Union Pacific Railroad was but a link about 1,000 miles in ength, and the Union Pacific Railroad Company merely an inter- ediate carrier without any power to make rates upon such traffic, nd that the defendant Southern Pacific Company, through its pos- ession and operation of the Central Pacific Railroad and its owner- hip of all of the stock of the Central Pacific Railway Company, ontrolled that portion of such transcontinental line extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points n California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic 98 ports could be made by the Union Pacific Railroad Company except with the consent of and by agreement with said South- rn Pacific Company; and while the said Union Pacific Railroad Company and its constituent companies, to wit, The Oregon Short Line Railroad Company and The Oregon Railroad and Navigation Company, separately owned connecting lines of railroad operated s a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as hereinbefore alleged, yet he avers hat such route via Portland was not only an impracticable route as competitor of said Southern Pacific Company, but any attempt of aid Union Pacific Railroad Company to use it as such competitor would have greatly injured the said Union Pacific Railroad Com- pany, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in outing and interchanging traffic at Ogden, and the business in ton- nage and revenue which the said Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total vol- me of business it could have secured over such impracticable route n competition with said Southern Pacific Company; so that the interest of said Union Pacific Railroad Company and the 99 companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Port- and in competition with said Southern Pacific Company upon any usiness to or from the Pacific coast south of Portland or to or from Asiatic ports.

(23) He denies that the rail line of said Southern Pacific Com- pany between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company

plying between San Francisco and Portland, and avers that competition between said lines was never practicable.

(24) He denies that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports, in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company.

(25) He denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points or that such competition was ever practicable.

900 (26) He denies that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(27) He admits that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad as alleged in subdivision III of the petition, and admits that the lines of the Union Pacific Railroad Company, in connection with the lines of the Central Pacific Railway Company, operated by the said Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast.

(28) He admits that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, about the year 1900, constituted the only line of transportation by rail from the Pacific coast, south of Portland, Oregon, to the Mississippi Valley and the East, except the lines

901 of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company, in connection with the Union Pacific Railroad, until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(29) He has no knowledge respecting the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports; but he denies that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and that

Union Pacific Railroad Company, was of great volume and embraced both passengers and freight.

(30) He admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but he denies that the lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of the Union Pacific Railroad Company; and he admits that the lines of the Chicago, Burlington 92 and Quincy Railroad Company are competitive with the lines owned and operated by the Union Pacific Railroad Company to a limited extent and between certain points.

(31) He denies that the traffic between the Pacific coast, Asiatic ports, and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it and the lines of said Northern Pacific Railway Company and Great Northern Railway Company and connections and steamship lines controlled by them.

(32) He admits that the defendant, The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro, on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California and Nevada and into Utah, to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City, Utah; and he denies that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

93 (33) He admits that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendants Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the

facilities and advantages in the carrying on of such trade and com
merce through the independent competition, if any there was, o
said railway systems and steamship lines or other railway syste
or steamship lines; or that he and the said defendants or a
904 of them ever entered into a combination or conspiracy t
effect a virtual or substantial consolidation of said Unio
Pacific Railroad Company and any other transcontinental railw
companies or steamship companies, or to place restraint upon a
competitive commerce, if any such there was, carried on by such co
panies, or to monopolize or attempt to monopolize the same, or t
suppress any competition existing between any of said companies o
lines by the means alleged in the petition or otherwise.

(2) He admits that on or about the 20th day of February, 19
defendant Union Pacific Railroad Company acquired by purcha
from said firm of Kuhn, Loeb & Co. 750,000 shares of the capi
stock of said Southern Pacific Company of the aggregate par val
of $75,000,000 out of 1,978,399 shares of the aggregate par value
$197,839,900 then issued and outstanding, but he denies that the sa
stock was purchased or acquired in pursuance of any conspiracy o
combination or for any of the purposes alleged in said petition.

(3) He admits that thereafter, to wit, on or about the 26th day
February, 1902, defendant Union Pacific Railroad Company sol
and delivered the said 750,000 shares of the stock of said Southe
Pacific Company to defendant Oregon Short Line Railro
905 Company, which has ever since owned and still owns the sa

(4) He admits that thereafter, to wit, on or about the 3d
day of May, 1902, defendant Oregon Short Line Railroad Compa
acquired by purchase from said Kuhn, Loeb & Co. 150,000 additio
shares of stock of said Southern Pacific Company, which said Oreg
Short Line Railroad Company has ever since owned and still own
but he denies that the said additional shares were purchased o
acquired in pursuance of any conspiracy or combination or for a
of the purposes alleged in the petition.

(5) He admits that thereafter, when in 1904 defendant Southe
Pacific Company created an issue of preferred stock which it offer
to its stockholders for subscription pro rata at par, said Oreg
Short Line Railroad Company as the owner of 900,000 shares o
the common stock of said Southern Pacific Company exercised i
right and subscribed for and received and has ever since owned a
still owns 180,000 shares of the preferred stock of said Southe
Pacific Company; and that thereafter, in 1907, when said Southe
Pacific Company increased its said preferred stock by an additio
issue thereof which it offered to the holders of its outstandi
906 stock for subscription pro rata at par, said Oregon Short Li

Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company exercised its right and subscribed for and received 162,000 additional shares of the preferred stock of said Southern Pacific Company, and it has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock, making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of
907 said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) He denies that the said preferred stock was issued by said Southern Pacific Company, or that any of the common stock of said company was acquired by said Oregon Short Line Railroad Company, or the Union Pacific Railroad Company, in pursuance of any combination or conspiracy or for any of the purposes or with the intent alleged in said petition.

(9) He admits that at the annual meetings of the stockholders of the Southern Pacific Company since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and he admits that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he avers that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(10) He admits that since April 3, 1901, a majority of
908 the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He admits that the stock of said Southern Pacific Compa not owned by defendant Oregon Short Line Railroad Company i owned by a large number of individuals, firms, and corporatio residing in many different places; but he denies that said stockholde are or will be unable to elect the directors of said Southern Paci Company, if they should deem it to their interest to do so, in op position to those voted for by said Oregon Short Line Railroad Com pany; and he avers that the reason why said stockholders have n heretofore elected the directors of said company is that they ha been satisfied with the directors nominated and elected by the agen and proxies of said Oregon Short Line Railroad Company in co junction with the agents and proxies of other stockholders.

(12) He admits that on the 3d day of April, 1901, he beca chairman of the executive committee, and on the 26th day of Se tember, 1901, he became the president of said Southern Pacific Co pany, and ever since has been and still is such chairman a president.

909 (13) He admits that the same person is the chief traf officer, the same person the chief operating officer, and t same person the chief accounting officer of both companies, and th said companies have jointly employed numerous commercial a other agents; but he avers that a very large majority of the agen officers, and employees of said companies are separate.

(14) He admits that since about the 26th day of October, 1904, t Pacific Mail Steamship Company, the Portland and Asiatic Stea ship Company, and the San Francisco and Portland Steamship Co pany have had the same officers and agents, but denies that there e was any competition between any of said steamship companies or a railroad or steamship lines.

(15) He denies each and every allegation of Subdivision IV of t petition, respecting the said Schiff, Kahn, Stillman, Union Pac Railroad Company, and this defendant, and any conspiracy or co bination among them for any of the purposes or with any of t intents alleged; and he denies each and every allegation of said S division IV of said petition not herein expressly admitted.

V. (1) He denies that he and the said Schiff, Kahn, Sti

910 man, Union Pacific Railroad, or any of them, in the spring 1901, or at any other time, caused the Union Pacific Railro Company to acquire a majority of the stock of the Northern Pac Railway Company pursuant to any conspiracy to restrain trade a commerce among the several States and with foreign nations, or t monopolize or attempt to monopolize such trade and commerce, or suppress any competition; and he denies all the allegations of S division V of the petition respecting any conspiracy or combinat

r that or any other purpose between any of the defendants to this it.

(2) He admits that in the year 1901 said Oregon Short Line Rail-ad Company purchased $37,023,000 par value of the common stock d $41,085,000 par value of the preferred stock of the Northern Pa-ic Railway Company, and that at the time of such purchase the tal stock of the Northern Pacific Railway Company issued and tstanding was of the aggregate par value of $155,000,000; but he nies that such purchase was in pursuance of any conspiracy or mbination or for any of the purposes alleged in the petition.

(3) He admits the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company, as alleged in said petition.

(4) He admits the sale and transfer of said stock to the Northern curities Company, and the receipt by said Oregon Short Line Rail-ad Company of $82,491,841 par value of the stock of said Northern curities Company represented by certificates issued in his name, d in the name of Winslow S. Pierce, who was at that time general unsel of defendant Union Pacific Railroad Company; and he ad-its that neither he nor the said Pierce had any personal interest in id shares.

(5) He admits the commencement of a suit by the United States America against said Northern Securities Company and others, d the decision of said suit as alleged in the petition.

(6) He admits the commencement thereafter of a suit by him and said Oregon Short Line Railroad Company, Winslow S. Pierce, d the Equitable Trust Company of New York, as alleged in the tition; and he admits that the relief sought by the complainants in id suit was denied by the decrees entered therein. But he avers at the said courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Rail-ad Company and its codefendants in said suit; and that as a re-lt of said distribution and of the approval of the same in said suit, e defendant Oregon Short Line Railroad Company during the year 04 received from the Northern Securities Company, as the interest d share of said Oregon Short Line Railroad Company of the assets distributed, 281,828 shares, being 18.18 per cent of the capital stock the Northern Pacific Railway Company, and 216,520 shares, being 82 per cent of the capital stock of the Great Northern Railway mpany; and that no doubt as to the right of said Oregon Short ne Railroad Company to so receive and hold the said shares was imated by any of the courts in such suit.

(7) He avers that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line
913 Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,745 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

(8) He denies that he and the said Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Winslow S. Pierce, the Equitable Trust Company of New York, and this defendant against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade as in said petition alleged.

(9) He denies each and every allegation of said Subdivision V not herein expressly admitted.
914

VI. (1) He admits that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company, but denies that it was for the purposes alleged in the petition, and refers to the articles of incorporation of the company for the purposes of its incorporation.

(2) He admits that on or about the 9th day of July, 1902, he entered into and executed with defendant William A. Clark an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement; but denies that said agreement was entered into for any of the purposes alleged in subdivision VI of the petition, or for any purpose not set forth or mentioned in said "Exhibit A," and he avers that in entering into and executing said contract he was acting for defendant Oregon Short Line Railroad Company and for no other corporation or person.

(3) He admits that pursuant to the said contract, "Exhibit A," other contracts between him and the said Clark and between
915 the Oregon Short Line Railroad Company and the San Pedro, Los Angeles and Salt Lake Railroad Company were made and entered into in June and July, 1903, but denies that any of such other contracts were of the character or for any of the purposes alleged in said subdivision VI of the petition.

(4) He admits that on or about the 7th day of June, 1903, a contract in writing bearing that date was made and entered into between him, as trustee for the defendant Oregon Short Line Railroad Company, and William A. Clark, individually and as trustee for his associates, and defendant The Farmers' Loan and Trust Company, of which "Exhibit B" annexed to the petition is a true copy, and that the stock of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was deposited with and is still held by the Farmers' Loan and Trust Company, defendant, as stipulated and provided in and by said contract "Exhibit B."

(5) He denies each and every allegation of a conspiracy or combination by and between himself and the defendants Schiff, Kahn, Stillman, Clark, Union Pacific Railroad Company, and Oregon Short Line Railroad Company, or any of them, for any of the objects or purposes mentioned in Subdivision VI of the petition, or
916 for any other purpose; and he denies each and every allegation in Subdivision VI of the petition not herein in this subdivision expressly admitted; and he avers the facts to be as follows, viz:

(a) As early as 1888 the Oregon Short Line and Utah Northern Railway Company, the corporation which formerly owned the lines of railroad now owned by defendant Oregon Short Line Railroad Company, resolved to construct a line of railroad from Salt Lake City, Utah, to Los Angeles, California, with various branches; and in 1890 it had constructed and put into operation the said line from Salt Like City, via Sandy, Provo, Juab, and Leamington, to Milford, a distance of 221.9 miles, and various branches, all of which are more particularly described as "Parcel I" and "Parcel II" of article second in the contract "Exhibit A" to the petition herein. It had complied with all the laws of the Territory of Utah and the State of Nevada, necessary to entitle it to construct said line and had surveyed and located the said line and under due corporate action had prepared and filed maps and profiles of the same in the proper land offices in Utah and Nevada to entitle it to, and it had acquired the right of way for, said line across the lands of the United States in a general southwesterly direction from Milford
917 through Utah and across the State of Nevada to the boundary line between the States of Nevada and California. The

said maps had been approved under the rules of the Department of the Interior, and the Oregon Short Line and Utah Northern Railway Company had graded and completed the roadbed of said line ready for the rails from Milford to the boundary line between Utah and Nevada; and had practically completed the grading of said line from said boundary line southwesterly to Calientes, Nevada, a distance of 339 miles from Salt Lake City; and had completed the grading of a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure the money necessary to complete the said line, said The Oregon Short Line and Utah Northern Railway Company discontinued and suspended the work of constructing said line in 1891. The company last named continued in such financial difficulty that on or about the 13th day of October, 1893, all of its railroad and other assets were placed in the hands of receivers, who administered the same until the sale thereof under decrees of the circuit courts of the United States for the districts of Utah and Idaho, on or about the 9th day of January,
918 1897, when they were bought by or for defendant Oregon Short Line Railroad Company.

(c) The defendant Oregon Short Line Railroad Company after its acquisition of the railroads and other assets of the Oregon Short Line and Utah Northern Railway Company, upon the foreclosure sale thereof as aforesaid, was until 1901 financially unable actively to resume the construction of said line from Milford to Los Angeles; and in its endeavor to provide for the completion of said line of railroad it conveyed that portion of said line, including the completed grade from Milford to the boundary line between the States of Utah and Nevada, to the Utah and Pacific Railroad Company, a corporation of the State of Utah, all the capital stock of which was owned by defendant Oregon Short Line Railroad Company, and conveyed that portion of said line from the boundary line between Utah and Nevada to the boundary line between Nevada and California, including the partially constructed grade of the main line from the Utah boundary line to Calientes, and of the branch line from Calientes to Pioche, to the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, and own that portion
919 of said line that was to be situated in the State of California. The defendant Oregon Short Line Railroad Company caused to be incorporated and acquired all the capital stock of the Utah, Nevada & California Railroad Company in California.

(d) Early in 1901 said Utah & Pacific Railroad Company and said Utah, Nevada & California Railroad Company, aided and assisted

by defendant Oregon Short Line Railroad Company, actively resumed the construction of the said line of railroad from Milford to Los Angeles, and to that end put a large force of men at work laying track upon and repairing where necessary the grades which had been constructed as aforesaid from Milford to Calientes, and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line was resumed in 1901, as aforesaid, defendant The San Pedro, Los Angeles and Salt Lake Railroad Company was incorporated under the laws of the State of Utah with power to build or acquire railroads in that State, but it did not acquire under the laws of Nevada the right to build or acquire railroads in that State or acquire the right under the laws of California to build or acquire any railroad north or east of Riverside until long after that date. It had acquired a line of railroad of inferior character extending from San Pedro to Los Angeles, a distance of twenty-four miles, and branches from Los Angeles to Pasadena and Glendale, a distance of about twenty miles, which were the only railroads owned or controlled by said The San Pedro, Los Angeles and Salt Lake Railroad Company when the construction of the said line from Milford to Los Angeles was resumed by defendant Oregon Short Line Railroad Company and the companies controlled by it as aforesaid. Said The San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build a railroad in the State of Utah, but not in the States of Nevada or California.

(f) Said The San Pedro, Los Angeles and Salt Lake Railroad Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad easterly or northerly of Riverside, California, a distance of sixty miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railway.

(g) Soon after the incorporation of said The San Pedro, Los Angeles and Salt Lake Railroad Company, it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and the Utah boundary line, and between Calientes and Pioche, and, to that end, located and constructed by the Utah Northern and Oregon Short Line Railway Company, as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company, and,

to that end, said The San Pedro, Los Angeles and Salt Lake Railroad Company caused the said line to be surveyed, and prepared maps and profiles adopting the same as its own, and attempted to file the same in the local land office of the United States in Nevada for the purpose of securing the right of way, and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to take forcible possession of the same.

(h) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the circuit court of the United States for the district of Nevada a suit
922 against said The San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railroad Company and others, and, upon the hearing of said cause, an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant, and said Utah, Nevada and California Railroad Company in a suit against said The San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax titles of the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada and California Railroad Company and said Utah and California Railway Company involving the said right of way was finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(i) As a result of such decision rendered prior to the execution of "Exhibit A" to the petition herein on July 9, 1902, the defendant Oregon Short Line Railroad Company and the said Utah and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it through the ownership of stock
923 established their right to the partially completed railroad and the located line and right of way therefor from Salt Lake City, Utah, to the boundary line between the States of Nevada and California, and were rapidly proceeding with the completion of said line to Los Angeles; while the said San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale, and had partially constructed an extension eastwardly for a distance of about sixty miles.

(j) And this defendant is informed and believes, and upon such information and belief avers, that defendant The San Pedro, Los Angeles and Salt Lake Railroad Company would never have under-

aken the construction of a line of railroad from Los Angeles to Salt Lake City except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire, without compensation, the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line; and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and
24 that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed rade could not thus be acquired, and that said Oregon Short Line Railrod Company would construct and extend its own line from Milford, Utah, to Los Angeles, California, said The San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would ave abandoned the previously conceived purposes and intention o construct and establish a line of railroad from Los Angeles, California, to Salt Lake City, Utah, but for their ability to negotiate and xecute the contract, "Exhibit A" to the petition herein, providing or the construction and establishment of such a line under the erms and conditions in said contract set forth.

(6) He denies that the said "Exhibit A" to the petition, or that nything done in executing and carrying out the same, has suppressed, restrained, or in any manner restricted any commerce among e several States or with foreign countries.

(7) He denies that the aforesaid act of Congress approved July 2, 890, or any other law of the United States, was intended to or could nstitutionally prohibit the making or carrying out of such agreement and contract, and avers that the construction of rail-
5 roads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of her States authorized by the said States to exercise their corporate wers therein, and all agreements relating to the construction or andonment of the construction of such railroads, are matters olly to be dealt with by the laws of the States, respectively, and y law of Congress intended or construed to prohibit or regulate in any manner interfere with such contracts, corporate powers, d matters is in excess of the powers of Congress under the Contution of the United States and is therefore void.

He avers that although prosecuted diligently after the making of d contract, "Exhibit A" to the petition, the work of constructing said railroad from Milford to Los Angeles was not completed d the said line opened for business until the first day of May, 1905; d the defendants avers that on the 9th day of July, 1902, when

the said agreement was made and entered into, there was not the
and, from the nature of the work to be done, there could not for se
eral years be, any competition of any sort between the parties to th
said agreement in transportation, to be suppressed or in any wa
restrained; and the possibility or probability of any suc
926 competition and of any restraint or restriction thereon was to
remote and contingent to be prohibited by or to come within
the provisions of the said act of Congress, approved July 2, 1890.

VII. (1) He denies that, pursuant to any conspiracy to restrai
trade and commerce among the several States or with foreign na
tions, or to monopolize or attempt to monopolize any such trade an
commerce, or to restrain or prevent competition among any of sai
railway systems, he and the defendants, Schiff, Kahn, Stillman
Rogers, and Frick, or any of them, in the year 1904, or at any othe
time, made large purchases of stock of the Atchison, Topeka and
Santa Fe Railway Company, aggregating $30,000,000 par value o
said stock or any other amount; and he denies that he or any of th
other defendants at any time demanded of any officials of the said
The Atchison, Topeka and Santa Fe Railway Company that any o
the defendants herein should be elected directors of the Atchison
Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 the defendants, Frick and
Rogers, were elected directors of the Atchison, Topeka and
927 Santa Fe Railway Company, and have since served and are
still serving as such directors; but he denies that they were
elected for any of the reasons alleged in Subdivision VII of the
petition herein, and denies that by means of such election the de
fendant Union Pacific Railroad Company has had knowledge of the
affairs and business of said The Atchison, Topeka and Santa Fe
Railway Company.

(3) He admits that in July, 1906, defendant Oregon Short Line
Railroad Company purchased, and has ever since owned, $10,000,00
par value of the capital stock of said The Atchison, Topeka and Santa
Fe Railway Company out of a total issue of preferred and common
stock of said company outstanding of the aggregate par value of
$216,199,530, but he denies that such purchase was for any of the
purposes alleged in said petition.

(4) He denies that he or any associates of his or defendant Union
Pacific Railroad Company, or all of them, have any control, partial
or otherwise, of said The Atchison, Topeka and Santa Fe Railway
Company.

(5) He denies that competition between the systems of railway
controlled by defendant Union Pacific Railroad Company and by

said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He admits that certain lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose stock was owned by the Southern Pacific Company, and that certain other lines of railroad surveyed and partially constructed within the State of California formerly owned by corporations whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were conveyed to a company incorporated under the laws of the State of California under the name, style, and title of "Northwestern Pacific Railway Company," and that one-half of the capital stock of the last-named corporation is owned by the Southern Pacific Company and the other half by the Atchison, Topeka and Santa Fe Railway Company; but he avers that all of the corporations which owned and conveyed said lines, and the said Northwestern Pacific Railroad Company itself, were incorporated under the laws of the State of California, and that all such sales and consolidations were made and effected under and by authority of the laws of said State.

(8) He denies that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business and that competition between such lines has been eliminated or in any wise restricted.

(9) He denies that any of the acts or transactions alleged in said petition were committed or occurred in pursuance of any conspiracy, combination, or contract to restrain trade or commerce among the several States and with foreign countries; or in pursuance of any conspiracy or combination for any purpose.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall

direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD H. HARRIMAN,
Defendant.

By P. L. WILLIAMS,
His solicitor.

ROBERT S. LOVETT, *of counsel.*

931 No. 993. United States Circuit Court, District of Utah. In equity.

The United States of America, complainant,
v.
Union Pacific Railroad Company et al., defendants.

Answer of defendant Southern Pacific Company. (Filed April 1908.)

932 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, against Union Pacific Railroad Company; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; The Great Northern Railway Company; The Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants.

933 The separate answer of the defendant Southern Pacific Company to the original petition of the United States of America.

This defendant now, and at all times hereafter, saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised, it is material or necessary for it to make answer unto, answering, says:

(1) It admits that it and the other corporations mentioned in Subdivision I of the petition were at the times alleged in said petition and are now common carriers employed in the transportation

freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, but were and are to that extent engaged in trade and commerce among the several States and with foreign countries.

(2) It has no knowledge respecting the matters alleged in Subdivision II of the petition.

(3) It admits that defendant Union Pacific Railroad Company since January 1, 1901, has owned and operated and now owns and operates lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; from Denver to Cheyenne, Wyoming; and from Julesburg to La Salle, Colorado; and it admits that said lines of railroad, except the line from Julesburg to La Salle, were constructed by the corporations named in the petition with the aid in lands and bonds of the United States granted by the acts of Congress approved July 1, 1862 (12 Stat., 479), and July 2, 1864 (13 Stat., 356), and the acts amendatory of and supplementary to the said acts.

(4) It is without knowledge of the consolidation of the corporations formerly owning the above-named lines into "The Union Pacific Railway Company," but is informed and believes that such consolidation was effected on January 24, 1880.

(5) It admits that the Central Pacific Railroad Company of California was organized under the laws of the State of California, and admits that the Western Pacific Railroad Company was also organized under the laws of said State. It admits that the said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company were consolidated into and under the name, style, and title of "Central Pacific Railroad Company." It admits that said Western Pacific Railroad Company constructed a line of railroad from San Francisco to Sacramento, California, and that said Central Pacific Railroad Company of California commenced the construction, and after the consolidation aforesaid the corporation formed by such consolidation completed the said railroad from Sacramento, California, to Ogden, Utah, where it connects with the main line of the Union Pacific Railroad Company.

(6) It refers to the said acts of Congress approved July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1874 (18 Stat., 111), for answer to the allegations of the petition respecting the aid granted in bonds and land to, and the duties and responsibilities imposed by said acts upon, the corporations aided and authorized by said acts to construct the railroads therein mentioned and provided for, and to the several acts and joint resolutions of Con-

gress amendatory of and supplementary to the aforesaid acts (
Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat.,
14 Stat., 79; 14 Stat., 290; 15 Stat., 39; 15 Stat., 79; 15 St.
936 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat.,
17 Stat., 508; 18 Stat., 200; 18 Stat., 453; 20 Stat., 56; 20 St.
169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439.)

(7) It admits that the defendants Oregon Short Line Railr
Company and The Oregon Railroad and Navigation Company o
and operate the lines of railroad alleged in said petition; and it
mits that they and said Union Pacific Railroad Company, resp
tively, operate important branch lines of railroad.

(8) It is without knowledge respecting the control of the Ore
Short Line Railroad Company and the Oregon Railroad and Na
gation Company by the Union Pacific Railroad Company.

(9) It is without knowledge of the ownership by the Oregon R
road and Navigation Company in 1901 or at any other time of
steamships, or of the ownership of stock of the Portland and Asi
Steamship Company, as alleged in the petition.

(10) It admits that it was on January 1, 1901, and still is
owner of a large majority of the capital stock of corporations wh
separately own and operate connecting links of a line of r
937 road extending from New Orleans, in the State of Louisi
and Galveston, in the State of Texas, and through the St
of Louisiana and Texas and the Territories of New Mexico and A
zona, and the States of California and Oregon to Los Angeles
San Francisco and other points in California, and to Portl
Oregon.

(11) It admits that in 1901 it also owned and operated, has
since owned and operated and now owns and operates lines of st
ships between New York and New Orleans, New York and Gal
ton, and between New Orleans and Havana, which connect at N
Orleans and Galveston with the said rail lines.

(12) It admits that on January 1, 1901, it owned, has ever
owned and now owns all the capital stock of the Central Pa
Railway Company, a corporation organized and existing under
laws of the State of Utah, and avers that said Central Pacific R
way Company succeeded to the ownership of and now owns the
road from San Francisco to Ogden with the branch lines forme
owned by the Central Pacific Railroad Company as originally e
ing and as constituted by the consolidation aforesaid with the
Western Pacific Railroad Company; but it avers that this defend
on and prior to the 1st day of January, 1901, and ever since
date has held, possessed, and operated, and still ho
938 possesses, and operates all the railroads of said Central

ific Railway Company with their appurtenances under and by virtue f instruments of lease theretofore made and entered into.

(13) It avers that said Central Pacific Railroad Company, as riginally existing and as constituted by the consolidation aforesaid ith the Western Pacific Railroad Company, was unable to pay its ndebtedness to the Government of the United States, arising from he issue of Government bonds under the provisions of the aforesaid cts of Congress to aid in the construction of said railroad from San rancisco to Ogden, at the maturity of said indebetdness, and was lso unable to pay its indebtedness evidenced by its own bonds, ag- regating large amounts, as such indebtedness matured during and rior to the year 1899.

(14) It avers that the said Central Pacific Railway Company, organ- ed as aforesaid under the laws of the State of Utah, acquired by pur- hase from said Central Pacific Railroad Company, on or about the 0th day of July, 1899, the railroad constructed as aforesaid from San rancisco to a connection with the Union Pacific Railroad at Ogden, with its various branches; and that the power of said Central Pacific Railroad Company to make such sale, and of the said Central Pacific Railway Company to make such purchase, as conferred upon the said corporations, respectively, by the laws f the States of Utah, Nevada, and California.

(15) It avers that such purchase and sale was made for the pur- se of paying the indebtedness of said Central Pacific Railroad ompany of the United States of America and to the holders of its wn bonds; that all such indebtedness was thereby paid and dis- harged in full, and that the incorporation and organization of said entral Pacific Railway Company and the said purchase and ale and the payment of all such indebtedness were caused and rought about by this defendant, and that the means for paying nd satisfying all such indebtedness and rehabilitating the railroads f the said Central Pacific Railway Company were provided and rocured by or at the instance of this defendant.

(16) It admits that on January 1, 1901, it owned, has ever since wned, and still owns 100,500 shares out of a total of 200,000 shares f the capital stock of the Pacific Mail Steamship Company, and hat said Pacific Mail Steamship Company, during all said period, has operated a line of steamships between San Francisco, the Hawaiian Islands, the Philippine Islands, and Chinese and Japanese ports, and also a line of steamships between San rancisco and Panama; but it denies that the said line of steam- hips, with the Panama Railroad Company and steamships oper- ting in the Atlantic Ocean, forms a through line between New ork and San Francisco via the Isthmus of Panama.

(17) It denies that the said rail lines from the Mississippi River to Portland, Oregon, by way of Los Angeles and San Francisco, were at any time in competition with the lines of the Union Pacific Railroad Company for the transportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to Pacific coast points and points in Colorado and other interior States; and it denies that the steamship lines of this defendant between New York and New Orleans and between New York and Galveston, together with rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and in the Central States.

(18) It avers, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,
941 the Union Pacific Railroad was but a link about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier, without any power to make rates upon such traffic; and that this defendant through its possession and operation of the Central Pacific Railroad, under lease as aforesaid, and by its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland, or Asiatic ports, could be made by defendant Union Pacific Railroad Company, except with the consent of and by agreement with this defendant; and while the defendants Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company separately owned connecting lines of railroad operated as a single system extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, yet this defendant avers that such route via Portland was not only an impracticable route as a competitor of this defendant, but any attempt of said
942 defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because this defendant would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with this defendant, so that the interest of defendant Union Pacific Railroad Compay and the companies formerly owning its lines always prevented it and them from using or attempting to use it

said route via Portland in competition with this defendant upon any business to or from Pacific coast points south of Portland or to or from Asiatic ports.

(19) It denies that its rail line between San Francisco and Portland was in active competition with any ships of the Oregon Railroad and Navigation Company between San Francisco and Portland, and avers that competition between said lines was never practicable.

(20) It denies that the ships operated by the Portland and Asiatic Steamship Company in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, between Portland, Oregon, and Asiatic ports, were ever in competition with the Pacific Mail Steamship Company.

(21) It denies that the line of railroad composed of the tracks of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company between Ogden and Portland were ever in active competition with the lines of this defendant between said points.

(22) It denies that any competition between the system of railroads and steamships owned and controlled by this defendant and the system of railroads and any steamships owned or controlled by the Union Pacific Railroad Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(23) It admits that the Atchison, Topeka and Santa Fe Railway Company for a period of more than eight years has been the owner and in control of the lines of railroad alleged in the petition, and that during such period it has been, and still is, competing with said Union Pacific Railroad Company and this defendant for a large volume of traffic to and from the Pacific coast and the Orient, and has been competing with the defendant Union Pacific Railroad Company between the Missouri River and various points in Kansas, Colorado, and other States.

(24) It admits that the line of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco about the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland, Oregon, to the Mississippi Valley and the East, except the lines of this defendant to the Gulf and the lines of the Central Pacific Railway Company operated by this defendant in connection with the Union Pacific Railroad Company until the completion of the San Pedro, Los Angeles and Salt Lake Railroad Company in the year 1905.

(25) It has no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, but it denies that the traffic

handled by any such steamship line, if any such line was ever operated, competitive between this defendant and the Atchison, Topeka and Santa Fe Railway Company was of great volume and embraced both passengers and freight.

(26) It admits that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company is each the owner of the lines of railroad described in the petition, but it has no knowledge of the ownership of the stock of the Chicago, Burlington and Quincy Railroad Company or of any competition between any of said lines and the lines of the Union Pacific Railroad Company.

945

(27) It admits that the San Pedro, Los Angeles and Salt Lake Railroad Company operates a line of railroad extending from San Pedro on the Pacific Ocean in the State of California by way of Los Angeles through the States of California, Nevada, and Utah to Salt Lake City, Utah, but it is without knowledge of the character of the title of said company to said railroad, and it admits that said company as the owner of said railroad with its connections is a competitor of this defendant between certain points in southern California.

(28) This defendant admits that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired 750,000 shares of the capital stock of this defendant of the aggregate par value of $75,000,000 out of a total of 1,978,399 shares of the aggregate par value of $197,839,900 then issued and outstanding, and it admits that thereafter and on or about the 26th day of February, 1902, said Union Pacific Railroad Company sold said 750,000 shares to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

946

(29) It admits that thereafter on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired 150,000 additional shares of stock of this defendant, which it has ever since owned and still owns.

(30) It admits that when in 1904 this defendant created an issue of preferred stock which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of this defendant exercised its right and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of this defendant; and that thereafter when in 1907 this defendant increased its preferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of this defendant, exercised its right and subscribed and received 162,000 additional shares of the preferred stock

f this defendant, and has ever since owned and still owns the same, so that said Oregon Short Line Railroad Company now owns 47 900,000 shares of the common stock, and 342,000 shares of the preferred stock, making a total of 1,242,000 shares out of a otal of 2,726,498 shares of the capital stock of this defendant issued nd outstanding.

(31) It denies that defendants Harriman, Schiff, Kahn, Stillman, r Union Pacific Railroad Company caused the said preferred stock be issued by this defendant.

(32) It admits that the stock of this defendant not owned by said regon Short Line Railroad Company is owned by a large number f individuals, firms, and corporations residing in many different laces, but it denies that such stockholders, other than defendant regon Short Line Railroad Company, are or will be unable to elect e directors of this defendant if they should deem it to their interest do so in opposition to those voted for by said Oregon Short Line ailroad Company.

(33) It admits that at the annual meetings of this defendant, held nce the stock was so acquired and owned by said Oregon Short Line ailroad Company, such stock has constituted a majority of the ares represented at such meetings, and that by voting upon the said shares through its duly authorized agents and proxies, 8 aided by the votes upon other shares owned by various other stockholders of this defendant, said Oregon Short Line Rail- ad Company, has been able to elect the directors of this defendant, t at no such meetings have any votes ever been cast by any such ckholder against the persons so elected.

(34) It denies that the Union Pacific Railroad Company or the regon Short Line Railroad Company controls or has ever controlled e management, operation, or business affairs of this defendant, or ercised any control whatsoever over it, except such as may result m the voting upon the stock of this defendant owned by said Ore- n Short Line Railroad Company, as aforesaid, at meetings for the ction of directors of this defendant.

(35) It admits that since April 3, 1901, a majority of the persons o have been elected directors of this defendant, have been at the ne time directors of the defendant Union Pacific Railroad Com- ny.

(36) It admits that defendant Harriman on April 3, 1901, became airman of the executive committee and on the 26th day of Septem- , 1901, became the president of this defendant and ever since has been and still is such chairman and president.

) (37) It admits that the same person is the chief traffic officer, the same person the chief operating officer, and the ne person the chief accounting officer of both companies; and that

said companies have jointly employed numerous commercial and other agents, but it avers that a large majority of the officers, agents, and employees of said companies are separate.

(38) It denies that through the purchase and ownership of said stock by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company, or from any other cause, there has been any suppression or restraint of competition in the transportation of commerce among the several States or with foreign countries, or any monopoly in the transportation of any such commerce; and it denies any knowledge of any conspiracy, combination, or contract in restraint of trade or commerce among the several States or between said States and foreign countries, or to suppress or restrain competition therein, or to monopolize or attempt to monopolize transportation of any such commerce.

(39) It is without knowledge respecting any of the other matters alleged in Subdivision IV of the said petition.

(40) It is also without knowledge of any of the matters
950 alleged in Subdivision V of the petition.

(41) It admits that there is a competition between the San Pedro, Los Angeles, and Salt Lake Railroad Company and this defendant between certain points in California.

(42) It is without knowledge of any of the other matters alleged in Subdivision VI of the petition.

(43) This defendant admits that, pursuant to an agreement with the Atchison, Topeka and Santa Fe Railway Company, a corporation was organized under the laws of the State of California under the name, style, and title of the "Northwestern Pacific Railway Company," and that certain other corporations of the State of California whose capital stock was owned by this defendant and certain other corporations of the State of California whose capital stock was owned by the Atchison, Topeka and Santa Fe Railway Company were consolidated with and merged into said Northwestern Pacific Railway Company under the name, style, and title of "Northwestern Pacific Railroad Company," and that the capital stock of said Northwestern Pacific Railroad Company is owned equally by this defendant and by the Atchison, Topeka and Santa Fe Railway Company; but it avers that all of the said corporations merged and con-
951 solidated as aforesaid were incorporated under the laws of the State of California; and the said lines of railroad were situated wholly within the State of California, and the said consolidation and merger was and is authorized and provided for by the laws of said State.

(44) It denies all of the allegations of Subdivision VII of the petition in reference to any conspiracy, combination, or contract to restrain commerce among the several States or with foreign countries

or to restrain competition in any such commerce or to monopolize or attempt to monopolize transportation in any such commerce.

(45) This defendant is without knowledge of any of the other matters alleged in Subdivision VII of the petition.

(46) And this defendant denies all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

952 and humbly prays to be hence dismissed with its reasonable costs and charges in its behalf most wrongfully sustained.

SOUTHERN PACIFIC COMPANY,
By P. L. WILLIAMS, *Its Solicitor.*

ROBERT S. LOVETT, *Of Counsel.*

953 No. 993. United States Circuit Court, District of Utah.
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

The joint and several answer of defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company. (Filed April 6, 1908.)

954 United States Circuit Court, District of Utah. No. 993.
In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

955 The joint and several answer of the defendants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and The Oregon Railroad and Navigation Company to the original petition of the United States of America.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can

or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

I. They admit that the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, and these defendants were at the times alleged in the petition and are now common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned and operated by them, respectively, are located, and not further or otherwise, and were and are to that extent, but to that extent only, engaged in trade and commerce among the several States and with foreign nations.

956

II. (1) They deny that from January 1, 1901, or at any time, the defendants, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn and James Stillman, with certain other persons who have joined with them from time to time, including the defendants, Henry H. Rogers and Henry C. Frick, have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) They admit that the defendant Edward H. Harriman on the 23d day of May, 1898, became and ever since has been and still is the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company; and that on the 7th day of January, 1904, and not before, he became and ever since has been and still is president of said corporation.

(3) They admit that the said Jacob H. Schiff became a director of said Union Pacific Railroad Company on the 1st day of March, 1898, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

957

(4) They admit that the said Otto H. Kahn became a director of said Union Pacific Railroad Company on the 1st day of July, 1897, and continued to be a director of said company until the 10th day of April, 1906, when he resigned.

(5) They admit that the said James Stillman became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the 13th day of February, 1908, when he resigned.

(6) They admit that the said James Stillman was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the 13th day of February, 1908, and that said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(7) They admit that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the firm name and style of Kuhn, Loeb & Co., but deny that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and they admit that some of the stocks re-
958 ferred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house and that some of the bonds issued by said companies were sold to said firm.

(8) They admit that defendant Henry H. Rogers became a director of said Union Pacific Railroad Company on the 8th day of October, 1901, and that defendant Henry C. Frick became a director of said Union Pacific Railroad Company on the 11th day of October, 1904, and that both the said Rogers and the said Frick have ever since been and still are members of said board of directors.

(9) Except as herein admitted, they deny each and every allegation of subdivision II of the petition.

III. (1) They admit that defendant, Union Pacific Railroad Company, in 1897, acquired and ever since has been and still is the owner of lines of railroad extending from Council Bluffs, Iowa, to Ogden, Utah; from Kansas City, Missouri, to Denver, Colorado; and from Denver, Colorado, to Cheyenne, Wyoming.

(2) They admit that the said line of railroad extending from
959 Council Bluffs, Iowa, to Ogden, Utah, was constructed by a company incorporated by an act of Congress, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," approved July 1, 1862 (12 Stat., 489), under the name, style, and title of "The Union Pacific Railroad Company"; and they admit that the said line of railroad, extending from Kansas City, Missouri, to Denver, Colorado, was constructed by a company originally incorporated by the Territory of Kansas as the "Leavenworth, Pawnee & Western Railroad Company," which afterwards assumed the name, style, and title of "Union Pacific Railroad Company, Eastern Division," and subsequently by authority of a joint resolution of Congress approved March 3, 1869 (15 Stat., 348), changed its name to "Kansas Pacific Railway Company"; and they also admit that the said line of railroad, extending from Denver, Colorado, to Cheyenne, Wyoming, was constructed by the "Denver Pacific Railway and Telegraph Company," a corporation organized under the laws of the Territory of Colorado.

(3) They deny that the Union Pacific Railroad Company, the company incorporated by the aforesaid act of Congress
960 approved July 1, 1862, constructed a line of railroad from Julesburg to Denver, but aver that the said branch line of railroad extends from Julesburg to La Salle, Colorado, where it connects with the aforesaid line extending from Denver to Cheyenne, and that it was constructed by the Colorado Central Railroad Company, a corporation of the State of Colorado, which was subsequently consolidated with and merged into the Union Pacific, Denver and Gulf Railway Company, and thereafter was sold under foreclosure decrees against the last-named company, and the purchasers at such foreclosure sale afterward and on or about the 6th day of February, 1899, sold and conveyed the same to defendant Union Pacific Railroad Company, and that the said Union Pacific Railroad Company ever since has been and still is the owner thereof.

(4) They aver that the said lines of railroad owned by defendant Union Pacific Railroad Company and extending as aforesaid from Council Bluffs to Ogden, from Kansas City to Denver, and from Denver to Cheyenne, were located, laid out, constructed, connected, consolidated, and put into use and operation as a system of railroads under and pursuant to the aforesaid act of Congress approved
961 July 1, 1862, and an act approved July 2, 1864, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862" (13 Stat., 356), and the several acts and joint resolutions of Congress amendatory of and supplementary to the aforesaid acts (12 Stat., 538; 13 Stat., 504; 13 Stat., 573; 14 Stat., 355; 14 Stat., 356; 14 Stat., 79; 14 Stat., 292; 15 Stat., 39; 15 Stat., 79; 15 Stat., 324; 15 Stat., 348; 16 Stat., 56; 16 Stat., 121; 16 Stat., 430; 17 Stat., 508; 18 Stat., 111; 18 Stat., 200; 18 Stat., 4; 20 Stat., 56; 20 Stat., 169; 24 Stat., 488; 25 Stat., 382; 25 Stat., 439); and they refer to the said acts and joint resolutions themselves for the provisions, purposes, and effect thereof.

(5) They admit that the said the Union Pacific Railroad Company, the said Kansas Pacific Railway Company, and the said Denver Pacific Railway and Telegraph Company were consolidated under and by virtue of the aforesaid acts of Congress, and that the corporation formed by such consolidation became and assumed the name, style, and title of "The Union Pacific Railway Com-
962 pany"; and they aver that such consolidation occurred on or about January 24, 1880.

(6) They aver that under and pursuant to the provisions of decrees of the Circuit Courts of the United States for the District

braska, the Southern District of Iowa, the District of Wyoming, District of Colorado, and the District of Utah, rendered in 1897, certain suits in equity commenced by F. Gordon Dexter and Oliver nes, second, against the Union Pacific Railway Company and others the foreclosure of the first mortgage of the Union Pacific Rail- d Company upon the said line of railroad, with its appurtenances said decrees described; and under the provisions of decrees ren- ed, respectively, by the same courts on the same dates in certain its in equity, commenced by the United States of America as com- inant against said the Union Pacific Railway Company and others the foreclosure of the lien created by or arising under the afore- d acts of Congress to secure the indebtedness to the United States America for its bonds issued under the provisions of said acts the Union Pacific Railroad Company, the said railroad extending m Council Bluffs, Iowa, to Ogden, Utah, with its appurtenances, was sold, and upon confirmation of the said sale and full com- pliance with all the terms and provisions of the decrees of the said courts in said causes the special master of the said rts duly conveyed the said railroad, with its appurtenances, so d to Union Pacific Railroad Company, defendant herein, by eds dated the 22d day of January, 1898, whereupon the possession said railroads and other property so sold was surrendered and de- ered by the receivers appointed in said suits to Union Pacific Rail- d Company, defendant herein, which has ever since held and pos- sed and now hold and possess the same.

(7) They aver that under and pursuant to the provisions of de- es of the Circuit Courts of the United States for the District of nsas and the Western District of Missouri, rendered on the 30th y of July, 1897, in certain suits in equity commenced by the United tes of America, as complainant, against said the Union Pacific ilway Company and others for the foreclosure of the lien created or arising under the aforesaid acts of Congress to secure the lebtedness to the United States of America for its bonds issued der the provisions of said acts to the Kansas Pacific Railway Com- ny; and under and pursuant to the provisions of other decrees of the same courts and of the Circuit Court of the United States for the District of Colorado in suits in equity commenced by various parties to foreclose numerous mortgages executed by d Kansas Pacific Railway Company under its different corporate mes, the said line of railroad extending from Kansas City, Mis- ri, to Denver, Colorado, with its appurtenances in said decrees scribed, was sold, and upon confirmation of the said sale and full mpliance with all the terms and provisions of the decrees of said rts in said causes, the special master of said courts duly con- yed the said railroad, with its appurtenances, to Union Pacific

Railroad Company, the defendant herein, by deeds dated on o
about the 19th day of April, 1898, whereupon the possession of sai
railroad and other property so sold was surrendered and delivere
by the receivers appointed in said suits to Union Pacific Railroa
Company, defendant herein, which has ever since held and possesse
and now holds and possesses the same.

(8) They aver that under and pursuant to the provisions of de
crees of the Circuit Courts of the United States for the Districts o
Colorado and Wyoming, rendered on the 31st day of July, 1897, i
certain suits in equity to foreclose the first mortgage of the Denv
Pacific Railway and Telegraph Company, the said line of rai
965 road extending from Denver, Colorado, to Cheyenne, Wy
oming, with its appurtenances in said decrees described, w
sold and upon confirmation of the said sale and full compliance
with all the terms and provisions of said decrees of said courts i
said causes the special master of said courts duly conveyed the sa
railroad, with its appurtenances, to Union Pacific Railroad Com
pany, defendant herein, by deeds dated on or about the 22d day o
March, 1898, whereupon the possession of said railroad, with i
appurtenances and other property so sold, was surrendered and deli
ered by the receivers appointed in said suits to Union Pacific Rai
road Company, defendant herein, which has ever since held and po
sessed and now holds and possesses the same.

(9) They admit that the Central Pacific Railroad Company
California was organized under the laws of the State of California
and they admit that the Western Pacific Railroad Company w
also organized under the laws of said State. They admit that t
said Central Pacific Railroad Company of California and the s
Western Pacific Railroad Company were consolidated into and un
the name, style, and title of "Central Pacific Railroad Compan
They admit that said Western Pacific Railroad Company c
966 structed a line of railroad from San Francisco to Sacramen
California, and that said Central Pacific Railroad Compa
of California commenced the construction, and after the consoli
tion aforesaid the company formed by such consolidation compl
the said railroad from Sacramento, California, to Ogden, Ut
where it connects with the main line of the Union Pacific Railr
Company.

(10) They refer to the said acts of Congress approved July
1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1
(18 Stat., 111), for answer to the allegations of the petition resp
ing the aid granted in bonds and land to, and the duties and resp
sibilities imposed by said acts upon, the corporations aided
authorized by said acts to construct the railroads therein mentio
and provided for.

(11) They admit that defendant Oregon Short Line Railroad Company is now and since about the 16th day of March, 1897, continuously has been the owner of lines of railroad extending from the junction with the main line of the Union Pacific Railroad at Granger, Wyoming, to Huntington, Oregon, and of another line of railroad extending from Salt Lake City, Utah, to Butte, Montana—the track in the State of Idaho between Pocatello and McCammon being common to both of said lines. They admit that defendant The Oregon Railroad and Navigation Company is and since about the 18th day of August, 1896, continuously has been the owner of a line of railroad extending from a connection with the line of the Oregon Short Line Railroad Company at Huntington, Oregon, to Portland, Oregon.

(12) They admit that each of these defendants is the owner of important lines of railroad as branches of the lines hereinbefore described; the branches of the lines owned by Union Pacific Railroad Company being located in the States of Nebraska, Kansas, Colorado, Wyoming, and Utah; the branches owned by the Oregon Short Line Railroad Company being located in the States of Utah, Idaho, Montana, and Wyoming; and the branches owned by The Oregon Railroad and Navigation Company being located in the States of Oregon, Washington, and Idaho.

(13) They admit that long prior to the date alleged in the petition the Union Pacific Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Short Line Railroad Company. They admit that long prior to the date alleged in the petition the Oregon Short Line Railroad Company acquired and has ever since owned and still owns substantially all of the capital stock of the Oregon Railroad and Navigation Company.

(14) They admit that by means of such stock ownership the Union Pacific Railroad Company has since its acquisition been able to elect, by voting upon such stock through its proxies, the directors of said Oregon Short Line Railroad Company, and that the latter, by voting upon said stock through its proxies, has elected the directors of The Oregon Railroad and Navigation Company; but they aver that the railroads and other property of the Oregon Short Line Railroad Company have at all times been controlled, managed, and operated by said Oregon Short Line Railroad Company in its own name and by its own officers and agents, and that the railroads and other property of The Oregon Railroad and Navigation Company have at all times been controlled, managed, and operated by The Oregon Railroad and Navigation Company in its own name and by its own officers and agents.

(15) They admit that the lines of railroad owned by these defendants, respectively, have been and are operated as one system and that said lines extending from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt Lake City and Ogden, Utah, Butte, Montana,
and Portland, Oregon, have composed and still compose con-
969 tinuous through lines operated harmoniously and, so far as
affecting the shipping and traveling public, practically as if owned and operated by a single company.

(16) They aver that long prior to July 2, 1890, when the so-called "antitrust act" of Congress was approved, the Union Pacific Railway Company, the consolidated corporation organized and existing under the acts of Congress, as hereinbefore alleged, acquired a large majority of the stock of the Oregon Short Line and Utah Northern Railway Company, which constructed the lines of railroad now owned by defendant Oregon Short Line Railroad Company, as well as a portion of the lines now owned by the defendant San Pedro, Los Angeles and Salt Lake Railroad Company, and that long prior to said July 2, 1890, said Oregon Short Line and Utah Northern Railway Company acquired a large majority of the capital stock of the Oregon Railway and Navigation Company, the corporation which constructed and formerly owned the line of railroad now owned by defendant The Oregon Railroad and Navigation Company, extending from Huntington to Portland, Oregon, with various branches, and long prior to July 2, 1890, the said lines of railroad extending
from Kansas City, Missouri, and Council Bluffs, Iowa, to Salt
970 Lake City and Ogden, Utah, Butte, Montana, and Portland,
Oregon, were and ever since have been operated harmoniously as one system and as continuous lines and, so far as affecting the shipping and traveling public, practically as if owned and operated by a single corporation.

(17) They aver that the said lines of railroad and all other property of said Oregon Short Line and Utah Northern Railway Company were sold under decrees of the circuit courts of the United States for the districts of Utah, Wyoming, Idaho, and Montana foreclosing mortgages thereon on or about the 9th day of January, 1897, and that the purchasers at such sale caused to be incorporated the defendant Oregon Short Line Railroad Company, and conveyed to it the railroads and properties so sold. They aver that the said line of railroad extending from Huntington to Portland, Oregon, and all other property of the Oregon Railway and Navigation Company were sold under decrees of the circuit courts of the United States for the district of Oregon, foreclosing mortgages thereon on or about the 9th day of July, 1896, and the purchasers at such sale caused to be incorporated the defendant, the Oregon Railroad and Navigation

mpany, and conveyed to it the railroads and properties so sold.

1 (18) They admit that in the year 1901 the Oregon Railroad and Navigation Company owned three steamships averaging out 1,350 net tons each, plying between Portland and San Fran-co, by way of the Willamette and Columbia Rivers and the Pacific ean; and they aver that in the year 1904 the San Francisco and ortland Steamship Company, a corporation of the State of Cali-rnia, was organized; that all its stock was acquired by the Oregon ilroad and Navigation Company, and that two of said steamships re transferred by charter to said San Francisco and Portland eamship Company, and that said San Francisco and Portland eamship Company has since operated and now regularly operates o steamships—one of 2,317 tons and one of 1,836 tons—between n Francisco and Portland, via the Pacific Ocean and the Willam-te and Columbia Rivers.

(19) They deny that the Oregon Railroad and Navigation Com-ny ever operated a line of steamships or any steamships between ortland, Oregon, and Japan, and China, or other Asiatic ports. hey admit that on or about the 14th day of January, 1901, the Port-nd and Asiatic Steamship Company was incorporated under the laws of the State of Oregon with a capital of $100,000, and

2 that all of its capital stock was acquired and has ever since been and still is owned by said the Oregon Railroad and Navi-ation Company; and they admit that said Portland and Asiatic eamship Company has sometimes operated steamships between ortland, Oregon, and Asiatic ports under charter, but they deny at said steamship company has ever owned, or now owns, any eamships, or has ever operated, or now operates, any regular line f steamships.

(20) They aver that the said Portland and Asiatic Steamship Com-ny was incorporated and that the ships chartered and operated by were chartered and operated for the benefit of the traffic of the rail-ad lines of the Oregon Railroad and Navigation Company—that is ay, to afford an outlet by way of Portland and the Columbia River r the grain and flour grown and milled on the line of the Oregon ailroad and Navigation Company in eastern Oregon and the State f Washington which otherwise would have moved via the rails of the orthern Pacific Railway Company and Great Northern Railway ompany to Puget Sound and the traffic would have been lost to the regon Railroad and Navigation Company, and they aver that the operation of the steamships of said Portland and Asiatic

73 Steamship Company has of itself been unprofitable and re-sulted in a large loss to said company every year, except one

during the war between Japan and Russia, and that it was inaugurated and is maintained only because, in the judgment of the Oregon Railroad and Navigation Company, the losses sustained in the operation of said steamships are more than compensated by retaining for the rails of the Oregon Railroad and Navigation Company and for the mills and merchants on its lines the grain and flour traffic which otherwise would have moved to Puget Sound and been lost to said company and to them.

(21) They deny that it has been or ever was practicable for the said steamships operated by the Portland and Asiatic Steamship Company to compete to any considerable or substantial extent with lines of steamers operated between San Francisco and Asiatic ports and Puget Sound and Asiatic ports for traffic originating in the interior of the United States or on the Atlantic seaboard.

(22) They admit that the Southern Pacific Company was, on January 1, 1901, and still is the owner of a large majority of the capital stock of corporations which separately own and operate connecting links of a line of railroad extending from New Orleans
974 in the State of Louisiana, and Galveston, in the State of Texas, and through the States of Louisiana and Texas and the Territories of New Mexico and Arizona and the States of California and Oregon to Los Angeles and San Francisco and other points in California and to Portland, Oregon.

(23) They admit that said Southern Pacific Company in 190 owned and operated and has ever since owned and operated and now owns and operates lines of steamships between New York and New Orleans and between New York and Galveston and between New Orleans and Havana, which connect at New Orleans and Galveston with the rail lines controlled by it.

(24) They aver that the Central Pacific Railroad Company, the corporation formed by the consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company, and which constructed and formerly operated the said railroad from San Francisco to a connection with the Union Pacific Railroad Company at Ogden, was unable to pay its indebtedness to the Government of the United States, arising from the issue to it of Government bonds as aforesaid at the maturity of said indebtedness, and was also unable to pay its indebtedness evidenced by its own bonds, aggregating a large amount, as such indebtedness
975 matured during and prior to the year 1899; that the "Central Pacific Railway Company" was organized under and by virtue of the laws of the State of Utah, and acquired by purchase from the said consolidated Central Pacific Railroad Company, on or about the 29th day of July, 1899, the said railroads so constructed

rom San Francisco to a connection with the main line of the Union acific Railroad Company at Ogden, Utah, with its various branches; nd that the power of said Central Pacific Railroad Company to ake such sale and of the Central Pacific Railway Company to make uch purchase was expressly conferred upon and existed in them, re-pectively, by the laws of the States of Utah, Nevada, and California.

(25) They aver that such purchase and sale were made for the urpose of paying the indebtedness of said Central Pacific Railroad ompany to the United States of America and to the holders of its wn bonds; that all such indebtedness was thereby paid and dis-harged in full; and that the incorporation and organization of the aid Central Pacific Railway Company and the said purchase and ale and the payment of all such indebtedness were caused and rought about by the defendant Southern Pacific Company; and that the means for paying and satisfying all such indebted-976 ness were provided and procured by or at the instance of the said Southern Pacific Company.

(26) They admit that on January 1, 1901, said Southern Pacific ompany owned, has ever since owned, and still owns 100,500 shares ut of a total of 200,000 shares of the capital stock of the Pacific Iail Steamship Company, and that said Pacific Mail Steamship ompany during all said period has operated a line of steamships etween San Francisco, the Hawaiian Islands, the Philippine Islands, nd Chinese and Japanese ports, and also a line of steamships be-ween San Francisco and Panama. But they deny that the said line f steamships, with the railroad of the Panama Railroad Company nd steamships operating in the Atlantic Ocean, forms a through ine between New York and San Francisco via the Isthmus of anama.

(27) They deny that the said rail lines of the Southern Pacific ompany from the Mississippi River to Portland, Oregon, by way f Los Angeles and San Francisco, were at any time in competition ith the said lines of the Union Pacific Railroad Company for the ransportation of freight from points in the Mississippi Valley and in the Eastern States or elsewhere to the Pacific coast and 977 points in Colorado and other interior States; and they deny that the steamship lines of the Southern Pacific Company be-tween New York and New Orleans and New York and Galveston, together with the rail lines of said company in connection therewith, were in active competition with the lines of the Union Pacific Rail-road Company for a large amount of traffic originating on the At-lantic coast and in the Central States.

(28) They aver, on the contrary, that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon,

the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line, about 850 miles in length, extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made
978 by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connecting lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business in tonnage and revenue which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company and the companies formerly owning its lines always prevented it and them from using or attempting to use the said route via Portland in competition with said Southern Pacific Company upon any business to or from
979 the Pacific coast south of Portland or to or from Asiatic ports.

(29) They deny that the rail line of said Southern Pacific Company between San Francisco and Portland was in active competition with the ships of the Oregon Railroad and Navigation Company plying between San Francisco and Portland, and aver that competition between said lines was never practicable.

(30) They deny that ships operated by the Portland and Asiatic Steamship Company between Portland, Oregon, and Asiatic ports in connection with the rail lines of the Union Pacific Railroad Company, or otherwise, were ever in competition with the Pacific Mail Steamship Company and the rails of the Southern Pacific Company.

(31) They deny that the lines of railroad of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation

Company between Ogden, Utah, and Portland, Oregon, were ever in competition with the lines of said Southern Pacific Company between said points, and aver that such competition was never practicable.

(32) They deny that any competition between the system of railroads and steamships owned and controlled by the Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by the Southern Pacific Company, if any such competition ever existed, was substantial or that it included a large volume of traffic of any kind.

(33) They admit that the Atchison, Topeka and Santa Fe Railway Company has been for a period of more than eight years the owner and in control of lines of railroad, as alleged in Subdivision III of the petition, and admit that the lines of the Union Pacific Railroad Company, in connection with the line of the Central Pacific Railway Company, operated by the Southern Pacific Company, have been during such period and still are competitors of the Atchison, Topeka and Santa Fe Railway Company for a large volume of traffic to and from the Pacific coast, and that the lines of the Union Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company have been and are competitive between various points in Kansas, Colorado, and other States.

(34) They admit that the lines of the Atchison, Topeka and Santa Fe Railway Company, since the completion of the same to San Francisco, California, in the year 1900, constituted the only line of transportation by rail from the Pacific coast south of Portland to the Mississippi Valley and the East except the lines of the Southern Pacific Company to the Gulf of Mexico and the lines of the Central Pacific Railway Company operated by the Southern Pacific Company in connection with the Union Pacific Railroad until the completion of the San Pedro, Los Angeles and Salt Lake Railroad in the year 1905.

(35) They have no knowledge of the operation by the Atchison, Topeka and Santa Fe Railway Company of a line of steamships between San Diego, California, and Asiatic ports, as alleged in the petition, but they deny that the traffic handled by any such steamship line, if any such line was ever operated, competitive between said Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company and the Union Pacific Railroad Company, was of great volume, and embraced both passengers and freight.

(36) They admit that the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Burlington and Quincy Railroad Company each owns and operates lines of railroad substantially as alleged in said petition; but they deny that the

lines of said Northern Pacific Railway Company in and of themselves are competitive with the lines of these defendants, and they admit that the lines of the Chicago, Burlington and Quincy
982 Railroad Company are competitive with the lines owned and operated by the defendant Union Pacific Railroad Company to a limited extent and between certain points.

(37) They deny that traffic between the Pacific coast and Asiatic ports and points on and east of the Missouri and Mississippi Rivers is competitive between the lines of the Union Pacific Railroad Company and connections owned by it, and the lines of said Northern Pacific Railway Company and The Great Northern Railway Company and connections and steamship lines controlled by them.

(38) They admit that the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company is the owner of a line of railroad extending from San Pedro on the Pacific Ocean, in the State of California, by way of Los Angeles, through the States of California, Nevada, and into Utah to Salt Lake City, and that most of said line is directly owned by said corporation, and the remainder of it is operated under lease or trackage contracts, and that the same constitutes a continuous line between San Pedro and Salt Lake City; but they deny that by said contract or otherwise there ever was any suppression or restriction of competition by said line with the lines of any defendant herein.

983 (39) They admit that the Denver and Rio Grande Railway Company owns a line of railroad from Salt Lake City, Utah, to Denver, Colorado, and that it is a competitor of defendant Union Pacific Railroad Company, but not of defendant Southern Pacific Company.

(40) Except as herein admitted they deny each and every allegation of Subdivision III of the petition.

IV. (1) They deny that in the spring of 1901, or at any other time, the defendants, Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the several States and between said States and foreign countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company, or any other company or any steamship lines, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems, or any other railway systems, and said steamship lines, or any other steamship lines, in respect to any such commerce, or to deprive the public of the facilities and advantages of the carrying on of such trade and commerce through the inde-
984 pendent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship lines, or that said defendants, or any of them, ever entered into

combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce carried on by such companies, if any such there was, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

(2) They admit that on or about the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by purchase from said firm of Kuhn, Loeb & Company 750,000 shares of the capital stock of said Southern Pacific Company of the aggregate par value of $75,000,000 out of 1,978,399 shares of the aggregate value of $197,839,900 then issued and outstanding; but they deny that the said stock was purchased or acquired in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

(3) They admit that thereafter, to wit, on or about the 26th
985 day of February, 1902, defendant Union Pacific Railroad Company sold and delivered the said 750,000 shares of the stock of said Southern Pacific Company to defendant Oregon Short Line Railroad Company, which has ever since owned and still owns the same.

(4) They admit that thereafter, to wit, on or about the 31st day of May, 1902, defendant Oregon Short Line Railroad Company acquired by purchase from said Kuhn, Loeb & Company, 150,000 additional shares of stock of said Southern Pacific Company, which said Oregon Short Line Railroad Company has ever since owned, and still owns; but they deny that the said additional shares were purchased or acquired in pursuance of any conspiracy or combination, or for any of the purposes alleged in said petition.

(5) They admit that thereafter, when, in 1904, defendant Southern Pacific Company created an issue of preferred stock, which it offered to its stockholders for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right, and subscribed for and received and has ever since owned and still owns 180,000 shares of the preferred stock of
986 said Southern Pacific Company; and they aver that thereafter in 1907, when said Southern Pacific Company increased its said preferred stock by an additional issue thereof, which it offered to the holders of its outstanding stock for subscription *pro rata* at par, said Oregon Short Line Railroad Company, as the owner of 1,080,000 shares of the stock of said Southern Pacific Company, exercised its right, and subscribed for and received 162,000 additional shares of the preferred stock of said Southern

Pacific Company, and it has ever since owned and still owns the same; so that said Oregon Short Line Railroad Company now owns 900,000 shares of common stock and 342,000 shares of preferred stock making a total of 1,242,000 shares of the capital stock of said Southern Pacific Company, out of a total of 2,726,498 shares issued and outstanding; but they deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company caused said Southern Pacific Company to issue said preferred stock; and deny that it was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any conspiracy or for any of the purposes or with the intent alleged in said petition.

(6) They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Rail-
987 road Company is voted at the dictation and instance of the defendants Harriman, Stillman, Schiff, and Kahn, and that the directors of said company have been selected by the said Harriman, Stillman, Schiff, and Kahn.

(7) They deny that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may result from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(8) They admit that at the annual meetings of the stockholders of the Southern Pacific Company held since the stock was so acquired and owned by said Oregon Short Line Railroad Company such stock has constituted a majority of the shares represented at such meetings; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by various other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad
988 Company has been able to elect the directors of said Southern Pacific Company, but they aver that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(9) They admit that since April 3, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(10) They admit that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but they deny that said stock

lers are or will be unable to elect the directors of said Southern ific Company, if they should deem it to their interest to do so, in osition to those voted for by said Oregon Short Line Railroad npany; and they aver that the reason why said stockholders have heretofore elected the directors of said company is that they e been satisfied with the directors nominated and elected by the nts and proxies of said Oregon Short Line Railroad Company in junction with the agents and proxies of other stockholders.

(11) They admit that defendant Harriman on the 3d day of April, 1901, became chairman of the executive committee, and on the 26th day of September, 1901, became the president aid Southern Pacific Company and ever since has been and still uch chairman and president.

12) They admit that the same person is the chief traffic officer, same person the chief operating officer, and the same person chief accounting officer of both companies, and that said com-ies have jointly employed numerous commercial and other agents; they aver that a very large majority of the agents, officers, and loyees of said companies are separate.

13) They admit that since about the 26th day of August, 1904, Pacific Mail Steamship Company, the Portland and Asiatic amship Company, and the San Francisco and Portland Steam-p Company have had the same officers and agents; but they deny t there ever was any competition between any of said steamship panies or said railroad or steamship lines or that such commerce been monopolized.

14) They aver that although the railroad of the Union Pacific lroad Company and the said Central Pacific Railroad physically formed a continuous line from the Missouri River to the Pacific Ocean, yet almost one-half the length of said line, to wit, from Ogden to San Francisco, with many branches, was ned by the Central Pacific Railway Company and was controlled l operated by the Southern Pacific Company, and no rate for transportation of passengers or property over the said line be-een the Missouri River and the Pacific Ocean could be made hout the concurrence of both the Union Pacific Railroad Com-ny and the Southern Pacific Company; and the only means by ich the Union Pacific Railroad Company could secure control of said Central Pacific Railroad was to secure control of the said uthern Pacific Company, which owned every share of the stock said Central Pacific Railway Company. That the lines of rail-ad now owned by defendant Union Pacific Railroad Company d been greatly improved while in the hands of receivers in the reclosure proceedings hereinbefore mentioned, and prior to Janu-y 1, 1901, it recognized the necessity, in the interest of the public

as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the
991 line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over the Union Pacific Railroad, the improvement of the latter as contemplated would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring by improvements its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by an interest adverse to defendant Union Pacific Railroad Company its plans, efforts, and object to improve its line of railroad between Council Bluffs and Ogden and the substantial object of the
992 aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of an opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of its lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated and impaired. For the purpose of procuring the improvement of said Central Pacific Railroad and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and with any intent or purpose in any wise to suppress or restrain any

petition in interstate or foreign commerce, the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named.

(15) They aver that such acquisition greatly increased and strengthened the credit not only of said Southern Pacific Company, but also of these defendants, and enabled them to procure means for improving the said railroads and increasing the efficiency of the same in the public interest upon much better terms and more readily than otherwise would have been possible. Immediately after such acquisition of the said stock, the improvement of the lines of the said Central Pacific Railway between Ogden and the Pacific Ocean, as well as the lines of these defendants, was commenced, and ever since has been actively prosecuted, so that between the 1st day of January, 1901, and the 1st day of January, 1908, there has been expended (in addition to ordinary expenditures for maintenance) for betterments and improvements of the line of the said Central Pacific Railway Company between Ogden and San Francisco alone about $24,000,000, being approximately $30,000 per mile; the great "cut-off" across Salt Lake, Utah, has been constructed and completed, the grades and curves have been greatly reduced, and the said line has been shortened about 51 miles. And these defendants aver that such improvements would not and could not have been made except for the improvement of the credit of both companies resulting from the acquisition by defendant Union Pacific Railroad Company and Oregon Short Line Railroad Company of the stock of the Southern Pacific Company as aforesaid, thereby securing for the Union Pacific Railroad Company an adequate and permanent outlet and establishing upon uniform standards a continuous line and railroad system from the Missouri River to the Pacific Ocean, as contemplated by said acts of Congress.

(16) They aver that the reports of defendant Union Pacific Railroad Company and Southern Pacific Company, returned under oath to the Interstate Commerce Commission for the fiscal year ending June 30, 1901, and for every fiscal year since that date, have shown that a majority of the directors of the Southern Pacific Company were at the same time directors of the Union Pacific Railroad Company; that since the 1st day of July, 1901, the records of said commission have shown that the same person was chief traffic officer of said Southern Pacific Company and of these defendants; that the purchase in 1901 of 750,000 shares and in 1902 of 150,000 additional shares of said Southern Pacific Company by Union Pacific Railroad Company and Oregon Short Line Railroad Company became known to said Interstate Commerce Commission and

to the public at large soon after said purchases were made; that the fact that said Southern Pacific Company and these defendants had many common officers and agents, and the relations existing between said Southern Pacific Company and these defendants in all their details became known as they occurred to the Interstate Commerce Commission and to the public at large, and have been published constantly throughout the United States, not only in the news press but by advertisements of these defendants and of said Southern Pacific Company, and have never been denied or in any way concealed. They aver that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of said 750,000 shares of the stock of the Southern Pacific Company in 1901, and of said additional 150,000 shares of such stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in
996 1901 and of said 150,000 shares in 1902 and by the payment of the price therefor at the time of such delivery. That the election of directors of said Southern Pacific Company and the election and appointment of all the officers and agents of said Southern Pacific Company and all other matters and things complained of in the petition herein, so far as they have occurred, were merely the natural and necessary consequences and results of said purchase of the said stock. That the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company as aforesaid by the exercise of subscription rights did not change and has not changed the relative voting strength or position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two blocks aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid. And these defendants aver that by reason of the premises, the right to maintain this suit and all rights of action or prosecution by the Government of the United States for or on account of the acquisition or ownership by either of these defendants of stock of said Southern Pacific Company accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is therefore barred
997 by the statutes of the United States in such cases made and provided.

(17) They deny each and every allegation of Subdivision IV of the petition respecting any combination or conspiracy between the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, for any of the purposes or with any of the intents alleged; and deny each and every allegation of said Subdivision IV of said petition not herein expressly admitted.

. (1) They deny that the defendants Harriman, Schiff, Kahn, lman, and Union Pacific Railroad Company in the spring of 1, or at any other time, caused the Union Pacific Railroad Com- y to acquire a majority of the stock of the Northern Pacific lway Company pursuant to any conspiracy to restrain trade and merce among the several States and with foreign nations, to nopolize, or attempt to monopolize, such trade and commerce, or suppress any competition; and they deny all the allegations of division V of the petition respecting any conspiracy or combi- ion for that or any other purpose between any of the defendants his suit.

2) They admit that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at time of such purchase the total stock of the Northern Pacific lway Company issued and outstanding was of the aggregate par ue of $155,000,000, but deny that such purchase was in pursuance ny conspiracy or combination or for any of the purposes alleged he petition.

3) They admit the incorporation of the Northern Securities npany, and also the retirement of the preferred stock by an addi- al issue of common stock of the Northern Pacific Railway Com- y as alleged in said petition.

4) They admit the sale and transfer of said stock to the Northern urities Company, and the receipt by said Oregon Short Line ilroad Company of $82,491,871 par value of the stock of said rthern Securities Company represented by certificates issued in name of Edward H. Harriman and Winslow S. Pierce, who was that time general counsel of defendant Union Pacific Railroad mpany; and they admit that neither the said Harriman nor the d Pierce had any personal interest in said shares.

5) They admit the commencement of a suit by the United States of America against said Northern Securities Company) and others, and the decision of said suit as alleged in the petition.

(6) They admit the commencement thereafter of a suit by said egon Short Line Railroad Company, Edward H. Harriman, Wins- S. Pierce, and The Equitable Trust Company of New York, as ged in the petition; and they admit that the relief sought by the plainants in said suit was denied by the decrees entered therein. t they aver that the said courts by said decrees approved the dis- bution by the Northern Securities Company of the stock of the rthern Pacific Railway Company and the Great Northern Rail- y Company complained of by defendant Oregon Short Line Rail-

road Company and its codefendants in said suit; and that as a result of said distribution and of the approval of the same in said suit the defendant Oregon Short Line Railroad Company, during the year 1904, received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares (being 18.18 per cent) of the capital stock of the Northern Pacific Railway Company, and 216,520 shares (being 17.32 per cent) of the capital stock of The Great Northern Railway Company; and that no doubt as to the right of said

1000 Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit.

(7) They aver that defendant Oregon Short Line Railroad Company upon the final decision of said suit proceeded from time to time to sell the stock of the Northern Pacific Railway Company, and of the Great Northern Railway Company, so received by it, as such sales could be advantageously affected; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 1,128 shares of the aggregate par value of $112,800 of the stock of the Northern Pacific Railway Company, and all but 4,041 shares of the aggregate par value of $404,100 of the stock of the Great Northern Railway Company, which it had received from such distribution of the assets of said Northern Securities Company; and said Oregon Short Line Railroad Company, at the date of the commencement of this suit, also owned 32,516 partially paid shares of the Northern Pacific Railway Company and 38,700 partially paid shares of the Great Northern Railway Company, for which it had subscribed upon increases of the stock of said companies since said distribution was made.

1001 (8) They deny that the defendants Harriman, Schiff, Kahn, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Oregon Short Line Railroad Company, Edward H. Harriman, Winslow S. Pierce and the Equitable Trust Company of New York against Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or to monopolize any trade and commerce as in said petition alleged.

(9) They deny each and every allegation of said Subdivision not herein expressly admitted.

VI. (1) They admit that prior to the year 1902 defendant William A. Clark, together with others, caused to be incorporated the defendant The San Pedro, Los Angeles & Salt Lake Railroad Company, but deny that it was for the purposes alleged in the petition;

fer to the articles of incorporation of said company for the purposes
its incorporation.

(2) They admit that defendants Harriman and Clark, on or about
e 9th day of July, 1902, entered into and executed an agreement in
writing, and that "Exhibit A" to the petition is a true copy
02 of such agreement; but they deny that said agreement was en-
tered into for any of the purposes alleged in Subdivision VI
f the petition, or for any purpose not set forth or mentioned in said
Exhibit A"; and they aver that the said Harriman in entering into
d executing said contract was acting for defendant Oregon Short
ine Railroad Company and for no other corporation or person.

(3) They admit that, pursuant to said contract, "Exhibit A," other
ntracts between the said Harriman and the said Clark and between
e Oregon Short Line Railroad Company and the San Pedro, Los
ngeles and Salt Lake Railroad Company were made and entered
to in June and July, 1903, but deny that any of such other con-
acts were of the character or for any of the purposes alleged in
id Subdivision VI of the petition.

(4) They admit that on or about the 7th day of June, 1903, a con-
act in writing bearing that date was made and entered into between
illiam A. Clark, individually and as trustee for his associates, and
e defendant Edward H. Harriman, as trustee for the defendant
regon Short Line Railroad Company, and defendant The Farmers'
oan and Trust Company, of which "Exhibit B" annexed to the
petition is a true copy, and that stock of the defendant The
03 San Pedro, Los Angeles and Salt Lake Railroad Company was
deposited with and is still held by said The Farmers' Loan
d Trust Company, as stipulated and provided in and by said con-
act "Exhibit B."

(5) They deny each and every allegation of a conspiracy or com-
nation by and between defendants Harriman, Schiff, Kahn, Still-
an, Clark, Union Pacific Railroad Company, and Oregon Short
ine Railroad Company, or any of them, for any of the objects or
rposes mentioned in Subdivision VI of the petition, or for any
her purpose; and they deny each and every allegation in Subdi-
sion VI of the petition not herein in this subdivision expressly ad-
itted; and they aver the facts to be as follows, viz:

(a) The Oregon Short Line and Utah Northern Railway Com-
ny, the corporation which formerly owned the lines of railroad
w owned by defendant Oregon Short Line Railroad Company, re-
ived prior to the year 1890 to construct a line of railroad from
lt Lake City, Utah, to Los Angeles, California, with various
anches; and in 1890 it had constructed and put in operation the
id line from Salt Lake City, via Sandy, Provo, Juab, and Leaming-

ton to Milford, Utah, a distance of 221.9 miles, and various
1004 branches, all of which are more particularly described as
"(Parcel 1)" and "(Parcel 2)" of article second in the con-
tract, "Exhibit A," to the petition herein. It had complied with
all the laws of the Territory of Utah and the State of Nevada neces-
sary to entitle it to construct said line and had surveyed and located
the said line; and under due corporate action it had prepared and
filed maps and profiles of the same in the proper land offices in Utah
and Nevada to entitle it to and it had acquired the right of way for
said line across the lands of the United States in a general south-
westerly direction from Milford through Utah and across the State
of Nevada to the boundary line between the States of Nevada and
California. The said maps had been approved under the rules of the
Department of the Interior, and the Oregon Short Line and Utah
Northern Railway Company had graded and completed the roadbed
of said line ready for the rails from Milford to the boundary line
between Utah and Nevada, and had practically completed the grad-
ing of said line from said boundary line southwesterly to Calientes,
Nevada, a distance of about 339 miles from Salt Lake City; and had
graded a branch of said line from Calientes to Pioche, Nevada.

(b) On account of its inability at that time to procure
1005 the money necessary to complete the said line said Oregon
Short Line and Utah Northern Railway Company discon-
tinued and suspended the work of constructing said line in 1891. The
said company continued in such financial difficulty that on or about
the 13th day of October, 1893, all its railroads and other assets were
placed in the hands of receivers, who administered the same until
the sale thereof under the decrees of the Circuit Courts of the United
States for the District of Utah, Wyoming, Montana, and Idaho on
or about the 9th day of January, 1897, when they were bought by
for defendant Oregon Short Line Railroad Company as hereinbefore
alleged.

(c) The defendant Oregon Short Line Railroad Company after
its acquisition of the railroads and other assets of the Oregon Short
Line and Utah Northern Railway Company upon the foreclosure
sale thereof as aforesaid until 1901 was financially unable actively
to resume the construction of said line from Milford to Los Angeles
and in its endeavor to provide for the completion of said line of
railroad it conveyed that portion of said line, including the com-
pleted grade from Milford to the boundary line between the State
of Utah and Nevada, to the "Utah and Pacific Railroad Com-
pany," a corporation of the State of Utah, all the capital stock
1006 of which was owned by defendant Oregon Short Line Rail-
road Company, and conveyed that portion of said line from
the boundary line between Utah and Nevada to the boundary

etween Nevada and California, including the partially constructed rade of the main line from the Utah boundary line to Calientes nd of the branch line from Calientes to Pioche to the "Utah, Neada and California Railroad Company," a corporation of the State f Nevada, all of the capital stock of which was owned by defendant Oregon Short Line Railroad Company; and to construct, complete, nd own that portion of said line which was to be situated in the tate of California the defendant Oregon Short Line Railroad Comany caused to be incorporated and acquired all the capital stock f the "Utah, Nevada and California Railroad Company in Calirnia."

(d) Early in 1901 said Utah and Pacific Railroad Company and id Utah, Nevada and California Railroad Company, aided and sisted by defendant Oregon Short Line Railroad Company, actively sumed the construction of the said line of railroad from Milford Los Angeles, and to that end put a large force of men at work ying track upon and repairing, where necessary, the grade which had been constructed as aforesaid from Milford to Calientes 007 and in doing other work necessary in the construction of the said line to Los Angeles.

(e) On or about the date when the construction of said line as resumed in 1901 as aforesaid defendant, the San Pedro, Los ngeles and Salt Lake Railroad Company was incorporated under e laws of the State of Utah, with power to build or acquire railads in that State, but it did not acquire, under the laws of Nevada, e right to build or acquire railroads in that State, or acquire the ght under the laws of California to build or acquire any railroad rth or east of Riverside until long after that date. It had acired a line of railroad of inferior character extending from San edro to Los Angeles, a distance of twenty-four miles, and branches om Los Angeles to Pasadena and Glendale, a distance of about enty miles, which were the only railroads owned or controlled by id the San Pedro, Los Angeles and Salt Lake Railroad Company hen the construction of the said line from Milford to Los Angeles as resumed by defendant Oregon Short Line Railroad Company d the companies controlled by it as aforesaid.

(f) The said the San Pedro, Los Angeles and Salt Lake Railroad Company at that time controlled, through the ownership of 008 stock or otherwise, the Utah and California Railway Company, a corporation of the State of Utah, authorized to build railroad in the State of Utah, but not in the States of Nevada or lifornia.

(g) The said the San Pedro, Los Angeles and Salt Lake Railroad mpany had not at said time located any line of railroad or acired any rights of way or done any work of constructing a railroad

easterly or northerly of Riverside, California, a distance of [illegible] miles from Los Angeles, and said Utah and California Railway Company had not at said time located any line of railroad or acquired any rights of way or done any work of constructing a railroad.

(h) Soon after the incorporation of said the San Pedro, Los Angeles and Salt Lake Railroad Company it attempted to seize and appropriate to its own use the right of way across the State of Nevada and the partially completed grade between Calientes and Pioche, located and constructed by the Oregon Short Line and Utah Northern Railway Company as hereinbefore alleged, and then owned by the Utah, Nevada and California Railroad Company; and to that end said the San Pedro, Los Angeles and Salt Lake Railroad Company ran surveys over the said lines and prepared maps and profiles adopting the same as its own and attempted to file the same in
1009 the local land office of the United States in Nevada for the purpose of securing the right of way and also acquired a pretended tax title thereto from Lincoln County, Nevada, and also attempted by its laborers and other employees to seize and take forcible possession of the same.

(i) Thereupon and in order to protect its possession of and title to said grade and right of way across the State of Nevada, said Utah, Nevada and California Railroad Company commenced in the Circuit Court of the United States for the District of Nevada a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company and others, and upon the hearing of said cause an injunction was issued restraining and enjoining the said defendants from interfering with the possession and rights of said complainant; and said Utah, Nevada and California Railroad Company in a suit against said the San Pedro, Los Angeles and Salt Lake Railroad Company and others in Lincoln County, Nevada, procured a decree canceling and setting aside the said pretended tax title of the defendant the San Pedro, Los Angeles and Salt Lake Railroad Company; and the contests in the land offices of the United States between said Utah, Nevada
1010 and California Railroad Company and said the San Pedro, Los Angeles and Salt Lake Railroad Company and said Utah and California Railway Company involving the said right of way were finally decided by the Secretary of the Interior in favor of the said Utah, Nevada and California Railroad Company.

(j) As a result of such decisions, rendered prior to the execution of the contract, "Exhibit A" to the petition, herein on July 9, 1[illegible] the defendant Oregon Short Line Railroad Company and said Union and Pacific Railroad Company and said Utah, Nevada and California Railroad Company, controlled by it, established their right to the partially completed railroad and the located line and right

ray therefor from Salt Lake City, Utah, to the boundary lines between the States of Nevada and California and were rapidly proceeding with the completion of said line to Los Angeles, while the said the San Pedro, Los Angeles and Salt Lake Railroad Company had in operation only the aforesaid line from San Pedro to Los Angeles and branches from Los Angeles to Pasadena and Glendale.

(k) And these defendants are informed and believe, and upon such information and belief allege, that defendant the San Pedro, Los Angeles and Salt Lake Railroad Company would 1011 never have undertaken the construction of a line of railroad from Los Angeles to Salt Lake City, except for its expectation and belief, and the expectation and belief of the defendant Clark, that it could acquire without compensation the right of way and partially constructed line located and constructed as aforesaid by the Oregon Short Line and Utah Northern Railway Company from Milford through Utah and across the State of Nevada to the California boundary line, and that defendant Oregon Short Line Railroad Company would not extend the said line by construction from Milford to Los Angeles; and that when it appeared from the contests, suits, and decisions aforesaid that the said right of way and partially completed grade could not thus be acquired, and that defendant Oregon Short Line Railroad Company would construct and extend its own line from Milford to Los Angeles, the said the San Pedro, Los Angeles and Salt Lake Railroad Company and the said Clark would have abandoned the previously conceived purposes and intention to construct and establish a line of railroad from Los Angeles to Salt Lake City, but for the ability to negotiate and execute the contract "Exhibit A" to the petition herein providing for the construction and establishment of such a line under the terms and 1012 conditions in said contract set forth.

(6) They deny that the said "Exhibit A" to the petition or that anything done in executing and carrying out the same has suppressed, restrained, or in any manner restricted any commerce among the several States or with foreign countries.

(7) They deny that the aforesaid act of Congress approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreement and contract, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein, and all agreements relating to the construction or the abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States respectively; and any act of Congress intended or construed to prohibit or regulate or in any man-

ner interfere with such contracts, corporate powers, and matters in in excess of the powers of Congress under the Constitution of the United States, and is therefore void.

(8) They aver that although prosecuted diligently after
1013 the making of said contract, "Exhibit A" to the petition, the work of constructing the said railroad from Milford to Los Angeles was not completed and the said line opened for business until the first day of May, 1905; and these defendants aver that on the 9th day of July, 1902, when the said agreement was made and entered into, there was not then and from the nature of the work to be done there could not for several years be any competition of any kind between the parties to the said agreement in the transportation of commerce; and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote and contingent to be prohibited by or to come within the provisions of the said act of Congress approved July 2, 1890.

(9) They aver that the said contract, "Exhibit A" to the petition, was made and entered into on the 9th day of July, 1902, and not afterward, and they aver that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on account of said contract or for or on account of any of the matters and things alleged in Subdivision VI of the petition, accrued, if at all, more than three years and more than five years next before the commencement of this
1014 suit and is therefore barred by the statutes of the United States in such cases made and provided, and all right of the petitioner to relief herein is barred by the said statutes.

VII. (1) These defendants are without any knowledge respecting the purchase of shares of the Atchison, Topeka and Santa Fe Railway Company by defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, and of any conspiracy or combination between the defendants last mentioned for the purchase of such stock or for any other purpose, and of the election of defendants Frick and Rogers as directors of the Atchison, Topeka and Santa Fe Railway Company, and of the reasons for such election.

(2) They admit that during the year 1906 defendant Oregon Short Line Railroad Company purchased $10,000,000 par value of the preferred stock of the Atchison, Topeka and Santa Fe Railway Company, which it still owns, and they aver that neither of the defendants has ever owned any other stock of the Atchison, Topeka and Santa Fe Railway Company; and they also aver that the capital stock of the Atchison, Topeka and Santa Fe Railway Company outstanding at the time of such purchase was, and still is, of the
1015 aggregate par value of $216,199,530.

(3) They deny that in the purchase of said stock or otherwise these defendants, or either of them, conspired or combined, or have ever conspired or combined, with the defendants Harriman, Schiff, Kahn, Stillman, Rogers, and Frick, or any of them, for the purchase of stock of the Atchison, Topeka and Santa Fe Railway Company, or to restrain trade and commerce among the several States and with foreign nations, or to monopolize, or attempt to monopolize, such trade and commerce, or to restrain and prevent competition among any railroad systems, or for any other purpose alleged or mentioned in the petition herein.

(4) They deny that the lines of railroad of the Atchison, Topeka and Santa Fe Railway Company are operated in harmony with the lines of defendant Union Pacific Railroad Company and of the Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(5) They are without knowledge of any agreements between the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company respecting the extension or abandon-
1016 ment of the extension of their lines in California, and are without knowledge of the incorporation of the "Northwestern Pacific Railway Company" and of the ownership of its stock.

(6) They deny all the other allegations of Subdivision VII of the petition.

VIII. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied the same is not true to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct and humbly pray to be hence dismissed with their reasonable costs and charges in their behalf most wrongfully sustained.

UNION PACIFIC RAILROAD COMPANY,
By JOHN W. BALDWIN, *Its Solicitor.*

1017 THE OREGON RAILROAD AND NAVIGATION COMPANY,
By WILLIAM W. COTTON, *Its Solicitor.*

OREGON SHORT LINE RAILROAD COMPANY,
By P. L. WILLIAMS, *Its Solicitor.*

P. L. WILLIAMS,
ROBERT S. LOVETT,
Of Counsel.

1018 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein. (Filed April 6, 1908.)

1019 In the Circuit Court of the United States for the District of Utah. No. 933. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company; Oregon Short Line Railroad Company; the Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick, and William A. Clark, defendants.

1020 The joint and separate answer of the defendants, William A. Clark and of the San Pedro, Los Angeles and Salt Lake Railroad Company, to the original bill of the United States of America filed herein.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exception which can or may be taken to the errors, uncertainties, and other imperfections in the complainant's bill contained, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

I. They admit that the defendant, the San Pedro, Los Angeles and Salt Lake Railroad Company, is now and since about the first day of May, 1905, has been a common carrier engaged in the transportation of freight and passengers within the States of California, Nevada, and Utah, and between the termini of its railroad at San Pedro, in the State of California, and at Salt Lake City, in the State of Utah; and since that time has participated in the transportation of freight and passengers under joint and through tariffs made effective therefor according to law, over the lines of railroad
1021 owned by the Union Pacific Railroad Company, Oregon Short Line Railroad Company, Denver and Rio Grande Railroad Company, and to a limited extent in southern California with the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company, and among the several States of the United States into and through which the transportation lines owned and operated by said companies, respectively, and not further or other

rise, and to that extent the defendant San Pedro, Los Angeles nd Salt Lake Railroad Company is now and since about May 1st, 905, has been engaged in trade and commerce among the several tates and with foreign nations.

II. For answer to the second paragraph of complainant's bill, hese defendants say that they have no knowledge, information, or elief in respect to said several matters in said second paragraph lleged except the statements and allegations of the complainant ontained in said paragraph; wherefore these defendants neither admit nor deny the same, but leave the complainant to make such proof s it may see proper or be advised.

III. For answer to the third paragraph of complainant's
022 bill, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, they admit hat the defendant San Pedro, Los Angeles and Salt Lake Railroad Company is now the owner of or operates a line of railroad extending from East San Pedro, a port on the Pacific Ocean, in the State of California, and thence by way of Los Angeles through the States of California and Nevada and into the State of Utah to the city of Salt Lake, in said State of Utah; that the said company is also the owner of certain branch lines of railroad extending from Los Angeles, in California, to Glendale and Pasadena; that that part of its said line of railroad lying between Riverside Junction and Colton and San Bernardino is used and operated under a lease whereby the right to use the tracks of said Southern Pacific Company between said points is conferred upon defendant, San Pedro, Los Angeles and Salt Lake Railroad Company; and that a portion of the track of the Atchison, Topeka and Santa Fe Railway Company extending from Colton through San Bernardino and Barstow to Daggett, in California, is operated upon by the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a certain lease whereby the joint use of that portion of the tracks of said Atchison, To-
1023 peka and Santa Fe Railway Company is granted for a term of years to the said San Pedro, Los Angeles and Salt Lake Railroad Company. They admit that the remainder of the line of railroad from San Pedro to Salt Lake City aforesaid is owned by the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the entire line constitutes a continuous line of railroad between said points. They admit and aver that the line of railroad of the said San Pedro, Los Angeles and Salt Lake Railroad Company was completed between its said termini on or about the first day of May, 1905, and also admit and aver that it has been at all times since its completion, through its connection with the Oregon Short Line Railroad Company at Salt Lake City and also by and through a connection which it has and maintains with the Denver and Rio Grande

Railroad Company at Salt Lake and at Provo, in Utah, a competing with the Southern Pacific Company.

They deny that there is or has been for any reason or by any cause any suppression of competition by any act or thing done or suffered to be done by the said San Pedro, Los Angeles and Salt Lake Railroad Company in its relation to any traffic having origin or destination upon or beyond the lines of railroad owned and operated
1024 by the said San Pedro, Los Angeles and Salt Lake Railroad Company or any other traffic.

IV. For answer to the fourth paragraph of complainant's bill these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph IV of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

V. For answer to the fifth paragraph of complainant's bill, these defendants say that they have no knowledge, information, or advice save that contained in the several allegations of said Paragraph V of complainant's bill, and for want of such information or knowledge these defendants are unable specifically to admit or deny the several allegations therein contained, and leave the complainant to make such proofs as it may be advised.

VI. For anwser to the sixth paragraph of complainant's bill these defendants aver that prior to the twentieth day of
1025 March, 1901, there existed in the State of California a certain railroad corporation known as the Los Angeles Terminal Railway Company, which owned and operated a line of railroad extending from East San Pedro, bordering upon the harbor of San Pedro in California, to Los Angeles, California, with a branch line extending from Los Angeles to Pasadena, and with another branch line extending from a point on the last-named branch to a terminus at Verdugo in California, in all about 45 miles of railroad; and

That there also existed a corporation known as the Los Angeles Terminal Land Company, which owned certain lands at and near the terminus of said railroad at San Pedro, California;

That there also existed at the same time a corporation known as the California Improvement Company, the same being a corporation organized under the laws of the State of Illinois, which was the owner of the stocks of the first two mentioned corporations; and

That within a few months prior to said March 20th, 1901, the stock and interests in said corporations were owned by defendant Clark and certain other persons;

That said persons, owners of the stock of the said several
1026 corporations above named, about March 12th, 1901, caused

articles of association to be made for the creation of a corporation to be known as the San Pedro, Los Angeles and Salt Lake Railroad Company, which articles of association were duly executed; and on March 20th, 1901, filed in the proper offices in the State of Utah, whereby the said San Pedro, Los Angeles and Salt Lake Railroad Company became on March 20th, 1901, legally incorporated under the laws of the State of Utah;

That in compliance with the laws of the State of Nevada, and to enable it to own and acquire a railroad in the State of Nevada, the said San Pedro, Los Angeles and Salt Lake Railroad Company, on April 8th, 1901, filed its articles of incorporation, duly certified, in the proper offices in the said State of Nevada; and

That on the thirteenth day of April, 1901, in order to comply with the laws of the State of California, the said San Pedro, Los Angeles and Salt Lake Railroad Company filed duly certified copies of its articles of incorporation in the office of the secretary of state of the State of California, and that it filed its articles of incorporation in the county of Los Angeles, in said State, on the fifteenth day
1027 of April; in the county of San Bernardino, on the tenth day of December, 1901; and in Riverside County in California on the tenth day of April, 1902.

These defendants allege that the purpose of said incorporators who created the said corporation was duly expressed by them in the articles of incorporation of said company; and that the corporate powers and the business and purposes of said corporation were duly expressed in the said articles of incorporation under which the said San Pedro, Los Angeles and Salt Lake Railroad Company, among other things, was given power "to own and operate a main line of railroad from Salt Lake City, in the State of Utah, through the following counties in the said State: Salt Lake, Utah, Tooele, Juab, Millard, Beaver, and Iron; also through Lincoln County in Nevada, and also through the counties of San Bernardino, Riverside, Orange, and Los Angeles, in California, to a terminal point on the harbor of San Pedro, in Los Angeles County, California"; and it also thereby had power to construct, own, and operate certain branch lines of railroad particularly described in its said articles; and thereby it also had power "to buy, own, maintain, operate, and further extend" the railroad rights, properties, and franchises in the
1028 State of Utah, which are so located as to be conveniently appropriated as a part of the main line of its said railroad, or as branch lines thereof; and to purchase like properties in the State of Nevada and the State of California; and particularly to purchase the railroad properties and franchises of the Los Angeles Terminal Railroad Company; and to build and operate certain extensions and branches more particularly described in said articles; and to acquire

real estate for the operation of wharves on navigable waters; and also to operate a telegraph line and own and hold water rights, lands, and materials necessary for the purposes of the corporation. It also had power "to purchase or otherwise acquire and own" the capital stock or securities, or any part of the capital stock or securities, of any other railroad corporation or corporations.

These defendants submit that the purpose for which the said San Pedro, Los Angeles and Salt Lake Railroad Company was organized and created is fully and particularly specified and set forth in its said articles of incorporation, reference to which is hereby made and prayed to be considered herein, specifically set forth, and the same will be shown and exhibited upon the hearing of this cause; and

These defendants expressly deny that the alleged purpose
1029 set forth in the first clause of the sixth paragraph of complainant's bill was or is a true statement of the purpose of the said San Pedro, Los Angeles and Salt Lake Railroad Company or of its incorporators, and alleges that its only purpose was that expressed in its said articles of incorporation.

These defendants admit that the said San Pedro, Los Angeles and Salt Lake Railroad Company acquired a line of railway from San Pedro to Los Angeles, which, defendants aver, was by and through a conveyance of the properties of the Los Angeles Terminal Railway Company, which conveyance was delivered to and accepted by the said San Pedro, Los Angeles and Salt Lake Railroad Company on March 21st, 1901, under which the said San Pedro, Los Angeles and Salt Lake Railroad Company became the owner of a line of railroad extending from East San Pedro aforesaid through Los Angeles to Pasadena and Glendale, as above mentioned.

In respect to the allegation of said bill that the defendant San Pedro, Los Angeles and Salt Lake Railroad Company was "engaged in the construction of the balance of its line when the defendants Harriman, Schiff, Kahn, Stillman, the Union Pacific Railroad Company, and Oregon Short Line Railroad Company, for the sole
1030 purpose of restraining trade and commerce among the States and with foreign nations and monopolizing same, as hereinbefore more particularly set forth, and of preventing competition between said railways then in process of construction; and the said Union Pacific Railroad system, including said Southern Pacific system, brought suits of various kinds in the courts for the purpose of harassing and injuring the said railway company and preventing the acquisition of the necessary right of way for the same; put large gangs of men at work to interfere with and prevent construction of the said line; threatened said Clark and his associates in the said San Pedro, Los Angeles and Salt Lake Railroad Company that if said line was completed the same would be paralleled by the Oregon

Short Line, its value would be destroyed, and its ability to secure business or operate at a profit would be taken away, which said threats, litigation, and other interference were continued for a period of many months"; these defendants deny the said several allegations and each of them, and aver the truth to be, in respect of said several allegations, that a controversy did arise about April 1st, 1901, between the said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company,
1031 and one of its auxiliary and subsidiary companies known as the Utah, California and Nevada Railroad Company. The said controversies were with respect to the conflicting rights and claims of said companies to a certain right of way for a railroad extending from the eastern boundary of the State of Nevada, beginning at a point known as Uvada, in Lincoln County, in said State; thence in a southwesterly course across the State of Nevada to the southwestern boundary thereof; and also a branch line of the railroad right of way extending from a point upon the line above described, designated and known as Clover Valley Junction, said point being distant about forty miles southwesterly from said Uvada, the point of beginning of the above-described line, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles.

The contention and claim of the said Oregon Short Line and its said auxiliary company was based upon and grew out of a certain law in the United States entitled, "An act granting to railroads the right of way across the public land of the United States," approved March 3, 1875, the title and claim of the said Short Line Company being substantially as follows:

1032 The Nevada Pacific Railway Company was a corporation created in the year 1889, existing under the laws of the State of Nevada, and its franchise authorized it to construct a railroad connecting with the railroad of the Utah Central Railway Company's railroad at a point on the eastern boundary of the State of Nevada, now known as Uvada, near Pioche in Lincoln County, Nevada, and extending thence in a southwesterly course across the said State of Nevada to the western boundary line of the said State, with two branch lines thence extending into the counties of White Pine and Nye.

That on the twenty-seventh day of July, 1889, the said Nevada Pacific Railway Company, together with the Oregon Short Line Railroad Company, the Utah and Northern Railway Company, and other railroad corporations of the States of Utah, Idaho, and of the United States, pursuant to lawful authority, made and entered into certain articles of consolidation and agreements, whereby said

several corporations agreed to and with each other to unite and consolidate and to unite, form, and consolidate their respective organizations, capital stock railroads and franchises of every nature and description into one company, to continue in existence for a period of fifty years, and to be called and known as "Oregon
1033 Short Line and Utah Northern Railway Company."

For a more particular and complete statement of the terms and conditions of the said articles of consolidation, reference is hereby made to the same, which will be exhibited to this honorable court in due course.

That in the years 1889 and 1890 said Oregon Short Line and Utah Northern Railway Company resolved to construct its railroad upon its right of way from Milford, in the State of Utah, to a point now known as Uvada, on said line, and thence into Lincoln County, Nevada, upon the line authorized under the charter privileges prior to the execution of said agreement of consolidation and owned and enjoyed by the said Nevada Pacific Railway Company.

That in pursuance of said determination the said Oregon Short Line and Utah Northern Railway Company adopted its line of railroad and located the same, caused a copy of its articles of incorporation and due proof of its organization under the same and maps and profiles showing its line of railroad as located and adopted by it to be filed with the local land offices of the United States in Nevada and Utah and to be forwarded therefrom to the Secretary of the Interior, and also caused maps and profiles of the line of its
1034 railroad from Milford, Utah, to the Utah-Nevada State line at the point now known as Uvada, and also from the said last-named point southwesterly, through the State of Nevada, to the southwestern boundary thereof, and also extending from a point upon said line then known as and called Clover Valley Junction, but now Caliente, and extending thence in a northerly or northwesterly direction to the town of Pioche, in Lincoln County, in the said State, a distance of about thirty miles, to be duly prepared and submitted to the proper officers of the Land Department of the United States, and thereupon said maps and profiles were by said officers and by the Secretary of the Interior of the United States duly approved, all in conformity with the terms and provisions of the aforesaid act of Congress of the United States and pursuant to the regulations and requirements of the Secretary of the Interior of the United States; and that thereby the said Oregon Short Line and Utah Northern Railway Company claimed to have become fully possessed of the ownership of the said railway shown and indicated upon said maps and profiles between the eastern boundary of the State of Nevada and southwesterly boundary of the said State, and also upon said branch line from Clover Valley Junction to Pioche aforesaid and

1035 shown upon said maps and profiles of said railroad and as approved by the Secretary of the Interior of the United States.

That the right, title, and interest so acquired by the said Oregon Short Line and Utah Northern Railway Company had not been forfeited by the United States or by any act of Congress thereof, nor by any proceedings under the direction of Secretary of the Interior or by *quo warranto* nor any other proceeding whatsoever, nor in any way or manner; but the same was claimed as a valid subsisting vested right, title, and ownership in the said right of way, and the grade thereon constructed by said Oregon Short Line and Utah Northern Railway Company and its assigns.

That during the year 1890 the said Oregon Short Line and Utah Northern Railway Company entered upon the construction of its said line of railway from Milford, in the State of Utah, to the Nevada State line, and from said State line into and through Lincoln County, Nevada, including the said branch line from Clover Valley Junction to Pioche, and expended in constructing the roadbed and embankments, including bridges, tunnels, and work within and upon said right of way, in all about the sum of one million dollars, of which sum about six hundred and ninety thousand

1036 dollars was expended upon that portion of the right of way in Lincoln County, Nevada, in the construction of grade, embankments, cuts, tunnels, and work in and upon said right of way from Uvada aforesaid southwesterly along the main line of said railway to Clover Valley Junction, a distance of about forty miles, and from said last-named point northerly or northwesterly upon said branch line to or near the said town of Pioche, a distance of about thirty miles.

That in the year 1891, after expending said sums of money, the said Oregon Short Line and Utah Northern Railway Company became embarrassed financially and was unable to prosecute said work to completion, and for said reason suspended the prosecution of said work.

That all the properties of the Oregon Short Line and Utah Northern Railway Company, including the properties above mentioned and described, about August 1st, 1889, were mortgaged by the said Oregon Short Line and Utah Northern Railway Company to the American Loan and Trust Company of Boston.

That in the 1895 the said company, being in default in the payment of its indebtedness, secured by said mortgage and other mortgages upon its property, the American Loan and Trust Com-

1037 pany, trustee of the said consolidated mortgage, brought its bill to foreclose the same in the Circuit Courts of the United States; and thereafter in said suit such proceedings were had that a decree of foreclosure and sale was duly entered thereon, and the

said property embraced in the said mortgage was duly sold by pro-
ceedings under said decree of foreclosure and thereafter duly con-
veyed to the Oregon Short Line Railroad Company by the master
under the terms and directions of said decree; and that in making
execution and delivery of the conveyance of said properties the said
Oregon Short Line and Utah Northern Railway Company duly
joined, and the purchaser at said foreclosure sale was duly let into
the possession thereof, under the terms of said decree of foreclosure
and sale, on or about March 15th, 1897.

The said Oregon Short Line Railroad Company, the purchaser of
the property of the said Oregon Short Line and Utah Northern Rail-
way Company, was a corporation of the State of Utah, organized as
such on the ninth day of February, 1897, and had power to acquire,
own, operate, enjoy, maintain, and further extend all of the lines
of the railroad right of way and property formerly owned and en-
joyed by the said Oregon Short Line and Utah Northern Railway
Company.

That in the year 1896, pending the foreclosure proceed-
1038 ings above mentioned, there was formed in the State of Utah a
corporation known as the Utah and California Railway Com-
pany, which had power by its original articles of incorporation to
construct, own, and operate a railroad from Salt Lake City, in the
State of Utah, to St. George, in the State of Utah; and that by an
amendment to the said articles the said company was empowered to
construct a branch line from a point at or near Milford, Beaver
County, Utah, a station on the Oregon Short Line and Utah North-
ern Railway Company, as then constructed, and continuing to the
Utah-Nevada State line at a point now known as Uvada.

Said Utah and California company caused maps of its proposed
railroad to be prepared and submitted to the proper land officers of
the United States for its line of railroad, as shown upon said maps
extending from Milford station to Uvada, in the State of Utah, which
said line of its railroad was identical with the constructed roadbed
and right of way line of said Oregon Short Line and Utah Northern
Railway Company; and

The said Utah and California company caused to be prepared maps
and profiles of a proposed railroad line extending from the
1039 boundary line between the said States of Utah and Nevada
from Uvada into and through Lincoln County, in the State
of Nevada, for a distance of about forty miles, to a point known as
called Clover Valley Junction; and also northerly from said point for
a distance of about thirty miles to Pioche, which said maps and pro-
files were for a right of way identical with and laid upon the right
of way and railroad grade and embankments and embraced in the
maps and profiles and right of way of said Oregon Short Line as

Utah Northern Railway Company hereinbefore described; and it caused said maps and profiles covering the said line within the State of Nevada to be deposited with the said land office of the United States for the district of Nevada for approval by the Secretary of the Interior.

That none of the said maps and profiles so filed by the Utah and California Railway Company over the said line within the States of Utah and Nevada were ever approved by the Secretary of the Interior; and that no title to the said right of way shown upon such maps was ever acquired by the Utah and California Railway Company.

That the said articles of incorporation and corporation franchise of the said Utah and California Company did not at the time
1040 aforesaid embrace any right, franchise, or power to construct, maintain, or operate a railroad for any distance whatsoever, or at all, within the State of Nevada.

And the said Utah and California Railway Company had not at the time of making and depositing its said maps and profiles upon the said line in the State of Nevada any right, franchise, or power whatsoever under which it could make, construct, or operate a railroad in the State of Nevada, nor under which it could, according to the laws of the said State of Nevada, acquire any right to construct, maintain, and operate a railroad in said State.

That in the year 1898 the Oregon Short Line Railroad Company made a certain agreement with one McCune and his associates providing that they should organize a company to be known as Utah and Pacific Railroad Company, to build, construct, maintain, and operate a railroad from Milford station, on the line of the said Oregon Short Line Railroad Company in Beaver County, Utah, to Nevada, on the Nevada State line.

In said agreement the Short Line Company reserved to itself the option to purchase and take over from said McCune and others the majority of the capital stock and securities of the said Utah and Pacific Company.

1041 That pursuant to said agreement a corporation of the State of Utah was organized by the name last aforesaid, and the line of the railroad from Milford to Uvada was by it constructed.

That the Utah and California Railway Company waived its preferred rights under its said filing of maps and profiles in favor of the said Utah and Pacific Railroad Company, and consented that the Utah and Pacific Railroad Company should construct, maintain, and operate its railroad upon said right of way; and

That the said Oregon Short Line and Utah Northern Railway Company and said Oregon Short Line Railroad Company assigned and trans-

ferred their rights to said right of way and railroad grade betwe
said points to said Utah and Pacific Railroad Company, and the sa
railroad of the Utah and Pacific Railroad Company was construc
and operated from Milford to Uvada aforesaid upon a right of w
duly approved to it by the United States and identical with the orig
nal right of way approved by the United States to said Oregon Sho
Line and Utah Northern Railway Company.

That said Oregon Short Line Railroad Company acquired all th
stock, bonds, and securities of said Utah and Pacific Railro
1042 Company and was possessed thereof and operated said ra
road to Uvada as aforesaid.

That at the time said controversies arose the line of the railroad
the Oregon Short Line Railroad Company operated by it, includi
the said Utah and Pacific Company, extended from Salt Lake Ci
in the State of Utah, continuously to said Uvada, a distance of
miles, and at Uvada connected with the railway right of way f
merly owned by the Oregon Short Line and Utah Northern Railw
Company and extended into and through Lincoln County, Nevada, a
it was engaged in collecting material for and in preparation for co
tinuing the construction of a railroad upon the said line of right
way into and through Lincoln County, Nevada, including said bra
line to Pioche.

On the second day of February, 1898, the Utah, Nevada and C
fornia Railroad Company was organized in and under the laws
the State of Nevada as an auxiliary company of the Oregon Sh
Line Railroad Company for the purpose of constructing a railr
from the eastern boundary of the State of Nevada, from a point n
Uvada aforesaid, southwesterly across the State of Nevada to
southwestern boundary of said State, with a branch line extend
from a point on the aforesaid main line of railroad, ea
1043 Clover Valley Junction, and about forty miles southwes
from the said boundary line between the State of Utah
Nevada, and extending thence in a northerly and northwesterly di
tion a distance of about thirty miles to the town of Pioche, in Lin
County, Nevada, and for the purpose of utilizing, using, and occ
ing the line of right of way and railroad grade of the said Or
Short Line and Utah Northern Railway Company hereinbefore
ferred to, but to so occupy the same with the consent of the Or
Short Line and Utah Northern Railway Company aforesaid, an
assignee, the Oregon Short Line Railroad Company.

That all of the capital stock of said Utah, Nevada and Calif
Railroad Company was owned by said Oregon Short Line Rail
Company.

That after its organization the said Utah, Nevada and Calif
Railroad Company duly adopted and located its line of railroa

caused to be prepared maps and profiles of its said line of railroad showing the line thereof across the public lands of the United States from Uvada to Clover Valley Junction, a distance of about forty miles, the same being identical with the line of right of way of said Oregon Short Line and Utah Northern Railway Company
1044 hereinbefore referred to and caused its said maps and profiles, together with copies of its articles of association and due proofs of its organization to be deposited in the proper land office in the State of Nevada under and as required by the regulations and requirements of the Department of the Interior prescribed under and by virtue of the act of Congress aforesaid; that by reason of the apparent conflict of location and claims of said several companies indicated in said several sets of maps the Department of the Interior required a hearing to be had before the said local land office in Carson City, Nevada, to determine the rights of said Utah, Nevada and California Railroad Company and of the Oregon Short Line and Utah Northern Railway Company and the said Utah and California Railway Company in respect to said location and right of way; that a hearing was had in said local land office pursuant to the direction of the Secretary of the Interior, but said local land office erroneously and wrongfully held that the grant to and right of way of the said Oregon Short Line and Utah Northern Railway Company under its said approved maps and location were forfeited because said line was not built within five years, and erroneously recommended that the maps and location of the said Utah and California Rail-
1045 way Company should be approved. Afterwards, on the twenty-fourth day of April, 1901, the Land Commissioner of the General Land Office, having before him by proper proceedings the record and testimony and the findings and recommendations of the local land office, did correct said error made by the local land office and recommended to the Secretary of the Interior that the said maps and profiles of said Utah and California Railway Company be disapproved, and the maps and profiles and "due proofs" presented by the said Utah, Nevada and California Railroad Company were approved by the Secretary of the Interior of the United States on the twenty-fifth day of April, 1901.

That the said Utah and California Railway Company, after the filing of its said maps and due proofs as aforesaid, and on December 8th, 1900, at a meeting of its stockholders amended its articles of association so as to create a right, power, and franchise for it to build, construct, maintain, and operate a railroad in the State of Nevada, but did not file its said amended articles of association in the State of Nevada until the eighth day of April, 1901.

That about the first day of April, 1901, by reason of the failure of the Oregon Short Line Railroad Company to build and com-

1046 plete the said railroad within five years from the date of the
approval of the said maps and profiles first filed by the Ore-
gon Short Line and Utah Northern Railway Company as aforesaid,
and because of the approval of the maps and profiles of the Utah
and California Railway Company by the local land office, and be-
cause of refusal of the approval by the local land office of the maps,
profiles, and due proofs theretofore filed by said Utah, Nevada
and California Railroad Company, the said San Pedro, Los An-
geles and Salt Lake Railroad Company, having at that time obtained
the consent of the Utah and California Railway Company and con-
trol of said company by ownership of its stock, was advised that the
said line of right of way was owned by it and lawfully appropriated
by said Utah and California Railway Company and its assigns, un-
dertook to enter upon the said right of way, grade, roadbed, tunnels
and improvements made and constructed as aforesaid, and to take
hold and appropriate the same under its supposed rights under the
Utah and California Railway Company and under its own charter, and
that thereupon the Utah, Nevada and California Railroad Company
being engaged in the construction of its line of railroad southwesterly
from Uvada, a direct conflict arose between the agents and servants
of the respective companies.

1047 That in order to quiet the same and to settle the rights and
interests of the respective claimants to said right of way, a suit
was brought in the Circuit Court of the United States for the Dis-
trict of Nevada by the Utah, Nevada and California Railroad Com-
pany against the Utah and California Railway Company, the Empire
Construction Company, the San Pedro, Los Angeles and Salt Lake
Railroad Company, C. O. Whittemore, T. E. Gibbon, J. Ross Clark,
Adam Paul, Virgil Kelley, H. B. Maxson, in which suit the the com-
plainant alleged the facts hereinbefore set out; that in said suit the
complainant therein, the Utah, Nevada & California Railroad Com-
pany afterwards filed a supplemental bill alleging that the Utah &
California Railway Company had made some sort of contract or
agreement whereby it conveyed or agreed to convey to the said San
Pedro Company some right, title, estate, or interest in and to the
said railroad grade and roadbed hereinbefore described. It also
alleged in said supplemental bill the filing by it of maps, profiles,
and due proofs for its branch line extending from Clover Valley
Junction to the town of Pioche, in the State of Nevada; also the sur-
veying and adoption of its line of railroad from Clover Valley Junc-
tion southwesterly across the State of Nevada to the western
1048 boundary thereof, and that it had caused maps and profiles of
its line of right of way, as adopted by it for that part of its
proposed line southwesterly from Clover Valley Junction across the
State of Nevada to the western boundary of said State, to be sur-

itted to the Secretary of the Interior for his approval; that it had
ly adopted the line of right of way described upon and embraced
said maps by due corporate action by its board of directors, and
at it had continuously prosecuted the work of construction of its
ilroad upon the line of railroad right of way indicated and shown
on its said several maps and profiles, and that it then had in opera-
on twenty-three miles of railroad in and upon its said main line
right of way from the Utah-Nevada State line in the direction and
wards Clover Valley Junction aforesaid, and that it had on hand
ack material and was actively and earnestly prosecuting the work
construction of said line of railroad through Clover Valley Junc-
on and toward the western boundary of the State. It alleged the
try upon its line of railroad by the said San Pedro, Los Angeles
d Salt Lake Railroad Company and the attempted location of a
ght of way for the benefit of the said San Pedro, Los Angeles and
Salt Lake Railroad Company, and alleged its claim to right
949 and title to the entire line of right of way and the interference
therewith from Uvada westward by the agents and servants
the said San Pedro, Los Angeles and Salt Lake Railroad Com-
ny, and alleged and claimed title to the whole of the said line of
ght of way, and prayed that the claim of right and title asserted by
e said San Pedro, Los Angeles and Salt Lake Railroad Company
ereto be quieted and its possession and right of possession be con-
med to it.

That in said suit answers were filed by the defendants in said suit,
cluding the said San Pedro, Los Angeles and Salt Lake Railroad
ompany, and that a temporary injunction was issued and allowed
nder the said original bill.

In said suit the said San Pedro, Los Angeles and Salt Lake Rail-
ad Company filed its answer and cross bill to the said original and
id amended and supplemental bills, and denied either upon in-
rmation or directly the allegations thereof, and claimed that it
d the right to enter in and upon and to appropriate all the prem-
es claimed by the complainant in said suit, and by way of cross
mplaint in said proceedings alleged and set out its claim to all of
at part of the line of right of way for a railroad commencing
at Clover Valley Junction, extending thence in a southwesterly
050 direction through the Meadow Valley Wash to the Nevada-
California State line, a distance of about one hundred and
enty-five miles, and alleged the adoption by it of its line of
ght of way for its railroad, the filing by it of copies of its articles
f association, due proofs, maps, and profiles, as required by the laws
f the United States; denied the said complainant's adoption, loca-
ion, or filing of maps and profiles as to different portions of said
ne, and attacked the method of survey, location, and adoption of

route which had been made by the complainant, and charged that the said complainant's supposed line was not validly made, adopted, located, or proven; that on June 10th, 1901, it had commenced at Salt Lake City the survey and location of a part of its line from Salt Lake City by the most feasible and direct route through said State of Utah and into the State of Nevada to a point of connection with its said line of railroad surveyed, located, and adopted in the State of Nevada, and then had about eighty miles of said line surveyed and adopted; alleged that it had entered upon and taken possession of all of the railroad right of way from Clover Valley Junction to the Nevada-California State line, and that on May 6th it commenced the work of construction of its railroad upon said

1051 line, and that at a point about twenty-six miles southwesterly from Clover Valley Junction it had entered upon and commenced construction of its railroad line upon said disputed right of way, and alleged its purpose to continue to use and occupy said disputed right of way as the location for its line of railroad; that it was then engaged in surveying and locating a line for its railroad from the city of Los Angeles, in the State of California, to the Nevada-California State line; that it then had acquired and had in operation its railroad from San Pedro to the city of Los Angeles, a distance of 27 miles, and had acquired a system of railroads in the city of Los Angeles and extending into the surrounding country, consisting of three branch lines of standard-gauge railroad, aggregating in all about eighty miles of track; that it had expended in addition to the amount expended in acquiring the Los Angeles Terminal Railway's property, about five hundred thousand dollars; that it purchased rails for sixty miles of track, a large number of ties, was rebuilding its railroad between San Pedro Harbor and Los Angeles; that it had purchased from private owners nearly all the right of way for the first sixty miles of its railroad easterly from Los Angeles, and was engaged in securing the remainder right of

1052 way, and that it proposed to continue the same; that when the right of way was secured contracts for the grading of the first sixty miles of its line would at once be let and the railroad constructed thereon. It recited the purchase of equipment and preparations for construction; alleged that the complainant on July 29th had entered at Clover Valley Junction upon the said disputed right of way formerly owned by the Oregon Short Line and Utah Northern Railway Company, and forcibly took possession thereof and threatened to proceed along the said disputed right of way in the construction of its own railroad. By said cross bill the said San Pedro, Los Angeles and Salt Lake Railroad Company prayed, amongst other things, for the settlement of the title to the disputed

right of way, and that the complainant in said suit and all persons under them be enjoined from interfering with or occupying the said disputed right of way, and that the title thereof be declared to be in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and that the title of the complainant, the Utah, Nevada and California Railroad Company, be quieted in the said San Pedro, Los Angeles and Salt Lake Railroad Company, and for relief by which the complainant would be excluded from any further right, title, or claim therein.

1053 The case was heard upon the issues as made up under the original bill, the supplemental bill, the cross bill, and the respective motions for injunction before the Honorable Thomas P. Hawley, judge of the said United States Circuit Court, on the 22d day of July, 1901, and the said complainants in the said original bill were granted an injunction restraining the Utah and California Railway Company and the San Pedro, Los Angeles and Salt Lake Railroad Company from interference with the line of right of way and railroad roadbed and grade from Uvada to Clover Valley Junction and thence to Pioche, and the court denied the prayer of the complainant for an injunction *pendente lite*, under its amended and supplemental bill, as to that portion of the line of right of way for a railroad southwesterly from Clover Valley Junction, and as the respective claims of the parties in respect thereto were yet pending before the Land Department of the United States left the decision of questions as to such rights to be further considered after the completion of the respective hearings in said Land Department of the United States.

1054 That the complainant in said suit, the Utah, Nevada and California Railroad Company, completed its line of railroad to Clover Valley Junction on or about the first day of August, 1901, and there was in operation by it and the Oregon Short Line Railroad Company at that time southwardly from Salt Lake by direct line about three hundred and twenty-four miles of railroad.

These defendants allege that after the said decision of the United States court for the district of Nevada the complainant in said suit and the said San Pedro, Los Angeles and Salt Lake Railroad Company each, by their separate corps of surveyors, surveyed and studied the country known as the Meadow Valley Wash, the then only known practicable route for a railroad southwesterly from Caliente, Nevada, for a distance of about one hundred and twenty-five miles, and which consists of a canyon carrying a mountain stream, the difficulties of railroad construction through which for even one line of railroad are from a physical standpoint very great, and thence across the desert to a junction with the line of railroad of the Atchison, Topeka and

Santa Fe Railway Company; that along the entire line of railroad through said Meadow Valley Wash and to a junction with the railroad of the Santa Fe Company there were almost no agricultural, live-stock, or mining interests or development, practically no local settlement, either actual or prospective, and the line of railroad between said points was through a canyon or a desert without any substantial showing for even a prospective local business.

1055

These defendants deny that they or either of them were at any time or in any manner or for any reason whatever induced to or did desist from and abandon their proposed intention of building a line of railroad such as was described and defined in the articles of association of the said San Pedro, Los Angeles and Salt Lake Railroad Company. They deny that the said Harriman and his associates and the said Oregon Short Line Railroad Company, on the one part, and defendant Clark and his associates upon the other part, then or at any time, combined and confederated together to suppress any competition either actual or proposed. They deny that the said Clark and his associates, upon the one part, or the said Harriman and his associates and the said Oregon Short Line Railroad Company then or at any time made or entered into any contract, agreement, or combination to in any manner maintain, continue, or extend the, or any, alleged restraint of trade mentioned in complainant's bill, or to maintain, continue, or extend any or the alleged monopoly. They deny that the said William A. Clark joined in the alleged or any conspiracy to suppress competition in any or all of the territory set forth or described in the complainant's bill, and deny that in pursuance of such alleged or any unlawful alliance with said, or any of said, alleged conspirators the said Clark entered into a certain agreement with the defendant Harriman under date of July 9th, 1902. They admit that the defendant Clark and the said Harriman did make a certain agreement, dated July 9th, 1902, and they admit that a copy thereof is annexed to the said complainant's bill, marked "Exhibit A." These defendants allege and aver that there was not at the time of the making of said agreement any continuous line of railroad extending from Salt Lake City in Utah to San Pedro via Los Angeles. They allege the truth to be that the only railroad constructed at that time was the railroad owned by the Oregon Short Line Railroad Company and its auxiliary company, the Utah, Nevada and California Railroad Company, which extended southerly from Salt Lake by direct line for a distance of about three hundred and twenty-four miles; that the said Short Line Company also owned and operated other branch lines of railroad south of Salt Lake City, including a cut-off then being constructed and known as the Lean-

1056

ington Cut-off, extending southerly from Salt Lake City through Stockton to Leamington Junction for a distance of about 200
1057 miles, making in all a constructed line of railroad and branch lines owned and operated by the said Short Line Company south of Salt Lake City, of about 525 miles; that the said San Pedro, Los Angeles and Salt Lake Railroad Company at that time owned in southern California a line of railroad with branches aggregating about eighty miles of constructed road, and was engaged in securing rights of way for the construction of its line of railroad and in constructing a road thereon from Los Angeles to Riverside, and that the amount of railroad thus under construction amounted to about sixty miles. It also claimed to have located a line for a right of way across Government land extending from Caliente to a junction with the Atchison, Topeka and Santa Fe Railway Company's line of railroad for about 300 miles, the title to which was in dispute.

These defendants allege and aver that the said San Pedro, Los Angeles and Salt Lake Railroad Company had not acquired nor located its line of railroad between said junction with the Santa Fe Railroad tracks and San Bernardino and Riverside, California. That the route from Daggett, the junction point with the Santa Fe Railroad aforesaid, passed over a range of mountains over the Cajon Pass for a distance of about eighty miles, which called for the
1058 crossing of a mountain of steep grades and which required very heavy, expensive construction work, and it had not acquired any right of way nor made any certain and definite plans for the construction of its line of road from San Bernardino to Riverside, California, nor yet between said Riverside and the said junction of the Santa Fe Railroad aforesaid.

The said San Pedro, Los Angeles and Salt Lake Railroad Company had failed to secure to itself the right and title to the line of right of way for a railroad, including the roadbed built thereon originally by the Oregon Short Line and Utah Northern Railway Company, and the right to the location of its entire line of railroad from Caliente southwesterly to a junction with the Santa Fe tracks as aforesaid, was in dispute in the Land Department of the United States; and the said San Pedro, Los Angeles and Salt Lake Railroad Company was advised that its right to recover in said proceedings was in grave doubt.

The premises and nature of the country considered, it had become apparent to the said San Pedro, Los Angeles and Salt Lake Railroad Company that for the entire distance from Caliente to a junction with the line of railroad of the Atchison, Topeka and Santa
1059 Fe Railway there was not then and apparently never could be any considerable or profitable amount of local business, and

that the line of railroad from Caliente northward existed in a country which promised much valuable local business between Salt Lake and Caliente; that the line of railroad owned and then being constructed by the said San Pedro, Los Angeles and Salt Lake Railroad Company in California promised a lucrative business locally in southern California, and that if said California line was connected with the lines of railroad extending from Caliente northerly to Salt Lake and to connections with railroads existing at Salt Lake and extending eastwardly to the Missouri River, namely, the Oregon Short Line and its connection, the Union Pacific Railroad, the Denver and Rio Grande Railroad and its connections to the Missouri River, a line of railroad constituting a new through transportation line from the Missouri River through Salt Lake to Los Angeles could successfully and with some reasonable chance for profit be constructed, maintained, and operated, and that the construction, maintenance, and operation of two such lines of railroad from southern California to Salt Lake would be unprofitable and nonremunerative to both of such lines.

That upon the consideration of the circumstances and con-
1060 ditions above recited, the contract and agreement of July 9,
1902, was made, executed, and entered into, and these defendants allege that the said contract and agreement did not create any combination, confederacy, or conspiracy with the intention of or with the effect of suppressing competition, and was not made with the intention of restraining trade and did not have the effect of restraining trade, and was not intended to create or provide for a monopoly and did not cause or create any monopoly whatever.

And these defendants admit and aver that after the making of said contract of July 9th, 1902, and pursuant thereto, the Oregon Short Line Railroad Company and its auxiliary companies made, executed, and delivered to the said San Pedro, Los Angeles and Salt Lake Railroad Company deeds and conveyances conveying to it those certain lines of railroad then commonly known as the Garfield Branch, the Leamington Cut-off, the lines of railroad of the Oregon Short Line Railroad Company lying south of Sandy to Milford, including the branch line to Frisco, the so-called Tintic branches, the line of the Utah and Pacific Railroad Company extending from Milford to Uvada, the constructed line of railroad of the Utah
Nevada and California Railroad Company extending from
1061 Uvada to Caliente, Nevada, the partially completed roadbed
constructed upon the right of way for a railroad from Caliente to Pioche, Nevada, and assigned and caused to be assigned and conveyed to said San Pedro, Los Angeles and Salt Lake Railroad Company all of the right, title, and interest of the said Oregon Short Line Railroad Company and of the Utah, Nevada and California

Railroad Company in and to the located line for a right of way for a railroad extending from Caliente southerly and southwesterly through the Meadow Valley Wash to the Nevada-California State line, and also sold and delivered to the San Pedro, Los Angeles and Salt Lake Railroad Company a large amount of equipment and railroad material situated upon and along the said lines of constructed railroad above mentioned from Salt Lake City and from Sandy southerly to Caliente, embracing in all 523 miles of constructed and completed railroad and the franchises thereof.

These defendants also admit and aver that pursuant to said agreement the Oregon Short Line Railroad Company granted to the said San Pedro, Los Angeles and Salt Lake Railroad Company joint and equal use of the yards and terminal facilities of the Oregon Short Line Railroad Company at Salt Lake City.

1062 These defendants also admit and aver that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Southern Pacific Company the said Southern Pacific Company granted to it the right to use jointly and equally with the Southern Pacific Company certain railroad tracks of the Southern Pacific Company extending from Riverside Junction to Colton and thence to San Bernardino, in southern California, which were secured to the said San Pedro, Los Angeles and Salt Lake Railroad Company by virtue of a definite lease embracing the tracks lastly above mentioned, and specifying the terms and conditions for the operation thereof.

These defendants further admit that upon the application of said San Pedro, Los Angeles and Salt Lake Railroad Company to the Atchison, Topeka and Santa Fe Railway Company, and upon negotiations between said San Pedro Company and the said Santa Fe Company, the said Santa Fe Company granted to said San Pedro, Los Angeles and Salt Lake Railroad Company the right to the joint use and occupation of certain of the tracks of the said Santa Fe Company extending from Colton, in California, through San Bernardino, and through Barstow to Daggett, for a term of years,

1063 to a point upon the line of the said Santa Fe Company, a distance of about 91 miles; and that the tracks obtained by said two leasehold interests from the Santa Fe Company and the said Southern Pacific Company, respectively, are now and after the dates of said respective leases were used by the said San Pedro, Los Angeles and Salt Lake Railroad Company as a part of its new through line of railroad from San Pedro to Salt Lake City.

That because of the making and by carrying out the said several agreements hereinbefore referred to the defendant The San Pedro, Los Angeles and Salt Lake Railroad Company, was enabled to com-

plete and open for use its said line of railroad from Salt Lake City to San Pedro via Los Angeles on the first day of May, 1905, and that otherwise it would have been unable to complete and open its said line of railroad between said points for two or three years thereafter.

That at the time of the making of said agreements upwards of 400 miles of difficult and expensive construction work remained to be done to connect the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company and those of the Oregon Short Line Railroad Company, Utah, Nevada and California Railroad Company at Caliente, Nevada, and there could not for several
1964 years have been any competition of any kind between the parties to said agreement for the transportation of commerce, and the possibility or probability of any such competition and of any restraint or restriction thereon was too remote or contingent to be prohibited by or to come within the provisions of said act of Congress approved July 2, 1890.

These defendants deny that for the purpose of maintaining, extending, and preserving the or any alleged restraint of trade and commerce among the States and with foreign nations, or monopolizing the same and destroying competition with relation thereto, or for any other unlawful or illegal purpose, or to any unlawful effect, said San Pedro, Los Angeles and Salt Lake Railroad Company made certain or any traffic arrangements or contracts with either the said Harriman, Schiff, Kahn, Stillman, Union Pacific Railroad Company, Oregon Short Line Railroad Company, the defendant Clark and his associates or other persons, but these defendants admit and aver that said San Pedro, Los Angeles and Salt Lake Railroad Company did make a certain agreement with the Southern Pacific Company, under date of June 18th, 1903, which is the same agreement referred to in complainants' bill.

These defendants allege and aver that the only tariffs
1065 and rates of the Southern Pacific Company, which by the terms of said contract the said San Pedro, Los Angeles and Salt Lake Railroad Company was to adopt were the rates and tariffs of the Southern Pacific Company in respect of local southern California intrastate business as to that part of the lines of said San Pedro, Los Angeles and Salt Lake Railroad Company which extended from San Pedro through Los Angeles to Pasadena, and as to that portion of the new line then under construction by said San Pedro, Los Angeles and Salt Lake Railroad Company which extended easterly from Los Angeles toward Riverside, California, of which no more than thirty miles had at that time been constructed. These defendants aver that the Southern Pacific Company at the time of making said

contract and for many years prior thereto had owned and exclusively operated a line of railroad from San Pedro to Los Angeles; that it also owned a line from Los Angeles to Pasadena, and that its main line also extended eastwardly from Los Angeles through Pomona, Ontario, and Riverside, California, and thence to its eastern terminus; and these defendants aver and allege that on the 15th day of April, 1907, long prior to the commencement of this suit, the said agreement between said San Pedro, Los Angeles and Salt 1066 Lake Railroad Company and said Southern Pacific Company was by due corporate action by both of these said companies abrogated and canceled.

These defendants, further answering, admit and aver that pursuant to said contract of July 9th, 1902, certain contracts and agreements were made between said San Pedro, Los Angeles and Salt Lake Railroad Company and the said Oregon Short Line Railroad Company, and which are the same agreements referred to by complainant in Paragraph VI of its said bill.

And these defendants admit that in one of said contracts it was, among other things, provided that the San Pedro, Los Angeles and Salt Lake Railroad Company would not for the term of ninety-nine years build or assist in building any lines of railroad which might run northwardly of the parallel of Salt Lake City, Utah, and that the Oregon Short Line Railroad Company would not construct any lines of railroad southwardly of the parallel of Salt Lake City, Utah, except by common consent; but these defendants deny that the purpose of said agreement was to maintain, extend, and preserve the, or any, restraint of trade or commerce among the States or with foreign nations, or of monopolizing the same and destroying competition with relation thereto, as alleged in said bill, or in 1067 pursuance of any conspiracy in said bill alleged, and that it was competent and proper for these defendants to enter into such arrangements with the Oregon Short Line Railroad Company for the reason, among others, that the San Pedro, Los Angeles and Salt Lake Railroad Company had no corporate power under its said articles of incorporation to construct or build any railroads whatever northward from Salt Lake City, Utah; and that the Oregon Short Line Railroad Company, after selling its said railroads and franchises therefor southward from Sandy and from Salt Lake City, retained no corporate power to build, construct, maintain, or operate railroads south of said Sandy or Salt Lake City, as above mentioned.

Answering further, these defendants allege and aver that pursuant to and in carrying out the said contract of July 9, 1902, certain other contracts or agreements referred to in the complainant's bill

were made between the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and said San Pedro, Los Angeles and Salt Lake Railroad Company, providing the terms and conditions upon which traffic might be interchanged between the said companies and providing for the operation of a through line for the carriage of freight and passengers by through cars,
1068 through trains, and direct connections; and that, among other things, upon the conditions in said contract recited there was reserved to the Union Pacific Railroad Company and to the Oregon Short Line Railroad Company the right to make and establish certain through rates on certain joint business between points reached over the line of said Union Pacific Railroad Company and the Oregon Short Line Railroad Company and points in Utah upon the lines of railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company; but these defendants deny that the effect or purpose of said contract and its several provisions was for the purpose of maintaining, extending, and preserving the, or any, restraint of trade or commerce among the States or with foreign nations, or monopolizing the same or destroying any competition with relation thereto. For a full statement of all the terms and conditions of said contract reference is made hereby to said contract, which is dated the 18th day of June, 1903, and which will be exhibited to the court herein in due course; and these defendants deny that the San Pedro, Los Angeles and Salt Lake Railroad Company thereby in any way or manner or to any extent surrendered the control of said company or the management of its affairs or the control and management of its said railroad and properties to the said
1069 Harriman and his associates, or to the said Union Pacific Railroad Company, or to the said Oregon Short Line Railroad Company, or any or either of them.

These defendants admit that there was issued of the capital stock of said San Pedro, Los Angeles and Salt Lake Railroad Company twenty-five million dollars in par value, and that one-half of the same was issued to and for the defendant Clark and his associates and that one-half thereof was issued to said Edward H. Harriman as trustee, and that the said capital stock of said company was issued to said parties and by them transferred to and deposited with the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee under an agreement, a copy of which is annexed to complainant's bill, marked "Exhibit B," and made a part thereof.

These defendants deny that each and all or any of the several acts in Paragraph VI of complainant's bill alleged against these defendants were done in whole or in part or in any manner whatever

pursuant to the alleged original conspiracy or to any conspiracy whatever to suppress competition or to procure a monopoly of the transportation business throughout the territory in said bill
1070 described, or in any other territory whatever, and deny that any conspiracy for any of said purposes or for any illegal or unlawful purpose existed, or that these defendants in any way or manner at any time joined in the making or maintaining of any conspiracy or the doing of any unlawful act or thing, or that they or either of them in any way or manner at any time united in connection with other persons or corporations in the purpose of accomplishing of any illegal or unlawful design, and deny that the said San Pedro, Los Angeles and Salt Lake Railroad Company was in any way or manner party to any conspiracy, combination, or confederacy forbidden by law or in restraint of trade or for the purpose of creating any combination, monopoly, or unlawful confederation or conspiracy.

These defendants deny that in pursuance of said alleged or any combination, confederation, or conspiracy, or that in fact or in any way or manner the lines of railroad owned and operated by the said San Pedro, Los Angeles and Salt Lake Railroad Company are in all or any respect managed or controlled by the said alleged or any conspirators or by any person or persons other than its own proper officers and agents, and these defendants deny that there is not now and that there has not been at all times direct, positive,
1071 and active competition between the railroad of said San Pedro, Los Angeles and Salt Lake Railroad Company and the railroad and lines of the Southern Pacific Company or of any other line of railway controlled by said Union Pacific Railroad Company and said Harriman and his associates, as in said bill alleged.

They deny that the aforesaid act of Congress, approved July 2, 1890, or any other law of the United States, was intended to or could constitutionally prohibit the making or carrying out of such agreements and contracts, or any of them, and aver that the construction of railroads in the States of Utah, Nevada, and California by the corporations of said States, respectively, or by corporations of other States authorized by the said States to exercise their corporate powers therein and all agreements relating to the construction or abandonment of the construction of such railroads are matters wholly to be dealt with by the laws of the said States, respectively, and any law of Congress intended or construed to prohibit or regulate or in any manner interfere with such contracts, corporate powers, and matters is in excess of the powers of Congress under the Constitution of the United States and therefore void.

They aver that the said contract, "Exhibit A" to the pe
1072 tion, was made and entered into on July 2, 1902, and that ea
and every contract thereafter made and entered into in carr
ing out and pursuant to the provisions of the same was made a
entered into and was fully executed during the months of June a
July, 1903, and not afterwards; and these defendants aver that
reason of the premises the right to maintain this suit and all ri
of action or prosecution by the Government of the United States
or on account of said contract or for or on account of any of t
matters and things alleged in Subdivision VI of the petition accru
if at all, more than three years and more than five years next bef
the commencement of this suit and is therefore barred by the law
the United States, and all right of the petitioner to relief herei
barred by the said statute and by the laches and acquiescence of
petitioner.

VII. For answer to the seventh paragraph of complainant's
these defendants say that they have no knowledge, information,
belief in respect of the said several matters in said Paragraph V
alleged, except the statements and allegations of the complaint it
as contained in said paragraph, wherefore these defend
1073 neither admit nor deny the said several allegations, but le
the complainant to make its proofs therein as it may
advised.

VIII. All these defendants deny all and all manner of unlaw
combination and confederacy wherewith they are by the said p
tion charged, without this, that if there is any other matter, ca
or thing in the petition contained material or necessary for th
defendants to make answer unto and not herein or hereby well
sufficiently answered, confessed, traversed, and avoided or den
the same is not true to the knowledge or belief of these defend
all of which matters and things these defendants are ready and w
ing to aver, maintain, and prove as this honorable court shall di
and humbly pray to be hence dismissed, with their reasonable c
and charges in this behalf most wrongfully sustained.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD C
By W. A. CLARK, *President.*

Attest:

J. H. ANDERSON,
Assistant Secretary.

W. R. KELLY,
Solicitor and Counsel.

974 In the Circuit Court of the United States for the District of Utah. In equity. No. 993.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The separate answer of the defendant The Farmers' Loan and Trust Company to the original petition of the United States of America. (Filed April 6, 1908.)

975 United States Circuit Court, District of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

976 The separate answer of the defendant, the Farmers' Loan and Trust Company, to the original petition of the United States of America.

This defendant now and at all times hereafter saving to itself all manner of benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

I. As to all the matters alleged in Subdivisions I, II, III, IV, and V of the said petition this defendant is not informed save by said petition, and it leaves the complainant to make such proof thereof as

it may be advised; except that it is informed and believes that the defendants mentioned in Subdivision I of said petition were at the times alleged in said petition, and are now, common carriers employed in the transportation of freight and passengers within and among those States and Territories of the United States in and through which the transportation lines owned by them, respectively are located, and not further or otherwise, but were and are to
1077 that extent engaged in trade and commerce among the several States and with foreign countries; and except that as to all provisions of statutes of the United States and decisions of courts of the United States purporting to be quoted or set forth in said subdivisions of said petition this defendant begs leave to refer to said statutes and decisions themselves for the contents and provisions thereof.

II. This defendant admits that on or about the 7th day of June, 1903, a contract in writing bearing date on that day was made and entered into between this defendant and William A. Clark, individually and as trustee for his associates and Edward H. Harriman, as trustee, as therein stated, of which contract "Exhibit B" annexed to said petition and referred to in Subdivision VI thereof is a true copy and to which for the terms and provisions thereof this defendant begs leave to refer as fully as if the same were herein at length set forth; and this defendant admits that the stock of the defendant San Pedro, Los Angeles & Salt Lake Railroad Company was deposited with and is still held and voted by this defendant in the manner, for the purpose, and as stipulated and provided in and by said contract "Exhibit B." This defendant denies that the making
1078 of said contract "Exhibit B" or the acts done thereunder were done pursuant to any conspiracy to suppress competition or procure a monopoly of the transportation business throughout the territory in said petition described or otherwise, and upon information and belief denies each and every allegation of a conspiracy or combination contained in Subdivision VI of said petition for any of the objects or purposes therein mentioned or for any other purpose, and upon information and belief this defendant denies that the matters alleged in Subdivision VI of said petition or any of them have suppressed, restrained, or in any manner restricted commerce among the several States or with foreign nations. This defendant admits upon information and belief that on or about the 9th day of July, 1902, the defendants William A. Clark and Edward H. Harriman entered into and executed an agreement in writing and that "Exhibit A" to the petition is a true copy of such agreement. Except as in this paragraph expressly admitted or denied, this defendant

not informed save by said petition as to the matters alleged in
ubdivision VI thereof, and it leaves the complainant to make such
oof thereof as it may be advised.

III. This defendant denies that the act of Congress ap-
79 proved July 2nd, 1890, referred to in the said petition, or any
other law of the United States, was intended to or could con-
tutionally prohibit the making or carrying out of such agreement
contract "Exhibit B," or of said other agreement or contract an-
xed as "Exhibit A" to said petition and referred to in Subdivision
I thereof, and avers that the construction of railroads in the States
Utah, Nevada, and California by individuals or by the corpora-
ns of said States, respectively, or by corporations of other States
thorized by the said States to exercise their corporate powers
erein, and all agreements relating to the construction or the aban-
nment of the construction of such railroads, are matters wholly
be dealt with by the laws of the said States, respectively; and
y act of Congress intended or construed to prohibit or regulate
in any manner interfere with such contracts, corporate powers,
d matters is in excess of the powers of Congress under the Con-
tution of the United States, and therefore void.

IV. This defendant avers that the said contract "Exhibit B" to
e petition was made and entered into on June 7th, 1903; it avers
information and belief that the said "Exhibit A" to the petition
was made and entered into on July 2nd, 1902. This defendant
80 avers that by reason of the premises the right to maintain this
suit and all right of action or prosecution by the Government
the United States for or on account of any of the matters and
ngs alleged in Subdivision VI of the petition accrued, if at all,
re than three years and more than five years next before the
mmencement of this suit, and is, therefore, barred by the Revised
atutes of the United States, in such cases made and provided,
d all right of the complainant to relief herein is barred by the
d statutes and by the laches and acquiescence of the complainant.

V. As to all the matters alleged in Subdivision VII of the said
tition this defendant is not informed save by said petition, and
leaves the complainant to make such proof thereof as it may be
vised; except that it admits that the stock of the Northwestern
cific Railroad Company is controlled equally by the defendants
uthern Pacific Company and The Atchison, Topeka & Santa Fe
ilway Company; and upon information and belief this defendant
ers that said Northwestern Pacific Railroad Company is a corpo-
tion duly organized under the laws of the State of California and

that its lines of railroad are situated wholly within the State of California.

1081 VI. This defendant is advised and therefore avers that the cause of action, if any, stated in Subdivisions I to V of said petition, and the cause of action, if any, stated in Subdivision VI thereof, and the cause of action, if any, stated in Subdivision VII thereof, are wholly separate and distinct from one another, and that if either of said alleged causes of action constitutes a violation of the said act of Congress approved July 2nd, 1890, or of any other law of the United States, such violation was and is altogether distinct from any violation of said laws alleged as constituting any other causes of action, and the said alleged causes of action were improperly united in said petition. This defendant avers that the matters set forth in said petition as constituting each of said alleged causes of action are wholly irrelevant to the said other alleged causes of action.

VII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is or may be charged in the said petition, without this, that if there is any other matter cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided

1082 or denied, the same is not true to the knowledge and belief of this defendant; all of which matters and things this defendant is ready and willing to offer, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] THE FARMERS' LOAN AND TRUST COMPANY.
By E. S. MARSTON, *President.*

Attest:

A. V. HEELY, *Secretary.*

TURNER, ROLSTON & HORAN,
P. L. WILLIAMS,
Solicitors for Defendant, The Farmers' Loan and Trust Company.

P. L. WILLIAMS,
JAMES F. HORAN,
Of Counsel.

1083 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

D. T. Watson, attorney for defendant. (Filed April 6, 1908.)

1084 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus the Union Pacific Railroad Company, the Oregon Short Line Railroad, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of Henry C. Frick to the bill of complaint of the United States of America.

To the honorable the judges of the said court:

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and
1085 saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the bill of complaint or petition contained, for answer to said bill of complaint or petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

I deny all the allegations of the petition that at any time or in any way I was a member of any group or combination of persons

which controlled, or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and I deny that I ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either, or by any other lines of railroads or steamships as named in the petition, and I deny that in any way I ever entered into any combination or conspiracy or aided or abetted in

1086 combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway systems and steamship lines named in the petition, or that I ever was a member of any combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraints on any or all competitive interstate and foreign trade and commerce or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that I ever in any way was a party to or aided or abetted any such combination or conspiracy.

I never knowingly violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and I am not guilty of any of the acts, matters, or things charged in the petition which are in alleged violation of said act of Congress.

The facts, so far as I am concerned, touching the matters alleged in the petition are as follows:

1087 I am now, and for a number of years I have been, an investor in the capital stock of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company, but the stocks I have bought with my own means as my own individual investments, and without cooperation on the part of any other person. I bought them because I believed the investments to be good ones; not only that, they were, when I bought, fairly worth the price paid for them, but I believed in the future prospects of each one of said railroad companies, and I bought with such belief as one of the prominent reasons for my investment.

I am now, and I always have been, a great believer in the future of our country, and especially of the future of the West and the

Pacific slope, and when I bought I then looked, as I now do look, forward to a large increase in the value of the said stocks legitimately arising from the intrastate and interstate trade and traffic which I think is certain, in the ensuing years, to develop and to demand transportation over these different lines of railroad.

I never have believed, nor do I now believe, in the restriction of competition in interstate and foreign traffic as a policy of the
1088 railroad system in a country as undeveloped as in the West and to the Pacific Ocean. Neither of the systems named in the petition, either the Union Pacific, or the Southern Pacific, or the Atchison, Topeka & Santa Fe, or any other of the existing systems, or all of them combined, will, as I believe, in the near future, be much more than able to efficiently handle the trade and traffic which will seek their lines, and I feel certain that each one of these systems will have all the business that each can handle.

In my purchases of these stocks I had no idea of the formation of a monopoly which could hope to control the present, let alone the future, vast traffic east and west to and from the Pacific slope, and certainly I never designed any such amalgamation or combination of railroads as is charged in the petition, and I never directly or indirectly was a party to or an abettor or aider of any such scheme as is therein outlined.

I was elected a member of the board of directors of the Union Pacific Railroad Company in the month of October, 1904, and I have ever since been a member of said board. I deny that since I became a director of said railroad company the Union Pacific Railroad Company became a party to or has carried out any such combina-
1089 tion or conspiracy as is alleged in the petition, or was a party to an attempt to restrict interstate trade or traffic.

It is true that, as in all large corporations where almost daily questions are arising which demand prompt answers, an executive committee was created long before I became a member of its board of directors, which executive committee I regard as necessary to the efficient management of the company, and the actions of that executive committee have been and are now always subject to the control of the board of directors as well as to the stockholders.

I deny the averments in the petition—

"That during all the times above mentioned, by by-laws of said company to that end enacted, the directors of said corporation have delegated their power to manage and direct the business and affairs of the said company to an executive committee of five members, to act in such manner as such committee should deem best for the company's interests in all cases in which specific directions shall not have been given by the board."

"And it is and has been also provided by said by-laws that the chairman of said executive committee is authorized to repre-
1090 sent that committee when it is not in session."

The by-law which relates to such matters is as follows:

"SECTION 12. The directors shall elect from their number an executive committee of five mmbers. Such committee shall hold office until the next annual election of directors, and shall, when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the board of directors. The chairman of the executive committee shall be elected by the board of directors, and subject to the control and approval of the executive committee, shall represent it when not in session. He shall from time to time report to the executive committee. Any vacancy which may occur in said committee shall be filled by the board of directors. Regular meetings of said executive committee shall be held at such times and at such places in the city and State of New York or elsewhere as the committee shall from time to time determine. Special meetings may be called at any time by the chairman or any three members of
1091 the committee, to convene at such time and place as may be appointed. Three members of the committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the secretary and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the board of directors to act during the temporary absence of any member or members of the committee."

I deny the allegation of the petition—

"That, pursuant to said by-laws, the said defendant Harriman has with the concurrence and assistance of said individual defendants other than defendant Clark, who were members of the executive committee or directors of said company, dominated the affairs and controlled the management of said defendant Union Pacific Railroad Company."

I have, as I have stated, from time to time made investments in the capital stock of the Atchison, Topeka & Santa Fe Railway Company, and I was elected a member of the board of directors of said
1092 company in the year 1904, and have ever since continued to be a member of said board and a holder of considerable stock in said railroad company.

I deny the averments of the seventh paragraph of the bill that the purchase I made of the capital stock was in pursuance of any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade or commerce, or to unlawfully restrain and prevent competition among the railroad systems named in the petition, and I deny that I purchased my said stock jointly with Harriman, Schiff, Kahn, Stillman, and Rogers. On the contrary, I purchased my said stock as my separate individual investment.

I deny that I was elected a member of the board of directors of the Atchison, Topeka & Santa Fe Railway Company for the purpose of aiding or abetting in any shape or form any such alleged conspiracy as is named in the petition, and I deny that I had or have ever united myself with any conspiracy alleged by the petition to have been made by Messrs. Harriman, Schiff, Kahn, and Stillman, and I deny that my election as a member of the board of directors of the said Atchison, Topeka & Santa Fe Railway Company was in pursuance of or carrying out of or in aid of any such alleged conspiracy.

1093 I never knew or heard of such conspiracy until the filing of the petition in this case.

I especially deny that by reason of my being upon the board of directors of the Atchison, Topeka & Santa Fe Railway Company, as also a member of the board of directors of the Union Pacific Railroad Company, that the Union Pacific Railroad Company or any of its officers or directors have had knowledge of the affairs and business of the said Atchison, Topeka & Santa Fe Railway Company; but I aver that, on the contrary, in each of my positions as director of the Union Pacific Railroad Company and as director of the Atchison, Topeka & Santa Fe Railway Company, I have been scrupulously careful not to make known to either company the acts and doings of the other.

I have not in either of those positions acted adversely to the interest of the company in which at the time I was acting as a member of its board of directors.

I recognize that each of these systems has a great future and each will in the near future have all the business it can properly attend to, and that each of the systems is more largely benefited by the general development of the West and of the territories through

1094 which each runs, and of the business interests that each serves than from any temporary and comparatively trivial benefit which might arise from the restriction in competition for freight.

To some inconsiderable extent and at times the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railroad Company have been and probably will be competitors, but the future of each of these railroad systems is to be so certain and decided that I

believe, and I act on that belief, that this future of each should dom-
nate and control and thus minimize as a real factor in the policy o
the companies the question of competition. In great and controllin
degree the present and future interests of the territory traversed b
each of these systems demands a thoroughly equipped railroad syste
properly and economically supplying the wants of the territory tra
ersed by each, and this each of these railroad systems is endeavorin
to give.

I have not as a member of the Atchison, Topeka & Santa Fe Rai
road Company board disregarded or slighted its interest or welfa
for the benefit of the Union Pacific Railroad Company, nor have
disclosed to the latter the business of the former; but, on the co
trary, I have to the best of my ability acted as a member of th
1095 board of directors of the Atchison, Topeka & Santa Fe Rai
road Company solely in the interest and the welfare of sai
company, and I have kept my knowledge of its affairs gained as
member of its board of directors as confidential.

I deny that the acquisition of stock by myself in the Atchiso
Topeka & Santa Fe Railroad Company, or my membership on th
board of directors, in any way changed or lessened the competitio
between the Union Pacific Railroad Company and the Atchiso
Topeka & Santa Fe Railway Company or between the Southe
Pacific Company and the Atchison, Topeka & Santa Fe Railroad C

I deny the averments of the petition that for the purpose of mak
ing more certain and effective the restraint of trade and commerc
and the elimination of competition and the monopolization of com
merce referred to in the petition, that Harriman and his alleg
coconspirators caused to be purchased by the Union Pacific Railro
Company $10,000,000 par value of the preferred stock of the sai
Atchison, Topeka & Santa Fe Railway Company, but I admit tha
said purchase was made as a legitimate investment by the Oregon
Short Line Railroad Company, and that the said company still own
the said stock, and I also admit that the Union Paci
1096 Railroad Company owns the capital stock of said last-name
company.

I deny the averments of the seventh paragraph of the bill, that th
acquisition of the stock of the Atchison, Topeka & Santa Fe Rai
way Company, as alleged in said petition, by myself and other
has to a large extent eliminated competition between the Unio
Pacific Railroad Company, and the Atchison, Topeka & Santa F
Railway Company, and I deny that I or the persons alleged to b
conspirators in said paragraph of the petition have caused th
Southern Pacific Company to abandon certain extensions, improve
ments, and additions to their railway lines in the State of California
or that the Atchison, Topeka & Santa Fe Railway Company h

been in the same manner caused and induced to abandon extensions and additions to its said railway lines in said State of California.

I then thought, and now think, that the action of the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company in the matter of the Northwestern Pacific Railway Company, as explained in the Union Pacific Railway Company's answer, was wise and prudent, and in the best interest of both of said
1097 railroad companies, and also of the public, and I deny the concluding averment of the seventh paragraph of the bill—

"That all of the said acts hereinbefore enumerated have been done in pursuance to the said conspiracy, so originally formed by certain of the defendants as fully set forth in this bill, and in which said conspiracy and confederation said other defendants joined from time to time as above alleged."

I admit that Jacob H. Schiff, Otto H. Kahn, and James Stillman were for years members of the board of directors of the Union Pacific Railroad Company, and I admit that there is a banking firm in the State of New York doing business under the name of Kuhn, Loeb & Company, but I deny the averments of the second paragraph of the petition—"which said banking house is and during all the time above stated has been the fiscal agent of said Union Pacific Railroad Company, through which agent substantially all the purchases of said stocks hereinafter mentioned have been made."

I admit that from time to time Kuhn, Loeb & Company have bought and sold bonds and stocks in which the Union Pacific Railroad Company has been interested.

1098 I admit that Henry H. Rogers and myself are still members of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Co.

Most of the matters and things alleged in the different paragraphs of the bill are as to transactions completed prior to the time I had any interest in either the Union Pacific Railroad Company or the Southern Pacific Company or the Atchison, Topeka & Santa Fe Railway Company; I took no part in the said matters and things averred in said paragraphs nor have I personal knowledge as to the same.

All of the matters and things alleged in the third paragraph of the bill took place prior to my election as a member of the board of directors of either the Atchison, Topeka & Santa Fe or the Union Pacific Railroad Company, and I had no personal connection with any of them. As a member of the board of directors of said two companies and also as a stockholder in said two companies and in the Southern Pacific Company I do now have a general knowledge of the location of the different lines of railroad owned by the said

different railroad companies and the systems as made up by said lines named in the petition, and I know in a general way of the Oregon Railroad & Navigation Company, of the Portland &
1099 Asiatic Steamship Company, and of the Pacific Mail Steamship Company, and I believe the routes stated in the third paragraph of the bill are correct, but I am not acquainted with the details of matters happening prior to the time that I became a member of the board of directors of the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company.

I admit that the Atchison, Topeka & Santa Fe Railway Company has to a certain extent since I have been on the board of directors of that company been in competition with the Union Pacific Railway Company and the Southern Pacific Railway Company, but I never took any active part in such competition, and so far as I can now recollect, no question of competition between these two companies has come up for decision before the board of directors or executive committee of either of said railroad companies at any time when I was present.

I know that the Northern Pacific Railway Company and the Great Northern Railway Company are each owners of lines of railway extending from ports on Lake Superior and also from the city of St. Paul through different Western States, and I am informed that
1100 it is true that these two railroad companies were and are the joint owners of substantially all the stock of the Chicago, Burlington & Quincy Railroad Company, but I deny the averments in the petition that the Supreme Court of the United States has held that their lines are competitive with the lines of the Union Pacific Railway Company for a large amount of traffic, both passenger and freight.

On information which I believe to be true, I deny all the other allegations of competition as alleged in the third paragraph of the petition.

I have no personal knowledge of the matters and things alleged in the fourth paragraph of the petition, and on information which I believe to be true, I deny that the conspiracy, as is therein stated, was ever formed.

I admit that the Oregon Short Line Railroad Company is the owner of 900,000 shares of the common and 342,000 shares of the preferred capital stock of the Southern Pacific Railroad Company, but I deny that it was acquired in pursuance of any conspiracy such as therein alleged.

I admit that the said company, as holding such stock, took its share of the increase of stock made by the Southern Pacific Company, but I deny that the Union Pacific Railroad Company

1101 controls the management, operation, and business affairs of the Southern Pacific Railway Company, and I deny that the two railroads have been operating as one single, entire system since 1901, and I deny that the matters and things alleged in said fourth paragraph were done for the purpose of monopolizing the trade and commerce among the States and with foreign nations and of eliminating competition.

I had nothing to do with the acquisition of stock by the Union Pacific Railroad Company in the Northern Pacific Railway Company, as alleged in the fifth paragraph of the bill, and I have no personal knowledge of the matters and things therein referred to.

I know of the decision of the Supreme Court of the United States reported in 197 U. S., 244, as *Harriman vs. Northern Securities Company*. I was not a party to said litigation, but I deny that so far as the Union Pacific Railroad Company was concerned that the litigation was prosecuted, as alleged in the petition, for the sole purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize such trade and commerce among the several States and with foreign nations.

1102 I have no personal knowledge of the matters and things alleged in the sixth paragraph of the petition or of the contract therein referred to, or of the conspiracy therein alleged, but so far as I know and so far as I have had any part in the management of the Union Pacific Railroad Company since 1904 I deny that there has been any conspiracy to which it was a party to suppress competition or monopolize trade and commerce among the States and with foreign nations, such as is alleged in the sixth paragraph of the petition.

I deny the averments of the seventh paragraph of the petition, except as hereinbefore admitted by me.

In so far as the other allegations in said petition may be material to the case of the plaintiff, I pray it be put upon proof of each and all of the same.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other matter, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which mat-

1103 ters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be herein dismissed with his reasonable costs in this behalf most wrongfully sustained.

1104 In the Circuit Court of the United States, District of Utah.
In equity. No. 993.

United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

Separate answer of the defendant, The Atchison, Topeka and Santa Fe Railway Company.

Gardiner Lathrop, Robert Dunlap, solicitors for defendant.
P. L. Williams, of counsel.
(Filed April 14, 1908.)

1105 United States Circuit Court, District of Utah.

United States of America, complainant, vs. Union Pacific Railroad Company; Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan and Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. In equity. No. 993.

Separate answer of the defendant, The Atchison, Topeka and Santa Fe Railway Company, to the bill of complaint of the
1106 United States of America, complainant.

This defendant, the Atchison, Topeka and Santa Fe Railway Company, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

I. This defendant admits that the Union Pacific Railroad Company; Oregon Short Line Railroad Company; the Oregon Railroad and Navigation Company; the San Pedro, Los Angeles and Salt Lake Railroad Company; this defendant, the Atchison, Topeka and Santa Fe Railway Company; Southern Pacific Company; Northern Pacific Railway Company; and Great Northern Railway Company were, at the times in said bill or petition mentioned, and now are common carriers, each engaged or employed in the transportation

of freight and passengers among the several States of the United States and between such States and foreign nations, and as such carriers so employed were and are engaged in trade and commerce
1107 among the several States and with foreign nations.

II. As to all the matters and things set forth in Subdivision II of said complainant's petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

III. And this defendant admits that it has been, for a period of more than eight years last passed, the owner, and in control by direct ownership and by the ownership of the stock, of railway companies owning a portion of certain lines, and now by ownership, of a line of railway reaching from Chicago in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico and Arizona, and the State of California, to the city of San Francisco and to tidewater at San Diego, California; that said line of railway touches the Union Pacific at Kansas City, Missouri, and to a certain extent, but in connection with other connecting lines of railroads, is and has been competitive with the lines of the Union Pacific Railroad Company and the Southern Pacific
1108 Company, in connection also with other connecting lines of railroads, for certain traffic to and from the Pacific coast, and also from the Orient in connection with steamship lines to and from various points in the east and the Mississippi Valley and in the State of Colorado and other interior States, but largely by means of such connecting lines of railway of other railway companies as aforesaid. It admits that its tracks cross the continent between those of the Southern Pacific Company and those of the Union Pacific Railroad Company, and until the construction of the San Pedro, Los Angeles, and Salt Lake Railroad constituted the only outlet to the east by rail from territory along the Pacific coast touched by it at San Francisco, Los Angeles, and San Diego, but denies that it constituted the only outlet to the east by rail from all the territory along the Pacific coast south of Portland to the Mexican border other than the lines of the Union Pacific Railroad Company and said Southern Pacific Company. On the contrary, it avers that there were other lines connecting with said Southern Pacific Company south of Portland which formed an outlet to the east.

It denies that it was for a number of years engaged in operat-
1109 ing a line of steamships to oriental ports from the port of San Diego, California. It admits that traffic which was competitive as between said Southern Pacific and Union Pacific companies and this defendant was and is of considerable volume, both passenger and freight.

As to all and singular the other matters and things set forth in Subdivision III of said petition or bill, this defendant says that it is a stranger as to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

IV. As to the matters and things set forth in Subdivision IV of said petition or bill, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves said complainant to make such proof thereof as it shall be able to produce.

V. As to all and singular the matters and things in Subdivision V of said petition or bill contained, this defendant says that it is a stranger to all and singular such matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1110 VI. This defendant denies that said defendant E. H. Harriman secured to said The San Pedro, Los Angeles and Salt Lake Railroad Company the use of certain of the tracks owned and controlled by this defendant, The Atchison, Topeka and Santa Fe Railway Company, in southern California. On the contrary this defendant avers that through the action of its own directors it voluntarily granted said The San Pedro, Los Angeles and Salt Lake Railroad Company trackage rights; that is, the right to operate its trains over a portion of the line of this defendant in southern California, such arrangement being an advantageous one to this defendant, inasmuch as it derived a revenue from a part of the use of its property by said The San Pedro, Los Angeles and Salt Lake Railroad Company.

As to all and singular the other matters and things contained in Subdivision VI of said petition or bill, this defendant says that it is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

1111 VII. This defendant admits that in the year 1904 the defendant Harriman represented to certain officials of this defendant that he and other individuals associated with him had acquired approximately three hundred thousand (300,000) shares of the stock of this defendant, and stated that he thought that these interests should be represented in the directorate of this defendant, but this defendant denies that the defendant Frick joined in or made any such representation or statement. On information and belief this defendant avers that at the time when such representation or statement were made by said Harriman the defendant Frick had not purchased any stock in the defendant company and that he has never been associated with said Harriman or any of the defendants in

purchases of stock in this defendant, but that all shares of stock in this defendant held by him were purchased by him and are held by him severally and individually as an investment. This defendant avers that its officials stated to said defendant Harriman that they would not be willing to admit representatives of the Union Pacific Railroad Company or of the Southern Pacific Company to places on the board of directors of this defendant, and it avers
1112 further that the officials of this company were thereupon assured by the defendant Harriman that neither the Union Pacific Railroad Company nor the Southern Pacific Company had any interest in said stock purchased by himself and associates and that such stock had been purchased by himself and associates as investments. This defendant admits that by reason of the fact that under the cumulative system of voting provided for by the laws of Kansas the defendant Harriman, by virtue of the stock in the defendant company held by himself and his associates and by virtue of the proxies which he might be able to obtain from other stockholders, would probably have been able to elect at least two directors of the defendant company, and that the officials of this defendant consented and agreed that said Harriman and his associated owners of stock of this defendant might nominate two directors who would be satisfactory to the board of directors of this defendant, but with the distinct understanding that they were to represent only the stock held by himself and his associates individually and in no sense should act as representatives of either the Union Pacific Railroad Company or of the Southern Pacific Company. Accordingly, on February 8, 1905, the defendants, Frick and Rogers, were
1113 chosen as directors to fill vacancies on the board of directors of this defendant, and said defendants ever since have been and now are directors of this defendant. This defendant denies that said Union Pacific Railroad Company, through said Rogers or Frick, has had knowledge of the affairs or business of this defendant, and this defendant avers on information and belief that the said Rogers and Frick at all times have acted and voted as directors of this defendant conscientiously in the interest of this defendant and not in the interest of either the Union Pacific Railroad Company or the Southern Pacific Company. This defendant denies that the said Rogers and Frick, or either of them, united themselves with the said Harriman or with any of the defendants in any conspiracy alleged in the bill of complaint. This defendant avers, on information and belief, that the stock originally acquired by said Harriman and his associates was all common stock, but that subsequently some of this common stock was sold. This defendant states that its records at present show that Mr. H. H. Rogers holds one hundred

(100) shares of stock, Mr. Frick thirty-five thousand three hundred (35,300) shares of stock, Mr. Harriman two thousand three hundred (2,300) shares of stock, and Kuhn, Loeb and Company and others, believed to be in the interest of such firm, one hundred
1114 fifty-one thousand one hundred forty-nine (151,149) shares of the stock of this defendant. But it has not been advised and it does not know, that any of the above stock was purchased for or on behalf of the Union Pacific Railroad Company, but, on the contrary, avers that no stock has ever appeared on its records in the name of the said Union Pacific Railroad Company or of any of its associated companies. This defendant further denies that competition between the systems of railway controlled by said Union Pacific Railroad Company and that of this defendant has to any extent been eliminated, either on account of the holdings of the stock of the said Harriman and his associates or otherwise. This defendant further denies that it has been induced by said Harriman and his associates to abandon extensions or additions to its lines of railway in the State of California.

It admits that certain lines of railroad partially constructed within the State of California, formerly owned by corporations whose stock was owned or controlled by this defendant, and that certain other lines of railroad partially constructed within the State of California formerly owned by corporations whose capital stock was owned or controlled by the Southern Pacific Company, were conveyed to
1115 a company incorporated under the laws of California under the name of "Northwestern Pacific Railroad Company," and that one-half of the capital stock of said last-named company was owned by this defendant and the other half by the Southern Pacific Company, but it states that all of the corporations which formerly owned said lines of railway and said Northwestern Pacific Railroad Company itself were incorporated under the laws of the State of California, and that such sales and consolidation were made under and by authority of the laws of said State; that said lines of railway so consolidated formed by further construction connecting lines and such consolidation thus afforded better railway facilities to the northwestern part of California than had been theretofore afforded by the several respective lines theretofore operated by their several respective companies. This defendant further says that prior to such consolidation the companies whose stock was as aforesaid owned by it only owned and operated about fifty miles out of Eureka and a few miles of detached line in Mendocino County; that said consolidation gave this defendant, through said Northwestern Pacific Railway Company, access for traffic to the territory served by said several lines north of San Francisco Bay; that said trans-

1116 action did not prevent competition or result in a monopoly, but, on the contrary, prevented the Southern Pacific Company from having or maintaining a monopoly in the aforesaid territory north of San Francisco Bay; that but for this consolidation it would have been impracticable to build the extension connecting Eureka with the San Francisco Bay or to furnish needed railway facilities to the territory which should be served by these lines.

This defendant denies that the lines of railway of the Union Pacific Railroad Company and the Southern Pacific Company and of this defendant are operated in harmony with each other under agreements or understandings as to rates or divisions of business, and this defendant says that it was at no time a party to any alleged conspiracy set forth in said petition or bill, and that as to all and singular the other matters and things in Subdivision VII of said petition or bill this defendant is a stranger to all and singular such other matters and things, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

VIII. And this defendant submits to this honorable court 1117 that all and every of the matters in said complainant's petition or bill mentioned and complained of are matters with respect to which the said complainant is not entitled to any relief as against this defendant from a court of equity, and this defendant hopes that it will have the same benefit of this defense as if it had demurred to said complainant's bill or petition.

IX. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that if there is any other matter, cause, or thing in said complainant's said bill of complaint or petition contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, the same is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

1118 THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By W. B. JANSEN,
Its Fourth Vice-President.
GARDINER LATHROP,
ROBERT DUNLAP,
Solicitors for the Atchison, Topeka and Santa Fe Railway Company.
P. L. WILLIAMS, *Of Counsel.*

1119 No. 993. United States Circuit Court, district of Utah. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company et al., defendants.

Answer of the defendant Henry H. Rogers.

Shearman & Sterling, attorneys for defendant. James M. Beck, P. L. Williams, of counsel.
(Filed May 2, 1908.)

1120 United States Circuit Court, district of Utah. No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1121 The answer of Henry H. Rogers to the petition of the United State of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, jurisdiction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons, which controlled or sought to control the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for

object the restraint of trade and commerce among the several
122 States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the outhern Pacific Company, or the system of either or by any other nes of railroads or steamships as named in the petition, and he de- ies that in any way he ever entered into any combination or con- piracy or aided or abetted any combination or conspiracy to unlaw- ully deprive the public of the facilities and advantages in the car- ying on of interstate and foreign trade and commerce theretofore njoyed through the independent competition of the railway systems nd steamship lines named in the petition, or that he ever was a mem- er of any unlawful combination or conspiracy whose object was to ffect a virtual or substantial combination of the Union Pacific Rail- oad Company and any other transcontinental railway company or mpanies or steamship line or lines, or whose object or purpose was place restraint on any or all competitive interstate and foreign ade and commerce, or to monopolize or attempt to monopolize the me or to suppress competition in the same as averred in the petition, that he ever in any way was a party to or aided or abetted any ch alleged combination or conspiracy. This defendant denies that
123 he ever violated the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that is denial be regarded by the court for the sake of brevity as re- ated as against every allegation in said petition, which charges to e contrary as to this defendant.

For further answer this defendant says:

This defendant is now and for a number of years has been an in- stor in the capital stock of the Union Pacific Railroad Company, e Southern Pacific Company, and the Atchison, Topeka & Santa Fe ailroad Company. These investments were not made with any ew to exercising any control in the respective companies beyond the rtial control which this defendant, in common with any stock- older, exercises in proportion to his stock holdings, and they were rther made with this defendant's own means and credit, in the be- f which this defendant had that the investments were legitimate es and that this defendant was entitled to all the rights, privileges, d profits which would lawfully and legitimately result from such vestments. These investments were not made or held with any rpose or object on the part of this defendant, either alone or in
124 conjunction with others, to restrain competition in interstate or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no onopoly in transportation has existed or is likely to exist, and that never had any thought, purpose, or plan, either individually or in

conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the eighth day of October, 1901, and is still a director of said company. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad and has never knowingly failed in any duty which he owed as such director either to the railroad company or to the public.

Further answering the said petition, by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence of Paragraph II of the petition have owned or controlled a majority
1125 of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the eighth day of October, 1901, and is still a director of said company.

(3) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(4) He admits that said Harriman, Schiff, Stillman, and Frick became directors and served as such as stated in Paragraph II of said petition.

(5) As to the true meaning and effect of the by-laws, referred to in Paragraph III of the petition, this defendant asks for greater
1126 certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by the production so that this court may itself determine their true meaning.

(6) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than Defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. Most of the averments contained in Paragraph III of the petition refer to transactions which took place prior to the

hen this defendant became a director in the railroad company, nd as to such transactions this defendant disclaims personal knowl-dge. Except as hereinafter specifically admitted or denied, the ther averments refer to transactions as to which this defendant has o personal knowledge. This defendant, however, on information nd belief accepts and adopts the respective admissions and denial o Paragraph III of the said petition which are contained in the oint and several answer of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon
127 Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part f this answer as fully as though recited herein, they being omitted or the sake of brevity and because they are already before the court n the joint answer above referred to.

IV. (1) He denies on information and belief that in the spring of 901, or at any other time, said Schiff, Kahn, Harriman, Stillman, nd Union Pacific Railroad Company, or any of them, conspired to estrain trade and commerce among the foreign States and between aid States and several countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other ompany, or to monopolize or attempt to monopolize any such trade nd commerce or to restrain or prevent competition among said rail-ray systems or any other railway systems, and said steamship lines r any other steamship lines in respect to any such commerce; or to leprive the public of the facilities and advantages in the carrying on f such trade and commerce through the independent competition, if ny there was, of said railway systems and steamship lines or other railway systems or steamship lines; or that he and the said
128 defendants or any of them ever entered into a combination or conspiracy for a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental ailway companies or steamship companies; or to place restraint pon any competitive commerce, if any such there was, carried on by uch companies; or to monopolize or attempt to monopolize the same; r to suppress any competition existing between any of said compa-ies or lines.

(2) He admits on information that on the 20th day of February, 1901, defendant Union Pacific Railroad Company acquired by pur-hase from said firm of Kuhn, Loeb & Co. 750,000 shares of the capi-al stock of said Southern Pacific Company of the aggregate par alue of $75,000,000 out of 1,978,399 shares of the aggregate par alue of $197,839,900, then issued and outstanding, but he denies hat the said stock was purchased or acquired in pursuance of any onspiracy or combination or for any of the purposes alleged in said etition.

(3) He admits on information that thereafter, to wit, on or abo
the 26th day of February, 1902, defendant Union Pacific Railro
Company sold and delivered the said 750,000 shares of th
1129 stock of the Southern Pacific Company to defendant Oreg
Short Line Railroad Company, which has ever since own
and still owns the same.

(4) He admits on information that thereafter, to wit, on or abo
the 31st day of May, 1902, defendant Oregon Short Line Railro
Company acquired by purchase from said Kuhn, Loeb & Co. 150,0
additional shares of stock of said Southern Pacific Company, whi
said Oregon Short Line Railroad Company has ever since own
and which it still owns.

(5) He admits on information that thereafter when, on or abo
the 20th day of July, 1904, defendant Southern Pacific Compa
created an issue of preferred stock which it offered to its stockhold
for subscription, said Oregon Short Line Railroad Company as t
owner of 900,000 shares of the common stock of said Southern P
cific Company, exercised its right and subscribed for and receiv
and has ever since owned and still owns, 180,000 shares of the p
ferred stock of said Southern Pacific Company; and that thereaft
in July, 1907, when said Southern Pacific Company increased i
said preferred stock by an additional issue thereof which it offe
to the holders of its outstanding stock for subscription, said Oreg
Short Line Railroad Company, as the owner of 1,080,
1130 shares of the stock of said Southern Pacific Company, ex
cised its right and subscribed for and received 162,000 ad
tional shares of the preferred stock of said Southern Pacific Co
pany, and has ever since owned, and still owns, the same, so th
said Oregon Short Line Railroad Company now owns 900,000 sha
of common stock and 342,000 shares of preferred stock, making
total of 1,242,000 shares of the capital stock of said Southern Pac
Company, out of a total of 2,726,498 shares issued and outstandi

(6) He denies that the said preferred stock was issued by s
Southern Pacific Company, or that any of the common stock of s
company was acquired or has been held by said Oregon Short Li
Railroad Company or the Union Pacific Railroad Company, in p
suance of any combination or conspiracy or for any of the purpo
or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of t
Southern Pacific Company held the 3d day of April, 1901, and
every meeting of the stockholders of said company since said da
the stock so acquired and owned by said Oregon Short Line R
road Company has constituted a majority of the shares represe
at such meetings; and he admits that by voting upon the s

1131 shares, through its duly authorized agents and proxies, and by the voting by the same agents and proxies, upon shares of other stockholders of said Southern Pacific Company, delegated to it, the defendant Oregon Short Line Railroad Company has been able to elect the directors of said Southern Pacific Company; but he is informed and believes that at no such meeting have any votes ever been cast by any stockholder against the persons so elected.

(8) He admits on information that the stock of said Southern Pacific Company not owned by defendant Oregon Short Line Railroad Company is owned by a large number of individuals, firms, and corporations residing in many different places; but he denies that said stockholders are or will be unable to elect the directors of said Southern Pacific Company, if they should deem it to their interest to do so, in opposition to those voted for by said Oregon Short Line Railroad Company; and he avers that the reason why said stockholders have not heretofore elected the directors of said company is that they have been satisfied with the directors nominated and elected by the agents and proxies of said Oregon Short Line Railroad Company in conjunction with the agents or proxies of other stockholders and their management of said company.

1132 (9) He denies that the Union Pacific Railroad Company or the Oregon Short Line Railroad Company controls or has ever controlled the management, operation, and business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as lawfully and proportionately results from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company.

(10) He admits that since April 9, 1901, a majority of the persons who have been directors of said Southern Pacific Company were at the same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competition between the steamship and railroad lines and asks that petitioner be put upon proof of such averments, if they be material or pertinent to any lawful inquiry in this case.

(12) He avers, on information, that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares of such

1133 stock in 1902 by defendant Oregon Short Line Railroad Company, were actual purchases of said stock, made in good faith, and were completed and fully executed by the delivery of the certificates for said 750,000 shares in 1901 and for said 150,000 shares in

1902 and by the payment of the price therefor at the time of such delivery; that the acquisition of the preferred stock of said Southern Pacific Company by defendant Oregon Short Line Railroad Company, as aforesaid, by the exercise of subscription rights, did not and has not changed the relative voting strength of position of the said Oregon Short Line Railroad Company from what it was upon the completion of the purchase of said two lots aggregating 900,000 shares of the common stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the petition, respecting the said Schiff, Kahn, Harriman, Union Pacific Railroad Company, and this defendant, and of any conspiracy or combination among them for any of the purposes or with any of the intents alleged, and denies each and every allegation of Paragraph IV of said petition not herein expressly admitted.

V. (1) He denies, on information, that the said Schiff,
1134 Kahn, Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901, or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and he denies all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000, par value, of the common stock and $41,085,000, par value, of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000.

(3) He admits on information the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,841, par value, of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United
1135 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company so received by it

opportunity to sell the same advantageously appeared; and that by such sales the amount of such stock so held has been steadily reduced, so that at the date of the commencement of this suit the said Oregon Short Line Railroad Company had sold all but 32,516 shares of the stock of the Great Northern Railway Company and all but 38,745 shares of the stock of the Great Northern Railway Company, which it still owns, but with no intent to restrain or monopolize interstate or foreign commerce or any part thereof.

(7) This defendant was not a party to the litigation which was begun in the Circuit Court of the United States for the District of New Jersey, referred to in Paragraph V of the petition; but, on information and belief, he denies that the litigation was prose-
1136 cuted, as alleged in the petition, for the purpose of effectuating the said conspiracy so originally entered into to restrain trade and commerce, smother competition, and monopolize trade and commerce among the several States and with foreign nations.

VI. This defendant denies any and every averment contained in Paragraph VI of the petition, which charges that this defendant was a party to or aided or abetted in any alleged conspiracy or unlawful combination. As to the other averments contained in said paragraph, this defendant has no personal knowledge or recollection which enables him to either admit or deny them, and he asks that the petitioner be put upon proof of the same, if the same averments be material and pertinent to any lawful inquiry before this court.

VII. (1) He denies that pursuant to any conspiracy to restrain trade and commerce among the several States with foreign nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems he and the defendants Schiff, Kahn, Harriman, Still-
man, and Frick, or any of them, in the year 1904, or at any
1137 other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits that in the year 1904 he and said Frick were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served, and are still serving, as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said the Atchison, Topeka and Santa Fe Railway Company. This defendant avers that

in discharging his duties as a director of the said Atchison Railroad Company he has always endeavored to protect and advance its best interests, and he has never intentionally acted adversely to such interests, either for the benefit of the Union Pacific Railroad Company or any other railroad company.

1138 (3) He admits on information that in July, 1906, defendant Oregon Short Line Railroad Company purchased, and has ever since owned, $10,000,000 par value of the capital stock of said the Atchison, Topeka and Santa Fe Railway Company out of a total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition, or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railways controlled by defendant Union Pacific Railroad Company and the said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

1139 (7) He denies that the lines of railroad of the Atchison Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in anywise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing

1140 to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

1141 In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

The answer of James Stillman to the bill of complaint of the United States of America.

Shearman & Sterling, attorneys for defendants. James M. Beck, P. L. Williams, of counsel.
(Filed May 2, 1908.)

1142 United States Circuit Court, District of Utah. No. 993. In Equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

1143 The answer of James Stillman to the petition of the United States of America.

This defendant, protesting and objecting that he was not, when the petition was filed, nor has he since been, nor is he now a resident of the district of Utah, and that this court has not, as to him, juris-

diction of the matters and things charged in the petition, and saving unto himself all manner of benefits and advantages by way of exception or otherwise which may or can be taken to the many irregularities, errors and mistakes, imperfections and uncertainties in the petition contained, for answer to said petition, or to so much as he is advised it is necessary or material for him to make answer to, answering, says:

This defendant denies all the allegations of the petition that at any time or in any way he was a member of any group or combination of persons which controlled or sought to control, the Union Pacific Railroad Company or the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, or any other railroad company named in the petition, and he denies that he ever entered into any conspiracy or aided or abetted any conspiracy which had for its object the restraint of trade and commerce among
1144 the several States or between the said States and foreign countries as carried on by the Union Pacific Railroad Company and the Southern Pacific Company, or the system of either or by any other lines of railroads or steamships as named in the petition, and he denies that in any way he ever entered into any combination or conspiracy or aided or abetted any combination or conspiracy to unlawfully deprive the public of the facilities and advantages in the carrying on of interstate and foreign trade and commerce theretofore enjoyed through the independent competition of the railway system and steamship lines named in the petition, or that he ever was a member of any unlawful combination or conspiracy whose object was to effect a virtual or substantial combination of the Union Pacific Railroad Company and any other transcontinental railway company or companies or steamship line or lines, or whose object or purpose was to place restraint on any or all competitive interstate and foreign trade and commerce, or to monopolize or attempt to monopolize the same or to suppress competition in the same as averred in the petition, or that he ever in any way was a party to or aided or abetted any such alleged combination or conspiracy. This defendant denies that he ever violated the provisions of an act of Congress
1145 approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and asks that this denial be regarded by the court for the sake of brevity as repeated as against every allegation in said petition, which charges to the contrary as to this defendant.

For further answer, this defendant says:

This defendant is now and for a number of years has been an investor in the capital stock of the Union Pacific Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company. These investments were not made with

view to exercising any control in the respective companies beyond the partial control which this defendant, in common with any stockholder, exercised in proportion to his stock holdings, and they were further made with this defendant's own means and credit, in the belief which this defendant had that the investments were legitimate ones, and that this defendant was entitled to all the rights, privileges, and profits which would lawfully and legitimately flow from such investments. These investments were not made or held with any purpose or object on the part of this defendant, either alone or in conjunction with others, to restrain competition in inter-
1146 state or foreign traffic or with any purpose or object of forming or maintaining any monopoly. This defendant avers that no monopoly in transportation has existed or is likely to exist, and that he never had any thought, purpose, or plan, either individually or in conjunction with others, to form a combination of railroads, as is charged in Paragraph IV of the petition.

This defendant became a director of the Union Pacific Railroad on the sixth day of December, 1897, and continued as such until the thirteenth day of February, 1908. As such director he has at all times acted according to his best judgment for the true and lawful interests of the said railroad and has never knowingly failed in any duty which he owed as such director, either to the railroad company or to the public.

Further answering the said petition by paragraphs, this defendant says:

I. The averments contained in the first paragraph of the petition this defendant believes to be true.

II. (1) He denies that from or at any time after January 1, 1901, he and the other defendants named in the first sentence
1147 of Paragraph II of the petition have owned or controlled a majority of the capital stock of the Union Pacific Railroad Company.

(2) He admits that he became a director of said Union Pacific Railroad Company on the 6th day of December, 1897, and continued to be a director of said company until the thirteenth day of February, 1908, when he resigned.

(3) He admits that he was a member of the executive committee of the board of directors from the 8th day of December, 1897, until the thirteenth day of February, 1908, and that the said Otto H. Kahn was a member of said committee from the 8th day of December, 1897, until the 10th day of April, 1906.

(4) He admits that during all of said time the said Jacob H. Schiff and Otto H. Kahn were and still are members of a banking firm of the city of New York, doing business under the name and style of "Kuhn, Loeb & Co.," but denies that said banking house has

been or is the "fiscal agent" of the defendant Union Pacific Railroad Company; and he admits that some of the stocks referred to in the petition were bought by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company, respectively, from
1148 time to time through said banking house, and that some of the bonds issued by said companies were sold to said firm.

(5) He admits that Harriman, Schiff, Rogers, and Frick became directors and served as such, as stated in Paragraph II of said petition.

(6) As to the true meaning of the by-laws referred to by petitioner in Paragraph III, this defendant asks for greater certainty, if the inquiry be material and relevant, that the petitioner be required to formally prove the by-laws by their production, so that this court may itself determine their true meaning.

(7) He denies that pursuant to such by-laws or otherwise the said Harriman has, with the concurrence of said individual defendants other than defendant Clark, who are members of the executive committee or board of directors of said company, dominated the affairs and controlled the management of said Union Pacific Railroad Company.

III. This defendant, on information and belief, accepts and adopts the respective admissions and denials to Paragraph III of the said petition, which are contained in the joint and several answers
1149 of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, and he asks that such admissions, denials, and averments may be regarded as part of this answer as fully as though recited herein, they being omitted for the sake of brevity and because they are already before the court in the joint answer above referred to.

IV. (1) He denies that in the spring of 1901 or at any other time he and the defendant Schiff, Kahn, Harriman and Union Pacific Railroad Company, or any of them, conspired to restrain trade and commerce among the foreign States and between said States and several countries carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among said railway systems or any other railway systems and said steamship lines or any other steamship lines in respect to any such commerce, or to deprive the public of the facilities and advantages in the carrying on of such trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or
1150 other railway systems or steamship lines, or that he and the said defendants, or any of them, ever entered into a con-

ation or conspiracy for a virtual or substantial consolidation of aid Union Pacific Railroad Company and any other transconti- ental railway companies or steamship companies, or to place re- traint upon any competitive commerce, if any such there was, car- ied on by such companies, or to monopolize or attempt to monopo- ize the same, or to suppress any competition existing between any f said companies or lines.

(2) He admits on information that on the 20th day of February, 901, defendant Union Pacific Railroad Company acquired by pur- hase from said firm of Kuhn, Loeb & Co. 750,000 shares of the apital stock of said Southern Pacific Company of the aggregate par alue of $75,000,000 out of 1,978,399 shares of the aggregate par value f $197,839,900 then issued and outstanding, but he denies that the id stock was purchased or acquired in pursuance of any conspiracy combination or for any of the purposes alleged in said petition.

(3) He admits on information that thereafter, to wit, on or about the 26th day of February, 1902, defendant Union Pacific Rail- 51 road Company sold and delivered the said 750,000 shares of the stock of Southern Pacific Company to defendant Oregon hort Line Railroad Company, which has ever since owned and still ns the same.

(4) He admits on information that thereafter, to wit, on or about e 31st day of May, 1902, defendant Oregon Short Line Railroad mpany acquired by purchase from said Kuhn, Loeb & Co. 150,000 ditional shares of stock of said Southern Pacific Company, which id Oregon Short Line Railroad Company has ever since owned d which it still owns.

(5) He admits on information that thereafter, when, on or about e 20th day of July, 1904, defendant Southern Pacific Company ated an issue of preferred stock which it offered to its stockholders subscription at par, said Oregon Short Line Railroad Company the owner of 900,000 shares of the common stock of said Southern cific Company exercised its right and subscribed for and received d has ever since owned and still owns 180,000 shares of the pre- red stock of said Southern Pacific Company; and that thereafter, July, 1907, when said Southern Pacific Company increased its said ferred stock by an additional issue thereof which it offered to the holders of its outstanding stock for subscription at par, said 2 Oregon Short Line Railroad Company as the owner of 1,080,000 shares of the stock of said Southern Pacific Company rcised its right and subscribed for and received 162,000 addi- al shares of the preferred stock of said Southern Pacific Com- y, and has ever since owned and still owns the same; so that said gon Short Line Railroad Company now owns 900,000 shares of

common stock and 342,000 shares of preferred stock, making a to
of 1,242,000 shares of the capital stock of said Southern Pacific Co
pany out of a total of 2,726,498 shares issued and outstanding.

(6) He denies that the said preferred stock was issued by
Southern Pacific Company or that any of the common stock of
company was acquired or has been held by said Oregon Short L
Railroad Company or the Union Pacific Railroad Company in
suance of any combination or conspiracy or for any of the purp
or with the intent alleged in said petition.

(7) He admits on information that at the annual meeting of
Southern Pacific Company held the 3d day of April, 1901, and
every meeting of the stockholders of said company since said d
the stock so acquired and owned by said Oregon Short L
1153 Railroad Company has constituted a majority of the sh
represented at such meetings; and he admits that by vo
upon the said shares through its duly authorized agents and pro
and by the voting by the same agents and proxies upon shares
other stockholders of said Southern Pacific Company delegated
the defendant Oregon Short Line Railroad Company has been
to elect the directors of said Southern Pacific Company; but h
informed and believes that at no such meeting have any votes
been cast by any stockholder against the persons so elected.

(8) He admits, on information, that the stock of said South
Pacific Company not owned by defendant Oregon Short Line R
road Company is owned by a large number of individuals, f
and corporations residing in many different places; but he d
that said stockholders are or will be unable to elect the directors
said Southern Pacific Company, if they should deem it to their i
est to do so, in opposition to those voted for by said Oregon S
Line Railroad Company; and he avers that the reason why
stockholders have not heretofore elected the directors of said
pany is that they have been satisfied with the directors nomin
and elected by the agents and proxies of said Oregon S
1154 Line Railroad Company, in conjunction with the agen
proxies of other stockholders and their management of
company.

(9) He denies that the Union Pacific Railroad Company o
Oregon Short Line Railroad Company controls or has ever
trolled the management, operation, and business affairs of
Southern Pacific Company or exercised any control whatsoever
it, except such as lawfully and proportionately results from the
ing upon the stock of said Southern Pacific Company, owned by
Oregon Short Line Railroad Company at meetings of the
holders for the election of directors of said Southern P
Company.

(10) He admits that since April 9, 1901, a majority of the persons ho have been directors of said Southern Pacific Company were at e same time directors of said Union Pacific Railroad Company.

(11) He disclaims personal knowledge as to the alleged competi- on between the steamship and railroad lines, and asks that petitioner upon proof of such averments, if they be material or pertinent to y lawful inquiry in this case.

(12) He avers on information that the acquisition by the Union Pacific Railroad Company and Oregon Short Line Railroad 35 Company of 750,000 shares of the stock of said Southern Pacific Company in 1901, and of said additional 150,000 shares such stock in 1902 by defendant Oregon Short Line Railroad Com- any, were actual purchases of said stock, made in good faith, and ere completed and fully executed by the delivery of the certificates r said 750,000 shares in 1901, and for said 150,000 shares in 1902, d by the payment of the price therefor at the time of such delivery; at the acquisition of the preferred stock of said Southern Pacific ompany by defendant Oregon Short Line Railroad Company as oresaid, by the exercise of subscription rights did not and has not anged the relative voting strength of position of the said Oregon hort Line Railroad Company from what it was upon the completion the purchase of said two lots, aggregating 900,000 shares of the mmon stock of the Southern Pacific Company as aforesaid.

(13) He denies all the allegations of Subdivision IV of the peti- n, respecting the said Schiff, Kahn, Harriman, Union Pacific ilroad Company, and this defendant, and of any conspiracy or mbination among them for any of the purposes or with any of e intents alleged, and denies each and every allegation of Para- graph IV of said petition not herein expressly admitted.

56 V. (1) He denies that he and the said Schiff, Kann, Harri- man, Union Pacific Railroad, or any of them, in the spring of 01, or at any other time, caused the Union Pacific Railroad Com- any to acquire a majority of the stock of the Northern Pacific Rail- ay Company pursuant to any conspiracy to restrain trade and com- erce among the several States and with foreign nations, or to onopolize or attempt to monopolize such trade and commerce, or to ppress any competition; and he denies all the allegations of Sub- ivision V of the petition respecting any conspiracy or combination r any purpose between any of the defendants to this suit.

(2) He admits on information that in the year 1901 said Oregon hort Line Railroad Company purchased $37,023,000 par value of e common stock, and $41,085,000 par value of the preferred stock the Northern Pacific Railway Company, and that at the time of ch purchase the total stock of the Northern Pacific Railway Com-

pany issued and outstanding was of the aggregate par value o
$155,000,000.

(3) He admits on information the sale and transfer of said sto
to the Northern Securities Company, and the receipt by sa
1157 Oregon Short Line Railroad Company of $82,491,841 p
value of the stock of said Northern Securities Company.

(4) He admits the commencement of a suit by the United Stat
of America against said Northern Securities Company and othe
and the decision of said suit as alleged in the petition.

(6) He is informed that defendant Oregon Short Line Railro
Company, upon the final decision of said suit, proceeded from ti
to time to sell the stock of the Northern Pacific Railway Compan
and of the Great Northern Railway Company, so received by it,
opportunity to sell the same advantageously appeared; and that b
such sales the amount of such stock so held has been steadily reduc
so that at the date of the commencement of this suit the said Oreg
Short Line Railroad Company had sold all but 32,516 shares of t
Northern Pacific Railway Company, and all but 38,745 shares
the stock of the Great Northern Railway Company, which it st
owns, but with no intent to restrain or monopolize interstate or fo
eign commerce or any part thereof.

(7) This defendant was not a party to the litigation whi
1158 was begun in the Circuit Court of the United States for t
District of New Jersey, referred to in paragraph V of th
petition, but, on information and belief, he denies that the litigatio
was prosecuted, as alleged in the petition, for the purpose of effectu
ing the said conspiracy so originally entered into to restrain tra
and commerce, smother competition, and monopolize trade and co
merce among the several States and with foreign nations.

VI. This defendant denies any and every averment contained i
Paragraph VI of the petition, which charges that this defendant w
a party to or aided or abetted in any alleged conspiracy or unlawf
combination. As to the other averments contained in said paragraph
this defendant has no personal knowledge or recollection which e
ables him to either admit or deny them, and he asks that the pe
tioner be put upon proof of the same, if the said averments b
material and pertinent to any lawful inquiry before this court.

VII. (1) He denies that pursuant to any conspiracy to restra
trade and commerce among the several States with foreign nation
or to monopolize or attempt to monopolize any such tra
1159 and commerce or to restrain or prevent competition amo
any of said railway systems he and the defendants Schi
Kahn, Harriman, Rogers, and Frick, or any of them, in the ye
1904, or at any other time, made large purchases of stock of th

Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000 par value of said stock or any other amount; and he denies that he or any of the other defendants at any time demanded of any officials of the said the Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein should be elected directors of the Atchison, Topeka and Santa Fe Railway Company.

(2) He admits on information that in the year 1904 the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company, and have since served and are still serving as such directors; but he denies that they were so elected for any of the reasons alleged in Subdivision VII of the petition herein, and denies that by means of such election the defendant Union Pacific Railroad Company has had knowledge of the affairs and business of said The Atchison, Topeka and Santa Fe Railway Company.

(3) He admits on information that in July, 1906, defendant 160 Oregon Short Line Railroad Company purchased, and has ever since owned, $10,000,000 par value of the capital stock of said The Atchison, Topeka and Santa Fe Railway Company out of total issue of preferred and common stock of said company outstanding of the aggregate par value of $216,199,530, but he denies that such purchase was for any of the purposes alleged in said petition or in furtherance of any unlawful combination or conspiracy.

(4) He denies that he or any associates of his or defendant Union Pacific Railroad Company, or all of them, have any control, partial or otherwise, of said The Atchison, Topeka and Santa Fe Railway Company.

(5) He denies that competition between the systems of railway controlled by defendant Union Pacific Railroad Company and by said The Atchison, Topeka and Santa Fe Railway Company has to any extent been eliminated.

(6) He denies that he or any other persons alleged in said petition to be "conspirators" have caused defendant Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway Company to abandon any extensions, improvements, and additions to their lines in California or elsewhere.

(7) He denies that the lines of railroad of the Atchison, 161 Topeka and Santa Fe Railway Company are operated in harmony with the lines of said Union Pacific Railroad Company or said Southern Pacific Company under agreements and understandings as to rates and divisions of business, and that competition between such lines has been eliminated or in any wise restricted.

(8) As to any other averments contained in the Paragraph VII of the petition, not hereinbefore expressly admitted or denied, this defendant disclaims personal knowledge and asks that the petitioner

be put upon proof of the same, if the same be material and pertinent to any lawful inquiry before this court.

VIII. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged, without this, that if there is any other manner, cause, or thing in the petition contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

1162 and humbly prays to be hence dismissed with his reasonable costs and charges in his behalf most wrongfully sustained.

JAMES M. BECK,
P. L. WILLIAMS,
SHEARMAN & STERLING,
Solicitors for Defendants.

1163 No. 993. In the United States Circuit Court, District of Utah.

The United States of America, complainant, versus Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

Joint and several answer of Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

CRAVATH, HENDERSON & DE GERSDORFF,
Attorneys for Defendants Schiff and Kahn.
PAUL D. CRAVATH,
P. L. WILLIAMS,
Of Counsel.

(Filed May 13, 1908.)

164 United States Circuit Court, District of Utah.

No. 993. In equity.

The United States of America, complainant, vs. Union Pacific Railroad Company, Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los Angeles and Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, Northern Pacific Railway Company, The Great Northern Railway Company, The Farmers' Loan and Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants.

165 The joint and several answer of the defendants Jacob H. Schiff and Otto H. Kahn to the original petition of the United States of America.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantages of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's petition contained, for their joint and several answer thereunto, or to so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

I. These defendants deny that they or either of them ever knowingly violated the provisions of an act of Congress approved July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." They deny all the allegations of the petition, charging that they or either of them were connected with or concerned in any combination or conspiracy which had for its object the restraint of trade and commerce among the several States or between the said States and foreign countries or any unlawful combination or arrangement of any kind whatsoever

166 between the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company or affecting any portion or portions of the system of said Union Pacific Railroad Company and any portion or portions of the system of said Southern Pacific Company, or any railroad companies or railroad lines whatsoever. They aver that all of the transactions between the firm of Kuhn, Loeb & Co. and said Union Pacific Railroad Company or the Oregon Short Line Railroad Company alleged in the petition, in so far as such transactions occurred, were, so far as said firm of Kuhn, Loeb & Co. and these defendants were concerned, in the ordinary

course of their business as bankers, and were not part of or in any manner connected with any conspiracy or combination of any kind whatsoever between the said firm of Kuhn, Loeb & Co. or these defendants or either of them and any other person or persons or corporation or corporations whatsoever. They aver that in voting as directors of said Union Pacific Railroad Company, and in the case of the defendant Kahn, as a member of the executive committee of the board of directors of said company, in favor of any transactions on the part of said company, they so voted because they deemed such transactions to be lawful and advantageous to said company;
1167 and they aver that in all their actions as directors of said company they were guided solely by their best judgment as to the best interests of said company. They aver that they and the firm of Kuhn, Loeb & Co. have voted such shares of stock of The Union Pacific Railroad Company as they from time to time have held in such manner as seemed to them to be for the best interests of the company and its shareholders. They aver that on February 26, 1906, both of these defendants resigned from the board of directors of the Union Pacific Railroad Company; that such resignations were duly accepted by the board of directors of said company on April 10, 1906; and that since said resignations they have had no connection with or voice in the management of said company or of any of the other railroad companies mentioned in the petition; and for that reason these defendants aver that they are not proper parties defendant to this suit. And further answering the petition these defendants say:

II. They admit that the defendant Jacob H. Schiff was a director of said Union Pacific Railroad Company from March 1, 1898, until February 26, 1906, when he resigned; and that the defendant Otto H. Kahn became a director of said company on July 1, 1897, and
1168 a member of the executive committee of the board of directors of said company on December 8, 1897, and continued to be a director of said company and a member of said committee from said respective dates until February 26, 1906, when he resigned.

III. They admit that during all of the period alleged in the petition the defendants Jacob H. Schiff and Otto H. Kahn were, and still are, members of a banking firm doing business in the city of New York under the firm name and style of Kuhn, Loeb & Co., and they admit that many, although by no means all, of the purchases and sales of shares of stock and bonds mentioned in said petition were made from or to or through the instrumentality of said firm; but they deny that said firm of Kuhn, Loeb & Co. were ever appointed as or held the office of "fiscal agent" of said Union Pacific Railroad Company, and they deny that while these defendants were members of its board of directors said company appointed any person, partnership, or corporation as its fiscal agent or agents.

They deny that during the time when they were directors of said company, or when either of them was a director thereof, the
1169 by-laws of said Union Pacific Railroad Company respecting the power of the executive committee of its board of directors and the power and authority of the chairman of said executive committee were in the form or of the legal effect alleged in Subdivision II of the petition; and for the provisions of said by-laws in respect of the power and authority of the executive committee and the chairman of the executive committee during said period these defendants respectfully refer to the records of said corporation.

They deny that, pursuant to the by-laws of said corporation or otherwise, the defendant Harriman at any time while these defendants were directors, or either of them was a director, of said Union Pacific Railroad Company, with or without a concurrence and assistance of the individual defendants in this suit, other than defendant Clark, who were members of the executive committee or the board of directors of said company, dominated the affairs and controlled the management of said company, and they allege that while these defendants were members of the board of directors of said corporation its by-laws in respect to the powers and duties of its officers were such as are usually adopted by large railroad corpora-
1170 tions. They have no knowledge as to the control of the management of said company or as to its by-laws since they ceased to be directors thereof.

IV. They deny that from and after January 1, 1901, or at any time, they, or either of them, and the defendants, Edward H. Harriman and James Stillman, together with Henry H. Rogers and Henry C. Frick, or any of them, or with any other person or persons who joined with them, have owned or controlled a majority of the capital stock of the defendant Union Pacific Railroad Company.

They admit that the said Edward H. Harriman was the chairman of the executive committee of the board of directors of said Union Pacific Railroad Company from January 1, 1901, to February 26, 1906, when these defendants resigned as directors thereof, and that he was the president of said corporation from January, 1904, to said February 26, 1906; they are informed and believe that the said Harriman, since said February 26, 1906, has been and still is the chairman of said board of directors and the president of said corporation.

V. They admit the ownership by said Union Pacific Rail-
1171 road Company, Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, and Southern Pacific Company, respectively, of capital stock of other companies, as alleged in subdivision III of the petition, from January 1, 1901, to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company; but they deny that ever prior

to said February 26, 1906, said Union Pacific Railroad Company managed said Oregon Short Line Railroad Company or the said Oregon Railroad and Navigation Company. They deny that said Union Pacific Railroad Company controlled said corporations or either of them except to the extent of voting its stock in said corporations for the election of members of their boards of directors, but these defendants aver that each of those companies controlled and managed its own railroads and other property in its own name and by its own officers and agents.

These defendants have no knowledge or information sufficient to form a belief as to the allegations of Subdivision III of the petition respecting alleged competition between the various companies; but they aver that, if there was any competition between any railroad lines or steamship lines alleged to be controlled by the South-
1172 ern Pacific Company and the lines alleged to be controlled by the Union Pacific Railroad Company, such competition was not of such a character as to render illegal the acquisition of stock of the Southern Pacific Company by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company.

VI. They deny that in the spring of 1901, or at any other time, they, or either of them, and the defendants Harriman, Stillman, and Union Pacific Railroad Company, or any of them, conspired to restrain the trade and commerce among the several States and between said States and foreign countries, carried on by said Union Pacific Railroad Company and said Southern Pacific Company or any other company, or to monopolize or attempt to monopolize any such trade and commerce, or to restrain or prevent competition among said railway systems or any other railway systems, and said steamship lines or any other steamship lines, in respect to any such trade and commerce; or to deprive the public of the facilities and advantages in the carrying on of such interstate and foreign trade and commerce through the independent competition, if any there was, of said railway systems and steamship lines or other railway systems or steamship
1173 lines; or that they or either of them and the said defendants or any of them ever entered into a combination or conspiracy to effect a virtual or substantial consolidation of said Union Pacific Railroad Company and any other transcontinental railway companies or steamship companies, or to place restraint upon any competitive commerce, if any such there was, carried on by such companies, or to monopolize or attempt to monopolize the same, or to suppress any competition existing between any of said companies or lines by the means alleged in the petition or otherwise.

They admit that in February, 1901, said firm of Kuhn, Loeb & Co. acquired 750,000 shares of the capital stock of said Southern Pacific Company, of the aggregate par value of $75,000,000, out of 1,978,800

shares, of the aggregate par value of $197,839,900, then issued and outstanding, with the expectation of offering to said Union Pacific Railroad Company an opportunity of purchasing said shares of stock; they admit that said firm subsequently sold said stock to said Union Pacific Railroad Company (these defendants not voting upon the purchase as directors of said Union Pacific Railroad Company),

but they deny that the said stock was acquired or sold by said
1174 firm in pursuance of any conspiracy or combination or for any of the purposes alleged in said petition.

They admit that thereafter, to wit, on or about the 31st day of May, 1902, said Kuhn, Loeb & Co. sold to defendant Oregon Short Line Railroad Company 150,000 additional shares of stock of said Southern Pacific Company; but they deny that the said additional shares were acquired or sold by said firm in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit that thereafter, to wit, in 1904, defendant Southern Pacific Company created an issue of preferred stock which it offered to its stockholders for subscription pro rata at par, but they deny that these defendants, or either of them, and the defendants Harriman, Stillman, and said Union Pacific Railroad Company, or any of them, caused said issue of preferred stock. They admit that said Oregon Short Line Railroad Company, as the owner of 900,000 shares of the common stock of said Southern Pacific Company, exercised its right and subscribed for and received 180,000 shares of the preferred stock of said Southern Pacific Company of the par value of $18,000,000.

They deny that the said preferred stock was issued by said
1175 Southern Pacific Company or that any of the common or preferred stock of said company was acquired by said Oregon Short Line Railroad Company or the Union Pacific Railroad Company in pursuance of any combination or conspiracy with which either of these defendants was in any way connected, or for any of the purposes or with the intent on the part of these defendants or either of them as alleged in said petition.

They deny that ever, prior to February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, said Union Pacific Railroad Company or said Oregon Short Line Railroad Company controlled the management, operation, or business affairs of said Southern Pacific Company or exercised any control whatsoever over it, except such as may have resulted from the voting upon the stock of said Southern Pacific Company owned by said Oregon Short Line Railroad Company at meetings of the stockholders for the election of directors of said Southern Pacific Company. They have no knowledge or information sufficient to form

a belief as to whether said companies have, or either of them has, controlled the management or operation or business affairs of said Southern Pacific Company at any time since said date.

They admit that at the annual meetings of the stock-
1176 holders of the Southern Pacific Company from the time the stock was so acquired and owned by said Oregon Short Line Railroad Company until February 26, 1906, when these defendants resigned as directors of said Union Pacific Railroad Company, such stock constituted a majority of the shares represented at such meetings, though not a majority of the entire capital stock of said company; and they admit that by voting upon the said shares, through its duly authorized agents and proxies, aided by the votes upon other shares owned by a large number of other stockholders of said Southern Pacific Company, the defendant Oregon Short Line Railroad Company was able to elect the directors of said Southern Pacific Company; but they aver that at none of said meetings were any votes cast by any stockholder against the persons so elected. They have no knowledge or information sufficient to form a belief as to the voting of said stock since said February 26, 1906.

They deny that the stock of the Southern Pacific Company so acquired and owned by defendant Oregon Short Line Railroad Company ever was or is voted at the dictation or instance of these defendants, or either of them, or at the dictation or instance of
1177 these defendants, or either of them, acting in concert with said Union Pacific Railroad Company, Harriman, and Stillman, or any of them; or that said stock was ever voted for the purposes or ends alleged in Subdivision IV of the petition; and they deny that the directors of said Southern Pacific Company have ever been selected or caused to be elected by them, or either of them, or by them, or either of them, acting in concert with others.

They deny that competition between said Union Pacific Railroad and Southern Pacific Company with their steamship lines as set forth in the petition or otherwise, if any such competition ever existed, has been destroyed or that any interstate or foreign commerce which at any time was the subject of competition was ever, while these defendants were directors of said Union Pacific Railroad Company, monopolized in the hands or under the control of said company and subsidiary corporations and its officials, or any of them.

They deny each and every allegation of Subdivision IV of the petition respecting these defendants and each every allegation therein respecting any conspiracy or combination between these defendants, or either of them, and said Harriman, Stillman, and Union Pacific Railroad Company, or any of them, for any of the purposes
1178 or with any of the intents or results alleged.

VII. They deny that they, or either of them, and the said Harriman, Stillman, Union Pacific Railroad, or any of them, in the spring of 1901 or at any other time, caused the Union Pacific Railroad Company to acquire a majority of the stock of the Northern Pacific Railway Company, or any other amount thereof, pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign nations, or to monopolize or attempt to monopolize such trade and commerce, or to suppress any competition; and they deny all the allegations of Subdivision V of the petition respecting any conspiracy or combination for any purpose between these defendants, or either of them, and any of the defendants to this suit.

They admit that in the year 1901 said Oregon Short Line Railroad Company purchased $37,023,000 par value of the common stock and $11,085,000 par value of the preferred stock of the Northern Pacific Railway Company, and that at the time of such purchase the total stock of the Northern Pacific Railway Company issued and outstanding was of the aggregate par value of $155,000,000; but
1179 they deny that such purchase was in pursuance of any conspiracy or combination or for any of the purposes alleged in the petition.

They admit the incorporation of the Northern Securities Company, and also the retirement of the preferred stock by an additional issue of common stock of the Northern Pacific Railway Company as alleged in said petition.

They admit the sale and transfer of said stock to the Northern Securities Company, and the receipt by said Oregon Short Line Railroad Company of $82,491,871 par value of the stock of said Northern Securities Company represented by certificates issued in the name of said Harriman and of Winslow S. Pierce, who was at that time general counsel of defendant Union Pacific Railroad Company, and they admit that neither the said Harriman nor the said Pierce had any personal interest in said shares; but they deny that said sale was caused by these defendants or either of them, or by them or either of them acting with any other parties, and they deny that said stock of the Northern Securities Company was held by said Harriman and Pierce, pursuant to any conspiracy to which these defendants were parties, or either of them was a party.

They admit the commencement of a suit by the United
1180 States of America against said Northern Securities Company and others, and the decision of said suit as alleged in the petition.

They admit the commencement thereafter of a suit by defendants Harriman and Oregon Short Line Railroad Company, and the said Winslow S. Pierce and the Equitable Trust Company of New York,

as alleged in the petition; and they admit that the relief sought by the complainants in said suit was denied by the decrees entered therein. But they aver that the courts by said decrees approved the distribution by the Northern Securities Company of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company complained of by defendant Oregon Short Line Railroad Company and its copetitioners in said suit; and that as a result of said distribution, and of the approval of the same in said suit, the defendant Oregon Short Line Railroad Company during the year 1904 received from the Northern Securities Company, as the interest and share of said Oregon Short Line Railroad Company of the assets so distributed, 281,828 shares, being 18.18 per cent of the capital stock of the Northern Pacific Railway Company; and 216,536 shares, being 17.32 per cent of the capital stock of the Great Northern Railway Company; and that no doubt as to the right of

1181 said Oregon Short Line Railroad Company to so receive and hold the said shares was intimated by any of the courts in such suit. They deny that they were parties, or either of them was a party, to said suit, and deny that they, or either of them, in any way opposed or protested against any proposed distribution of shares by said Northern Securities Company as alleged in the petition.

They aver that defendant, Oregon Short Line Railroad Company, upon the final decision of said suit, proceeded from time to time to sell the stock of the Northern Pacific Railway Company and of the Great Northern Railway Company, so received by it, as sales could be advantageously effected; but they have no knowledge or information sufficient to form a belief as to what amount of said stock has been disposed of by said Oregon Short Line Railway Company or what amount thereof, if any, it owned at the date of the commencement of this suit or now owns; they deny that said Oregon Short Line Railway Company ever held or now holds any stocks as the agent or representative of these defendants, or either of them, or of any conspirators of whom either of these defendants was one, or pursuant to any conspiracy to which these defendants were parties or either of them was a party.

1182 They deny that they, or either of them, and the said Harriman, Stillman, and Union Pacific Railroad Company, or any other persons associated with them, caused the said suit of Harriman, Pierce, Oregon Short Line Railroad Company and Equitable Trust Company of New York against said Northern Securities Company to be prosecuted for the purpose of effectuating any conspiracy to restrain trade and commerce or to smother competition or monopolize any trade or commerce as in said petition alleged.

They deny each and every allegation of said subdivision V of the petition not herein expressly admitted or respecting which the

have not stated that they have no knowledge or information sufficient to form a belief.

VIII. They have no knowledge or information sufficient to form a belief as to when or by whom or for what purpose or purposes the defendant, San Pedro, Los Angeles and Salt Lake Railroad Company, was incorporated, or as to what line or lines of railway it had acquired or was engaged in constructing prior to the year 1902.

They deny that they, or either of them, for the purpose of restraining trade and commerce among the States and with foreign
1183 nations, and monopolizing the same, or of preventing competition, or for any other purpose, brought any suit or suits or were concerned in bringing any suit or suits in the courts for the purpose of harassing or injuring the said San Pedro, Los Angeles and Salt Lake Railroad Company, or for any other purposes alleged in subdivision VI of said petition; and they deny that they made or were concerned in the making of any threats or caused any interference as in said subdivision alleged.

They deny that the contracts referred to in Subdivision VI of said petition, alleged copies of which are annexed thereto and marked, respectively, Exhibits "A" and "B", were entered into for the purpose alleged in said subdivision, and they deny that the consummation of said contracts had the results in said subdivision alleged.

They deny that they were parties, or either of them was a party, to any combination, confederation, or conspiracy for the purposes mentioned in the said subdivision or any of them; and they deny each and every allegation in said subdivision contained respecting these defendants.

IX. They deny that pursuant to any conspiracy to restrain trade and commerce among the several States and with foreign
1184 nations or to monopolize or attempt to monopolize any such trade and commerce or to restrain or prevent competition among any of said railway systems, they, or either of them, and the defendants, Harriman, Stillman, Rogers, and Frick, or any of them, in the year 1904 or at any other time, made large purchases of stock of the Atchison, Topeka and Santa Fe Railway Company, aggregating $30,000,000, par value, of said stock or any other amount; and they deny that they, or either of them, at any time demanded of or were concerned in or took part in any demand upon any officials of said The Atchison, Topeka and Santa Fe Railway Company that any of the defendants herein, or any other person or persons, should be elected directors of said company.

They deny that the defendants Frick and Rogers were elected directors of the Atchison, Topeka and Santa Fe Railway Company pursuant to any demand made by these defendants, or either of them,

or pursuant to any conspiracy to which the defendants were parties or either of them was a party, or for any other reason alleged in Subdivision VII of the petition herein.

They deny that in the summer of 1906 they, or either of them, caused or were concerned in causing the Union Pacific
1185 Railroad Company or Oregon Short Line Railroad Company to purchase $10,000,000, par value, or any other amount of the stock of the Atchison, Topeka and Santa Fe Railway Company, and have no knowledge or information sufficient to form a belief as to the purposes of the Union Pacific Railroad Company or Oregon Short Line Railroad Company in making any purchase of stock of said Atchison, Topeka and Santa Fe Railway Company, which it may have made.

They have no knowledge or information sufficient to form a belief as to the course which has been pursued by the Atchison, Topeka and Santa Fe Railway Company in respect to the matters alleged in said Subdivision VII of the petition or as to the allegations of competition between the system of railways alleged to be controlled by the Union Pacific Railroad Company and said Atchison, Topeka and Santa Fe Railway Company, or any elimination thereof, if such competition ever existed.

They deny that any of the acts or transactions alleged in Subdivision VII were the result of any conspiracy, combination, or contract to restrain commerce among the several States and with foreign countries, or were done or occurred in pursuance of any con-
1186 spiracy or combination for any purpose to which these defendants were parties or either of them was a party; and they deny each and every allegation of said Subdivision VII respecting these defendants.

X. They allege that, so far as practicable, they have confined this answer to the allegations of the petition which related to the matters and things of which these defendants have knowledge or with which they had some connection, either individually or as directors of the Union Pacific Railroad Company. As to the other allegations of the petition, they have refrained from making either admissions or denials thereon, and pray that the complainant be put upon proof of each and all of the same, if such other allegations be material or pertinent to any inquiry before this court as regards these defendants.

XI. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are in the said petition charged; without that any other matter, cause, or thing in the said petition contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, traversed, and avoided or
1187 denied, is true to the knowledge or belief of these defendants

all of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JACOB H. SCHIFF,
OTTO H. KAHN,
Defendants.
By CRAVATH, HENDERSON & DE GERSDORFF,
Their Solicitors.
PAUL D. CRAVATH,
P. L. WILLIAMS.
Of Counsel.

1188 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Edward H. Harriman. (Filed May 4, 1908.)

1189 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Edward H. Harriman, one of the defendants in the above-entitled action.

1190 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Edward H. Harriman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other

matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Edward H. Harriman.

1191 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Southern Pacific Company. (Filed May 4, 1908.)

1192 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Southern Pacific Company, one of the defendants in the above-entitled action.

1193 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the Southern Pacific Company, one of the defendants herein, is uncertain, untrue and insufficient to be replied unto by this repliant, without this

any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct; and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Southern Pacific Company.

1194 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the joint answer of the Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company. (Filed May 4, 1908.)

1195 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to joint answer of Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navi-
1196 gation Company, three of the defendants in the above-entitled action.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said

answer, for replication thereunto saith that it will aver and prove t
said bill to be true, certain, and sufficient in the law to be answere
unto, and that the said answer of the Union Pacific Railroad Co
pany, Oregon Short Line Railroad Company, and the Oregon Ra
road and Navigation Company, three of the defendants herein,
uncertain, untrue, and insufficient to be replied unto by this repli
without this, that any other matter or thing whatsoever in sa
answer contained, material or effectual to be replied unto, confes
and avoided, traversed or denied, is true. All of which matters a
things this repliant is and will be ready to aver and prove as th
honorable court shall direct, and humbly prays, as in and by its sa
bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.

1197 C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the foregoing replication this 4th day of M
A. D. 1908.

P. L. WILLIAMS,
Attorney for Union Pacific Railroad Company,
Oregon Short Line Railroad Company, and
Oregon Railroad and Navigation Company.

1198 No. 993. In the Circuit Court of the United States for t
District of Utah.

The United States of America, complainant, v. The Union Pac
Railroad Company and others, defendants.

Replication of the United States to the answer of William A. Cl
and the San Pedro, Los Angeles and Salt Lake Railroad Co
pany. (Filed May 4, 1908.)

1199 In the Circuit Court of the United States for the District
Utah.

United States of America, complainant, vs. The Union Pacific Ra
road Company, the Oregon Short Line Railroad Company, t
Oregon Railroad & Navigation Company, The San Pedro, L
Angeles & Salt Lake Railroad Company, The Atchison, Topek
Santa Fe Railway Company, the Southern Pacific Compa
Northern Pacific Railway Company, Great Northern Railw
Company, Farmers' Loan & Trust Company, Edward H. Har

man, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of William A. Clark and the San Pedro, Los Angeles and Salt Lake Railroad Company, two of the defend-
1200 ants in the above-entitled action.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the San Pedro, Los Angeles & Salt Lake Railroad Company and William A. Clark, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

1201 Received a copy of the above replication this 4th day of May, 1908.

PENNEL CHERRINGTON,
Attorney for San Pedro, Los Angeles & Salt Lake Rd. Co. and William A. Clark.

1202 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of the Farmers' Loan & Trust Company. (Filed May 4, 1908.)

1203 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka &

Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers' Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of the Farmers' Loan & Trust Company, one of the defendants herein.

1204 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that said answer of the Farmers' Loan & Trust Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of the above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Farmers' Loan & Trust Company.

1205 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. the Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry C. Frick. (Filed May 4, 1908.)

1206 In the Circuit Court of The United States for the District of Utah.

The United States of America, complainant, vs. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; the San Pedro

Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry C. Frick, one of the defendants in the above-entitled action.

1207 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Henry C. Frick, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.

P. L. WILLIAMS,
Attorney for Henry C. Frick.

1208 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of The Atchison, Topeka & Santa Fe Railway Company. (Filed May 4, 1908.)

1209 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants in the above-entitled action.

1210 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of The Atchison, Topeka & Santa Fe Railway Company, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE.
FRANK B. KELLOGG.
Of Counsel.

Received a copy of above replication this 4th day of May, 1908.
P. L. WILLIAMS,
Attorney for Atchison, Topeka & Santa Fe Railway Company.

1211 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Henry H. Rogers.
(Filed May 25, 1908.)

1212 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad and Navigation Company; The San Pedro, L

Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry H. Rogers; Henry C. Frick; and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of Henry H. Rogers, one of the defendants in the above-entitled action.

1213 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said Henry H. Rogers, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material, or effectual to be replied unto, confessed and avoided, traversed, or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

Received a copy of above replication this 25th day of May, 1908.
P. L. WILLIAMS,
Attorney for Henry H. Rogers.

1214 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, *v.* The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of James Stillman. (Filed May 25, 1908.)

1215 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, Los

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of the United States of America, complainant, to the answer of James Stillman, one of the defendants in the above-entitled action.

1216 This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of James Stillman, one of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney,
Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of counsel.

Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for James Stillman.

1217 No. 993. In the Circuit Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company and others, defendants.

Replication of the United States to the answer of Jacob H. Schiff and Otto H. Kahn. (Filed May 25, 1908.)

1218 In the Circuit Court of the United States for the District of Utah.

United States of America, complainant, vs. The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, The San Pedro, L

Angeles & Salt Lake Railroad Company, The Atchison, Topeka & Santa Fe Railway Company, The Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick, and William A. Clark, defendants. No. 993. Replication.

The replication of The United States of America, complainant, to the joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants in the above entitled action.

2219 This repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said joint and several answer of Jacob H. Schiff and Otto H. Kahn, two of the defendants herein, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HIRAM E. BOOTH,
United States Attorney, Solicitor for Complainant.
C. A. SEVERANCE,
FRANK B. KELLOGG,
Of Counsel.

2220 Received a copy of the above replication this 25th day of May, 1908.

P. L. WILLIAMS,
Attorney for Jacob H. Schiff and Otto H. Kahn.

2221 DEFENDANTS' EXHIBIT No. 50 (PART B), APRIL 16, 1915.

Opinion and decree of the United States Circuit Court for the District of Utah in the Union Pacific Merger suit, dated June 24, 1911.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to as reported in the 188th Federal Reporter, page 102 and following.

1222 DEFENDANTS' EXHIBIT No. 50 (PART C), APRIL 16, 1915.

Opinion and decree of the United States Supreme Court rendered December 2, 1912, in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this opinion and decree need not be copied into the record, but may be referred to in volume 226 of the United States Reports at page 61 and following.

1223 DEFENDANTS' EXHIBIT No. 50 (PART D), APRIL 16, 1915.

Supplemental opinion and decree of the United States Supreme Court, rendered January 6, 1913, upon the motion as to form of mandate in the Union Pacific merger suit.

Pursuant to stipulation at page 1928 of the testimony, this supplemental opinion and decree need not be copied in the record, but may be referred to in volume 226 of United States Reports at page 470 and following.

1224 DEFENDANTS' EXHIBIT No. 50 (PART E), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

United States of America, complainant, v. The Union Pacific Railroad Company; The Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; and Robert S. Lovett, as trustee, defendants. No. ——.

1225 Decree.

The above-entitled cause having duly come on for hearing before this court, and having been determined adversely to the complainant, and the said cause having been appealed to the Supreme Court of the United States, by which court the decree of this court dismissing the said bill of complaint was in part reversed, and a mandate from the Supreme Court in proper form containing directions as to the decree to be entered herein having been filed here on the 12th day of February, 1913.

Now, therefore, this cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

SECTION 1. That the final decree entered herein on June 24, 1911, dismissing the bill be set aside so far as the same was reversed by the Supreme Court.

SEC. 2. That prior to the year 1901, and ever since said date, the defendant Union Pacific Railroad Company has controlled, by the ownership of substantially all the stock thereof, the defendant Oregon Short Line Railroad Company; and that the defendant Ore-
1226 gon Short Line Railroad Company, by the ownership of substantially all the stock thereof, has controlled the defendant Oregon Railroad & Navigation Company, which latter company has controlled, and still does, through the ownership of all the stock thereof, control the Portland & Asiatic Steamship Company; and that in the year 1901, and for several years prior thereto, said Oregon Railroad & Navigation Company had been the owner and engaged in the operation of a line of steamships between Portland, Oregon, and San Francisco, California; that it continued in the operation of the same until about the year 1904, when a corporation was organized, of which said Oregon Railroad & Navigation Company then was and still is the sole stockholder, known as the San Francisco and Portland Steamship Company, which took over the said line of ships between San Francisco and Portland, and has since been operating the same in connection with the rail lines of said Oregon Railroad & Navigation Company; and that the lines of railway and steamships of said corporations were, prior to 1901, and ever since have been, controlled and managed in all respects by the defendant Union Pacific Railroad Company; and that prior to the year 1901, and continuously since that date, the said defendant Union Pacific Railroad Company
1227 and its subsidiary corporations owned, controlled, and managed by it, have owned and have been engaged in the operation of a system of railroad and steamship lines.

SEC. 3. That the defendant Southern Pacific Company controls, by direct ownership, stock ownership, and lease a system of rail and steamship lines, and also by the ownership of a majority of its stock has, during all of said time, controlled the Pacific Mail Steamship Company, which is engaged in transportation business between the port of San Francisco and various ports in China and Japan, which ports in China and Japan were also served by said Portland and Asiatic Steamship Company.

SEC. 4. That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, California, to Ogden, Utah.

That the Western Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, California, and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to
1228 Ogden, at which point it connected with the main line of said Union Pacific Railroad Company.

That the said Southern Pacific Company was and is also the owner of all the capital stock of the Central Pacific Railway Company, a corporation organized and existing under the laws of Utah, which succeeded to the ownership of the line of railway from Ogden to San Francisco theretofore owned by the Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company in all respects controls the operation and management of the affairs and business of said Central Pacific Railway Company.

That the railways and properties formerly belonging to the said Central Pacific Railroad Company were, by indenture and agreement dated July 28, 1899, conveyed to the said Central Pacific Railway Company.

That prior thereto and on or about the 17th day of February, 1885, the said Central Pacific Railroad Company leased to the said Southern Pacific Company all of its railroad and properties for a period of ninety-nine years, which lease was threafter modified by agreements between the parties dated the first day of January,
1229 1888, and the 7th day of December, 1893, dated respectively, and the 22d day of March, 1894, and that the railroads of the said Central Pacific Railroad and said Central Pacific Railway were controlled and operated by the said Southern Pacific Company, and thereafter, and in or about the month of March, 1901, said Southern Pacific Company passed under the control of the Union Pacific Railroad Company as hereinbefore specified.

SEC. 5. That prior to the year 1901 the said systems of rail and steamship lines of the defendant Union Pacific Railroad Company and the defendant Southern Pacific Company and different portions of the same were, and but for the suppression of competition hereinafter mentioned would still be, active competitors for the transportation of large quantities of freight and passengers between the Atlantic seaboard and the Pacific coast and between various other points. That the railroad and steamship lines of said Union Pacific Railroad Company's system and said Southern Pacific Company's system are natural competitors.

SEC. 6. That in the spring of 1901 the said defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, together with one Edward

H. Harriman, who was originally a defendant in this cause,
1230 but who has died during the pendency thereof, for the purpose of enabling the Union Pacific Railroad Company to acquire control of the railroad system of the Southern Pacific Company and thereby to form the combination herein described, caused to be acquired for transfer to the Union Pacific Railroad Company, and said company thereupon, in consummation of said plan, acquired 750,000 shares of the stock of said Southern Pacific Company of the par value of $75,000,000 out of a total issue of 1,978,477 shares of the aggregate par value of $197,847,788 then issued and outstanding (said shares being delivered to said defendant Union Pacific Railroad Company on or about March 4, 1901), so that the same might be held in the treasury of said company and voted by it for the purpose and with the intention of controlling the election of the board of directors and officers of the said Southern Pacific Company and eliminating the competition that had theretofore existed between said Union Pacific system and said Southern Pacific system.

That the said shares of stock were afterwards transferred to the Oregon Short Line Railroad Company, to be held for the use and benefit of said Union Pacific Railroad Company. That thereafter for
1231 the purpose of strengthening and completing said combination the Union Pacific Railroad Company acquired from time to time additional shares of the capital stock of the Southern Pacific Company and turned the same over to the Oregon Short Line Railroad Company to be held for the use and benefit of the Union Pacific Railroad Company, until the Oregon Short Line Railroad Company had acquired and now owns and holds 1,266,500 shares of the capital stock of said Southern Pacific Company out of a total of 2,726,724 shares issued and outstanding, or about 46% thereof.

That at each and every annual meeting of the stockholders of the Southern Pacific Company for the election of directors since said 750,000 shares of stock were so acquired the stock so held by said Union Pacific Railroad Company and said Oregon Short Line Railroad Company has constituted a majority of the shares represented at such meetings, and the directors of said Southern Pacific Company have been chosen by the vote of such stock.

That the balance of the stock of said Southern Pacific Company is scattered among a large number of stockholders, and that by reason of the fact that such stock is so scattered the full amount of the same is not and never has been voted at any meeting, for which
1232 reason the said stock of the Southern Pacific Company so controlled by said Oregon Short Line Railroad Company has constituted a majority of the stock of said Southern Pacific Company at the meetings of the stockholders thereof, and by reason of said stock ownership the said Union Pacific Railroad Company

and its said subsidiary corporation have controlled said Southern Pacific Company, and in the case of a large corporation of the character of the Southern Pacific Company a compact, united ownership of 46% of the stock is ample to control the operations of the corporation.

That since April 3, 1901, members of the board of directors of the Union Pacific Railroad Company have constituted a majority of the board of directors of said Southern Pacific Company.

That for several years last past the Union Pacific Railroad Company and its subsidiary lines and said Southern Pacific Company have had common traffic officials, operating officials, purchasing agents, and commercial agents, and the said lines of railway and steamships of said respective systems have been and are operated as a single system, and the competition that formerly existed between the said two railway systems with their steamships has been destroyed, and the interstate and foreign commerce which was
1233 formerly the subject of competition between said two systems has been in the hands and under the control of said Union Pacific Railroad Company and its subsidiary corporations and their officials.

SEC. 7. That the stocks of the Southern Pacific Company were acquired and are held by the Oregon Short Line Railroad Company by virtue of an unlawful combination to restrain trade and commerce and eliminate the competition herein described.

SEC. 8. That the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company, acting directly or through their respective officers, boards of directors, executive committees, agents, servants, or through any other person, firm, or corporation acting for or in the interest of said companies, are hereby perpetually enjoined from purchasing, acquiring, receiving, holding, voting, whether by proxy or otherwise, or in any manner acting as the owner of any of the shares of the capital stock of the Southern Pacific Company.

SECTION 9. That the defendant Southern Pacific Company, its officers, directors, servants, and agents, and all persons acting by, through, or under it, be, and they are hereby, respectively and collectively, enjoined from permitting the stock aforesaid to be
1234 voted by the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or in their behalf by their attorneys or agents or the attorneys or agents of either of them, at any meeting of the stockholders of said railway company; and said Southern Pacific Company, together with its officers, directors, servants, and agents, are likewise enjoined and respectively restrained from paying any dividends to said Union Pacific Railroad Company

or the Oregon Short Line Railroad Company, or to any person for them or either of them on account of stock in said Southern Pacific Company, which the said Oregon Short Line Railroad Company now claims to own and hold, and from paying any dividends on said stock while thus held, except to a receiver to be appointed by this court to collect and hold such dividends until disposed of by the decree of this court; and said Southern Pacific Company, its officers, directors, servants, and agents are further enjoined from permitting or suffering the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, or any of its officers or agents, from exercising any control whatsoever over the corporate acts of said Southern Pacific Company.

SECTION 10. That the defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad
1235 and Navigation Company, and Southern Pacific Company, together with the officers, directors, agents, servants, employees, and all persons and corporations acting by, through, or under the corporations named in this section, are enjoined and prohibited from continuing or carrying into further effect the combination hereby adjudged illegal, either:

(a) By the use of any written evidences of a stock interest in the said Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, or either of them, or by causing the conveyance of the physical property and business of the Southern Pacific Company, on the one hand, to the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the other hand, or by causing the conveyance of the physical property and business of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, or either of them, upon the one hand, to the Southern Pacific Company, upon the other hand, or by placing the control of the Southern Pacific Company, on the one hand, and of the Union Pacific Railroad Company,
1236 the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, upon the other hand, in a trustee or group of trustees, or by causing the stock in said Southern Pacific Company to be held by any person for the benefit of the said Union Pacific Railroad Company, the said Oregon Short Line Railroad Company, or any person acting in their interest, or in the interest of either of them; or

(b) By making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, relative to the control or management of said Southern Pacific Company

by the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, or any person acting in their interest, or from causing said companies to agree as to the rates of transportation of competitive traffic, or after the first day of May, 1913, from continuing any union of management of any sort or description, either as to operation, rates, or otherwise, between the said Southern Pacific Company, on the one hand, and the said Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, on the other hand, and, after said date from electing, permitting to be elected, or continuing the
1237 same person or persons as a director or officer of both the Southern Pacific Company or any of its subsidiary companies on the one hand, and the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company, or any of the subsidiaries of said companies, on the other hand, or by maintaining common agencies for the solicitation of traffic; but nothing herein contained shall be construed as prohibiting said railroad companies from entering into agreements for the joint carriage of through traffic, including the making of through rates and the running of through cars or trains as well as the granting of running rights by the one company to the other and the making of other operating and traffic arrangements such as can legally be made between connecting independent railroad corporations operating under separate managements.

And the defendant corporations, their respective officers, directors, agents, servants and employees, and the individual defendants, Jacob H. Schiff, Otto H. Kahn, and James Stillman, are enjoined and prohibited from entering into any like combination to that above described, the effect of which is or may be to restrain commerce among the States or with foreign nations in violation of the act of
1238 July 2, 1890, by any of the means aforesaid.

SECTION 11. And said defendant Oregon Short Line Railroad Company is hereby further enjoined from selling, assigning, transferring, mortgaging, or pledging any of the said stock of the Southern Pacific Company, or any certificate of interest in the stock of the last-named company, to any person or corporation except as may be authorized by this court.

And the defendant Southern Pacific Company, its officers, directors, agents, and servants, and each and every one of them, are enjoined from recognizing as valid any transfer, mortgage, pledge, or assignment by said Oregon Short Line Railroad Company, of the said shares of stock of said Southern Pacific Company unless the same shall be authorized by this court.

SECTION 12. That nothing in this decree contained shall be considered as preventing the Government, or any party to this suit, from

presenting to this court plans for the acquisition or control by the Union Pacific Railroad Company of the Central Pacific Railway Company, or of its line of railroad, so far and to such extent as shall be approved by this court. Any such plan or plans shall be
1239 filed with the clerk of this court within three months from the 12th day of February, 1913.

SECTION 13. The complainant herein is hereby granted leave at any time, by motion or by supplemental or amended bill or petition, as it may be advised, to make and bring in any additional parties, and the clerk of this court is directed to issue all the necessary and appropriate process to that end.

SECTION 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this court plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this court; and the court, upon the presentation of such plans, will hear the complainant and defendants, and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the court of the plans submitted within such time, this court will take
1240 such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose.

SECTION 15. The bill of complaint is hereby dismissed as to the defendants, The San Pedro, Los Angeles and Salt Lake Railroad Company; The Atchison, Topeka and Santa Fe Railway Company; Northern Pacific Railway Company; Great Northern Railway Company; The Farmers' Loan and Trust Company; Henry C. Frick, William A. Clark, and Robert S. Lovett as trustee.

SECTION 16. That the complainant, United States of America, have and recover from the defendants, The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad and Navigation Company, Jacob H. Schiff, Otto H. Kahn, and James Stillman, its costs and disbursements, to be taxed by the court.

Dated February 12, 1913.

WALTER H. SANBORN,
W. C. HOOK,
WALTER I. SMITH,
United States Circuit Judges.

1241 DEFENDANTS' EXHIBIT NO. 50 (PART F), APRIL 16, 1915.

In the District Court of the United States for the District of Utah.

The United States of America, complainant, v. The Union Pacific Railroad Company; the Oregon Short Line Railroad Company; The Oregon Railroad & Navigation Company; The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Jacob H. Schiff; Otto H. Kahn; James Stillman; Henry C. Frick; William A. Clark; Robert S. Lovett, as trustee; Central Pacific Railway Company and Southern Pacific Railroad Company, defendants.

Final decree.

Whereas the above cause was determined by a decree of this
1242 court entered June 24, 1911, dismissing the bill, from which complainant appealed to the Supreme Court of the United States, which, in an opinion delivered December 2, 1912, reversed the decree of this court and issued its mandate filed herein February 12, 1913, remanding the cause with instructions to enter a decree and for further proceedings in conformity with its opinion, which opinion directed, among other things, that disposition of the shares of capital stock of the defendant Southern Pacific Company found to have been unlawfully acquired by the defendant Oregon Short Line Railroad Company in the interest of the defendant Union Pacific Railroad Company "shall be made subject to the approval and decree of the district court, and any plan for the disposition of this stock must be such as to effectually dissolve the unlawful combination thus created."

And further that "The court shall proceed, upon the presentation of any plan, to hear the Government and defendants, and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views herein ex-
1243 pressed."

* * * * * * *

"And any plan or plans shall be presented to the district court within three months from the receipt of the mandate of this court, failing which, or upon the rejection by the court of plans submitted within such time, the court shall proceed by receivership and sale, if necessary, to dispose of such stock in such wise as to dissolve such unlawful combination."

And whereas thereupon, on February 12, 1913, this Court entered a decree adjudging that the shares of the defendant Southern Pacific

Company held by the defendant Oregon Short Line Railroad Company were acquired by virtue of an unlawful combination to restrain trade and commerce and enjoining the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and their agents from voting or receiving dividends in respect thereof, and providing further, amongst other things, as follows:

"SEC. 14. That as directed by the said Supreme Court of the United States, the said defendants may present to this Court
1244 plans for the disposition of the stock of said Southern Pacific Company, so held by said Oregon Short Line Railroad Company, within three months from the 12th day of February, 1913, the date of the filing of the mandate in this Court; and the Court, upon the presentation of such plans, will hear the complainant and defendants and will bring in any additional parties whose presence may be found necessary to a final disposition of the stock in conformity with the decision of the Supreme Court. In the event that defendants shall fail to present such plans within said time, or upon the rejection by the Court of the plans submitted within such time, this Court will take such further steps relative to a disposition of such stock as may be necessary to carry out the provisions of this decree, jurisdiction of the cause being retained for that purpose."

And whereas on February 12, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company presented a plan for the disposition of the said shares which had been approved by the Attorney General of the United States, but
1245 which was withdrawn before action thereon because of the failure of the railroad commission of the State of California to approve certain features thereof within its jurisdiction;

And whereas thereafter, with the consent of the Attorney General, the time within which to present plans was extended by the Supreme Court until July 1, 1913;

And whereas on June 5, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad filed herein a petition submitting (1) a first amended plan, in substance providing for the disposition of said shares by a public subscription offering at prices and upon terms to be fixed by said defendants and with certain limitations upon the right of Union Pacific stockholders to subscribe; and (2) a second amended plan, in substance providing for the transfer of said shares to a trustee and for the offering of the trustee's nonvoting certificates of interest therein, upon terms fixed by said defendants, to Union Pacific stockholders or their assignees for subscription, which certificates of interest should be exchangeable for Southern Pacific shares upon affidavit that the applicant for such exchange owned no Union Pacific Railroad Company stock;

And whereas on June 12, 1913, the said defendants filed
1246 a petition supplementing their first amended plan and second
amended plan aforesaid by a proposal to sell to the Pennsyl-
vania Railroad Company 382,924 shares of the Southern Pacific Com-
pany in exchange for 425,472 shares of the Baltimore and Ohio Rail-
road Company;

And whereas, by petition filed herein June 30, 1913, the said de-
fendants withdrew all of the plans recited in the petitions then pend-
ing before the court and submitted their third amended plan;

And whereas complainant has filed an answer to said petition sub-
mitting said third amended plan:

Now, therefore, it is ordered, adjudged, and decreed:

SECTION 1. Said third amended plan is hereby approved in so far
and only so far as its provisions are embodied in this decree.

SECTION 2. The defendants Union Pacific Railroad Company and
Oregon Short Line Railroad Company having asked permission to
sell to the Pennsylvania Railroad Company 382,924 of the said shares
of the capital stock of the defendant Southern Pacific Company, of
the par value of $38,292,400, and to accept in exchange 425,472 shares
(half preferred and half common) of the capital stock of the
1247 Baltimore and Ohio Railroad Company, of the par value of
$42,547,200 (being all the stock of said company owned or con-
trolled by the Pennsylvania Railroad Company or any of its subsid-
iaries), and it appearing that such sale or exchange would be a sub-
stantial step toward the effectual dissolution of the particular combi-
nation now before the court, it is hereby provided and leave is
granted to effect the same: Provided, however, That neither such
approval and leave nor anything contained in this decree shall ever
be taken or construed as affecting the obligations, powers, rights, or
duties under present or future laws of any person or corporation not
a party to this cause, nor be taken or construed as an adjudication
that any defendant herein has the right to acquire or hold the shares
of stocks so sold or exchanged, nor as an exemption of any defendant
in respect of such acquisition or holding from the operation of any
law now in force or which may hereafter be enacted.

In the event of such sale immediate delivery shall be made of the
said 382,924 shares of the defendant Southern Pacific Company
which is hereby directed to cause them to be transferred on its stock
books to the Pennsylvania Railroad Company, upon presentation of
the certificates therefor duly assigned, and thereupon to pay to
1248 the defendant Oregon Short Line Railroad Company, on de-
mand, the dividends appertaining to said shares heretofore
declared and payable April 1 and July 1, 1913, respectively; and the
transaction shall be reported to the court within 30 days from the
date hereof.

SECTION 3. The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, and hereinafter called the Trustee, having declared its submission to the jurisdiction of this court for all purposes of this cause, and having entered its appearance herein by counsel, is made a party hereto; and said Central Trust Company of New York is hereby appointed to receive and hold, as the custodian and depositary of this court, subject to the provisions of this decree and to the further orders and decrees of the court herein, all shares of the capital stock of defendant Southern Pacific Company which shall be transferred to it as hereinafter provided.

SECTION 4. The shares of the defendant Southern Pacific Company held by the defendant Oregon Short Line Railroad Company remaining after the sale to the Pennsylvania Railroad Company of 382,924 shares thereof, as hereinabove provided, to wit, 883,576 shares, or the entire holdings if such sale to the Pennsylvania Rail-
1249 road Company shall not be consummated within 30 days from the date hereof, shall be transferred forthwith to the Trustee and registered in its name on the books of the Southern Pacific Company, and certificates therefor delivered to the Trustee.

The defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall assign or cause to be assigned to the Trustee all dividends appertaining to the shares so transferred which shall have been declared and shall be then or thereafter payable to the defendant Oregon Short Line Railroad Company or the individuals holding in its behalf as the registered stockholders entitled to such dividends. Such dividends, hereinafter designated as the "accumulated dividends", shall be collected by the Trustee and held and distributed upon the terms and conditions hereinafter provided.

SECTION 5. Prior to November 1, 1913, the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall offer to all stockholders of the former, common and preferred (registered as such on a date to be designated in the offer and not more than 40 days from its date), or to their assignees the right to subscribe for certificates of interest representing the said
1250 Southern Pacific Company shares transferred to the Trustee as provided hereunder substantially in the proportion of their respective holdings, with such allowance in fixing the distribution ratio as the above-named defendants may deem necessary for possible conversions of convertible bonds of the said Union Pacific Railroad Company. The offering shall include all accumulated dividends appertaining to said shares, and shall be at such price and upon such other terms as the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company shall determine, except as

specifically herein prescribed or as otherwise directed by the court by a subsequent order or decree.

The subscription price shall be payable at the time of the subscription or at the option of the subscriber, $25 per share at the time of subscription and the balance within one year thereafter, with interest on such balance at the rate of 6 per cent per annum. The subscriptions shall be filed with the Trustee.

Neither of the defendants Union Pacific Railroad Company or Oregon Short Line Railroad Company, nor any corporation controlled by either, nor any person acting in the interest of either, shall acquire by purchase or otherwise any of said certificates of
interest.

1251 The defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, may cause the sale of said certificates of interest upon such subscription offer to be underwritten, the underwritters to agree to purchase any certificates, or such an amount thereof as shall be designated in the underwriting agreement, not subscribed for pursuant to the offer.

SECTION 6. The Trustee shall execute and issue certificates of interest representing the shares transferred to it hereunder and shall deliver them at its offices in the city of New York to the subscribers therefore under section 5 hereof, upon payment in full of the subscription price and compliance in all respects with the terms prescribed by the offering, or by any subscription receipt issued under section 7 hereof, to be performed by the subscribers to entitle them to receive such certificates of interest; and in like manner shall deliver such certificates of interest upon full payment therefor to any other purchasers t owhom the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the same. All such certificates shall be registered
by the trustee in the names of the purchasers. They shall
1252 be substantially in the form hereto annexed, marked
"Form A."

SECTION 7. The Trustee shall issue part-paid subscription receipts to all subscribers who shall elect to defer payment of the balance of the subscription price, upon payment of the aforesaid initial installment thereof and due compliance in all other respects with the terms prescribed by the offering to be performed by the subscribers at the time of the subscription; and in like manner shall deliver such subscription receipts, upon payment of such initial installment of the purchase price, to any other purchasers to whom defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be authorized by the court to sell the said certificates of interest. All such subscription receipts shall be registered by the

Trustee in the names of the purchasers. They shall be substantially in the form hereto annexed, marked "Form B."

SECTION 8. The certificates of interest and subscription receipts issued hereunder may be in the denominations of 1 share, 10 shares, 50 shares, 100 shares, and such other denominations as the Trustee shall elect. The certificates of interest and subscription receipts shall be executed on behalf of the Trustee by such officer of the
1253 Trustee in the city of New York, or by such agent in London, England, as it shall authorize thereunto, and such certificates of interest may be countersigned by a trust company in the city of New York as registrar.

SECTION 9. The Trustee shall, if so requested by the registered owner of any subscription receipt issued hereunder and then outstanding, by application in writing presented at its office in the city of New York not less than 10 days prior to any annual or special stockholders' meeting of the Southern Pacific Company, execute and deliver to such registered owner, or to his nominee, a proxy appointing such attorneys, agents, and proxies as such registered owner shall nominate in his said application, to appear and vote at such stockholders' meeting upon the number of shares represented by said subscription receipt for the election of directors and upon any other business transacted at such meeting: Provided, however, that as a condition precedent to the issue of such proxy the applicant shall file with the Trustee at its said office, on or before the tenth day preceding such meeting, an affidavit executed as hereinafter in section 11 hereof prescribed, and in one of the forms referred to in said
1254 section 11, except that said affidavit shall refer to and describe a subscription receipt (or receipts) owned by said applicant, instead of certificates of interest, and that there shall be substituted in the form of said affidavit for the words "for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest" the words "for the purpose of procuring the issue of a proxy to vote upon the shares of the capital stock of the Southern Pacific Company held by said Trustee represented by the subscription receipt (or receipts) above described": And provided further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of the subscription receipt (or receipts) upon which such application is based.

The Trustee shall not be entitled to vote or issue proxies for voting in respect of any of the said shares of defendant Southern Pacific Company except as in this section provided or as may be hereafter directed by the court.

SECTION 10. So long as any of the shares of the capital stock of the Southern Pacific Company aforesaid shall be held by the
1255 Trustee, the Trustee shall collect and receive any and all cash dividends declared by the Southern Pacific Company appertaining to the shares so held, which shall be payable to the Trustee as the registered stockholder entitled to such dividends by the terms of the declarations thereof.

Upon the conversion pursuant to section 11 hereof of any certificate of interest issued hereunder into a certificate for shares of capital stock of the Southern Pacific Company held by the Trustee, the latter shall pay in cash to the owner of the certificate of interest converted, or upon his order, the amount of all cash dividends collected by it, including the aforesaid accumulated dividends, appertaining to the number of shares represented by such certificate of interest, but without interest thereon, and shall execute and deliver to such owner, or upon his order, a dividend order or assignment for the amount of any unmatured dividends declared in respect of such shares which shall be vested at the time of such conversion in the Trustee as the registered stockholder entitled thereto. Any interest realized or allowed by the Trustee upon funds paid to it as dividends shall be applicable to the payment of the compensation of the Trustee and the expenses of the administration of the trust, and any balance thereof remaining shall be paid to the defendant
1256 Oregon Short Line Railroad Company, unless otherwise ordered by the court.

All dividends payable otherwise than in cash which shall be declared by the Southern Pacific Company shall be received and held by the Trustee for the pro rata benefit of said registered owners from time to time, of the certificates of interest issued hereunder and outstanding, upon the same terms and conditions as the shares originally deposited, and shall be distributed to the persons who shall be the respective owners of certificates of interest when and as, and only when and as, the shares originally deposited are distributed to them respectively, subject to any necessary adjustment by scrip or otherwise, in the discretion of the Trustee, in respect of fractional shares. All subscription or other rights offered to stockholders of the Southern Pacific Company shall be immediately assigned by the Trustee pro rata to said registered owners of the certificates of interest and subscription receipts issued hereunder and then outstanding, who shall be such registered owners at the date when such rights become fixed.

No deduction shall be made by the Trustee in the distribu-
1257 tion of such dividends or increase for any commissions or expenses of the Trustee or other cost of collection or payment.

SECTION 11. At any time upon demand, at its office in the city of New York, upon surrender of any outstanding certificate of interest by the registered owner thereof or his assignee, the Trustee shall deliver to him stock certificates for the number of shares of the defendant Southern Pacific Company (of the par value of $100 each) represented by the surrendered certificate of interest, which stock certificates shall be issued by the said Southern Pacific Company and registered on its books in the name of the new holder, upon condition, however, that the applicant for such conversion or exchange shall file with the Trustee a duly executed affidavit in one of the forms hereto annexed.

The affidavit in the case of an individual applying for such conversion or exchange in his own right shall be substantially in the form annexed hereto marked "Form O".

If the applicant is a corporation or joint-stock company, the affidavit shall be executed by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substan-
2258 tially in the form annexed hereto marked "Form D".

If the applicant is a partnership, the affidavit shall be executed by one of the partners and shall be substantially in the form annexed hereto marked "Form E".

If the applicant is an executor, administrator, guardian, or testamentary or other trustee of an express trust, the affidavit shall be made by such executor, administrator, guardian, or trustee, as the case may be, or by one of such if the application is made on behalf of joint representatives, or, if such representative is a corporation or joint-stock company, by its president, vice president, controller, secretary, or treasurer, or, in the case of a corporation of a foreign country, by one of its managing officers, and shall be substantially in the form annexed hereto marked "Form F".

Provided, however, that whenever the number of shares of capital stock of the defendant Southern Pacific Company held by the Trustee hereunder shall be reduced by the conversion of certificates of interest as provided in this section to 500 shares, it shall be the duty of the Trustee thereupon to distribute such remaining shares pro rata amongst the registered owners of the then outstanding certificates of interest, or their assignees, upon the surrender of such cer-
2259 tificates of interest, without requiring the affidavits hereinabove provided for.

All certificates of interest surrendered pursuant to conversions or exchanges effected under this section shall forthwith be canceled by the Trustee and shall not be reissued.

Within thirty (30) days after the conversion of certificates of interest as herein provided shall have commenced, and at monthly

intervals thereafter, the Trustee shall file with the clerk of the court a report showing the aggregate amount of certificates of interest converted since the last previous report of the Trustee and the names of all persons, firms, or corporations to whom shares of stock of the Southern Pacific Company shall have been issued pursuant to every such conversion involving more than one hundred (100) shares; and from time to time, upon the request of the Attorney General of the United States, the Trustee shall furnish him with any information which he may require relating to the carrying out of this decree.

SECTION 12. The Trustee shall keep at an office maintained by it in the city of New York books for the registration and transfer
1260 of the certificates of interest and subscription receipts issued hereunder. Provision may be made by the Trustee for the registration and transfer of subscription receipts and certificates of interest in London, England. Upon the surrender of any such certificate of interest or subscription receipt duly assigned for transfer and the payment of any stamp tax required by law the Trustee shall issue to the transferee one or more new certificates of interest or subscription receipts for a like number of shares and shall cancel the surrendered certificate of interest or subscription receipt.

The Trustee may treat the person in whose name shall be registered any certificate of interest or subscription receipt, as hereinbefore provided, as the absolute owner thereof, and shall not be affected by any notice to the contrary; and also, in order to enable it to effectuate the true intent of this decree, the Trustee (so far as consistent with the provisions hereof) may decide all matters of detail in respect of the form of subscription receipts or certificates of interest and the arrangements necessary for their issue and transfer.

The Trustee shall be accountable for its action hereunder
1261 only in proceedings in this cause, and any order of the court entered upon notice to it and to the defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, shall be full protection to the Trustee for any action which it may take pursuant thereto, and any action so taken by the Trustee shall be binding upon all holders of subscription receipts and certificates of interest. The Trustee shall not be liable to anyone for deferring to take any action until instructed by the court.

In case any certificate of interest or subscription receipt issued hereunder shall become mutilated or be destroyed, the Trustee, in its discretion, may issue a new certificate of interest or subscription receipt of the same denomination in exchange and substitution for and upon cancellation of such mutilated certificate of interest or subscription receipt, or in lieu of and substitution for the same

destroyed. In case of destruction the applicant for a substituted certificate of interest or subscription receipt shall furnish to the Trustee evidence of such destruction to the satisfaction of the Trustee, in its discretion, and such reasonable indemnity as the Trustee shall require.

SECTION 13. From time to time the Trustee shall pay over to
1262 the defendant Oregon Short Line Railroad Company, or to its order, upon demand, when and as received by it, the moneys received by it in payment of, or on account of, subscriptions or purchases as hereinbefore provided, and it shall not be liable for any loss of such moneys unless incurred through its gross negligence or willful misconduct.

SECTION 14. The Trustee shall be entitled to reasonable compensation, the amount thereof to be approved by the court, for all services rendered by it hereunder, which compensation, together with counsel fees and other expenses incurred hereunder and approved by the court, and all stamp and other taxes imposed by law upon the transfer of the shares of the Southern Pacific Company from the Trustee to the holders of certificates of interest, shall be paid by the defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company.

SECTION 15. The defendant Southern Pacific Company is hereby authorized and directed from time to time to make any transfers upon its stock books of the aforesaid shares of its capital stock held by the defendant Oregon Short Line Railroad Company, or its nominees, and to make all payments of dividends contemplated by the provisions of this decree or necessary or appropriate in the performance thereof.

SECTION 16. Nothing in this decree nor in that entered
1263 February 12, 1913, shall be construed as prohibiting the defendant Union Pacific Railroad Company from acquiring at any time the capital stock or the railroads and other property of the defendant Central Pacific Railway Company.

SECTION 17. If at any time after January 1, 1916, any of such certificates of interest shall remain outstanding, the court in its discretion, after a hearing upon such notice to holders of certificates of interest as it may direct, may order the shares of the Southern Pacific Company represented by said certificates to be sold and the proceeds distributed to the registered owner or owners of such certificate or certificates.

SECTION 18. The Trustee is hereby authorized to treat all funds on deposit hereunder as general deposits and to allow interest thereon.

Louis C. Krauthoff, Esquire, of New York City, is appointed commissioner for the court to see to it that the letter and spirit of this

plan of dissolution is carried out and is directed to report to the court from time to time.

SECTION 19. The Trustee shall be subject to removal by the court in its discretion, and, in the event of such removal, the court shall appoint another Trustee.

1264 SECTION 20. Any party to this cause may make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the carrying out of the provisions of this decree, or in relation to the disposition of the unlawfully held shares of the defendant Southern Pacific Company; and jurisdiction thereof is retained for the purpose of giving full effect to this decree and the decree herein entered on February 12, 1913, and for the purpose of making such other and further orders and decrees or taking such other action, if any, as may become necessary or appropriate to carry out and enforce said decrees and the directions of the Supreme Court.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
United States Circuit Judges.

JUNE 30, 1913.

1265 Form A.

No. ———. ——— shares.

Certificate of interets in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee") has received and now holds for ——— or assigns certificates representing ——— shares of the capital stock of the Southern Pacific Company, a corporation of the State of Kentucky, of the par value of $100 each, subject to the terms of a decree entered the ——— day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this certificate is issued and of the rights of the holder hereof, and to which decree the holder of this certificate assents by acceptance hereof.

This certificate is one of a series of certificates issued by the undersigned in accordance with the terms of the said decree, repre-
1266 senting in the aggregate not exceeding ——— shares of the capital stock of said Southern Pacific Company.

The registered owner hereof, or his assigns, is entitled, upon the surrender of this certificate and upon filing with the Trustee an affidavit in the form required by section 11 of said decree (to the effect, in substance, that the applicant does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith), to receive a stock certificate for the number of shares of the capital stock of said Southern Pacific Company represented by this certificate and to receive the amount of all dividends (but without interest thereon) appertaining to the number of shares represented by this certificate declared and payable by the Southern Pacific Company after the 2d day of January, 1913, and collected and received by the Trustee prior to such conversion, and also to receive a dividend order or assignment
1267 executed by the Trustee for any declared but unmatured dividend appertaining to said shares which shall be vested at the time of such conversion in the Trustee as the registered holder of said shares. All subscription or other rights offered by the Southern Pacific Company appertaining to the shares represented by this certificate will be assigned to the registered owner hereof, as provided in said decree.

This certificate is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York, upon surrender and cancellation hereof; and thereupon one or more new certificates for a like number of shares will be issued to the transferee in exchange therefor.

This certificate is not valid until countersigned by the registrar.

In witness whereof, , as Trustee, has caused this certificate to be executed by one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by one of its assistant secretaries this day of , 191 .

----------,
Trustee.

1268 By ----------,
Vice President.

Attest:

----------,
Assistant Secretary.

Countersigned:

----------,

By ----------.

Form of assignment.

For value received the undersigned hereby sells, assigns, and transfers unto the interest in Southern Pacific Company shares and dividends thereon represented by the within certificate and does hereby irrevocably constitute and appoint attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated ----------

In the presence of—

1269 Form B.

No. ——— ——— shares

Subscription receipt for certificate of interest in Southern Pacific Company stock.

This is to certify that the undersigned (hereinafter designated as the "Trustee" has received payment of the first installment of twenty-five dollars ($25) per share of the subscription price ($ per share) of certificates of interest in shares of the capital stock of the Southern Pacific Company, of the par value of $100 per share, and that , or assigns, will be entitled to receive a fully paid certificate of interest for said shares, at the office of the undersigned in the city of New York, upon the surrender of this receipt and the payment of the balance of said subscription price, on or prior to the day of , 1914, with interest thereon at the rate of 6 per cent per annum to the date of payment.

For failure to pay the said deferred balance of the subscription price, with the interest thereon, on the day of , 1914, will operate as a forfeiture of all rights in respect of the
1270 subscription and the installment previously paid.

The undersigned has received and will hold, until default in the payment of the principal or interest of the deferred balance of the said subscription price, for the above-named subscriber, or assigns, stock certificates representing the number of shares above specified of the capital stock of the Southern Pacific Company, subject to the terms of a decree entered the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, to which decree reference is hereby made for a statement of the terms and conditions upon which this subscription receipt is issued and of the rights of the holder

hereof, and to which decree the holder hereof assents by acceptance hereof.

All dividends, appertaining to the number of shares above specified, declared and payable by the Southern Pacific Company after the second day of January, 1913, will be collected by the Trustee, and paid over (but without interest thereon) to the holder of a fully paid certificate of interest for said shares, upon the conversion of such certificate of interest into said shares of the capital stock of
1271 the Southern Pacific Company pursuant to the provisions of said decree.

This subscription receipt is transferable by the registered owner hereof, in person or by his duly authorized attorney, at the office of the Trustee in the city of New York or at its office or agency in London, England, upon surrender and cancellation hereof; and thereupon one or more new subscription receipts for a like number of shares will be issued to the transferee in exchange herefor.

The registered owner hereof is entitled, at any time not less than 10 days prior to the annual stockholders' meeting of the Southern Pacific Company held on the Wednesday following the first Monday of April in each year, and not less than 10 days prior to any special stockholders' meeting of said company, to require the Trustee to execute and deliver to such registered owner or his nominee a proxy appointing such attorneys, agents, and proxies as the registered owner hereof shall nominate in writing to appear and vote at such stockholders' meeting upon the number of shares represented by this subscription receipt for the election of directors and upon any other business transacted at such meeting: *Provided, however*, That
1272 such registered owner shall file with the Trustee, at its office in the city of New York, on or before the tenth day preceding such meeting, an affidavit in the form required by sections 9 and 11 of said decree (to the effect, in substance, that the registered owner hereof does not own any shares of the capital stock of the Union Pacific Railroad Company and is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith); and provided, further, that the applicant for such proxy shall at the close of business on the tenth day preceding said meeting be registered on the books of the Trustee as the owner of this subscription receipt.

This subscription receipt shall not be valid for any purpose unless signed on behalf of the Trustee by one of its officers or by its agents in London.

In witness whereof , as Trustee, has caused this certificate of interest to be executed in its behalf this day of , 1913.

1273 ----------,
Trustee.

By ----------

Form of assignment.

For value received, the undersigned hereby sells, assigns, and transfers unto this subscription receipt and the interest represented thereby in shares of the capital stock of Southern Pacific Company, and dividends thereon, and does hereby irrevocably constitute and appoint attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

Dated----------

In the presence of—

1274 Form C.

State of ----------, County of ----------:

, being duly sworn, deposes and says:

That deponent is the bona fide owner in his own proper right of a certificate or certificates of interest, numbered , for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Company and others, and makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That deponent does not own in his (or her) own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in his (or her) own name on the books of said Union Pacific Railroad Company or registered in the names of others for deponent's use and benefit. That deponent, in making this application,

1275 is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the

control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in his own behalf in good faith.

Sworn to before me this day of , 191 .

Form D.

State of ----------, County of ----------, ss:

, being duly sworn, deposes and says:

That he is of the , a corporation (or a joint stock company), hereinafter called the "Applicant." That said applicant is the bona fide owner in its own proper right of a certificate or certificates of interest, numbered , for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America against Union Pacific Railroad Com-
1276 pany and others, and that deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicant does not own in its own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in its own name on the books of said Union Pacific Railroad Company or registered in the names of others for said applicant's use and benefit. That said applicant in making this application is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this day of , 191 .

1277 Form E.

State of----------, County of----------, ss:

, being duly sworn, deposes and says:

That he is a member of the partnership of , hereinafter called the "Applicants"; that said applicants are the bona fide owners in their own proper right of a certificate or certificates of interest numbered for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the District of Utah, in the suit of the United States of America

against Union Pacific Railroad Company and others, and deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee in exchange for said certificate (or certificates) of interest. That said applicants do not own in their own right any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the applicants' own name on the books of said Union Pacific Railroad Com-
1278 pany or registered in the names of others for their use and benefit. That said applicants, in making this application, are not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in their own behalf in good faith.

Sworn to before me this day of , 191 .

Form F.

State of_____, County of_____, ss:

, being duly sworn, deposes and says:

That he is of . That the trust estate represented by deponent is the bona fide owner in its own proper right of a certificate or certificates of interest numbered for shares, registered in the name of , issued by the Central Trust Company of New York, as Trustee, under a decree entered on the day of June, 1913, by the District Court of the United States for the district of Utah, in the
1279 suit of the United States against Union Pacific Railroad Company and others. That deponent makes this affidavit for the purpose of procuring the issue of shares of the capital stock of the Southern Pacific Company held by said Trustee, in exchange for said certificate (or certificates) of interest. That said trust estate does not own any shares of the capital stock of the Union Pacific Railroad Company, a corporation of the State of Utah, whether registered in the name of said trust estate on the books of said Union Pacific Railroad Company or registered in the names of others for the use and benefit of said trust estate. That said trust estate, in making this application, is not acting for or on behalf of any stockholder of the Union Pacific Railroad Company, or in concert, agreement, or understanding with any other person, firm, or corporation for the control of the Southern Pacific Company in the interest of the Union Pacific Railroad Company, but in its own behalf in good faith.

Sworn to before me this day of , 191

1280 DEFENDANTS' EXHIBIT NO. 50 (PART G), APRIL 16, 1915.

Appellant's brief of facts and appellant's brief of the law filed in the United States Supreme Court on behalf of the United States of America by George W. Wickersham, Attorney General, Frank B. Kellogg and C. A. Severance, special assistants to the Attorney General in "The United States of America vs. The Union Pacific Railroad Company et al."

Pursuant to stipulation at page 1929 of the testimony the briefs offered in evidence need not be copied among the exhibits in this case.

1281 DEFENDANTS' EXHIBIT (NEILL) NO. 51, APRIL 16, 1915.

PACIFIC MAIL STEAMSHIP COMPANY,
Board of Directors, May 7, 1914.

The chairman submitted draft of letter over his signature as president, dated New York, May 7, 1914, and addressed to the stockholders of this company, explanatory of the steps proposed to be taken in connection with handling the company's business after July 1, 1914, as outlined in the foregoing resolution; and he stated he proposed, with the approval of this board, to forward a copy of this letter to each stockholder of the company;

Whereupon, on motion duly seconded, it was

Resolved, That the proposed action of the chairman to forward a copy of such letter to each stockholder of the company, and the form of such letter submitted as above are hereby approved.

I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true copy
1282 of a preamble and resolution duly adopted by the board of directors of the Pacific Mail Steamship Company at a special meeting of said board held at the principal office of the company in the city and State of New York on the 7th day of May, 1914, at which a quorum was present; and that the said preamble and resolution are now in full force and effect. And I do further certify that annexed hereto, marked "Exhibit A", is a true copy of that certain letter, dated New York, N. Y., May 7, 1914, signed J. Kruttschnitt, president, and addressed to the stockholders of this company, in the foregoing resolution referred to; that annexed hereto, marked "Exhibit B", is a true copy of the notice of annual meeting of stockholders of Pacific Mail Steamship Company held May 27, 1914; that annexed hereto, marked "Exhibit C", is a true copy of the printed form of proxy used at the annual meeting of stockholders of this company held May 27, 1914; and that I caused a copy of each of the above-described documents, hereinabove referred to as "Exhibits A,

B, and C", respectively, to be mailed in a sealed wrapper, by United States mail, postage prepaid, addressed to each stockholder of record of this company, at his address as the same appeared on the books of the corporation.

In witness whereof I have hereunto subscribed by name
1283 and affixed the seal of said company this 5th day of April, 1915.

[SEAL.] HUGH NEILL,
Secretary.

"EXHIBIT A."

PACIFIC MAIL STEAMSHIP COMPANY,
EXECUTIVE OFFICES, 165 BROADWAY,
New York, N. Y., May 7, 1914.

To the stockholders of the Pacific Mail Steamship Company:

The opening of the Panama Canal in the near future will practically put an end to that part of the business in which this company is now engaged, which consists of through traffic between San Francisco and Atlantic coast and Gulf ports of the United States and European ports, which traffic is now carried by the company's steamers between San Francisco and Balboa in connection with the Panama Railroad between Balboa and Colon and Atlantic Ocean steamship lines. Upon the opening of the canal such traffic will move in one bottom and without transhipment from port of origin to port of
destination. By reason of the expense of transhipment, as
1284 well as the breakage of cargo through rehandling and the incidental loss, it will be impossible for this company to retain any of such competitive business.

Entirely apart from the prohibitions of the act of Congress, known as the Panama Canal act, it would be impracticable and unprofitable for this company to try to compete for this business by sending through the canal the small combination freight and passenger steamers it now operates in the Panama service, since they would be in competition with the high-capacity vessels of the American-Hawaiian Steamship Company, of the Grace Line, and of the Luckenbach Line, all of the most modern design, with efficient cargo handling facilities, and all operated with small and economical crews possible where freight alone is carried and passengers are excluded. Moreover, the company possesses the requisite number only of steamers with limited capacity to accommodate the coastwise business between San Francisco and west coast ports. It has not a sufficient number of these small steamers to maintain service between Balboa and Atlantic coast ports, and possible relief by transfer of its large modern ships is out of the question because it owns a number barely sufficient to equip its trans-Pacific lines.

Mr. Schwerin, the general manager of this company, in reporting the above facts, has recommended that the company cease engaging in the business between the San Francisco and Atlantic ports via the Isthmus of Panama, above refered to, and confine the operation of its steamships (heretofore in Panama service) to handling freight and passenger traffic between San Francisco and ports in Mexico and Central America, and, by transhipment at Balboa, to South American ports, and *vice versa;* between said Mexican and Central American ports and Europe and Atlantic coast and Gulf ports said traffic with Europe and Atlantic and Gulf ports to be handled to or from Balboa and transhipped to vessels operating through the canal; and from San Francisco, Mexican, and Central American ports to ports of the West Indies and the northeast coast of South America, and *vice versa.*

The directors approve of these recommendations, but desire that the matter be passed upon by the stockholders at their approaching annual meeting. Accordingly, the board, at its meeting to-day, May 7, 1914, passed resolutions submitting the question to the stockholders. A copy of these resolutions is attached.

It is believed that the foregoing statement, in connection with the recitals of the resolutions, will fully explain the situation.

Yours, truly,

J. KRUTTSCHNITT, *President.*

"EXHIBIT B."

Pacific Mail Steamship Company. Notice of meeting.

165 BROADWAY, *New York, N. Y.*

The annual meeting of stockholders of the Pacific Mail Steamship Company will be held at the office of the company at No. 165 Broadway, New York, N. Y., on Wednesday, the 27th day of May, 1914, at 11.45 o'clock a. m., for the election of directors and the transaction of such other business as may legally come before the meeting.

The books for the transfer of stock will be closed at 12 o'clock m., Saturday, May 23, 1914, and will be reopened at 10 o'clock a. m., Thursday, May 28, 1914.

HUGH NEILL, *Secretary.*

Dated May 7, 1914.

N. B. If you do not expect to be present at the meeting, please execute the enclosed proxy and promptly return it in the accompanying envelope.

HUGH NEILL, *Secretary.*

"EXHIBIT C."

Proxy—Pacific Mail Steamship Company. Annual meeting M
27, 1914.

Shares ___

Know all men by these presents:

That _____, the undersigned, hereby constitute and appoint
Kruttschnitt, G. M. Buck, and R. P. Schwerin, or any of them,
such person or persons as they or a majority of them may substitu
and appoint, attorneys and proxies for and in the name, place, a
stead of the undersigned, to vote upon all stock of the Pacific M
Steamship Company held or owned by the undersigned, accordi
to the number of votes that the undersigned would be entitled to v
if then personally present at the annual meeting of the stockhold
of the Pacific Mail Steamship Company, to be held at the office
said company, No. 165 Broadway, New York, N. Y., on We
1288 nesday, the 27th day of May, 1914, at 11.45 o'clock a. m., a
at all adjournments thereof, for the election of directors a
the transaction of all such other business as may legally co
before the meeting, including the approval and ratification of
action of the board of directors and of the executive committee sin
the last annual meeting of the stockholders of the company, here
ratifying and confirming all that any of the said attorneys or the
substitutes may lawfully do at said meeting in the name, place, a
stead of the undersigned.

Authority is hereby given to any of said attorneys and proxies
their substitutes, to act in the absence of the others, with all t
powers which the undersigned would possess if personally present
such meeting. All proxies heretofore made or given by the unde
signed are hereby revoked.

In witness whereof the undersigned ha__ hereunto set ____ hand
and seal__ this _____ day of May, 1914.

Signed, sealed, and delivered in the presence of—

_____.

_____ [L. S.]

1289 Please date and sign this proxy in the presence of a witn
and return it promptly in the enclosed envelope to Hugh N
secretary, 165 Broadway, New York City.

Pacific Mail Steamship Company stockholders' meeting.

NEW YORK, *May 27, 1914.*

The sixty-seventh annual meeting of stockholders of the Pac
Mail Steamship Company was held at the office of the company,

Broadway, New York City, on Wednesday, May 27, 1914, at 11.45 o'clock a. m., pursuant to notice made and given in conformity with law and the by-laws of the company.

On motion duly made and seconded, Mr. Gordon M. Buck was nominated as chairman of the meeting and, having received a unanimous vote, was declared duly elected, and thereupon took the chair.

On motion duly seconded Mr. Hugh Neill was appointed secretary of the meeting.

The secretary submitted proofs of publication of the notice of the annual meeting, showing that the said notice had been published for the time and in the manner prescribed by the by-laws of the company.

1290 Oath of inspectors.—The oath of office of the inspectors of the meeting was then read by the secretary and ordered on file.

List of stockholders.—The secretary also submitted a certified alphabetical list of stockholders of the company registered as such at the close of business on May 23, 1914, and, upon call of said list, it was found that there were present at the meeting, in person or by proxy, stockholders owning shares as follows:

1. By proxies in favor of J. Kruttschnitt, G. M. Buck, and R. P. Schwerin, represented by G. M. Buck	135,235 shares.
2. By proxy in favor of Claude A. Simpler	1,100 shares.
3. Owen F. Roberts, in person	5,200 shares.
4. Martin A. Springsteed, in person	40 shares.
Total	141,575 shares.

Of the aggregate par value of $14,157,500 and more than one-half of the capital stock of the company.

Approval of minutes of board of directors.—The minutes of all the meetings of the board of directors since May 28, 1913, were
1291 read, and, on motion, duly seconded, it was, by a majority vote,

Resolved, That all action of the board of directors and officers of the company since the 28th day of May, 1913, as set forth or mentioned in the record of the minutes of meetings of the board of directors of the company, is hereby ratified, approved, and confirmed.

Mr. Simpler, representing 1,100 shares, and Mr. Springsteed, owning 40 shares of stock, desired to be recorded as voting against approval of the resolution adopted by the board of directors at its meeting held May 7, 1914, relating to change in the conduct of the company's business proposed to be made July 1, 1914.

Approval of minutes of executive committee.—The minutes of the meetings of the executive committee, held since May 28, 1913, were submitted, and, on motion, duly seconded, it was unanimously

Resolved, That all action of the executive committee and officers of the company since the 28th day of May, 1913, as set forth or men-

tioned in the record of the minutes of the executive committee
this company, is hereby ratified, approved, and confirmed.
1292 Opening of the polls.—At 12 o'clock, noon, the chairm
declared the polls open for the purpose of receiving the vot
of the stockholders for the election of directors for the ensuing ye

At this point Mrs. Lizzie L. Poirier, a holder of 15 shares of stoc
and Mr. George Reuter, a holder of 150 shares of stock came into th
meeting.

The following resolution was offered by Mr. Owen F. Roberts:

Resolved, That the by-laws be amended so as to postpone the d
fixed for the annual meeting of the stockholders, in order that in th
future the annual report of the company may be prepared in time f
the annual meeting of stockholders and be submitted at such ann
meeting; and that the general manager of the company be pres
at the annual meeting.

Having failed to receive a second, this motion was not put to
vote.

The preambles and resolutions adopted at a special meeting of th
board of directors of this company, held at its office, 165 Broadw
New York, on May 7th, 1914, were submitted to the meeting and re
aloud by the secretary.

On motion, duly made and seconded, the following pr
1293 ambles and resolution were by majority vote adopted:

Whereas, the Pacific Mail Steamship Company is now ope
ating steamers which are engaged in freight and passenger traffic
follows:

(1) Between San Francisco and Hawaiian Islands, Philippi
Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexi
and Central America, and also west coast of South America by inte
change with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America an
New York, New Orleans, and European ports, by through route co
sisting of its own steamers between San Francisco and Balboa, th
Panama Railroad and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexico and Ce
tral America and ports of the West India Islands and the northe
coast of South America, by a through route consisting of its ow
steamers on the Pacific Coast, the Panama Railroad and Atlan
Ocean steamship service.

(5) Between San Francisco and New York, New Orleans, an
European ports by through route consisting of its own steame
between San Francisco and Balboa, the Panama Railroad an
1294 Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manger of this company, has reported to the board of directors that respective of the prohibitions of the Panama Canal act it will t be practicable or feasible for this company, after the opening f the Panama Canal, to continue in the class of traffic embraced section (5) above, because with a transhipment at Balboa it n not secure such traffic in competition with ships operating rough the Panama Canal between San Francisco and Atlantic d European ports, and because the ships of this company now emoyed in such trade are unsuitable and inadequate for service rough the canal; and has recommended that the company conue to engage in all of the traffic above specified except that emaced in section (5).

Whereas the board of directors by preambles and resolution, dopted at a special meeting held May the 7th, 1914, and submitted this meeting, has referred to the stockholders the aforesaid recomendations of Mr. Schwerin;

Resolved, That the above referred to recommendations of Mr. Schwerin be approved, and the board of directors be and they 95 are hereby authorized to withdraw from the traffic described in clause (5) of the above preambles and to continue in the affic embraced in sections (1), (2), (3), and (4), or so much ereof in which in the judgment of the board this company should ntinue to engage, such change to be made on or before July the t, 1914, or at such other time or times as the board of directors ay determine.

Mr. Simpler, representing 1,100 shares, Mr. Springsteed, repreenting 40 shares, and Mr. Owen F. Roberts, representing 5,200 ares of stock, desired to be recorded as voting against the adoption the foregoing resolution. Mr. George Reuter desired to be reorded as not voting. All other shares represented at the meeting ere voted in favor of the resolution.

Closing of the polls.—At 2 o'clock p. m. the shareholders having d full opportunity to cast their ballots, the chairman declared e polls closed. Mr. George Reuter, representing 150 shares of ock, requested to be recorded as not voting in the election for rectors.

Thereupon the inspectors submitted their report as follows:

96 "Pacific Mail Steamship Company. Certificate of inspectors of election of directors.

We, the undersigned, duly elected inspectors of election to serve the anual meeting of stockholders of the Pacific Mail Steamship ompany, a stock corporation of the State of New York, held on the th day of May, 1914, do hereby certify as follows:

That a meeting of the stockholders of said corporation was he
at 11.45 o'clock a. m. on the 27th day of May, 1914, at the office
the corporation, at 165 Broadway, New York City, pursuant to
notice.

That before entering upon the discharge of our duties we w
severally sworn, and the oath so taken by us is hereto annexed.

That the result of the votes taken at such meeting for the elec
of directors of said corporation for the ensuing year was as follo

		Shares
	Henry W. de Forest	135,2
	Robert Goelet	135,2
	J. Kruttschnitt	135,2
1297	George H. Macy	135,2
	Ogden Mills	135,2
	E. P. Swenson	135,2
	R. P. Schwerin	135,2
	L. J. Spence	135,2
	W. A. Worthington	135,2
	Owen F. Roberts	6,2

That Henry W. de Forest, Robert Goelet, J. Kruttschnitt, Geo
H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. Spe
and W. A. Worthington, each having received 135,235 of the vo
cast at said election, were declared by us duly elected directors
said corporation for the ensuing year.

In witness whereof we have made and signed this certificate t
27th day of May, 1914.

W. F. BULL.
GEO. M. THORNTON.
H. B. HENRY.

STATE OF NEW YORK,
County of New York, ss:

On the 27th day of May, 1914, before me personally c
W. F. Bull, Geo. M. Thornton, and H. B. Henry, to me kno
1298 and known to me to be the individuals described in and w
executed the foregoing certificates, and severally acknowled
to me that they executed the same.

[SEAL.] WM. E. LA PLANTE,
Notary Public, New York County No. 2227,
New York Register No. 616

Term expires March 30, 1916.

STATE OF NEW YORK,
County of New York, ss:

We, the undersigned, W. F. Bull, Geo. M. Thornton, and H.
Henry, duly appointed inspectors of election to serve at the a

eting of stockholders of the Pacific Mail Steamship Company to held at the office of said company, at No. 165 Broadway, in the y of New York, N. Y., on this 27th day of May, nineteen hundred d fourteen, being severally duly sworn, do depose and say, and each r himself deposes and says, that he will faithfully execute the ties of inspectors at such meeting with strict impartiality and to e best of his ability.

W. F. BULL.
GEO. M. THORNTON.
H. B. HENRY.

99 Sworn to and subscribed before me this 27th day of May, 1914.

[SEAL.] WM. E. LA PLANTE,
Notary Public, New York County, No. 2227.
New York Register No. 6164.

Term expires March 30, 1916."

On motion, duly seconded, the report of the inspectors of election as accepted and ordered placed on file, and the chairman declared at Messrs. Henry W. de Forest, Robert Goelet, J. Kruttschnitt, eorge H. Macy, Ogden Mills, E. P. Swenson, R. P. Schwerin, L. J. pence, and W. A. Worthington, mentioned therein, were duly ected directors of the company for the ensuing year.

On motion, adjourned.

HUGH NEILL, *Secretary.*

00 I, Hugh Neill, secretary of the Pacific Mail Steamship Company, do hereby certify that the above and foregoing is a true opy of the minutes of the annual meeting of its stockholders held on e 27th day of May, 1914; and that annexed hereto is a copy of that rtain resolution adopted at a special meeting of the board of direcrs of the Pacific Mail Steamship Company held May 7th, 1914, to hich reference is made in the preamble and resolution appearing on age 4 of the foregoing minutes of the annual meeting of stockholders ove referred to. And I do further certify that at the above-menoned annual meeting of stockholders, held on the 27th day of May, 914, the Southern Pacific Company was present by proxy covering 0,755 shares of this company, owned by said Southern Pacific Comany, and that such shares were duly voted by proxy and participated said annual meeting.

In witness whereof I have hereunto subscribed my name and affixed e seal of said company this 5th day of April, 1915.

[SEAL.] HUGH NEILL, *Secretary.*

1301 Pacific Mail Steamship Company. Resolution adopted by board of directors May 7, 1914.

Whereas the Pacific Mail Steamship Company is now operating steamers which are engaged in freight and passenger traffic as follows:

(1) Between San Francisco and Hawaiian Islands, Philippine Islands, China, and Japan.

(2) Between San Francisco and ports on the west coast of Mexico and Central America, and also west coast of South America by interchange with other vessels at Balboa.

(3) Between west coast ports of Mexico and Central America and New York, New Orleans, and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad, and Atlantic Ocean steamship service.

(4) Between San Francisco, west coast ports of Mexican and Central America, and ports of the West India Islands and the northeast coast of South America, by a through route consisting of its own steamers on the Pacific coast, the Panama Railroad, and Atlantic Ocean steamship service.

1302 (5) Between San Francisco and New York, New Orleans and European ports, by through route consisting of its own steamers between San Francisco and Balboa, the Panama Railroad and Atlantic Ocean steamship service.

Whereas Mr. R. P. Schwerin, the vice president and general manager of the company, has reported to this board that, irrespective of the prohibitions of the Panama Canal act, it will not be practicable or feasible for this company, after the opening of the Panama Canal to continue in the class of traffic embraced in section (5) above, because with a transhipment at Balboa it can not secure such traffic in competition with ships operating through the Panama Canal between San Francisco and Atlantic and European ports, and because the ships of this company now employed in such trade are unsuitable and inadequate for service through the canal.

Whereas Mr. Schwerin has recommended that the company continue to engage in all of the traffic above specified except that embraced in section (5).

Whereas this board approves Mr. Schwerin's recommendation but believes that the suggested change in the business of the company should be approved or authorized by the stockholders.

1303 *Resolved*, That this board refer to the stockholders at the next meeting the matter of withdrawing from the traffic described in section (5) above, and continuing in the traffic embraced in sections (1), (2), (3), and (4), or so much thereof in which, in the judgment of the board, it should continue to engage, and that such

change shall be made on or before July 1, 1914, or at such other time as the board of directors may determine.

I hereby certify that the above and foregoing is a true copy of preambles and resolution unanimously adopted at a special meeting of the board of directors of the Pacific Mail Steamship Company, duly convened and held at the office of said Pacific Mail Steamship Company, 165 Broadway, New York, N. Y., on the 7th day of May, 1914, at 11.30 o'clock a. m., eastern time.

In witness whereof I have hereunto signed my name and affixed the seal of said company this 7th day of May, 1914.

[SEAL.] HUGH NEILL, *Secretary.*

1304 DEFENDANTS' EXHIBIT NO. 52, APRIL 16, 1915.

Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, filed February 18, 1914, under docket No. 6605, the original of which is now on file and of record in the office of this Commission.

In testimony whereof I have hereunto subscribed by name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1305 Before the Interstate Commerce Commission.

Application of Southern Pacific Company under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Comes now Southern Pacific Company, hereinafter called the petitioner, and respectfully shows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of Kentucky. The petitioner owns, controls, and operates either directly, as lessee, or through stock owner-

ship, lines of railroad within the States of California, Oregon, Uta
Nevada, Arizona, and New Mexico, extending from Portland in th
State of Oregon, to Sacramento, in the State of California, fro
Ogden, in the State of Utah, through Sacramento to San Francis
in the State of California, and from San Francisco, in the State
California, to a point in the State of New Mexico on the R
1306 Grande River near El Paso, in the State of Texas, wi
branches thereof reaching numerous points in said Stat
Said lines of railroad hereinbefore described connect at or near
Paso with the line of railroad of The Galveston, Harrisburg & S
Antonio Railway Company, which owns and operates a line of ra
road extending from said point to Galveston and Houston, in t
State of Texas. At said city of Houston, in the State of Texas, t
railroad of The Galveston, Harrisburg & San Antonio Railway Co
pany connects with a line of railroad owned and operated by t
Texas & New Orleans Railroad Company, which owns and operat
a line of railroad extending from said city of Houston to the Sabi
River, at which point said last-named line of railroad connects wi
a line of railroad owned and operated by the Louisiana West
Railroad Company extending from the Sabine River to Lafayet
in the State of Louisiana, at which point the line of railroad of t
last named company connects with a line of railroad owned a
operated by the Morgan's Louisiana & Texas Railroad & Steamsh
Company, extending from Lafayette, in the State of Louisiana,
New Orleans, in the State of Louisiana. Each of said lines of ra
road has numerous branches extending to numerous points wit
the States of Louisiana and Texas.

1307 Substantially all of the capital stock of each of the railro
companies hereinbefore described as owning and operati
lines of railroad east of El Paso in the State of Texas is owned by
in the interest of the petitioner. The petitioner is also the owner
substantially all of the capital stock of the Houston East & We
Texas Railway Company, the Houston & Shreveport Railroad Co
pany, and the Houston & Texas Central Railroad Company, wh
through connections with each other or with one or more of the li
of railroad hereinbefore described form continuous lines for t
transportation of persons and property to numerous points wit
the States of Texas and Louisiana. All of the lines of railroad he
inbefore described are engaged in the interstate transportation
persons and property and constitute a single system of railroads co
monly known as the Southern Pacific System.

The petitioner is also the owner of all of the outstanding capi
stock of the Southern Pacific Railroad Company of Mexico, a corp
ration organized and existing under the laws of the State of N
Jersey, which owns and operates a line of railroad extending fr

at or near Nogales, in the State of Arizona, at which point it connects with the railroad of the petitioner to various points in the Republic of Mexico.

1308 2. The petitioner also owns 110,800 shares of the par value of $11,080,000 out of a total of 200,000 shares of the par value of $20,000,000 of the capital stock of the Pacific Mail Steamship Company, a corporation organized and existing under the laws of the State of New York, hereinafter called the Steamship Company. The Steamship Company owns and operates steamships plying between San Francisco, in the State of California, Hawaii, and the Orient, and between San Francisco and Balboa on the western coast of the Isthmus of Panama and intermediate ports in the Republic of Mexico and in Central America. The vessels engaged in the latter service are not suitable for transoceanic service.

3. Traffic between Atlantic and Pacific ports of the United States and between Pacific ports of the United States and Europe in which the Steamship Company engages is now handled across the Isthmus of Panama by rail, and thence by water carriers in which neither the petitioner nor the Steamship Company has any direct or indirect interest. Upon the opening of the Panama Canal it will be impracticable and infeasible to continue the present service described in this paragraph 3 of this petition, or to handle traffic between the Pacific ports of the United States and the Atlantic or 1309 Gulf coast or Europe by shipment to or from Balboa, there to be transhipped to or from other vessels in competition with through service. As a result of the opening of the Canal the Steamship Company will be unable to engage in traffic between said ports.

4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Manzanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua, and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner.

1310 It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above

named and between Mazatlan and Atlantic and Gulf ports of the United States.

The location of the ports named herein is shown by the map attached hereto and made a part hereof marked "Exhibit A."

None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamhip company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912;
1311 and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

5. From and after July 1, 1914, the steamship company will also engage in traffic between San Francisco and Mazatlan, in the Republic of Mexico. The petitioner alleges that the situation in connection with the handling of said traffic is such as to admit of possible competition between the rail lines of the petitioner and the steamship company; that the steamship company and the railroad lines of the petitioner do not and may not compete for said traffic within the meaning of said act of Congress of August 24, 1912; and that the said water service between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

6. From and after July 1, 1914, the petitioner will also engage in the handling of local traffic between San Francisco and Balboa, but as alleged in paragraph 3 hereof, will be unable to engage in
1312 traffic between San Francisco and Balboa for transhipment to or from Atlantic or Gulf ports of the United States or to or from Europe. Petitioner states that said local traffic between San Francisco and Balboa is traffic for which the steamship company and the railroad lines of the petitioner do not and may not compete, and that the water service of the steamship company between said points is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people

and that its continuance will neither exclude, prevent, nor reduce competition.

7. The petitioner is advised and believes that the continuance of the existing service hereinbefore set forth as that in which the steamship company will engage from and after July 1, 1914, will not cause the petitioner's ownership of stock in the Pacific Mail Steamship Company to be in violation of said act of Congress of August 24, 1912, but as said act contemplates that application shall be made to this commission not only for permission to continue a service in violation of the statute but likewise for the purpose of determining whether an existing or contemplated situation is or will be in violation thereof, the petitioner in order to avoid any suspicion of
1313 wrongdoing or violation of the said act files this its application with this honorable commission.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth and for such relief as it may be entitled to receive.

FRED H. WOOD,
C. W. DURBROW,
GEO. D. SQUIRES,
Attorneys for Petitioner.

Of counsel:
J. P. BLAIR,
W. F. HERRIN.

NEW YORK, *February 17, 1914.*

1314 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed May 21, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1315 Before the Interstate Commerce Commission.

In re application of Southern Pacific Company under the provisio of section 5 of the act to regulate commerce as amended by sectio 11 of "An act to provide for the opening, maintenance, protectio and operation of the Panama Canal and the sanitation and go ernment of the Canal Zone," approved August 24, 1912, in conne tion with the operation of the Pacific Mail Steamship Company.

Amendment of application of Southern Pacific Company.

Now comes Southern Pacific Company (hereinafter called t petitioner) and files this amendment to its application heretofo filed herein, and respectfully shows:

As set forth in the original application filed herein, the Paci Mail Steamship Company (hereinafter called the steamship co pany) is engaged in the transportation of passengers and prope between Atlantic and Pacific ports of the United States a

1316 between Pacific ports of the United States and Europe, whi traffic is now handled across the Isthmus of Panama by rail a to or from the Isthmus by water carriers on the Atlantic side there in which neither the petitioner nor the steamship company has a direct or indirect interest; and, as therein set forth, upon the openi of the Panama Canal it will be impracticable and infeasible to c tinue said service involving transhipment in competition w through service. Petitioner is informed that the said canal w probably not be open for through service until after July 1, 19 after which date it is stated in the original application herein t the steamship company will be unable to engage in said traffic. It h been represented by the commercial and shipping interests of the P cific coast that it would be unfortunate from the standpoint of shipper if the steamship company should discontinue participatio said traffic until the canal is open for through traffic, and that wi out the steamers of the steamship company there would probab not be sufficient steamers to handle this traffic. In view of s representations the steamship company is willing and proposes continue in said traffic, both passenger and freight, until th shall be substituted therefor a satisfactory and equival

1317 through service.

Petitioner also states that in addition to the traffic forth in the original application filed herein, the steamship comp engages in traffic between San Francisco and Mexican and Cen American ports and ports of the West India Islands and the no

east coast of South America. Petitioner states that the water service herein described is being and will be operated in the interest of the public, and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition.

Wherefore petitioner prays that a full hearing may be had as provided by section 11 of the act of Congress of August 24, 1912, upon the matters herein set forth, as well as upon those set forth in the original application filed herein; and that the commission shall make an order or finding with respect to the meaning or interpretation of said act as applied to the facts hereinbefore set forth; and if continuance in said traffic or any part thereof shall be found to be in violation of the strict letter of said act, that the commission may make an order granting permission for continuance of the service herein described.

1318

F. H. WOOD,
C. W. DURBROW,
Attorneys for Petitioner.

Of counsel:
J. P. BLAIR.
WM. F. HERRIN.
NEW YORK, *May 20, 1914.*

1319 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of amendment filed December 7, 1914, to application of Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, docket No. 6605, the original of which is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the commission this 5th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1320 Before the Interstate Commerce Commission.

Application of Southern Pacific Company to amend its applicati
under the provisions of section 5 of the act to regulate commer
as amended by section 11 of "an act to provide for the openi
maintenance, protection, and operation of the Panama Canal a
the sanitation and government of the Canal Zone," approv
August 24, 1912, in connection with the operation of the Pacif
Mail Steamship Company.

Now comes Southern Pacific Company and states that at the ti
of the filing of its application herein it was advised that transhi
ment of traffic between Mexican and Central American ports a
Europe and between Mexican and Central American ports and A
lantic and Gulf ports of the United States, as described in paragra
4 thereof, could be effected by transfer by railroad across the Isthm
of Panama from Balboa to Colon; that it has since been advised th
the Panama Railroad will not handle commercial shipments a
that transfer must be made directly from vessel to vessel at one e
of the canal; and that it is also advised that such transhi-
1321 ment from vessel to vessel cannot be made in all instances
Balboa at the western end of the canal, and that it therefo
may be necessary at times to make transfer of such traffic betwe
Mexican and Central American ports and Europe or Atlantic a
Gulf ports of the United States at Colon as well as at Balboa.

In order, therefore, that said petition may conform to the chan
in conditions, petitioner prays leave to amend the same by insertin
after the word "Balboa" in the sixteenth line of the fourth para
graph thereof the words "or Colon."

H. C. Booth,
Fred H. Wood,
Attorneys for Petitioner.

J. P. Blair,
W. F. Herrin,
Of Counsel.
New York, *December 3, 1914.*

1322 Interstate Commerce Commission, Washington.

I, George B. McGinty, secretary of the Interstate Commerce Com
mission, do hereby certify that the attached is true copy of amend
ment filed April 2, 1915, to amended application of Southern Pacif
Company, under the provisions of section 5 of the act to regula
commerce as amended by section 11 of "An act to provide for th

pening, maintenance, protection, and operation of the Panama anal and the sanitation and government of the Canal Zone," ap-roved August 24, 1912, in connection with the operation of the Pa-ific Mail Steamship Company, docket No. 6605, the original of hich is now on file and of record in the office of this commission.

In testimony whereof I have hereunto subscribed my name and fixed the seal of the commission this 9th day of April, 1915.

GEORGE B. MCGINTY,
Secretary of the Interstate Commerce Commission.

[Seal, Interstate Commerce Commission, 1887.]

1933 Before the Interstate Commerce Commission.

In re Application of Southern Pacific Company to amend its application under the provisions of section 5 of the act to regulate commerce as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company.

Amendment to amended application.

Now comes Southern Pacific Company and amends its amended application herein by striking out, after the word "Balboa," in the 10th line of the fourth paragraph thereof, the words "or Colon," which said words, "or Colon," were inserted by an amendment to the original application herein, dated New York, December 3, 1914, and transmitted to this honorable commission on December 5, 1914, so that the fourth paragraph of the application herein, as now amended, will be restored to its original condition, and will read as follows:

1934 "4. From and after July 1, 1914, the steamship company will engage (in addition to its Hawaiian-Asiatic traffic hereinbefore described) in traffic between San Francisco and the ports of San Blas, Mazanillo, Acapulco, and Salina Cruz, in the Republic of Mexico; Ocos, Champerico, and San Jose de Guatemala, in the Republic of Guatemala; Acajutla, La Libertad, and La Union, in the Republic of Salvador; Amapala, in the Republic of Honduras; Corinto and San Juan del Sur, in the Republic of Nicaragua; and Punta Arenas, in the Republic of Costa Rica, between said ports above named, between said Mexican and Central American ports and Europe, and between said Mexican and Central American ports and Atlantic and Gulf ports of the United States, which said traffic with

Europe and with the Atlantic and Gulf ports will be handled by the steamship company to or from Balboa and transhipped in connection with the vessels of other lines in no way connected with the petitioner. It will also engage in traffic between the port of Mazatlan, Mexico, and other Mexican and Central American ports above named and between Mazatlan and Atlantic and Gulf ports of the United States.

"The location of the ports named herein is shown by the map attached hereto and made a part hereof, marked 'Exhibit A'

1325 "None of the Mexican and Central American ports above named, except Mazatlan, a point on the Southern Pacific Railroad of Mexico, are reached by any railroad company owned, leased, operated, or controlled by the petitioner or in which the petitioner has any interest whatsoever by stock ownership or otherwise, either directly or indirectly, through any holding company or by stockholders or directors in common or in any other manner. The steamship company and the petitioner do not and could not compete in any manner whatsoever for any of the traffic described in this paragraph; and petitioner alleges that its lines of railroad and the water line and service described herein are not competitive within the meaning of section 11 of 'An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' approved August 24, 1912; and that the said water service is being and will be operated in the interest of the public and is and will be of advantage to the convenience and commerce of the people, and that its continuance will neither exclude, prevent, nor reduce competition."

1326 FRED H. WOOD,
H. C. BOOTH,
Attorneys for Petitioner.

J. P. BLAIR,
W. F. HERRIN,
Of Counsel.
Dated, New York, March , 1915.

(Pursuant to stipulation at page 1937 of the testimony, the remainder of Defendants' Exhibit No. 52, being the report of the Interstate Commerce Commission upon the foregoing application, may be referred to in the officially printed and bound volumes of reports of the Interstate Commerce Commission, with the same effect as if incorporated in the record.)

1327 DEFENDANTS' EXHIBIT (GRIGGS) NO. 53, APRIL 20, 1915.

Report of the Attorney General.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 30, 1899.

To the Senate and House of Representatives of the United States of America in Congress assembled:

* * * * * * *

Pacific Railroad matters.—The deficiency appropriation act of July 7, 1898 appointed the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General a commission, with full power to settle the indebtedness to the Government growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as might be agreed upon by them, or by a majority of them, and the owners of said railroads, subject to the approval of the President.

1328 An agreement for the settlement of this indebtedness was entered into between the said commissioners with the railroad companies on February 1, 1899. At that date the amount due the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific Railroads was $58,-112,715.48, more than one-half of which was accrued interest upon the principal debt. The agreement of settlement provided for the funding of this amount into 20 promissory notes bearing date February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of $2,940,635.78, or one-twentieth of the total amount due. The notes bear interest at the rate of 3 per cent per annum, payable semiannually, and have a condition attached to the effect that if default be made, either in the payment of principal or interest of either of said notes or in any part thereof, then all of the said notes outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of the agreement of settlement.

It was further agreed that the payment of the principal and 1329 interest of the notes shall be secured by the deposit with the United States Treasury of $58,820,000 of face value of first refunding mortgage 4 per cent gold bonds, to be thereafter issued by the Central Pacific or its successor having charge of the railroads then owned by said company, such bonds to be part of an issue of not exceeding $100,000,000 in all, and to be secured by mortgage

upon all railroads, equipments, and terminals owned by said Central Pacific Railroad Company, such mortgage to be a first lien upon such property or to be secured by the deposit as collateral of certain percentages of the outstanding bonds upon such property or on the different divisional parts thereof.

The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement the four earliest maturing notes were purchased by Speyer & Co. March 10, 1899, and the proceeds, amounting to $11,762,543.12 and accrued interest to the date of payment $35,771.02, in all $11,798,314.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad Companies. The properties of the various companies comprising the Central Pacific system were subsequently conveyed to a new corporation called the Central Pacific Railway Company, which latter company executed the mortgage and bonds provided for by the agreement of settlement. On October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. The United States therefore holds the notes of the Central Pacific Railroad Company guaranteed by the Southern Pacific Railroad Company to the amount of $47,050,172.80, bearing interest payable semiannually at the rate of 3 per cent per annum and secured by the deposit of an equal amount of first mortgage bonds of the Pacific Railway Company, thus providing beyond doubt or peradventure for the sure and gradual payment of the whole of this subsidy debt, and providing in the meantime for the payment of interest at the rate of 3 per cent upon the unpaid balances.

In my report for the year 1898 I advised the Congress that the whole amount of principal and interest due on the Union Pacific subsidy had been realized and paid into the Federal Treasury, and that of the amount due upon the Kansas Pacific subsidy the whole amount of the principal, namely, $6,303,000 had been paid in, leaving due to the Government only the accrued interest on the Kansas Pacific, amounting to about $6,500,000. I further reported that I had caused to be filed a claim on behalf of the United States on account of this deficiency against certain funds remaining in the hands of the receivers of the Union Pacific Railway Company, which claims, along with many others aggregating a large sum, were subject to investigation and subsequent adjudication. The matter has since been brought to a conclusion, with the very satis-

1330

1331

factory result that the United States procured a decree directing the receivers to pay on account of its deficiency debt out of the moneys in their hands as pro rata dividend upon its deficiency claim the sum of $821,897.70, which sum has recently been paid into the Treasury of the United States and is to be credited against the deficiency above mentioned.

The proceedings referred to in my last report pending against the American Loan and Trust Company of Boston as trustee for the purpose of securing on account of the Government's deficiency claim certain moneys in the hands of such trustee which represent the proceeds of securities mortgaged for the benefit and further security of first-mortgage bonds of the Kansas Pacific Railway, and for the benefit, protection, and further security of the United States in respect to their subsidy bonds and interest thereon, have not yet been brought to a conclusion, but are being pressed with all due diligence, and before long I hope to be able to report the collection of a very substantial sum from this source in further reduction of the deficiency due the Government on this account.

The amounts paid or secured to be paid to the United States on account of Pacific Railroad subsidy claims since November 1, 1897, will appear from the following table:

Union Pacific, cash	$58,448,223.75
Kansas Pacific, cash	6,303,000.00
Central and Western Pacific—	
Cash	11,798,314.14
Notes	47,050,172.36
Kansas Pacific, dividend on deficiency due United States, cash	821,897.70
Total	124,421,607.95

So that it appears that out of an indebtedness of about $130,000,000, more than one-half of which consists of accrued interest, the Government has realized in cash or its equivalent the sum of $124,421,670.95 within a period of less than two years.

Taking into account the enormous material benefits that have accrued to the country from the construction of these transcontinental lines of communication and the advantage which the Government has had by way of reduced rates of transportation and service over them, the participation of the Government in the construction and maintenance of these enterprises has been fully justified and the faith of the original promoters and projectors of these great lines has been proven to have had a substantial basis.

* * * * * * *

1334 DEFENDANTS' EXHIBIT (SPENCE) No. 54, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in differ colors, on a scale of thirty-five miles to the inch, all of the lines braced within the Southern Pacific system.)

1335 DEFENDANTS' EXHIBIT (SPENCE) No. 55, APRIL 21, 1915.

(Official map of Rand, McNally & Company showing in differ colors, on a scale of 160 miles to the inch, all of the lines embra within the Southern Pacific system.)

1336 DEFENDANTS' EXHIBIT (SPENCE) No. 56, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pac system, and, in green, all other lines engaged in transcontine business December 31, 1900.

1337 DEFENDANTS' EXHIBIT (SPENCE) No. 57, APRIL 21, 1915.

(Map showing, in red, lines embraced within the Southern Pac system, and, in green, all other lines engaged in transcontine business October 1, 1914.)

1338 DEFENDANTS' EXHIBIT (SPENCE) No. 58, APRIL 22, 1915.

Lines maintaining soliciting organizations in California.

Atchison, Topeka & Santa Fe Railway.
Baltimore & Ohio Railroad.
Canadian Pacific Railway.
Chesapeake & Ohio Railway.
Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railroad.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Chicago & Alton Railroad.
Chicago & Eastern Illinois Railroad.
Chicago & North Western Railway.
Colorado Midland Railway.
Colorado & Southern Railway.
Delaware, Lackawanna & Western Railroad.
Denver & Rio Grande Railroad.
El Paso & Southwestern System.
Empire Fast Freight Line.

MAPS

TOO

LARGE

FOR

FILMING

1339 Erie Railroad.
Grand Trunk Railway System.
Great Northern Railway.
Illinois Central Railroad.
Kansas City, Mexico & Orient Railway.
Kansas City Southern Railway.
Lehigh Valley Railroad.
Minneapolis, St. Paul & Sault Ste. Marie Railway.
Minneapolis & St. Louis Railroad.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
New York Central Lines.
Nickel Plate.
Northern Pacific Railway.
Oregon Short Line.
Oregon-Washington Railroad & Navigation Co.
Pennsylvania System.
Pere Marquette Railroad.
Queen & Crescent Route.
San Pedro, Los Angeles & Salt Lake Railroad.
Southern Railway.
St. Louis, Iron Mountain & Southern Railway.
1340 St. Louis Southwestern Railway.
St. Louis & San Francisco Railroad.
Texas & Pacific Railway.
Toledo, St. Louis & Western Railroad.
Union Pacific Railroad.
Wabash Railroad.
Western Pacific Railway.
Total, 46.

1341 DEFENDANTS' EXHIBIT (SPENCE) No. 59, APRIL 22, 1915.

Lines maintaining soliciting organizations in Atlantic seaboard territory.

Atchison, Topeka & Santa Fe Railway.
Baltimore & Ohio Railroad.
Boston & Albany Railroad.
Boston & Maine Railroad.
Canadian Pacific Railway.
Central Railroad of New Jersey.
Chesapeake & Ohio Railway.
Chicago & Alton Railroad.
Chicago & North Western Railway.

Chicago, Burlington & Quincy Railroad.
Chicago Great Western Railroad.
Chicago, Milwaukee & St. Paul Railway.
Chicago, Rock Island & Pacific Railway.
Cincinnati, Hamilton & Dayton Railroad.
Cincinnati, New Orleans & Texas Pacific Ry.
Cleveland, Cincinnati, Chicago & St. Louis Ry.
1342 Colorado & Southern Railway.
Colorado Midland Railway.
Delaware & Hudson Company.
Delaware, Lackawanna & Western Railroad.
Denver & Rio Grande Railroad.
El Paso & Southwestern System.
Erie Railroad.
Grand Trunk Railway System.
Illinois Central Railroad.
Kansas City, Mexico & Orient Railway.
Kansas City Southern Railway.
Lake Erie & Western Railroad.
Lake Shore & Michigan Southern Railway.
Lehigh Valley Railroad.
Louisville & Nashville Railroad.
Michigan Central Railroad.
Minneapolis, St. Paul & Sault Ste. Marie Railway.
Missouri, Kansas & Texas Railway.
Missouri Pacific Railway.
New York Central & Hudson River Railroad.
New York, Chicago & St. Louis Railroad (Nickel Plate).
New York, New Haven & Hartford Railroad.
1343 Norfolk & Western Railway.
Northern Pacific Railway.
Oregon Short Line.
Oregon-Washington Railroad & Navigation Co.
Pennsylvania System.
Philadelphia & Reading Railway.
Pittsburgh, Cincinnati, Chicago & St. Louis Ry.
Queen & Crescent Route.
St. Louis & San Francisco Railroad.
St. Louis, Iron Mountain & Southern Ry.
St. Louis Southwestern Railway.
San Pedro, Los Angeles & Salt Lake Railroad.
Seaboard Air Line Railroad.
Southern Railway.
Toledo, Peoria & Western Railway.
Toledo, St. Louis & Western Railroad.

Union Pacific Railroad.
Vicksburg, Shreveport & Pacific Railway.
Wabash Railroad.
Western Pacific Railway.
West Shore Railroad.
Total, 59.

3344 DEFENDANTS' EXHIBIT (SPENCE) No. 60, APRIL 22, 1915.

Daily passenger-train service via Sunset Route.

March, 1883.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 5 days, 4 hours, 40 minutes.
Eastbound: 5 days, 4 hours, 55 minutes.
Time between New York and San Francisco:
Westbound: 7 days, 20 hours, 40 minutes.
Eastbound: 7 days, 17 hours, 55 minutes.
Time procured from schedules shown on pages 238, 239, and 356 of the Travelers' Official Guide, dated March, 1883.
December, 1885.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 4 days, 17 hours, 10 minutes.
Eastbound: 4 days, 14 hours, 10 minutes.
3345 Time between New York and San Francisco:
Westbound: 6 days, 22 hours.
Eastbound: 6 days, 21 hours, 10 minutes.
Time procured from schedules shown on pages 235, 236, and 439 of the Travelers' Official Guide dated December, 1885.
December, 1900.—One through train daily in each direction between New Orleans and San Francisco.
Time between New Orleans and San Francisco:
Westbound: 4 days, 1 hour, 30 minutes.
Eastbound: 3 days, 23 hours, 30 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 17 hours, 15 minutes.
Eastbound: 5 days, 16 hours, 43 minutes.
NOTE.—During the winter months of 1900–1901 a Sunset Limited train was operated three times weekly in each direction.
Time procured from schedules shown on pages 517 and 798 of the Official Guide dated December, 1900.
3346 December, 1914.—Two through trains daily in each direction between New Orleans and San Francisco.

Time between New Orleans and San Francisco (Sunset Limited):
Westbound: 3 days, 6 hours, 30 minutes.
Eastbound: 3 days, 2 hours, 10 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 1 hour, 55 minutes.
Eastbound: 4 days, 18 hours, 0 minutes.
Time procured from schedules shown on pages 811 and 1234 of th
Official Guide dated December, 1914.
The time between New York and San Francisco via Southern Pa
cific steamers, twice weekly in each direction, is:
Westbound: 8 days, 6 hours, 30 minutes.
Eastbound: 8 days, 11 hours, 40 minutes.

1347 DEFENDANTS' EXHIBIT (SPENCE No. 61, APRIL 22, 1915.

Daily passenger train service via Ogden route.

March, 1883.—No through train, but direct connections made dail
at Omaha and Ogden.
Time between Chicago and San Francisco:
Westbound: 5 days, 1 hour, 10 minutes.
Eastbound: 4 days, 20 hours, 45 minutes.
Time between New York and San Francisco:
Westbound: 6 days, 5 hours, 30 minutes.
Eastbound: 6 days, 2 hours, 30 minutes.
Time procured from schedules shown on pages 171 and 247 of th
Travelers' Official Guide dated March, 1883.
December, 1885.—No through train, but direct connections mad
daily at Omaha and Ogden.
Time between Chicago and San Francisco:
Westbound: 4 days, 15 hours, 10 minutes.
1348 Eastbound: 4 days, 13 hours, 50 minutes.
Time between New York and San Francisco:
Westbound: 5 days, 20 hours, 10 minutes.
Eastbound: 6 days.
Time procured from schedules shown on pages 221 and 311 of th
Travelers' Official Guide dated December, 1885.
December, 1900.—Two through trains daily westbound and thr
daily eastbound between Chicago and San Francisco.
Time between Chicago and San Francisco (Overland Limited):
Westbound: 3 days, 2 hours, 15 minutes.
Eastbound: 2 days, 21 hours, 30 minutes.
Time between New York and San Francisco:
Westbound: 4 days, 4 hours, 15 minutes.
Eastbound: 4 days, 0 hours, 30 minutes.

Time procured from schedules shown on pages 176 and 519 of the Official Guide dated December, 1900.

49 December, 1914.—Three through trains daily westbound and four daily eastbound between Chicago and San Francisco.

Time between Chicago and San Francisco (Overland Limited):

Westbound: 2 days, 17 hours, 10 minutes.

Eastbound: 2 days, 15 hours, 30 minutes.

Time between New York and San Francisco:

Westbound: 3 days, 18 hours, 25 minutes.

Eastbound: 3 days, 14 hours, 20 minutes.

Time procured from schedules shown on pages 235 and 809 of the Official Guide dated December, 1914.

50 DEFENDANTS' EXHIBIT (SPENCE) No. 62, APRIL 22, 1915.

S—31.

Statement showing total tonnage from and to all territories moving a Ogden, as compared with movement to and from Atlantic aboard territory, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	%	Tons.	%	Tons.	%
lantic seaboard territory..	154,229	20.6	68,916	11.2	223,145	16.3
her territories.....	592,588	79.4	549,009	88.8	1,141,597	83.7
Total.....	746,817	100.0	617,925	100.0	1,364,742	100.0

51 DEFENDANTS' EXHIBIT (SPENCE) No. 63, APRIL 22, 1915.

S—1.

Statement of commercial freight tonnage and revenue of the South-n Pacific Company on traffic moved via El Paso gateway (includ-g relatively small amount of traffic interchanged with A., T. & S. F. y., at Deming, N. M.) between all points west of Ogden, Utah, open traffic via Ogden gateway and Atlantic seaboard territory: Com-rising all points east of a line from Toronto, via Buffalo and Pitts-urgh, to Bristol, Tenn., and north of the line of the Norfolk & West-n Railway from Bristol to the Atlantic Ocean, for the year ended une 30, 1914.

	Tons.	Revenue.
astbound	85,059	1,202,109
estbound	94,737	1,899,083
Total east and west bound	179,796	3,101,292

1352 DEFENDANTS' EXHIBIT (SPENCE) No. 64, APRIL 22, 1915.

S—2.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including relatively small amount of traffic interchanged with A., T. & S. F. Ry., at Deming, N. M.) between all points west of Ogden, Utah, open to traffic via Ogden gateway and Middle West territory: Comprising all points on and east of the line of the C., R. I. & P. Ry., from Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, north of the northern boundary of Oklahoma and Arkansas, north of the Ohio River and west of the Atlantic seaboard territory, for the year ended June 30, 1914:

	Tons.	Revenue.
Eastbound	222,325	1,838,62[illegible]
Westbound	219,246	2,311,28[illegible]
Total east and west bound	441,571	4,149,91[illegible]

1353 DEFENDANTS' EXHIBIT (SPENCE) No. 65, APRIL 22, 1915.

S—3.

Comparsion of commercial freight tonnage and revenue of Southern Pacific Company on traffic moved by El Paso gateway with that moved by Ogden gateway between all points west of Ogden, Utah, open to traffic via Ogden on the one hand and Atlantic seaboard territory and Middle West territory on the other hand, for the year ended June 30, 1914.

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	85,059	1,202,109	154,229	[illegible]
Westbound	94,737	1,899,083	68,916	[illegible]
East and west bound	179,796	3,101,292	223,145	1,519,[illegible]

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	222,325	1,838,626	368,975	2,576,[illegible]
Westbound	219,246	2,311,285	259,648	2,451,[illegible]
East and west bound	441,571	4,149,911	628,623	5,028,[illegible]

4 DEFENDANTS' EXHIBIT (SPENCE) No. 66, APRIL 22, 1915.

S—4.

Statement of commercial tonnage and revenue of Southern Pacific mpany on traffic which originated, passed over, or was delivered on ntral Pacific Railroad moving via Ogden gateway to and from lantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
stbound	154, 229	926, 433
stbound	68, 916	593, 339
East and west bound	223, 145	1, 519, 772

5 DEFENDANTS' EXHIBIT (SPENCE) No. 67, APRIL 22, 1915.

S—5.

Statement of Commercial tonnage and revenue of Southern Pacific mpany on traffic which originated, passed over, or was delivered Central Pacific Railroad moving via Ogden gateway to and from iddle West territory:

	Tons.	Revenue.
stbound	368, 975	2, 576, 384
stbound	259, 648	2, 451, 700
East and west bound	628, 623	5, 028, 084

6 DEFENDANTS' EXHIBIT (SPENCE) No. 68, APRIL 22, 1915.

S—6.

Comparison of commercial tonnage and revenue of Southern acific Company on traffic via El Paso and via Ogden which origi- ated, passed over, or was delivered on Central Pacific Railroad to nd from Atlantic seaboard territory and Middle West territory, r the year ended June 30, 1914.

[Even tons and dollars.]

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
stbound	34, 812	646, 005	154, 229	926, 433
stbound	50, 045	1, 093, 267	68, 916	593, 339
East and west bound	84, 857	1, 739, 272	223, 145	1, 519, 772

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	31,180	269,457	368,975	2,576,296
Westbound	63,734	665,035	259,648	2,451,790
East and west bound	94,914	934,492	628,623	5,028,086

1357 DEFENDANTS' EXHIBIT (SPENCE) No. 68½, APRIL 22, 1915.

S—7

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Atlantic Seaboard Territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	28,234	45,651
Westbound	2,138	30,196
East and west bound	30,372	75,849

1358 DEFENDANTS' EXHIBIT (SPENCE) No. 69, APRIL 22, 1915.

S—8.

Statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway, between all points in Nevada and Middle West territory, for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	16,852	140,071
Westbound	25,898	286,227
East and west bound	42,750	426,298

1359 DEFENDANTS' EXHIBIT (SPENCE) No. 70, APRIL 22, 1915.

S—9.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso and Ogden gateways between all points in Nevada and Atlantic seaboard territory and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	0	0	28, 234	45, 651
Westbound	539	13, 281	2, 138	30, 198
East and west bound	539	13, 281	30, 372	75, 849

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	0	0	16, 852	140, 071
Westbound	30	959	25, 898	286, 237
East and west bound	30	959	42, 750	426, 308

1360 DEFENDANTS' EXHIBIT (SPENCE) No. 71, APRIL 22, 1915.

S—10.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Atlantic seaboard territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	27, 517	167, 059
Westbound	4, 684	40, 233
East and west bound	32, 201	207, 292

1361 DEFENDANTS' EXHIBIT (SPENCE) No. 72, APRIL 22, 1915.

S—11.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory for the year ended June 30, 1914.

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	86,165	471,2
Westbound	17,362	186,1
East and west bound	103,527	657,3

1362 DEFENDANTS' EXHIBIT (SPENCE) No. 73, APRIL 22, 1915.

S—12.

Comparison of tonnage and revenue of Southern Pacific Company via El Paso as shown in petitioner's Exhibits Nos. 55 and 56 with that via Ogden on traffic moved between Atlantic seaboard territory and Middle West territory on one hand and points in Oregon and beyond, and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo for the year ended June 30, 1914:

Atlantic seaboard territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	22,161	426,324	27,517	167,8
Westbound	2,801	84,260	4,684	40,2
East and west bound	24,962	510,584	32,201	207,3

Middle West territory.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	5,351	51,384	86,165	471,2
Westbound	13,122	124,919	17,362	186,1
East and west bound	18,473	176,303	103,527	657,3

1363 DEFENDANTS' EXHIBIT (SPENCE) No. 74, APRIL 22, 1915.

S—13.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	14,025	127,697
Westbound	44,214	380,256
East and west bound	58,239	507,953

1364 DEFENDANTS' EXHIBIT (SPENCE) No. 75, APRIL 22, 1915.

S—14.

Statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between San Francisco and Oakland, California, and Middle West territory for the year ended June 30, 1914:

[Even tons and dollars.]

	Tons.	Revenue.
Eastbound	52,432	336,713
Westbound	126,237	1,140,547
East and west bound	178,669	1,477,260

1365 DEFENDANTS' EXHIBIT (SPENCE) No. 76, APRIL 22, 1915.

S—15.

Comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso gateway and via Ogden gateway between San Francisco and Oakland, California, and Atlantic seaboard territory and Middle West territory, for the year ended June 30, 1914:

[Even tons and dollars.]

ATLANTIC SEABOARD TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	4,598	95,841	14,025	127,697
Westbound	38,933	920,502	44,214	380,256
East and west bound	43,531	1,016,343	58,239	507,953

MIDDLE WEST TERRITORY.

	Via El Paso.		Via Ogden.	
	Tons.	Revenue.	Tons.	Revenue.
Eastbound	10,295	76,209	52,432	336,713
Westbound	40,497	433,465	126,237	1,140,547
East and west bound	50,792	509,674	178,669	1,477,260

1366 DEFENDANTS' EXHIBIT (SPENCE) No. 77, APRIL 22, 1915.

S—17.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Atlantic seaboard territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	Tons.	*Tons.*	*Tons.*
Southern California	41,105	37,617	78,722
Oregon	7,533	1,743	9,276

1367 DEFENDANTS' EXHIBIT (SPENCE) No. 78, APRIL 22, 1915.

S—16.

Statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on one hand and points in Middle West territory on the other, for the year ended June 30, 1914:

	Eastbound.	Westbound.	Total.
	Tons.	*Tons.*	*Tons.*
Southern California	178,978	139,724	318,702
Oregon	1,878	10,716	12,594

1368 DEFENDANTS' EXHIBIT (SPENCE) No. 79, APRIL 22, 1915.

S—18.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north

of Mojave and Santa Barbara on the one hand and Middle West territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden	331,218	80.7	241,407	73.5	572,625	77.5
Via Sunset-Gulf	1,244	.3	13	0	1,257	.2
Via New Orleans	1,177	.3	11,278	3.4	12,455	1.7
Via El Paso and other gateways east thereof except New Orleans	76,777	18.7	75,754	23.1	152,531	20.6
Total	410,416	100	328,452	100	738,868	100

1369 DEFENDANTS' EXHIBIT (SPENCE) No. 80, APRIL 22, 1915.

S—26.

Statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north of Mojave and Santa Barbara on the one hand and Atlantic seaboard territory on the other hand, for the year ended June 30, 1914:

	Eastbound.		Westbound.		Total.	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Via Ogden	140,900	73.4	66,101	53.1	207,001	65.4
Via Sunset-Gulf	37,166	19.3	41,762	33.5	78,928	24.9
Via New Orleans	603	.3	2,174	1.7	2,777	.9
Via El Paso and other gateways east thereof except New Orleans	13,362	7	14,546	11.7	27,908	8.8
Total	192,031	100	124,583	100	316,614	100

1370 DEFENDANTS' EXHIBIT (SPENCE) No. 81, APRIL 22, 1915.

S—37.

Statement of commercial freight interchanged between Southern Pacific Company and Union Pacific Railroad Company at Ogden, Utah, for the fiscal years ended June 30, 1913 and 1914:

	1913, tons.	1914, tons.
Eastbound	606,122	598,035
Westbound	547,861	469,406

1371 DEFENDANTS' EXHIBIT (SPENCE) No. 82, APRIL 22, 1915.

S—22.

Comparison of tonnage to and from Middle West territory mo via El Paso, which had origin or destination on Central Pacific bo aided line, with tonnage moved via Ogden, which had origin or d tination on Southern Pacific or Central Pacific nonbond-aided li for the year ended June 30, 1914:

	Eastbound.	Westbound.	Tot
Via El Paso	5,765	9,233	14
Via Ogden	329,589	233,689	563

Movement via Ogden is over 3,755% of movement via El Pas

1372 DEFENDANTS' EXHIBIT (SPENCE) No. 83, APRIL 22, 1915.

S—30.

Comparison of tonnage to and from Atlantic seaboard terri moved via El Paso, which had origin or destination on Central Pa bond-aided line, with tonnage moved via Ogden, which had or or destination on Southern Pacific or Central Pacific nonbond-a line, for the year ended June 30, 1914:

	Eastbound.	Westbound.	To
Via El Paso	6,237	7,586	
Via Ogden	112,306	66,547	17

Movement via Ogden is 1,303% of the movement via El Paso.

1373 DEFENDANTS' EXHIBIT (SPENCE) No. 84, APRIL 22, 1915.

Map showing alternative competing routes for transconti traffic of the Chicago, Milwaukee & St. Paul Railway Compa

1374 DEFENDANTS' EXHIBIT (SPENCE) No. 85, APRIL 22, 1915.

Map showing alternative competing routes for transcontin traffic of the Union Pacific Railroad Company.

MAPS

TOO

LARGE

FOR

FILMING

MAPS

TOO

LARGE

FOR

FILMING

875 DEFENDANTS' EXHIBIT (SPENCE) No. 86, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Missouri Pacific system, consisting of the Missouri Pacific Railway, the Denver & Rio Grande Railroad, and the Western Pacific Railway.

876 DEFENDANTS' EXHIBIT (SPENCE) No. 87, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Atchison, Topeka & Santa Fe Railway.

877 DEFENDANTS' EXHIBIT (SPENCE) No. 88, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Great Northern Railway.

878 DEFENDANTS' EXHIBIT (SPENCE) No. 89, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago and North Western Railway.

879 DEFENDANTS' EXHIBIT (SPENCE) No. 90, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago, Rock Island & Pacific Railway.

880 DEFENDANTS' EXHIBIT (SPENCE) No. 91, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Chicago, Burlington & Quincy Railroad.

881 DEFENDANTS' EXHIBIT (SPENCE) No. 92, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Pennsylvania Railroad system.

882 DEFENDANTS' EXHIBIT (SPENCE) No. 93, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the Baltimore & Ohio Railroad system.

883 DEFENDANTS' EXHIBIT (SPENCE) No. 94, APRIL 22, 1915.

Map showing alternative competing routes for transcontinental traffic of the New York Central lines.

[1—Extract from the Commercial and Financial Chronicle, February 18, 1
volume 68, pages 329 and 330.]

Central Pacific R. R.—Settlement—Official announcement—Re
justment plan.—Messrs. Speyer & Co. make the following announ
ment: "The agreement of settlement of the Central Pacific R. R.
has been executed by the railroad company and by the Governm
commission, and approved by the President. The agreement p
vides for the payment in full of the debt of the railroad compa
principal and interest, amounting to about $59,000,000, in twe
equal half-yearly installments, running with 3 per cent interest,
first one to mature August 1, 1899. The twenty notes given by
railroad company to correspond with these installments are to
secured by an equal amount of first refunding bonds, which are to
created under the readjustment plan shortly to be promulgated h
and in Europe. The readjustment of the financial affairs of the r
road company is to be in charge of Messrs. Speyer & Co., New Yo
Messrs. Speyer Brothers, London; Laz Speyer Ellisen, Fra
1385 fort-on-the-Main; Messrs. Teixeira de Mattos Brothers, A
sterdam, and the Deutsche Bank of Berlin."

The sum due as of Feb. 1 was $58,812,714, composed of the follo
ing items:

Central Pacific debt February 1, $25,885,120 principal and $
604,385 interest, less $9,100,452 of judgments, bonds, and sinki
fund, leaving net liabililty $53,389,052. The amount due by
Western Pacific on the same date was $5,423,662, making the to
sum due by the two roads $58,812,714.

The agreement will obviate the necessity of foreclosure.

The act under which the settlement is made was passed by Congr
last July, and was given in full in our issue of July 2, page 27. T
act appoints the Secretary of the Treasury, the Secretary of the In
rior, and the Attorney General a commission with full power to se
the indebtedness, provided that any and all settlements shall be s
mitted in writing to the President for his approval or disappro
and unless approved by him shall not be binding. (V. 67, pp. 11
1163.)

1386 [2—Extract from the Commercial and Financial Chronicle, February
1899, volume 68, pages 352 to 354.]

The Central Pacific reorganization plan.

The plan just submitted for the reorganization of the Cen
Pacific property seems thorough and complete. It accompli
three distinct objects, each important in itself and essential to

sound and comprehensive scheme for establishing the property firmly in public estimation and confidence. In the first place, it secures that prime prerequisite, the adjustment and settlement of the indebtedness owing to the United States. In the second place, it accomplishes that other and hardly less desirable object, the placing of the relations between the Central Pacific and the Southern Pacific on a definite and assured basis, removing cause for future misunderstanding and controversy. In the third place, it provides for the complete refunding at a lower rate of interest of all the bonded indebtedness of the Central Pacific, while at the same time furnishing needed cash for present and future capital wants.

1387 As far as the settlement with the United States is concerned, the country certainly has no reason to complain. The Government gets the full amount of its claim, both principal and interest, namely $58,812,715. Such favorable terms for it were considered as hardly within the range of probabilities, or even possibilities, only a short time ago. By this we mean that few thought the company could safely undertake to carry a burden of obligations such a settlement on such a basis involved. No doubt, if the claim had been held by a private creditor it could not have been collected in full. A spirit of equity and fairness would have required part abatement of the claim. In the case of the United States as a public creditor, the occasion for leniency and concession was tenfold greater. The country as a whole, and the Government in particular, has derived incalculable advantages and blessings from the building of the road as part of the first route across the continent. Besides this, the United States is strong and prosperous, and would have suffered no hardship or inconvenience if it had agreed to forego a portion of its large claim. But Congress was unyielding. Its action was controlled by those antagonistic to the road. These people succeeded in having a 1388 law passed forbidding a settlement involving compromise or concession. The full pound of flesh was demanded—nothing less. This was the situation confronting the security holders and those administering the property. The company was practically without alternative but to accept them, merciless and unfair though they certainly were and onerous as they seemed likely to prove. And quick action, too, was called for, since this law declares that a settlement, even on these harsh terms, must be effected within twelve months from the date of the passage of the act (that is, July 7, 1888), otherwise the President was directed to begin foreclosure proceedings under the Government lien. This latter would have meant the wiping out of the junior equities. Nothing remained but to try to avert this unfortunate contingency, and a method has now been

devised for meeting the requirements of the law, while placing th
prospects for the security holders on a very encouraging basis.

Several fortuitous circumstances have opportunely come in t
facilitate the operation, and to this must be ascribed the fact th
a task which but a short while back seemed impossible is now bein
confidently undertaken by a very shrewd and able syndicate o
1389 financiers. Traffic and revenues have very considerably in
creased during the last eighteen months, so there is a muc
larger basis of earnings to start with. Then the outlook for indu
trial interests is now altogether assuring, where previously it ha
been clouded by many uncertainties. Furthermore, the rate of in
terest in this country has been steadily declining, so that money ca
be borrowed on lower and more advantageous terms than a sho
time back. Of the two new issues of bonds provided under the re
organization, one bears only 4 per cent interest, the other but 3
per cent. The old bonds carried 5 to 6 per cent interest. Th
the saving to be effected in annual charges in this way is importan
Then it must also be remembered that the Central Pacific has hel
large corporate sinking funds, and the assets in these funds cou
as an important offset to the increased obligations incurred in th
settlement of the Government claim. A statement in the reorganiz
tion plan shows that the securities in these sinking funds, and whic
are to be deposited as part security for the new 3½ per cents, aggr
gate $12,553,000 and yield a present annual income of $689,680.

The reorganization scheme is in many respects a clever an
1390 ingenious contrivance. The payments to the Government a
arranged in exact accordance with the new law. And here
little study will show that our lawmakers, in their desire to be seve
and give no quarter, have overreached themselves. The law pr
vides that in any settlement in the "final payment" and "full di
charge" of the indebtedness "shall not be postponed to exceed t
years, and the whole amount, principal and interest, shall be pa
in equal semiannual installments within the period so limited." I
compliance with these provisions, the agreement with the Gover
ment provides for the payment of the debt in twenty equal se
annual installments. The payments are to be evidenced by twen
notes of the railroad company, falling due one every six mont
beginning August 1, 1899, and these notes are to be secured by a
equal amount at face value of the new first refunding mortgage fo
per cent gold bonds. The ordinary way of settling would have be
to make a direct tender of the new bonds. The terms of the la
of Congress made that impossible, so notes had to be given inste
with the new bonds as security. But the notes bear only 3 per ce
interest, while the bonds bear 4 per cent. The result is a sa

of one per cent per annum to the company. Messrs. Speyer &
1891 Co. have agreed to purchase the $11,762,543 of these notes
earliest maturing; that, however, will still leave $47,050,172 of
notes in possession of the Government. Eventually these notes will
be replaced by the new refunding bonds, but in the meantime the
difference in interest will mean a saving to the company of $470,000
per year in the charges.

One other good result will follow, and in this sense the rigorous
terms of the law will prove a not unmixed evil. Had payment been
in bonds, the Government might have held them indefinitely and
thus retained its interest in the property, furnishing occasion for a
continuation of the meddlesome interference with the affairs of the
road on the part of Congress which has characterized its course in
the past. As it is, a definite limit is set to the time within which the
pecuniary concern of the United States may continue. After ten
years Government interest in the property will cease, and the United
States will be totally eliminated as a factor in the road's affairs.
Indeed, this may be said to be the situation from the start under
the new arrangement, for with the indebtedness placed on a fixed
basis the only concern the Government has is to see that the semi-
annual payments are met, and that, of course, by the arrange-
1892 ment is put beyond question.

The reorganization scheme provides, as already indicated,
for the taking up of all the existing bond issues of the Central Pacific
Company. These will be replaced by two general issues—(1) $100,-
000,000 of first refunding mortgage 4 per cent gold bonds, to run
not less than forty-five years, and (2) $25,000,000 of 3½ per cent
mortgage gold bonds, to run thirty years. The latter as a lien upon
the property and plant of the new company will be subordinate to
the first refunding mortgage bonds, but, on the other hand, will have
a prior lien upon the existing sinking-fund assets (amounting, as
stated above, to $12,553,000 in securities, besides a small amount of
cash), and also a lien upon the lands and the land notes covered by
the mortgage securing the present land bonds. The new company
will likewise issue $20,000,000 of 4 per cent cumulative preferred
stock, mainly for betterments and additions to the property, $5,000,000
being expressly reserved for this purpose, to be used at the rate of
not exceeding $200,000 per annum. This preferred stock will not be
sold, but will all be taken by the Southern Pacific Company, which
will issue and sell its collateral trust bonds against the same,
1893 bearing 4 per cent interest. Finally there will be $67,275,500
of new common stock, the same as at present. Under the terms
of the arrangement with the Southern Pacific the latter will guar-
antee both the new issues of Central Pacific bonds.

The fixed charges of the new company will be heavier than those of the old company. This follows from the fact that the payment to the United States is so large and includes such great arrearages of interest (the payment of $58,812,715 being more than double the original principal of the subsidy bonds issued in aid of the road and which amounted to only $27,855,680), which arrears of interest have now to be capitalized. Part of the additional burden falls on the Southern Pacific Company, which agrees to issue altogether $36,819,000 of the collateral trust bonds referred to above. But the charges on that account may be disregarded in considering the position of the new Central Pacific Company by itself. For the year ending June 30, 1898, the fixed charges were $4,269,905. The charges of the reorganized company, when the whole $100,000,000 of new 4s and $25,000,000 of 3½s have been issued, will be $4,875,000. For the present, however, there will be a saving of $470,000 in the way noted above on the notes issued to the Government, re-
1394 ducing the total of charges on the Central Pacific to $4,405,000 as against the $4,269,000 actually paid for the late year. The direct increase, therefore, will be comparatively small.

As against the $4,405,000 of charges which the new company will have to meet, the Central Pacific's net earnings from operations in the late year were $5,658,033. For the 10½ years ending last June the average of the net earnings was $4,893,259. In both cases this is independent of the income from the securities in the sinking funds, which, as we have seen, at present amounts to $689,680 per year. The position of the new company would thus appear to be entirely safe and secure. It would seem, too, that the inducement to the old bondholders to take the new securities offered them in exchange for their present obligations is strong. The terms vary for the different issues, larger or smaller proportions of the 4s and of 3½s being given in each case, depending upon the merits and position of the old security. But the old bondholders are not tied down to the terms of exchange. If they prefer, the reorganization syndicate will purchase their holdings for cash—offering for some issues par and accrued interest, for others 105 and interest, and for still
1395 others 109 and interest. Of the $100,000,000 of 4s, $47,036,000 will be retained against the 3 per cent notes given the Government, $51,253,500 will go in partial exchange for existing bonds, and $1,690,500 will be purchased by the syndicate to provide the cash requirements of the plan. Of the 3½ per cents, $13,695,000 will go in partial exchange for existing bonds and $11,305,000 will be purchased by the syndicate.

The cash requirements are put altogether at $21,420,100. Of this $11,762,543 represents the money needed to take up the first

semiannual notes given the Government and $9,657,556 represents the sum required for new equipment, improvements, and other purposes. To raise this large sum of money the syndicate purchases, besides the $1,690,500 of refunding 4s and $11,305,000 of new 3½s, the amount of $12,000,000 of the new Southern Pacific collateral trust bonds to be created. It is estimated that in this way upwards of $4,500,000 cash will be provided which will be immediately available for improvements.

We have stated above that one of the merits of the plan is that it provides a definite adjustment of the relations with the
1396 Southern Pacific as well as with the United States. This is accomplished by giving Southern Pacific stock in exchange for Central Pacific. The argument in opposition to Southern Pacific control of Central Pacific has always been that the former had an alternative route in its line via El Paso and that it was to its interest to favor this line at the expense of the Central Pacific route via Ogden. But as stockholders of the Southern Pacific it will be immaterial to the present shareholders of the Central Pacific which route is developed. They will have a proprietary interest in both, and all cause for complaint will be removed.

The proposition to the Central Pacific shareholders looks very attractive and certainly surpasses anything that was deemed probable by outsiders only a few months ago. If the shares had been called upon to pay an assessment of $20 or $25 a share, hardly anyone would have been surprised. Instead they are asked for a cash payment of only $2, and in return are given share for share of Southern Pacific stock and 25 per cent of collateral trust 4 per cents. As to the value of Southern Pacific stock, that company in the late year showed a surplus above charges and expenses of $4,122,602. Even after deducting $1,299,258 spent for betterments and additions, the
397 surplus was $2,823,344. The Central Pacific surplus for the same twelve months, to be added to this, was $1,561,464. But against the latter there is the increase in charges to be taken into account.

Central Pacific's own charges, we have seen, will be increased only $35,095. The interest on the collateral trust bonds of the Southern Pacific will, of course, be an entirely new charge. The plan, as already remarked, provides altogether for $36,819,000 of these bonds, but only $23,819,000 will be required at present—$16,819,000 being given to Central Pacific shareholders and $12,000,000 being sold to the syndicate. On this $28,819,000 of bonds the annual interest charge will be $1,152,760, but that will be offset by the $690,000 income (roughly) on the securities in the Central Pacific sinking funds, making a net increase of $462,760, which, added to the $135,095 increase in the Central Pacific's own charges, gives an aggregate augmentation in charges of $597,855. Deducting this from

the $1,561,464 surplus for the Central Pacific, as above, we h
$963,609 to be added to the Southern Pacific's own surplus
$2,823,344, making a total of $3,786,953; that is to say, the new char
when applied to last year's earnings show a surplus in
1398 sum of over 3¾ million dollars after the expenditure
1½ million dollars ($1,299,258 by the Southern Pacific
$162,250 by the Central Pacific) for betterments and additions.
course the aggregate of Southern Pacific stock will be increased.
present the total is $121,070,810; the amount issuable against Cen
Pacific shares will add $67,275,500, and $10,118,184 is issuable agai
the stocks of Southern Pacific proprietary roads not yet exchan
bringing the total up to $198,464,494.

1399 [3—Extract from the Commercial and Financial Chronicle, Februar
1899, volume 68, pages 378 and 379.]

Central Pacific R. R.—Southern Pacific Company—Readjustm
plan—Control of Stock—Guaranty.—Under date of Feb. 8, 1
Messrs. Speyer & Co. and their associates have prepared a
for the thorough readjustment of the finances of the Central Pa
R. R. Co. The plan contemplates the acquisition of a controll
interest in the stock by the Southern Pacific Co., and immedia
thereupon the guaranteeing by that company of the bonds of
new Central Pacific issues.

As stated last week, a settlement has been negotiated with
United States Government of its claim against the company,
agreement dated Feb. 1, 1899. The balance of the indebtedness
to the United States, as of Feb. 1, 1899, as therein stated, amoun
principal and interest, to $58,812,715.48, which is to be evide
by twenty 3 per cent notes of the Central Pacific R. R. Co. fal
due one every six months, beginning Aug. 1, 1899, to be secured
an equal amount of new first refunding mortgage 4s. Ma
Speyer & Co. have agreed to purchase $11,762,543 of said n
1400 earliest maturing, Aug. 1, 1899, to Feb. 1, 1901, so that
amount of said first refunding mortgage 4s to be retaine
collateral by the United States will be $47,056,000.

In order to create these new first refunding mortgage gold b
it is proposed promptly to readjust the financial affairs of the
road company, and for this purpose the following is now pro
gated. A syndicate has been formed to provide all the cash req
ments under the plan.

New securities.—The plan provides for the creation of the fol
ing new securities:

(1) Securities to be issued by present Central Pacific R. R. Comp
or its successor.

First refunding mortgage 4 per cent gold bonds, to run no
than forty-five years, to bear interest from Aug. 1, 1899, free of t

and to be secured by a mortgage upon all the railroads, terminals, and equipment now owned by the Central Pacific R. R. Co., covering about 1,349 miles of first track and about 365 miles of second track and sidings, or by deposit as collateral security therefor of at least 90 per cent of the present outstanding first mortgage bonds of the Central Pacific R. R. Co. of California, and the Western Pacific R. R. Co., and of at least 75 per cent of the aggregate
1401 of all the now outstanding bonds of the Central Pacific R. R. Co. and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first-mortgage bonds of the Central Pacific R. R. Co. of California and Western Pacific R. R. Co., said new bonds to be guaranteed by endorsement as to principal and interest by the Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific, as below stated.

Total issue of bonds	$100,000,000
Of which to be retained by U. S. Government as collateral for 3 per cent notes	47,056,000
In partial exchange for existing bonds	51,253,500
Purchased by syndicate to provide cash requirements of plan	1,690,500

3½ per cent mortgage thirty-year gold bonds, to bear interest from Aug. 1, 1899, free of taxes, and to be secured by a second lien upon all the properties covered by the first refunding mortgage above mentioned, and also by deposit with the trustee as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R. Co., and by a trust deed upon all the lands now
1402 covered by the mortgage dated Oct. 1, 1870, said new bonds to be guaranteed by endorsement as to principal and interest by Southern Pacific Company upon delivery to that company of the controlling interest in the stock of the Central Pacific as below stipulated.

Total issue	$25,000,000
Of which in partial exchange for existing bonds	13,695,000
Purchased by syndicate to provide cash requirements of plan	11,305,000
Preferred stock, 4 per cent cumulative, to be delivered to the Southern Pacific Co. in consideration of the issue of an equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds hereinafter mentioned	20,000,000
Of which to be delivered on completion of readjustment	12,000,000
Reserved to be delivered only to provide additional funds, if required, for the payment of said 3 per cent notes to the United States, and thereafter only for betterments and additions	3,000,000
Reserved to be delivered for improvements and additions at not exceeding $200,000 yearly	5,000,000
Common stock to be sold to syndicate and offered for sale to depositors of present common stock upon payment of $2 per share deposited	67,275,500

(2) Securities to be issued by Southern Pacific Company.

4 per cent collateral trust gold bonds bearing interest from A 1, 1899, free of taxes, and having fifty years to run (but subject redemption at any time, at the option of the Southern Pacific C at par and accrued interest, upon six months' notice). Said bo to be secured by a collateral trust mortgage covering all the n preferred stock issued and delivered, and also all the common st of the railroad company purchased by the Southern Pacific Co.

Total issue	$36,819,
Of which as part consideration for the common stock of the railroad company, being one-fourth of the par value thereof	16,819,
In consideration of new preferred stock of the railroad company as above stated ($3,000,000 reserved as stated in plan)	15,000,
Reserve for betterments or additions to the railroad company's properties at not exceeding $200,000 per annum, against the issue of an equal amount at par value of the new preferred stock	5,000,
Common stock, as part consideration for like amount of railroad company stock, if paying assessment of $2 per share	67,275,

Exchange of securities.—The basis of exchange is shown in t following table:

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Ref'g 4s.	New 3½s.	Or[illegible]
Cent. Pac. R. R. Co. of Cal. 1st M., series A, $2,995,000	$33.33	$1,000	$50	[2]$1,
Series B, C, D, E, F, G, H, and I, $22,886,000.	29.17	1,000	50	[2]1,
West. Pac. R. R. Co. 1st M., series A and B, $2,735,000	35.00	1,000	50	[2]1,
Cent. Pac. R. R. (San Joaquin Valley Branch) 1st M., $6,080,000	50.00	1,000	75	[2]1,
Cent. Pac. R. R. land bonds, $2,134,000	41.67	500	700	[2]1,
Fifty-year 6s, $56,000	50.00	500	900	[2]1,
Fifty-year 5s, $10,245,000	41.67	500	800	[2]1,
Cal. & Oregon R. R. and Cent. Pac. R. R. 1st M., A and B, $10,340,000	29.17	1,000	200	[2]1,

1405 [1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1 at the same rates, up to the date when the new bonds begin to bear inte namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

Existing stock, if deposited	Each $100—		
		Will receive—	
	If paying assess—	So. Pac. stock.	[illegible] Pa
Central Pacific stock, $67,275,500	$2.00	$100	

The London shareholders' committee, F. G. Banbury, Esq., chairman, representing a majority of the outstanding shares, has agreed to the purchase of said stock by the Southern Pacific Co. and has deposited the shares with the readjustment managers under the plan of readjustment.

Guaranty, when to be endorsed.—The Southern Pacific Company agrees that upon delivery to it of $12,000,000 of new preferred stock and at least 377,194 shares of the 672,755 shares of common stock of the railroad company, it will simultaneously guarantee unconditionally by endorsement the payment of the principal and interest of the first refunding mortgage 4 per cent gold bonds and of the 3½ per cent mortgage gold bonds.

Position of reorganized company.—A circular shows that
1406 under the plan the Central Pacific Company's fixed charges will aggregate $4,875,000. On the 4 percents held by the Government, however, there will be a saving of 1 per cent per annum until Feb. 1, 1901, or about $470,000 annually, while the Central Pacific sinking funds will earn about $695,000, making the net charges $3,710,000. The Southern Pacific charges will be increased by the interest on $28,819,000 new bonds, or $1,152,760, making the total net annual interest charge on account of the Central Pacific $4,862,760, as against $4,269,905 for the year ending June 30, 1898, or an increase of $592,855. Against this increase there was a surplus on the Central Pacific for the last year, after charging all betterments to earnings, of $1,561,463, and a surplus on the Southern Pacific of $2,823,344, a total of $4,384,807.

The Southern Pacific's present stock is $121,070,810; issuable against Central Pacific stock, $67,275,500; issuable against stocks of proprietary companies not yet exchanged, $10,118,184; making a total stock issue of $198,464,494. See further particulars in advertising columns.

"It thus appears that the fixed charges of the new company on completion of the readjustment will be well within the past net
1407 income of the property. It is estimated that under the readjustment upwards of $4,500,000 cash will be provided, which will be immediately available for improvements on the properties of the railroad company."

Deposits.—Participation under the plan of readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the depositary, or their associates, within the required time. Bonds must carry all coupons maturing after Feb. 1, 1899.

To facilitate the carrying out of the plan, holders of certificates of deposit issued under bondholders' agreement dated Aug. 14, 1897,

representing Central Pacific first-mortgage bonds, series A, B, C
E, F, G, H, and I should present their certificates at the offices of
of the readjustment managers to be stamped as assenting to the p
Holders who do not withdraw their bonds prior to March 23
be held to have assented. Any holder desiring to accept cash ra
than the new securities must present his securities of deposit t
stamped accordingly on or before March 23, 1899.

Similarly, holders of certificates of deposit issued under b
holders' agreement dated Oct. 1, 1896, representing Central Pa
fifty-year 5 per cent mortgage bonds, due April 1, 1939, should
sent their certificates for stamping.

1408 Securities sold.—Speyer & Co. announce that, as syndi
managers, they have sold all of the new Central Pacific
Southern Pacific bonds which the syndicate agreed to take under
Central Pacific readjustment plan. Of the aforesaid bonds, $8,000,
of the $12,000,000 Southern Pacific collateral trust 4s were purcha
by Brown Brothers & Co. and F. S. Smithers & Co. (V. 68, p. 3
v. 67, p. 839, 844.)

1409 [4—Extract from the Commercial and Financial Chronicle, March 4, 1
volume 68, page 397.]

As expected, the Central Pacific readjustment is proving an
qualified success. This week the American shareholders, as rep
sented by the certificates of deposit of the Central Trust Compa
unanimously adopted a resolution expressing approval of the Spe
plan and directing the committee, of which Mr. August Belmont
chairman, to conclude an agreement and accept the plan on behalf
the shareholders. There have been few other undertakings of eq
magnitude where success has followed so quickly upon the heels
the official promulgation of the plan. Seldom, too, has such gener
satisfaction been expressed by all parties in interest. And it must
admitted that the terms offered are favorable beyond the most sa
guine expectations. When one considers how dubious the outlo
appeared only a short time ago one can but marvel at the comple
transformation which has been worked in the prospects of the co
pany and in the situation of the security holders. The problem to
met was a difficult one. In the case of all the other transcontinen
lines—the Northern Pacific, the Union Pacific, and the Atch

1410 son—security holders were called upon to make important sa
rifices. In each of these instances the shareholders w
obliged to pay heavy assessments. The Central Pacific shareholde
have not only escaped this, but they get what must be considered th
equivalent of a handsome bonus, on a cash payment of only two do

lars per share, while all the other securities have been equitably and fairly dealt with.

We risk nothing in saying that such results would have been entirely out of the question except for the fact that Mr. C. P. Huntington and the banking house of Speyer & Co. have both stood behind the security holders, determined to protect them and see that they were not allowed to suffer. Mr. Huntington has at times been as harshly criticized by certain of the shareholders as he has been by the political agitators and demagogues of California. Yet he has repeatedly made important sacrifices on behalf of the Central Pacific, and in assenting to the present plan of readjustment has given proof that he regards the interests of that property as identical with those of every other portion of his vast system. As for the house of Speyer & Co., they deserve great credit for the solicitude and care displayed in looking after the Central Pacific se-
1411 curity holders. To them also belongs the credit of having devised the plan. Few people appreciate the time and labor required not only in carrying out the financial requirements of an undertaking of this magnitude but in contriving and perfecting such a scheme on a basis which shall be at once just and in exact accordance with the requirements. We understand that the plan is the work of Mr. James Speyer, who for the last six or seven months has given all his time and attention to it. The scheme must be regarded as in every way a most clever contrivance. The problem to be solved was such as to call for the utmost skill and ingenuity and the exercise withal of great patience in the elaboration of the various details. Not only were there the security holders to provide for, but the large debt owing to the United States (swollen to more than double the original principal of the subsidy loan through unpaid arrearages of interest) had to be arranged and settled. Moreover, the settlement had to be in accordance with a rigid law of Congress. It required a special order of talent to deal with such a complex state of affairs. The plan meets the situation exactly, and it is difficult to see how the same happy results could have been attained in any other way.

1412 [5—Extract from the Commercial and Financial Chronicle, March 4, 1899, volume 68, page 427.]

Central Pacific R. R.—Southern Pacific Co.—Deposits without penalty limited to March 23—Majority of stock assents.—Speyer & Co. give notice that the time for further deposits of bonds and stock under the Central Pacific R. R. Co. readjustment has been limited to March 23, after which date deposits will be accepted, if at all, only

upon such terms and conditions as the bankers may impose. A ma-
jority of the stock has already been deposited.

At a meeting of the American holders of certificates of the Centra
Trust Co. issued in exchange for stock, held on Tuesday, a resolution
was unanimously adopted authorizing the New York stockholders'
committee, consisting of August Belmont, John G. Carlisle, and
George Coppell, to conclude an agreement and accept the plan of re-
adjustment. A similar resolution was adopted by the foreign stock-
holders several days ago in London. Holders of Central Trust
Company certificates are notified to exchange them on or before
March 23 for certificates of deposit issued under the plan of read-
justment.

1413 Cash payment must be made by April 6.—The cash payment
of $2 per share on shares of Central Pacific stock deposited
has been called, and must be made on or before April 6, 1899, at the
office of Messrs. Speyer & Co., 30 Broad Street, New York, or at the
offices of their agents in Europe.

1414 [6—Extract from the Commercial and Financial Chronicle, March 1
1899, volume 68, page 472.]

Central Pacific R. R.—Listed.—Of the company's $67,275,500 c
capital stock, 393,918 shares have been deposited under the plan o
readjustment, and Speyer & Co. engraved certificates of deposit
issued therefor have been listed on the New York Stock Exchange.
(V. 68, p. 427.)

1415 [7—Extract from the Commercial and Financial Chronicle, March 1
1899, volume 68, page 523.]

Central Pacific R. R.—Four notes paid.—According to the terms o
the recent settlement, four of the notes given to the Government we
paid at the Treasury Department March 10. The notes amounted t
$11,762,543. (See v. 68, p. 378; v. 68, p. 472.)

1416 [8—Extract from the Commercial and Financial Chronicle, April 1, 18
volume 68, page 617.]

Central Pacific R. R.—Southern Pacific Co.—Plan operative.
Further deposits to be received till April 6.—A large majority o
each class of bonds and over 97½ per cent of the stock of the Centra
Pacific having assented to the plan and agreement for the readjus
ment of the company, dated Feb. 8, 1899, the readjustment manage
give notice that the said plan is declared operative. The time f

further deposits of stock and bonds, without additional charge, has been extended to and including April 6, 1899, after which date deposits will be accepted only upon a cash payment of one per cent of the par value of bonds, and an additional cash payment of $1 per share of stock deposited.

As to the Central Pacific first-mortgage bonds, series A, B, C, D, E, F, G, H, and I, holders of certificates of deposit issued under bondholders' agreement, dated Aug. 14, 1897, are notified that in order to accelerate the carrying out of the plan holders should present their certificates promptly at the offices of the readjustment managers to be stamped as assenting to the plan of readjust-
1417 ment. Any holder desiring to accept cash for his bond rather than the new securities as provided in the plan must present his certificate of deposit to be stamped accordingly on or before April 6, 1899. See advertisement in another column. (V. 68, p. 523.)

Listed.—The New York Stock Exchange has listed the engraved certificates issued by Speyer & Co. for the following securities:

$2,196,000 Western Pacific R. R. first-mortgage bonds, series A and B; $9,152,000 California & Oregon R. R. first-mortgage bonds, series A and B; $5,156,000 Central Pacific R. R., San Joaquin Valley Branch, first-mortgage bonds; and $1,703,000 Central Pacific Ry. land bonds. The amount of bonds on the list is to be reduced accordingly, and the committee on stock list is empowered to add to the list additional certificates as officially notified that they have been issued in accordance with the plan.

1418 [9—Extract from the Commercial and Financial Chronicle, April 15, 1899, volume 68, pages 721 and 722.]

Central Pacific R. R.—Securities mostly assented—Penalty.—Speyer & Co. announce that over 91 per cent of the bonds and 99 per cent of the stock have been deposited under the plan of readjustment, dated February 8. Further deposits will be accepted upon a cash payment of 1 per cent of the par value of bonds and an additional cash payment of $1 per share of stock deposited until April 29, after which date no deposits will be accepted except in their discretion and upon such terms and additional payments as may be imposed. (V. 68, p. 617.)

1419 [10—Extract from the Commercial and Financial Chronicle, Investors' Supplement for April, 1899, volume 68, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

Lines owned—

	Miles.
San Francisco, Cal., to near Ogden, Utah	872
Lathrop, Cal., to Goshen, Cal	146
Roseville Junction, Cal., to Oregon State line	256
Branches to San Jose, etc	76
Trackage—	
Northern Ry., main line	6
Union Pacific into Ogden	1
Total	1,36

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of two new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with interest, on Feb. 1, 1899, to $59,812,714), will be discharged and the future needs of the property provided for by the following new securities
1420 shown in the table above, viz:

(1) Common stock, $67,275,500, to be sold to syndicate and offered for sale to depositors of present common stock upon payment of $2 per share deposited.

(2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which to be delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies; of which

1421 to be retained by United States as collateral for 3 per cent notes, $47,056,000; in partial exchange for existing bonds, $51,253,500; purchased by syndicate to provide cash requirements of plan, $1,690,500.

(4) Thirty-year gold 3½s, $25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage, and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting Jan. 1, 1899, of $12,553,000 in securities and $86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870; of which in partial exchange for existing bonds, $13,695,000; purchased by syndicate to provide cash requirements of plan, $11,305,000.

(5) Twenty three per cent notes, aggregating $58,812,714, issued to the Government in settlement of subsidy debt; $11,762,543 paid, leaving $47,056,000 to mature, $2,940,635 half yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire the notes as they fall due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for $67,275,500 as part considera-
1422 tion, and also $36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and common stock acquired. See statement for Southern Pacific Co. In March, 1899, a large majority of each class of bonds and over 97½ per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)

Exchange of securities.—The basis of exchange is as follows:

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Ref'g. 4s.	New 3½s.	Or all cash.
ent. Pac. R. R. Co. 1st M. "A"	$33.33	$1,000	$50	[2] $1,000
eries B, C, D, E, F, G, H, and I	29.17	1,000	50	[2] 1,000
'est. Pac. R. R. 1st M., A and B	35.00	1,000	50	[2] 1,000
an Joaquin Valley Branch, 1st M	50.00	1,000	75	[2] 1,000
and bonds	41.67	500	700	[2] 1,000
ifty-year 6s	50.00	500	900	[2] 1,050
ifty-year 5s	41.67	500	800	[2] 1,050
il. & Or. and Cen. Pac. R. R. 1st M	29.17	1,000	200	[2] 1,090

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to the date when the new bonds begin to bear interest, namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

The old common, on payment of $2 per $100 share, will receive par Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate $4,875,-0; on the 4s held by the Government the saving of 1 per cent per

annum until Feb. 1, 1901, or about $470,000, while the sinking fund will earn about $695,000, making net charges $3,710,000. See also Southern Pacific Co.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres; sales, Jan. 1, 1897, to June 30, 1898, 52,582 acres; cancellations, 216,116 acres. Land contracts on hand July 1, 1898—uncompleted payments, $158,734; principal of deferred payments, $553,612; and interest do., $558,224.

Earnings, 8 months, July 1 to Feb. 28—

1898–9—	
Gross	$10,713,03
Net	3,940,71
1897–8—	
Gross	10,472,06
Net	4,604,02

1424 Annual report.—Fiscal year (since 1896) ends June 30. Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross $15,766,349, net $6,544,67 against gross $12,639,711 and net $4,990,812 in 1896–97. For the calendar years—

Gross earnings year ending Dec. 31—

1896	$12,527,08
1895	13,045,65
1894	13,118,24

—v. 68, p. 329, 378, 427, 472, 523, 617, 721.

1425 [11—Extract from the Commercial and Financial Chronicle, Investors' Supplement for July, 1899, volume 69, page 24.]

Central Pacific R. R.—(See map of Southern Pacific.)

Road:

	Miles
Lines owned—	
San Francisco, Cal., to near Ogden, Utah	87
Lathrop, Cal., to Goshen, Cal	18
Roseville Junction, Cal., to Oregon State line	28
Branches to San Jose, etc	5
Trackage—	
Northern Ry., main line	4
Union Pacific into Ogden	1
Total	1,38

Readjustment plan.—The plan issued by Speyer & Co. and associates in Feb., 1899, and published in v. 68, p. 378, provides for the acquisition of the stock by the Southern Pacific Co. and the guaranteeing by that company of the principal and interest of the new Cent. Pac. loans shown above. The present indebtedness, including the U. S. Government loan (the latter amounting, with

interest, on Feb. 1, 1899, to $59,812,714), will be discharged and the future needs of the property provided for by new securities
1426 in the table above, viz:

(1) Common stock, $67,275,500.

(2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, to be delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds, of which to be delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds, if required, for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions, $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and to be secured by all the railroads, terminals, and equipment now owned, including about 1,349 miles of first track, etc., or by deposit as collateral security of at least 90 per cent of the present outstanding first-mortgage bonds of the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. Co., and at least 75 p. c. of all the now outstanding bonds of the Central Pacific R. R. Co. and merged companies, of which to be retained by United States as collateral for 3 per cent notes, $47,056,000; in partial exchange for existing bonds,
1427 $51,253,500 purchased by syndicate to provide cash requirements of plan, $1,690,500.

(4) Thirty-year gold 3½s, $25,000,000, to be secured by a second lien upon all the properties covered by the 1st ref. mortgage and also by deposit with the trustees as acquired of all securities and moneys held in any sinking fund of the Central Pacific R. R., consisting. Jan. 1, 1899, of $12,553,000 in securities and $86,459 cash, and by a trust deed upon all the lands now covered by the mortgage dated Oct. 1, 1870, of which in partial exchange for existing bonds $13,695,000; purchased by syndicate to provide cash requirements of plan, $11,305,000.

(5) Twenty three per cent notes, aggregating $58,812,714, issued to the Government in settlement of subsidy debt; $11,762,543 paid, leaving $47,056,000 to mature, $2,940,635 half-yearly Aug., 1901, to Feb., 1909. First refunding 4s are deposited to retire them when due.

The Southern Pacific Co. will acquire the stock of the Cent. Pacific R. R., issuing its own stock for $67,275,500 as part consideration, and also $36,819,000 collateral 50-year gold 4s, secured by a collateral trust mortgage covering all the new Cent. Pac. preferred and
1428 common stock acquired. See statement for Southern Pacific Co. In March, 1899, a large majority of each class of bonds and over 97½ per cent of the stock had assented to the plan, which was thereupon declared operative. (V. 68, p. 617.)

Terms of exchange.—

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Refg. 4s.	New 3½s.	Or all c
Cent. Pac. R. R. Co. 1st M., "A".....	$33.33	$1,000	$50	[2] $1,
Series B, C, D, E, F, G, H, and I.....	29.17	1,000	50	[2] 1,
West. Pac. R. R. 1st M., A and B.....	35.00	1,000	50	[2] 1,
San Joaquin Valley Branch 1st M.....	50.00	1,000	75	[2] 1,
Land bonds.....	41.67	500	700	[2] 1,
Fifty-year 6s.....	50.00	500	900	[2] 1,
Fifty-year 5s.....	41.67	500	800	[2] 1,
Cal. & Or. and Cen. Pac. R. R. 1st M....	29.17	1,000	200	[2] 1,

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to date when the new bonds begin to bear interest, namely, Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

1429 The old common, on payment of $2 per $100 share, w receive par in Southern Pacific stock and 25 per cent in S Pac. coll. trust 4s.

On June 30, 1899, suit was brought to foreclose series "A" fir mortgage bonds. (V. 69, p. 26.)

Status of new company.—The fixed charges will aggregate $ 875,000; on the 4s held by the Government the saving of 1 p cent per annum until Feb. 1, 1901, or about $470,000, while the sin ing funds will earn about $695,000, making net charges $3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, which about 2,840,000 acres had been sold to December 31, 18 Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land co tracts on hand July 1, 1898—uncompleted payments, $158,73 principal of deferred payments, $553,612; and interest do., $558,22

Earnings, 11 months, July 1 to May 31—

1898–9—	
Gross	$14,897,3
Net	5,647,4
1897–8—	
Gross	14,420,5
Net	6,157,2

Annual report.—Fiscal year (since 1896) ends June 30. Abstra of report for year ending June 30, 1898, was given in v. 6

1430 p. 1157, 1163, showing gross $15,766,349, net $6,544,679, agains gross $12,639,711 and net $4,990,812 in 1896–97. For the ca endar years—

Gross earnings year ending Dec. 31—

1896	$12,527,0
1895	13,045,6
1894	13,118,2

—v. 68, p. 329, 378, 427, 472, 523, 617, 721; v. 69, p.

1431 [12—Extract from the Commercial and Financial Chronicle, August 5, 1899, volume 69, page 282.]

Central Pacific Railway—Successor company.—This company has been incorporated in Utah, with a capital stock of $87,275,500 (of which $20,000,000 preferred), as successor of the old Central Pacific Railroad under the plan of reorganization. (V. 69, p. 26.)

1432 [13—Extract from the Commercial and Financial Chronicle, September 23, 1899, volume 69, page 645.]

Central Pacific R. R.—Reorganization notice.—Of the total capital stock of $67,275,500, $66,960,300 has been deposited under the plan of readjustment dated February 8, 1899. Holders who have not yet deposited their stock may do so prior to Oct. 4, on payment of $5 per share penalty in addition to the assessment of $2 per share. See advertisement on another page. (V. 69, p. 282.)

1433 [14—Extract from the Comercial and Financial Chronicle, Investors' Supplement for October, 1899, volume 69, page 22.]

Central Pacific Ry.—(See map of Southern Pacific.)

Lines owned:	Miles.
San Francisco, Cal., to near Ogden, Utah	871
Lathrop, Cal., to Goshen, Cal	146
Roseville Junction, Cal., to Oregon State line	296
Branches to San Jose, etc	35
Trackage:	
Northern Ry., main line	6
Union Pacific into Ogden	5
Total	1,359

Organization.—Incorporated in Utah in July, 1899, as successor of the railroad under the plan of readjustment in v. 68, p. 378, by which plan the Southern Pacific acquired the entire capital stock and guaranteed the principal and interest of the two new Central Pacific bond issues shown above. The old indebtedness, including the U. S. Government loan, excepting about $1,600,000 bonds, largely soon to mature, has been discharged. The new securities are:

(1) Common stock, $67,275,500, all held by So. Pac. Co.

1434 (2) Preferred stock, 4 per cent cumulative, authorized issue $20,000,000, delivered to Southern Pacific Co. in consideration of issue of equal amount at par value of the Southern Pacific Company's 4 per cent gold bonds; of which delivered on completion of readjustment, $12,000,000; reserved to be delivered only to provide additional funds if required for the payment of 3 per cent notes to the United States, and thereafter only for betterments and additions $3,000,000; reserved to be delivered for improvements and additions at not exceeding $200,000 yearly, $5,000,000.

(3) First refunding M. gold 4s, $100,000,000, and secured by a the railroads, terminals, and equipment now owned, including abo 1,349 miles of first track, etc., or by deposit as collateral security at least 90 per cent of the present outstanding first mortgage bonds the Cent. Pac. R. R. Co. of California and the West. Pac. R. R. C and at least 75 p. c. of all the now outstanding bonds of the Centr Pacific R. R. Co. and merged companies; of which retained by Unit States as collateral for 3 p. c. notes, $47,056,000 issued; in parti exchange for existing bonds, $51,253,500 purchased by syndicate provide cash requirements of plan, $1,690,500. See Abstract, v. 6 p. 808.

1435 (4) Thirty-year gold 3 1/2s, $25,000,000, secured by a se ond lien upon all the properties covered by the 1st ref. mor gage, and also by deposit with the trustees as acquired of all s curities and moneys held in any sinking fund of the Central Pacif R. R., consisting Jan. 1, 1899, of $12,553,000 in securities an $86,459 cash, and by a trust deed upon all the lands now cover by the mortgage dated Oct. 1, 1870; of which in partial exchang for existing bonds, $13,695,000; purchased by syndicate to provid cash requirements of plan, $11,305,000. See Mortgage Abstract, 69, p. 858; also see p. 851.

(5) Twenty three per cent notes, aggregating $58,812,714, issue to the Government in settlement of subsidy debt; $11,762,543 pai leaving $47,056,000 to mature, $2,940,635 half-yearly Aug., 190 to Feb., 1909. First refunding 4s are deposited to retire them wh due.

The Southern Pacific Co. has acquired the stock of the Cent. P cific R. R., issuing its own stock for $67,275,500 as part consider tion, and also $36,819,000 collateral 50-year gold 4s, secured by collateral trust mortgage covering all the new Cent. Pac. preferr and common stock acquired. See statement for Southern P cific Co.

1436 Terms of exchange.—

Existing bonds to be deposited.	Each $1,000 receives—			
	Cash.[1]	Refg. 4s.	New 3 1/2s.	Or all cash
Cent. Pac. R. R. Co. 1st M. "A"	$33. 33	$1, 000	$50	[2] $1,
Series B, C, D, E, F, G, H, and I	29. 17	1, 000	50	[2] 1,
West. Pac. R. R. 1st M., A and B	35. 00	1, 000	50	[2] 1,
San Joaquin Valley Branch 1st M	50. 00	1, 000	75	[2] 1,
Land bonds	41. 67	500	700	[2] 1,
Fifty-year 6s	50. 00	500	900	[2] 1,
Fifty-year 5s	41. 67	500	800	[2] 1,
Cal. & Or. and Cen. Pac. R. R. 1st M	29. 17	1, 000	200	[2] 1,

[1] Interest from the due dates of the last coupons matured prior to Feb. 1, 1899, at the same rates up to date when the new bonds begin to bear interest, namely Aug. 1, 1899.
[2] Payable in New York, with accrued interest.

The old common, on payment of $2 per $100 share, will receive par in Southern Pacific stock and 25 per cent in So. Pac. coll. trust 4s.

Status of new company.—The fixed charges will aggregate
1437 $4,875,000; on the 4s held by the Government the saving of 1 per cent per annum until Feb. 1, 1901, or about $470,000, while the sinking funds will earn about $695,000, making net charges $3,710,000.

Land grant.—Total land grant was about 12,000,000 acres, of which about 2,840,000 acres had been sold to December 31, 1894. Sales in 1896, 38,644 acres; cancellations, 17,979 acres. Land contracts on hand July 1, 1898—uncompleted payments, $158,734; principal of deferred payments, $553,612; and interest do., $558,224.

Earnings, 2 months, July 1 to Aug. 31—

1899—	
Gross	$3,490,610
Net	1,628,476
1898—	
Gross	2,756,142
Net	1,140,057

Annual report.—Fiscal year (since 1896) ends June 30. In 1898–99 gross, $16,401,028; net, $6,362,381. Abstract of report for year ending June 30, 1898, was given in v. 67, p. 1157, 1163, showing gross $15,766,349, net $6,544,679. For the calendar years—

Gross earnings year ending Dec. 31—

1896	$12,527,084
1895	13,045,657
1894	13,118,245

—v. 68, p. 523, 617, 721; v. 69, p. 26, 282, 645, 646, 794, 851.

1438 DEFENDANTS' EXHIBIT No. 96, APRIL 24, 1915.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

To the judges of the United States Circuit Court, Southern District of California:

The United States of America, by direction of the Attorney General thereof, represented by George J. Denis, United States attorney, and Joseph H. Call, special attorney, bring this, their petition in equity, against the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad

Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation
1439 organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almeda Railroad Company, a corporation; the Pajara and Santa Cruz Railroad Company, a corporation; the Monterey Railroad Company, a corporation; the Monterey Extension Railroad Company, a corporation; the Southern Pacific Branch Railway Company, a corporation; the San Pablo and Tulare Railroad Company, a corporation; the San Pablo and Tulare Extension Railroad Company, a corporation; the San Ramon Valley Railroad Company, a corporation; the Stockton and Copperopolis Railroad Company, a corporation;
1440 the Stockton and Tulare Railroad Company, a corporation; the San Joaquin Valley and Yosemite Railroad Company, a corporation; the Los Angeles and San Diego Railroad Company, a corporation; the Los Angeles and Independence Railroad Company, a corporation; the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation; the Long Beach Railroad Company, a corporation; the Southern Pacific Railroad Extension Company, a corporation; the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a corporation; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and

by virtue of the laws of the State of California; the Central
1441 Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; the Pacific Mail Steamship Company, a corporation; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Sealres, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford, as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Stillman, a citizen and resident of ; Hubbard, a citizen and resident of ; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and Geritt L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of Californa; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California.

1442 And thereupon your orators allege and show unto the court: That each of the railroad companies and transportation companies above named now are, and at all the times hereinafter named have been, engaged in carrying passengers, property, and commerce between and among the States of the United States and between and among the States and Territories of the United States, and between and among the United States and foreign countries.

And your orators further allege that the railroad and transportation companies above named severally own and operate lines of standard-guage railroad, which are all connected with each other, which when taken together, form a continuous line from Portland, Oregon, by way of San Francisco and Los Angeles, in the State of California, Yuma, in the Territory of Arizona, and El Paso, in the State of Texas, to New Orleans, in the State of Louisiana, with connecting lines from Ogden, Utah, to San Francisco, California, from El Paso, Texas, to Santa Rosalia, Mexico, from Houston, Texas, to Galveston, Texas, from Houston, Texas, to Albany, Texas, and to the cities of Denison and Paris, and from Los Angeles, Cali-
1443 fornia, to San Pedro, Santa Monica, and Ellwood, California, and from San Francisco to Calistoga, Santa Rosa, Rumsey, Oroville, Placerville, Ione City, Valley Springs, Milton, Monterey, Santa Cruz, and to various other points and places.

And your orators further allege that said line of railroad from San Francisco, by way of Los Angeles, to Fort Yuma, upon the Colorado River, was constructed by the United States through the

agency of the Southern Pacific Railroad Company, by virtue of t acts of Congress of July 27, 1866 (14 Stats., 292), and of March 1871 (16 Stats., 573), for the purpose of securing the safe and spee transportation of the mails, troops, munitions of war, and publ stores of the United States over said line of railroad.

And your orators further allege that said line of railroad fro Ogden, Utah, to San Francisco, California, was likewise construct by the United States, through the agency of the Central Pacific Ra road Company, for like uses and purposes of the United States.

Your orators further allege that the line of railroad from the li between Oregon and California to San Francisco, California, w likewise constructed by the United States, through the agen
1444 of the California and Oregon Railroad Company, for li uses and purposes of the United States.

And your orators further allege that that part of the line of ra road constructed between the line between California and Oreg and Portland, Oregon, was constructed by the United States, throug the agency of the Oregon Central Railroad Company, for like us and purposes of the United States.

And your orators further allege that the defendants herein hav combined and conspired together, and with other persons and cor porations, whose names are unknown to your orators; but, when as certained, will be inserted as defendants herein, to restrain trade and commerce between and among the several States of the United State and between and among the States and Territories of the United States, and between and among the United States and foreign na tions.

And your orators further allege that, in furtherance of such com bination and conspiracy as aforesaid, the defendants have attempted to monopolize and have monopolized all the trade and commerce between San Francisco and other cities and places upon the Bay of San Francisco, in said State, by railroad, and other points and places within the United States outside of the State of California, and
1445 have attempted to monopolize, and have monopolized, a large part of the trade and commerce between and among the several States of the United States, and between and among the States and Territories of the United States, and between and among the United States and foreign nations, particularly that part of such trade and commerce by land and by sea between cities and towns in California, Nevada, Oregon, Arizona, New Mexico, and Texas, respectively, and other States and Territories of the United States.

And your orators further allege that, in furtherance of said com bination and conspiracy, and in fraud of the rights of the United States and of the public, the defendants herein have combined all of said lines of railroad and transportation under a single management

forming a monopoly of the trade and commerce thereof, by land and by sea between the points and places named as aforesaid.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authoritiy so to do, said Southern Pacific Company of Kentucky and the Southern Pacific Railroad Company of California, defendants, did, on the 10th
1446 day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed and made a part hereof and marked "Exhibit A," by which said Southern Pacific Railroad Company pretended to lease to said Southern Pacific Company, for the term of ninety-nine years, all of its railroad situated in the State of California, with all its branches, and all railroads leased to said Southern Pacific Railroad Company, together with all rolling stock, telegraph lines, tools, and property of every kind and nature.

And your orators further allege that, in furtherance of such combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, defendants, did, on the 17th day of February, 1885, enter into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit B," by which said Central Pacific Railroad Company pretended to lease to said Southern Pacific Company for the term of ninety-nine years all of its railroad situated in the Territory of Utah and States of Nevada and California, known and designated as the Central Pacific Railroad, together with all the branches thereof, and together
1447 with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, owned, held, and possessed by said Central Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California and the San Jose and Almaden Railroad Company, the Pajara and Santa Cruz Railroad Company, the Monterey Railroad Company, the Monterey Extension Railroad Company, the San Pablo and Tulare Railroad Company, the San Pablo Extension Railroad Company, the Southern Pacific Branch Railway Company, the San Ramon Valley Railroad Company, the Stockton and Copperopolis Railroad Company, the Stockton and Tulare Railroad Company, the San Joaquin Valley and Yosemite Railroad Company, the Los Angeles and San Diego Railroad Company, the Los Angeles and Independence Railroad Company, the Long Beach, Whittier and Los Angeles County Rail-

road Company, the Long Beach Railroad Company, the Southern Pacific Railroad Extension Company, and the Ramona and San Bernardino Railroad Company, on the 4th day of May, 1888,
1448 entered into a certain contract or agreement, a copy of which is hereto annexed, made a part hereof, and marked "Exhibit C," by which all of said railroad corporations agreed and pretended to amalgamate and consolidate their debts, properties, assets, and franchises, forming a new corporation, by the name and style of the Southern Pacific Railroad Company.

And your orators further allege that, in furtherance of said combination and conspiracy, and in fraud of the rights of the United States and of the public, and without any authority so to do, said Southern Pacific Railroad Company of California, incorporated in the year 1888 as aforesaid, did make, execute, and deliver to the defendant the Central Trust Company of New York a certain mortgage or deed of trust to secure the payment of thirty-eight millions ($38,000,000.00) of dollars of bonds proposed to be issued to said Central Trust Company as trustee, which said pretended mortgage or deed of trust has been recorded in all of the counties of the State of California through which said railroads and branches thereof pass, a copy of which said pretended mortgage or deed of trust is hereto annexed, made a part hereof, and marked "Exhibit D."

And your orators further allege that sometimes defend-
1449 ants herein pretend to have transferred a majority and controlling interest of the stock of said Southern Pacific Railroad Company, Southern Pacific Company of Kentucky, and other railroads mentioned as aforesaid to the Pacific Improvement Company, a defendant herein, in order to more effectually and conveniently carry out such combination and conspiracy in restraint of such trade and commerce and to create such monopoly thereof, but your orators allege that all such transfers of stock from one company to another is utterly void and of no effect.

And your orators further allege that sometimes defendants, in order to accomplish such combination and conspiracy in restraint of trade and commerce, pretend to have elected as boards of directors of said several railroad corporations and transportation companies above named the same persons appointed the board of directors of each such company, and such other persons as will carry out such combination and conspiracy without regard to the rights of the United States and of the public, and without regard to the rights of any of the stockholders of said companies; but your orators allege that all such acts and doings are illegal and void, and in fraud of the rights of the United States and of the public.

1450 Your orators hereby expressly reserve the right to question the corporate existence of any or all of said various rail-

road companies and transportation companies above named, in view of the unlawful acts of said companies and the violation and abuse of the charter powers of said companies.

To the end, therefore, that said defendants may, if they can, show why your orators should not be granted the relief herein sought, and that the matters herein alleged may be determined, and the rights of your orators enforced, your orators bring this suit and require each of the above-named corporations defendant herein to show, upon oath, to the best of their respective knowledge and information:

First. The original or copy of so much of the stock books or book of stockholders or other record of said respective compaines showing the names and residences of the owners and holders of the shares of capital stock of said respective companies, and the number of shares and amount now held by each such owner or holder.

1451 Second. The originals or copies of all contracts, leases, and agreements, of every kind and nature, between each of said companies and any other defendant herein, and between each of said companies and any other person or corporation relating to the operation or control or leasing or pooling of earnings of each such company or line of railroad of such company or any portion thereof.

And your orators further pray that said contract or lease between the Southern Pacific Company and the Southern Pacific Railroad Company, dated February 10, 1885, may be annulled and decreed to be void.

That the said agreement between the Southern Pacific Company of Kentucky and the Central Pacific Railroad Company, dated February 17, 1885, may be annulled and decreed to be void.

That the said pretended articles of amalgamation and consolidation between the Southern Pacific Railroad Company and seventeen other railroad corporations, dated May 4, 1888, may be annulled and decreed to be void.

1452 That the said pretended mortgage or deed of trust of the Southern Pacific Railroad Company to the Central Trust Company of New York may be annulled and decreed to be void.

And your orators further pray that all contracts, leases, agreements, and consolidations by and between the defendants and between each defendant railroad and transportation company and any other defendant railroad and transportation company, and between each defendant railroad and transportation company and any other railroad or transportation company, in anywise relating to the leasing, operation, or control of any thereof, may be annulled and decreed to be void.

And your orators further pray that all transfers of the shares of the capital stock of any of the corporations defendant herein to any other corporation defendant herein be annulled and decreed to be void.

And your orators further pray that by a proper decree of this court each of the railroad and transportation companies defendant herein be required henceforth, through its own corporate officers and employees, to maintain and operate, without favor or discrimination against any person, company, or corporation, or the United States, its said respective railroad or transportation line for railroad
1453 governmental, commercial, and other public purposes, and exercise, by itself alone, all of its respective duties required by its charter and by the laws of the United States and of the State of California.

And your orators further pray that the defendants herein and each of them, their servants, agents, and employees, be perpetually enjoined from in any way combining or conspiring together or with any other person or corporation to restrain trade or commerce between the States or with foreign nations.

And your orators allege and show unto the court that all of the defendants herein are necessary parties to this suit, and they pray that the court may order all of such defendants, whether they reside within this judicial district or not, may be summoned, and that subpœna may be issued to that end.

And may it please your honors to grant unto your orators all such other and further relief as the nature of the case may require and as may seem to your honors to be equitable, and for costs of this suit.

May it please your honors to grant unto your orators a writ of subpœna issuing out of and under the seal of this honorable
1454 court, directed to the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Louisiana Western Railroad Company, a corporation organized and existing under and by vir-

tue of the laws of the State of Louisiana; Morgan's Louisiana and Texas Railroad and Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Louisiana; the Mexican International Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut; the Southern Pacific Railroad Company, a
1455 corporation pretending to be organized in the year 1888 under and by virtue of the laws of the State of California; the San Jose and Almaden Railroad Company, a corporation, the Pajara and Santa Cruz Railroad Company, a corporation, the Monterey Railroad Company, a corporation, the Monterey Extension Railroad Company, a corporation, the Southern Pacific Branch Railway Company, a corporation, the San Pablo and Tulare Railroad Company, a corporation, the San Pablo and Tulare Extension Railroad Company, a corporation, the San Ramon Valley Railroad Company, a corporation, the Stockton and Copperopolis Railroad Company, a corporation, the Stockton and Tulare Railroad Company, a corporation, the San Joaquin Valley and Yosemite Railroad Company, a corporation, the Los Angeles and San Diego Railroad Company, a corporation, the Los Angeles and Independence Railroad Company, a corporation, the Long Beach, Whittier and Los Angeles County Railroad Company, a corporation, the Long Beach Railroad Company, a corporation, the Southern Pacific Railroad Extension Company, a corporation, the Ramona and San Bernardino Railroad Company, a corporation, each organized under and by virtue of the laws of the State of California; the Texas and Pacific Railway Company, a cor-
1456 poration; the Central Pacific Railroad Company, a corporation organized under the laws of the State of California and of the United States; the California and Oregon Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen of and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resi-

dent of State of New York; Thomas H. Hubbard, a citi
1457 and resident of State of New York; A. N. Towne, a citi
and resident of the State of California; J. A. Fillmore, a c
zen and resident of the State of California; D. O. Mills, Lloyd Te
and Geritt L. Lansing, trustees, each a resident and citizen of
State of California; T. H. Goodman, a citizen and resident of
State of California; John A. Muir, a citizen of the State of C
fornia, residing within the southern district of California; and
Burkhalter, a citizen of the State of California, residing within
southern district of California, commanding them, and every
them, on a certain day and under a certain penalty therein to
inserted, personally to be and to appear before your honors in t
honorable court, and then and there to answer all and singular
premises, and to stand to and perform and abide such further or
and decree therein as to your honors shall seem meet.

Your orators expressly waive answer under oath of the ab
defendants, except as to the two interrogatories hereinbefore m
tioned required to be answered by the corporations defendant here
as to which two interrogatories answer is required upon oath.

RICHARD OLNEY,
Attorney General United State
1458 GEORGE J. DENIS,
United States Attorney So. Dist. of California
JOSEPH H. CALL,
Special U. S. Atty.

Upon reading the foregoing petition in equity of the United Stat
and duly considering the same, and it appearing to the court that
of the defendants named in said petition are necessary parties to sa
suit, it is ordered by the court that subpœnas, issued under the se
of this court, be issued, directed to each of said defendants, whi
shall be served wherever said defendants may be found within th
jurisdiction of the United States.

July 16th, 1894.

E. M. Ross,
Judge of the District Court and one of the Judges of the Unit
States Circuit Court for the Southern District of California.

* * * * * * *

1459 (Pursuant to stipulation at page 2556 of the testimony, th
following matter appearing at this point need not be copied a
a part of defendants' Exhibit No. 96:)

Lease dated February 10, 1885, of the Central Pacific Railroa
Company and others to the Southern Pacific Company.

Lease dated February 17, 1885, of the Central Pacific Railroa
Company to the Southern Pacific Company.

Articles of association, incorporation, amalgamation, and consolidation of the Southern Pacific Railroad Company, dated May 4, 1888.

Indenture dated August 25, 1888, between the Southern Pacific Railroad Company, the Southern Pacific Company, and the Central Trust Company of New York.

* * * * * * *

1460 At a stated term, to wit, the January term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court room in the city of Los Angeles, on Saturday, the fourth day of August, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Erskine M. Ross, district judge.

United States, complainant, vs. Southern Pacific Company et al., defendants. No. 609.

In open court, this 4th day of August, 1894, it having been made to appear to the court that the Attorney General of the United States has directed the dismissal of the above-entitled suit without prejudice, and Mr. George J. Denis, United States attorney, and Mr. Joseph H. Call, special assistant United States attorney, having presented such matter to the court, and, in pursuance of such direction of the
1461 Attorney General, moved for such dismissal, it is therefore ordered by the court that the petition in equity in the above-entitled suit be, and the same is hereby, dismissed without prejudice.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California
1462 and of the United States; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of Arizona; the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the Territory of New Mexico; the Galveston, Harrisburg and San Antonio Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Texas; the Texas and New Orleans Railroad Company of 1874, a corporation organized and existing under and by

virtue of the laws of the State of Texas; the Louisiana Weste
Railroad Company, a corporation organized and existing und
and by virtue of the laws of the State of Louisiana; Morgan
Louisiana and Texas Railroad and Steamship Company, a corp
ration organized and existing under and by virtue of the laws
the State of Louisiana; the Mexican International Railro
1463 Company, a corporation organized and existing under an
by virtue of the laws of the State of Connecticut; the South
ern Pacific Railroad Company, a corporation pretending to
organized in the year 1888 under and by virtue of the laws of th
State of California; the San Jose and Almaden Railroad Co
pany, a corporation; the Pajara and Santa Cruz Railroad Co
pany, a corporation; the Monterey Railroad Company, a corpor
tion; the Monterey Extension Railroad Company, a corporatio
the Southern Pacific Branch Railway Company, a corporatio
the San Pablo and Tulare Railroad Company, a corporation; th
San Pablo and Tulare Extension Railroad Company, a corpor
tion; the San Ramon Valley Railroad Company, a corporatio
the Stockton and Copperopolis Railroad Company, a corporatio
the Stockton and Tulare Railroad Company, a corporation; th
San Joaquin Valley and Yosemite Railroad Company, a corpor
tion; the Los Angeles and San Diego Railroad Company,
1464 corporation; the Los Angeles and Independence Railro
Company, a corporation; the Long Beach, Whittier and L
Angeles County Railroad Company, a corporation; the Long Bea
Railroad Company, a corporation; the Southern Pacific Railro
Extension Company, a corporation; the Ramona and San Be
nardino Railroad Company, a corporation; each organized und
and by virtue of the laws of the State of California; the Texas an
Pacific Railway Company, a corporation; the Central Pacific Rai
road Company, a corporation organized under the laws of th
State of California and of the United States; the California an
Oregon Railroad Company, a corporation organized and existi
under and by virtue of the laws of the State of California and o
the United States; the Oregon Central Railroad Company, a co
poration organized and existing under and by virtue of the la
of the State of Oregon and of the United States; the Pacif
Mail Steamship Company, a corporation; the Pacific Im
1465 provement Company, a corporation organized and existi
under and by virtue of the laws of the State of California
the Central Trust Company of New York, a corporation organiz
and existing under and by virtue of the laws of the State of Ne
York; Collis P. Huntington, a citizen and resident of the State
California; Charles F. Crocker, a resident and citizen of the Sta

of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills,
1466 Lloyd Tevis, and Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

The complainants filed their petition in equity herein on the 16th day of July, 1894, which is hereto annexed.

On the 16th day of July, 1894, the court made and entered an order herein that subpœnas issued under the seal of this court be issued directed to each of said defendants, which shall be served wherever said defendants may be found within the jurisdiction of the United States, which order annexed to said petition in equity is hereto annexed.

A subpœna to appear and answer in said cause directed to
1467 all of the defendants was thereafter, on the 17th day of July, 1894, issued returnable on the 3rd day of September, A. D. 1894.

Six alias subpœnas to appear and answer in said cause, each directed to all of the defendants, were thereafter, on the 19th day of July, 1894, issued, returnable on the 3rd day of September.

On the 4th day of August, 1894, the court made and entered herein an order that complainants' petition in equity be dismissed without prejudice, and on said 4th day of August, 1894, a final decree of dismissal without prejudice was accordingly signed, filed, entered, and recorded herein and is hereto annexed.

1468 United States of America. Circuit Court of the United States. Ninth Judicial Circuit, Southern District of California. No. 609.

The United States of America, complainants, vs. The Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, the Southern Pacific

Railroad Company, a corporation organized and existing under
and by virtue of the laws of the State of California and
1469 of the United States, The Southern Pacific Railroad Com-
pany, a corporation organized and existing under and by
virtue of the laws of the Territory of Arizona; the Southern Pa-
cific Railroad Company, a corporation organized and existing
under and by virtue of the laws of the Territory of New Mexico;
the Galveston, Harrisburg and San Antonio Railway Company, a
corporation organized and existing under and by virtue of the
laws of the State of Texas; the Texas and New Orleans Railroad
Company, of 1874, a corporation organized and existing under
and by virtue of the laws of the State of Texas; the Louisiana
Western Railroad Company, a corporation organized and existing
under and by virtue of the laws of the State of Louisiana; Mor-
gan's Louisiana and Texas Railroad and Steamship Company, a
corporation organized and existing under and by virtue of the
laws of the State of Louisiana; the Mexican International
1470 Railroad Company, a corporation organized and existing un-
der and by virtue of the laws of the State of Connecticut; the
Southern Pacific Railroad Company, a corporation pretending to
be organized, in the year 1888, under and by virtue of the laws of
the State of California; the San Jose and Almaden Railroad
Company, a corporation; the Pajara and Santa Cruz Railroad
Company, a corporation; the Monterey Railroad Company, a cor-
poration; the Monterey Extension Railroad Company, a corpora-
tion; the Southern Pacific Branch Railway Company, a corpora-
tion; the San Pablo and Tulare Railroad Company, a corporation;
the San Pablo and Tulare Extension Railroad Company, a cor-
poration; the San Ramon Valley Railroad Company, a corporation;
the Stockton and Copperopolis Railroad Company, a corporation;
the Stockton and Tulare Railroad Company, a corporation; the San
Joaquin Valley and Yosemite Railroad Company, a corporation;
the Los Angeles and San Diego Railroad Company, a corpora-
1471 tion; the Los Angeles and Independence Railroad Company,
a corporation; the Long Beach, Whittier and Los Angeles
County Railroad Company, a corporation; the Long Beach Rail-
road Company, a corporation; the Southern Pacific Railroad Ex-
tension Company, a corporation; the Ramona and San Bernardino
Railroad Company, a corporation; each organized under and by
virtue of the laws of the State of California; the Texas and Pacific
Railway Company, a corporation; the Central Pacific Railroad
Company, a corporation, organized under the laws of the State
of California and of the United States; the California and Oregon

Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California and of the United States; the Oregon Central Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon and of the United States; the Pacific Mail
1472 Steamship Company, a corporation; the Pacific Improvement Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Central Trust Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York; Collis P. Huntington, a citizen and resident of the State of California; Charles F. Crocker, a resident and citizen of the State of California; Edwin F. Searles, a citizen and resident of the State of Massachusetts; Mrs. Leland Stanford, a citizen and resident of the State of California; Mrs. Leland Stanford as executrix of the last will and testament of Leland Stanford, deceased, a citizen and resident of the State of California; Thomas E. Stillman, a citizen and resident of State of New York; Thomas H. Hubbard, a citizen and resident of State of New York; A. N. Towne, a citizen and resident of the State of California; J. A. Fillmore, a citizen and resident of the State of California; D. O. Mills, Lloyd Tevis, and
1473 Gerrit L. Lansing, trustees, each a resident of and citizen of the State of California; T. H. Goodman, a citizen and resident of the State of California; John A. Muir, a citizen of the State of California, residing within the southern district of California; and D. Burkhalter, a citizen of the State of California, residing within the southern district of California, defendants.

In Equity.

Decree.

In open court this 4th day of August, 1894, being a day in the anuary term, A. D. 1894, of said Circuit Court of the United States or the Southern District of California, it having been made to ppear to the court that the Attorney General of the United States as directed the dismissal of the above-entitled suit without preju- ice, and George J. Denis, Esq., United States attorney, and Joseph . Call, Esq., special assistant United States attorney, having pre-
74 sented such matter to the court, and in pursuance of such direction of the Attorney General, moved for such dismissal, and the court having thereupon ordered that said motion be anted:

It is therefore ordered, adjudged, and decreed that the petition i
equity of the said complainants, the United States of America, be, an
the same hereby is, dismissed without prejudice.

Los Angeles, August 4th, 1894.

Ross,
District Judge.

Decree entered and recorded August 4th, 1894.
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Sou
ern District of California. The United States of America vs. T
Southern Pacific Company (a corporation) et al. Decree. Fil
Aug. 4, 1894. Wm. M. Van Dyke, clerk.

1475 Whereupon said petition in equity, order that subpœ
issue, and final decree are hereto annexed; said final dec
being duly signed, filed, and entered herein, pursuant to the practi
of said circuit court.

Attest, etc.:
[SEAL.]
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 609. In the Circuit Court of the United Sta
Ninth Judicial Circuit, for the Southern District of Californ
The United States of America vs. The Southern Pacific Company
corporation) et al. Enrolled papers. Filed August 4th, 1894. W
M. Van Dyke, clerk. By ——, deputy clerk. Recorded. Dec
Register Book No. 1, page 548.

1476 United States of America. Circuit Court of the United Sta
Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Compa
a corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue for service in the above-entitled cause one ori
nal subpœna and seventy certified copies thereof.

Los Angeles, July 17, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Atty.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, So
ern District of California. The United States of America vs.
Southern Pacific Company, a corporation, et al. Praecipe for
pœna and certified copies. Filed July 17, 1894. Wm. M. Van D
clerk.

1477 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a corporation, et al. Clerk's Office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue 6 alias subpœnas for service on defendants residing in other districts than the Southern District of California, and 10 certified copies of each of said alias subpœnas—in all 60 certified copies.

Los Angeles, July 19th, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Atty.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praecipe for 6 alias subpœnas and 10 certified copies of each. Filed July 19, 1894. Wm. M. Van Dyke, clerk.

1478 United States of America. Circuit Court of the United States, Ninth Circuit, Southern District of California.

The United States of America vs. The Southern Pacific Company, a corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue for service in the above-entitled cause thirty-seven (37) certified copies of alias subpœnas issued in said cause.

Los Angeles, July 20th, 1894.

JOSEPH H. CALL,
Spl. Asst. U. S. Attorney.
Per G. J. D., *U. S. Atty.*

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Company, a corporation, et al. Praecipe for thirty-seven (37) certified copies of alias subpœnas. Filed July 20, 1894. Wm. M. Van Dyke, clerk.

1479 United States of America. Circuit Court of the United State
Ninth Circuit, Southern District of California.

United States v. Southern Pacific Company et al. Clerk's offi
No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue copy of bill in equity filed in above cause an
oblige.

JOHN D. BICKNELL.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, South
ern District of California. United States v. Southern Pacific Co
pany et al. Praecipe for copy of bill. Filed Jul. 20, 1894. Wm. M
Van Dyke, clerk.

1480 United States of America. Circuit Court of the United State
Ninth Circuit, Southern District of California.

The United States of America, vs. The Southern Pacific Company,
corporation, et al. Clerk's office. No. 609. Praecipe.

To the clerk of said court:

SIR: Please issue a certified copy of the petition in equity filed i
the above-entitled cause.

Los Angeles, July 21st, 1894.

GEORGE J. DENIS,
U. S. Attorney.

(Endorsed:) No. 609. U. S. Circuit Court, Ninth Circuit, South
ern District of California. The United States of America vs. Th
Southern Pacific Company, a corporation, et al. Praecipe for ce
tified copy of petition in equity. Filed Jul. 21, 1894. Wm. M. Va
Dyke, clerk.

1481 I, Wm. M. Van Dyke, clerk of the Circuit Court of th
United States for the Southern District of California, do her
by certify the foregoing to be a full, true, and correct copy of a
pleadings and papers filed and of all orders made and entered in th
cause entitled The United States of America, complainants, vs. Th
Southern Pacific Company, a corporation, et al., defendants, No. 60
as the same remain on file and of record in my office.

Attest my hand and the seal of said Circuit Court this 25th da
of April, A. D. 1908.

[SEAL.]

WM. M. VAN DYKE, *Clerk,*
By CHAS. N. WILLIAMS, *Deputy.*

1482 DEFENDANTS' EXHIBIT No. 97, MAY 29, 1915.

This lease, made this first day of March, A. D. 1912, by and between Central Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, party of the first part and lessor, and Southern Pacific Company, a corporation duly organized and existing under laws of the State of Kentucky, party of the second part and lessee—

Witnesseth:

That whereas heretofore, on the 17th day of February, 1885, Central Pacific Railroad Company and Southern Pacific Company entered into an agreement of lease, covering the whole of the railroad, equipment, and property then owned by said Central Pacific Railroad Company and situated in the Territory of Utah and States of Nevada and California; and

Whereas said agreement and lease was subsequently changed and modified by four certain written agreements entered into between said Central Pacific Railroad Company and Southern Pacific Company, and dated, respectively, January 1, 1888, December 7,
1483 1893, March 22, 1894, and April 15, 1897, all of which said five agreements are hereby referred to and made a part hereof as fully as if they were herein set forth in full; and

Whereas subsequent to said amendment and agreement of April 15, 1897, Central Pacific Railroad Company sold, assigned, and transferred unto Central Pacific Railway Company, said lessor, all of the railroad, rights, properties, and franchises which were the subject of said five agreements with said Southern Pacific Company; and

Whereas said lessor, as the successor in interest of said Central Pacific Railroad Company, has recognized said five agreements and has continued to receive the benefits arising therefrom to it as the successor in interest of said Central Pacific Railroad Company and all benefits which would have been realized therefrom by said Central Pacific Railroad Company but for said sale to said lessor; and

Whereas the consideration moving and to move from said Southern Pacific Company for the exercise of the rights enjoyed by it under said five agreements made by it with Central Pacific Railroad Company is deemed by this lessor to be ample and adequate for the execution of this agreement and lease and for the rights to be
1484 enjoyed by said Southern Pacific Company under this agreement; and

Whereas before the acquisition of said property of said Central Pacific Railroad Company by said lessor Central Pacific Railroad Company acquired certain property not specifically mentioned and described in said five agreements, but which has been treated by the

parties hereto as falling under and leased by the effect of said five agreements; and

Whereas since the acquisition of said property of said Central Pacific Railroad Company by the said lessor said lessor has acquired certain property connected with and necessary in the conduct of the line of railroad acquired by it from said Central Pacific Railroad Company, which said after-acquired property has also been treated as falling under the terms and effect of said five agreements by said Central Pacific Railroad Company; and

Whereas, in addition to the after-acquired property of said lessor next hereinbefore mentioned, said lessor has acquired by deeds dated February 29, 1912, certain properties from Central California Railway Company, Oregon Eastern Railway Company, Nevada & California Railway Company, Chico & Northern Railroad Company, Fernley & Lassen Railway Company, Goose Lake & Southern
1485 Railway Company, Modoc Northern Railway Company, and Sacramento Southern Railroad Company:

Now, therefore, it is hereby agreed by and between the said lessor and the said lessee that the following properties now owned by said lessor shall be, and are hereby, subjected to the terms, conditions, and provisions of the lease herein by said Southern Pacific Company of the properties formerly owned by Central Pacific Railroad Company, as said lease is evidenced by said five agreements between said Central Pacific Railroad Company and said Southern Pacific Company, and for no other or further consideration, and for the unexpired portion of the term of said lease of said Southern Pacific Company of said properties of said Central Pacific Railroad Company, as evidenced by said five agreements.

The property so hereby leased consists of—

1st. All railroad properties, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts of every kind and nature acquired by said Central Pacific Railroad Company subsequent to the date of said agreement of April 15, 1899.

2nd. All railroads, together with their branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts
1486 of every kind and nature acquired by said Central Pacific Railway Company prior to February 29, 1912.

3rd. The following railroad properties acquired by said Central Pacific Railway Company on February 29, 1912:

All that certain line of railroad formerly belonging to the Central California Railway Company, and extending from a connection with the line of railroad of the Central Pacific Railway Company at Niles, in the county of Alameda, in a general southwesterly direction through Newark, in the county aforesaid, and across San Francisco Bay to a connection with the railroad of the Southern Pacific Rail-

road Company at Redwood City, in the county of San Mateo, all in the State of California, being about 16.316 miles in length, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto.

Also those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, formerly the property of Nevada & California Railway Company, a California corporation, and by it conveyed to Central Pacific Railway Company, a Utah corporation, by deed dated February 29, 1912, which said lines of railroad are described as follows:

1487 (a) A line of railroad extending from a connection with the railroad of the Central Pacific Railway Company at or near Hazen, Churchill County, Nevada, in a general southeasterly direction via Churchill and Tonopah Junction, Nevada, and Owenyo, California, to Keeler, Inyo County, California, through Churchill, Lyon, and Mineral Counties, Nevada, and Mono and Inyo Counties, California, about 288.64 miles.

(b) A line of railroad extending from a connection with line (a), above described, at or near Hazen in a general southeasterly direction to Fallon, all in Churchill County, Nevada, about 15.92 miles.

(c) A line of railroad extending from a connection with line (a), above described, at or near Churchill in a general southwesterly direction to Mound House, all in Lyon County, Nevada, about 26.21 miles.

(d) A line of railroad extending from a connection with line (a), above described, at or near Filben in a general southeasterly direction to Candelaria, all in Mineral County, Nevada, about 5.51 miles.

1488 (e) A line of railroad extending from a connection with line (a), above described, at or near Owenyo, Inyo County, in a general southerly direction, through San Bernardino County, to a connection with the railroad of the Southern Pacific Railroad Company at or near Mojave, Kern County, all in the State of California, about 142.68 miles.

Also all those certain lines of railroad, together with all of the rights, powers, immunities, privileges, franchises, and other property appertaining thereto, which were conveyed to Central Pacific Railway Company by Oregon Eastern Railway Company, an Oregon corporation, by deed dated February 29, 1912, and which said lines of railroad so hereby leased are described as follows:

The constructed line of railroad acquired by the Oregon Eastern Railway Company from the California Northeastern Railway Company extending from a connection with the line of railroad of the Central Pacific Railway Company at or near Weed Station, in Siskiyou County, California, in a general northeasterly direction to

Klamath Falls, Klamath County, Oregon; and also the line of railroad projected and partly constructed by the Oregon Eastern Railway Company extending from a connection with the aforesaid line of railroad of the Oregon Eastern Railway Company at said Klamath Falls in a general northerly direction to Odell, in said
1489 Klamath County, Oregon, and thence in a general northwesterly direction to a connection with the line of railroad of the Oregon & California Railroad Company at or near Natron, Lane County, Oregon.

4th. All railroads, property, branches, depots, station houses, equipments, appurtenances, appendages, and adjuncts, of every kind and nature, now owned and hereafter acquired or constructed by said Central Pacific Railway Company as or in connection with main lines, extensions, or branches, including the extension of said former Oregon Eastern Railway Company's line, and the lines projected by Fernley & Lassen Railway Company, Goose Lake & Southern Railway Company, and Modoc Northern Railway Company.

Nothing in this agreement contained shall be construed to cover the property acquired by the said lessor from Chico & Northern Railroad Company by deed dated February 29, 1912, nor the property acquired by said lessor from Sacramento Southern Railroad Company by deed dated February 29, 1912, nor any extensions or branches of said Chico & Northern Railroad Company or said Sacramento Southern Railroad Company, so long as the properties formerly owned by said two last-mentioned companies are under
1490 lease to corporations other than said lessee.

It is hereby further expressly understood and agreed that this lease shall and will be subordinated in all its terms and conditions to any future mortgage, deed of trust, or instrument evidencing or establishing a lien for indebtedness made or executed by the lessor upon any or all of the properties hereby leased; and in the event of such mortgage, deed of trust, or lien being foreclosed in whole or in part, this lease shall have no priority with respect to the rights acquired under such instrument creating or evidencing such lien, or under such foreclosure.

It is further agreed that the automatic extension of this lease to railroad properties hereafter constructed, including said lines and extensions projected by said Oregon Eastern Railway Company, Modoc Northern Railway Company, Goose Lake & Southern Railway Company, and Fernley & Lassen Railway Company, shall be effective only upon the completion of such after-constructed extensions, lines or branches, ready for operation, and as and at the time each new construction, including the ones above mentioned, is ready for operation.

1491 It is hereby further agreed that the lease now subsisting between Nevada & California Railway Company and Southern Pacific Company, dated July 1, 1909, be, and the same is hereby, cancelled.

In witness whereof each of the parties hereto has caused these presents to be signed by its president or a vice president and its corporate seal to be hereunto affixed, attested by its secretary or assistant secretary, all as of the day and year first above written.

[Official seal.] CENTRAL PACIFIC RAILWAY COMPANY,
By WM. F. HERRIN, *President.*

Attest:
G. I. KING, *Secretary.*

[Official seal.] SOUTHERN PACIFIC COMPANY,
By W. SPROULE, *President.*

Attest:
W. F. INGRAM, *Assistant Secretary.*

1492 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared W. Sproule and W. F. Ingram, known to me to be the president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1493 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and G. L. King, known to me to be the president and secretary, respectively, of the Central

Pacific Railway Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the city and county of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1494 Consent of stockholders of Central Pacific Railway Company to lease of corporate property to Southern Pacific Company.

Whereas the board of directors of Central Pacific Railway Company have this day leased, demised, and let unto Southern Pacific Company, a corporation, lines of railroad of said Central Pacific Railway Company described in and on the terms stated by a written lease thereof, authorized and approved by the directors of said Central Pacific Railway Company on this day, as more fully appears and by the proceedings of said directors, evidenced by the minutes of their meeting this day held:

Now, therefore, the undersigned stockholders, holding of record more than two-thirds of the issued capital stock of Central Pacific Railway Company, do hereby expressly ratify and confirm all and every action of said board of directors in respect to said lease, the leasing of said property, and the authorization therefor, and do hereby consent to the execution and delivery of said lease.

Dated at San Francisco, California, this 16th day of March, 19[illegible]

1495 *Names of stockholders and no. of shares.*

Common stock:
Wm. F. Herrin----------
E. E. Calvin----------
G. L. King----------
William Hood----------
C. H. Redington----------
W. R. Scott----------
E. O. McCormick----------
Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary)---------- 62[illegible]

Preferred stock:
Southern Pacific Company (by Wm. F. Herrin, vice president; W. F. Ingram, assistant secretary)---------- 17[illegible]

1496 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 16th day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and E. E. Calvin, G. L. King and William Hood, C. H. Redington, W. R. Scott, and E. O. McCormick, known to me to be the persons described in, whose names are subscribed to, and who executed the annexed instrument, and they acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the said city and county of San Francisco, the day and year last above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the city and county of San Francisco, State of California.

My commission expires Feby. 25th, 1914.

1497 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixteenth day of March, in the year one thousand nine hundred and twelve, before me, E. B. Ryan, a notary public in and for the said city and county, residing therein, duly commissioned and sworn, personally appeared Wm. F. Herrin and W. F. Ingram, known to me to be the vice president and assistant secretary, respectively, of the Southern Pacific Company, the corporation described in and that executed the within instrument, and also known to me to be the persons who executed said instrument on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in the city and county of San Francisco, the day and year in this certificate first above written.

[Notarial seal.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25th, 1914.

1498 DEFENDANTS' EXHIBIT No. 98, MAY 29, 1915.

Southern Pacific Company to Union Trust Company of New York, trustee.

Four per cent mortgage (Central Pacific stock collateral). Dated August 1st, 1899.

1499 NEW YORK, *May 21, 1915.*

I, John V. B. Thayer, vice president of the Union Trust Company of New York, do hereby certify that this is a true copy of the original mortgage, dated August 1st, 1899, of the Southern Pacific Company to Union Trust Company of New York, trustee, to secure an issue of bonds known as Southern Pacific Company four per cent gold bonds (Central Pacific stock collateral).

JOHN V. B. THAYER.

1500 [$14,409.25 internal-revenue stamps affixed and cancelled.]

This indenture, made the first day of August, A. D. 1899, by and between the Southern Pacific Company, a corporation created, organized, and existing under and by virtue of the laws of the State of Kentucky, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under and by virtue of the laws of the State of New York, party of the second part.

Witnesseth:

Whereas the party of the first part, in pursuance of its corporate powers, has acquired, and now holds, the preferred and common stock hereinafter described of the Central Pacific Railway Company, a corporation created, organized, and existing under the laws of the State of Utah; and

Whereas the party of the first part is about to issue (to the amount and within the limits hereinafter prescribed on that behalf) its four per cent gold bonds, to be designated as four per cent gold bonds—Central Pacific stock collateral—in the general forms following, that is to say:

1501 [Form of coupon bond.]

No. $1,000 (or $500)

United States of America. Southern Pacific Company. Four per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company, for value received, promises to pay to the bearer or, if regis-

tered, to the registered holder, of this bond, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company, in the city of New York, one thousand (or five hundred) dollars, gold coin of the United States of the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent per annum from August 1, 1899, payable semi-annually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each year, but only upon presentation and surrender, as they severally mature, of the
1502 coupons therefor annexed hereto.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay, or to retain therefrom, under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated April 1st, 1899, executed by the Southern Pacific Com-
1503 pany to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company, pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond shall pass by delivery unless registered in the owner's name on the books of the Southern Pacific Company at its office or agency in the city of New York, such registry being noted on the bond by the bond registrar of the Southern Pacific Company. After such registration no transfer shall be valid unless made on the company's books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be

restored; but this bond may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

1504 The holder may also, at his option, surrender for cancellation this bond with the coupons for future interest thereon in exchange for a registered bond without coupons, as provided in said mortgage or deed of trust.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the trustee under said mortgage or deed of trust.

In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents and its corporate seal to be hereunto affixed, and to be attested by its secretary or an assistant secretary, and coupons for said interest with the engraved signature of its treasurer to be attached hereto this first day of August, 1899.

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. S.] SOUTHERN PACIFIC COMPANY,

By ——— ———,

Vice President.

Attest:

By ——— ———,

Assistant Secretary.

1505 [Form of interest coupon.]

No. ——. $20 (or $

On the first day of the Southern Pacific Company will pay to bearer, at its office or agency in the city of New York, two (or ten) dollars, United States gold coin of the present standard weight and fineness, without deduction for taxes, being six months' interest then due on its four per cent gold bond—Central Pacific stock collateral—No. ——.

——— ———,

Treasurer.

1506 [Form of registered bond.]

No. $

United States of America. Southern Pacific Company four per cent gold bond, Central Pacific stock collateral.

Know all men by these presents that the Southern Pacific Company for value received promises to pay to or registered assigns the sum of dollars, gold coin of the United States of

present standard of weight and fineness, on the first day of August, nineteen hundred and forty-nine, at the office or agency of the Southern Pacific Company in the city of New York, and to pay interest thereon at the rate of four per cent per annum from the first day of June or December next preceding the date hereof, payable semiannually at the said office or agency, in like gold coin, on the first day of June and the first day of December in each
1507 year, until the payment of said principal sum.

The right is reserved to the Southern Pacific Company and its successors, at its or their option, to redeem this bond at par and accrued interest thereon, upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned, and the interest upon this bond shall cease at the time for which the same shall have been so called for redemption, as provided in said mortgage or deed of trust.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Southern Pacific Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State or county or municipality therein.

This bond is one of a series of four per cent gold bonds—Central Pacific stock collateral—(coupon and registered) of the Southern Pacific Company, issued and to be issued for an aggregate principal sum not exceeding thirty-six million eight hundred and nineteen thousand dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of
1508 trust dated August 1st, 1899, executed by the Southern Pacific Company to the Union Trust Company of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company pledged or to be pledged by said mortgage or deed of trust, to which reference is hereby made for a statement of the stock so mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof in person or by attorney duly authorized on the books of the Southern Pacific Company at its office or agency in the city of New York upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor, as provided in said mortgage or deed of trust, and on payment, if the Southern Pacific Company shall so require, of the charge therein provided for.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the trustee under said mortgage or deed of trust.

1509 In witness whereof the Southern Pacific Company has caused these presents to be signed by its president or one of its vice presidents and its corporate seal to be hereunto affixed and to be attested by its secretary or an assistant secretary this day of .

(The mortgage or deed of trust securing this bond has been duly stamped according to law.)

[L. S.] SOUTHERN PACIFIC COMPANY,

By

Vice President.

Attest:

Assistant Secretary.

[Form of trustee's certificate.]

This bond is one of a series of bonds described in the within-mentioned mortgage or deed of trust executed by the Southern Pacific Company to the undersigned.

UNION TRUST COMPANY OF NEW YORK,
Trustee.

By

Vice President.

1510 Whereas the said bonds of the party of the first part so to be issued as aforesaid are to be secured by the pledge and deposit with the trustee hereunder of the said preferred and common stock of the Central Pacific Railway Company and of such preferred and common stock of the last-mentioned company as may be hereafter deposited hereunder with the said trustee; and

Whereas at a meeting of the board of directors of the party of the first part, duly called, and held on the nineteenth day of September 1899, the following resolutions were adopted, that is to say:

Resolved, That for the corporate purposes of the company this company issue its bonds, to be known as "Four per cent gold bonds—Central Pacific stock collateral"—to an amount which shall not in any event exceed in the aggregate the principal sum of $36,819,000 at any one time outstanding. Such bonds shall bear date August 1, 1899, in the case of coupon bonds and of the time of their issue in the case of registered bonds, shall become and be payable on the first day of August, 1949, in gold coin of the United States of the present standard of weight and fineness, and shall bear interest

1511 at a rate not exceeding four per centum per annum, payable semiannually, in like gold coin, on the first day of June and the first day of December in each year, but shall be subject to the

right on behalf of the company and its successors, at its and their option, to redeem the same at par and accrued interest thereon upon giving previous notice of its or their intention so to do by publication as prescribed in the mortgage or deed of trust hereinafter mentioned. Said bonds shall be issued either as coupon or registered bonds. The coupon bonds shall be for the principal sum of one thousand dollars or five hundred dollars each, and shall give to the holders the right to register the principal thereof, and also the right to convert the same into fully registered bonds. The registered bonds without coupons shall be each for the principal sum of one thousand dollars, or such multiples thereof as the company by resolution of its board of directors may from time to time prescribe, and may be issued originally either as registered bonds or in exchange for coupon bonds for an equivalent sum. Such bonds, whether coupon bonds or registered bonds, shall be issued, as shall be determined by the action of the board of directors or the executive committee of the company, at such times and to such amounts as the purposes for which they are
512 to be issued may require. When issued such bonds shall be signed by the president or any vice president of the company, and the corporate seal shall be thereunto affixed and attested by the secretary or any assistant secretary. In case the officers who shall have signed and sealed any such bonds shall cease to be officers of the company before the bonds so signed and sealed shall have been actually issued, certified, and delivered, such bonds may, nevertheless, be adopted and used by the company, and may be issued, certified, and delivered as though the persons who signed and sealed such bonds had not ceased to be officers of the company. There shall be attached to the coupon bonds coupons for the interest to grow due thereon, authenticated by the engraved signature of the treasurer or of any future treasurer of the company; and the company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that such person may have ceased to be such treasurer when such bonds shall have been actually issued, certified, and delivered.

Resolved further, That in order to secure the payment of said bonds issued and to be issued, with interest thereon, this com-
513 pany execute a mortgage or deed of trust to the Union Trust Company of New York, a corporation of the State of New York, as trustee, covering the preferred and common stock of the Central Pacific Railway Company described in the printed form of mortgage now submitted to this board.

Resolved further, That the said printed form of mortgage now submitted to the board and the forms of bonds embodied therein be, and the same are hereby, approved, and that the president or any vice president and the secretary or any assistant secretary be, and

they are hereby, authorized to execute and deliver the same on b
half of the company under its corporate seal.

Now, therefore the said parties hereto, in consideration of th
premises and of one dollar to each by the other in hand paid at
before the ensealing and delivery of these presents, the recei
whereof is hereby acknowledged, and for other good and valuabl
considerations, do each covenant, promise, and agree, for themselv
and their respective successors and assigns, in manner and form fo
lowing; that is to say:

First. The said party of the first part has simultaneously with th
execution hereof pledged and deposited with the said party
1514 the second part certificates duly issued to and in the name
the party of the first part or its nominees, and assigned by
or them in blank, with irrevocable power to transfer the same, re
resenting preferred and common stock of the Central Pacific Railw
Company to the following amounts, respectively; that is to say:

1. Preferred stock to the amount at its face value of twelve m
lion dollars ($12,000,000).

2. Common stock to the amount, at its face value, of sixty-sev
million two hundred and seventy-four thousand two hundred dolla
($67,274,200).

The said certificates so pledged and deposited with the party of t
second part are to be held by the said party of the second part
its successors in this trust, subject to the reservations, terms, and co
ditions hereinafter expressed, upon trust for the benefit of the se
eral persons and corporations who shall be or become holders, respe
tively, of any of the bonds issued or to be issued hereunder by t
party of the first part or its successors to secure to such holde
equally and without preference of one over another, by reason
priority of time of issue thereof or otherwise, the due and punctu
payment of the said bonds and the interest thereon as it sh
1515 become due, according to the tenor and effect of the said bon
and the interest coupons attached thereto.

Second. The said party of the first part further covenants a
agress that it will, and its successors and assigns shall, in like manne
from time to time, pledge and deposit with the said party of the s
ond part, or its successors in this trust, further certificates issued
and in the name of the party of the first part, or its successors or
or their nominees, and assigned by it or them in blank with ir
vocable power to transfer the same, representing preferred stock
the said Central Pacific Railway Company, not exceeding in the
gregate eight million dollars ($8,000,000), when the same shall ha
been delivered to the party of the first part, or its successors
assigns, from time to time, in consideration of the issue hereunder
said party of the first part, or its successors, of bonds not exceed

the like amount, as provided in clauses 2 and 3 of article third of this indenture, such deposits to be made promptly from time to time as soon as practicable after the acquisition of such preferred stock by the party of the first part, or its successors or assigns, the same to be held by the said party of the second part and its suc-
1516 cessors in this trust for the uses and purposes and upon the trusts and subject to the reservations, terms, and conditions set forth and declared in this indenture.

Third. The party of the second part and its successors in the trust hereby created is and are to authenticate and certify as issued hereunder, and deliver to the party of the first part, its successors or assigns, or upon its or their order, bonds of the party of the first part or its successors, in the forms or substantially the forms above prescribed to the amounts and upon the conditions hereinafter stated, and not otherwise, that is to say:

1. Bonds to the amount, at their face value, of twenty-eight million eight hundred and eighteen thousand five hundred dollars ($28,818,500), simultaneously with the deposit with the trustee hereunder of the certificates referred to in article first hereof, representing twelve million dollars ($12,000,000), par value, preferred stock, and sixty-seven million two hundred and seventy-four thousand two hundred dollars ($67,274,200) par value, common stock, of the said Central Pacific Railway Company.

2. Bonds to the further amount of three million dollars
1517 ($3,000,000), at their face value, to be reserved by the party of the first part, or its successors, (a) to be used to provide additional funds, if required, for the payment from time to time of any of the twenty promissory notes for $2,940,635.78 each, heretofore delivered to the United States under a settlement agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899; or (b) when such notes shall have been paid, to be applied at their market value to provide for payment for, or the reimbursement of, the cost of betterments and additions to the properties of the Central Pacific Railway Company, covered by the mortgages securing its first refunding and three and one-half per cent mortgage bonds, as such cost shall be certified by the president or vice president and chief engineer of the Central Pacific Railway Company.

3. Bonds to the further amount of five million dollars ($5,000,000), at their face value, to be reserved by the party of the first part, or its successors, to be applied at their market value to provide for payment for, or reimbursement of, the cost of betterments and additions to the said properties of the Central Pacific Railway Company, as such cost shall be certified by the president or vice president

1518 and chief engineer of the said railway company; but the
amount of such additional bonds so to be applied under claus
3 hereof shall not at any time exceed at their face value two hundred
thousand dollars per annum from the date of this indenture.

When and as any such bonds are issued by said party of the firs
part, or its successors, under clause 2 or 3 hereof, the like amount
at their par value of preferred stock of the Central Pacific Railway
Company are to be received by it or them in consideration therefor
and are to be forthwith deposited with the trustee hereunder, to be
held by the said trustee for the uses and purposes and upon the
trusts and subject to the reservations, terms, and conditions set
forth and declared in this indenture.

The party of the first part hereby covenants and agrees with the
party of the second part and with the holders of the bonds intended
to be secured by this indenture that the said bonds and their pro-
ceeds shall be used and applied only to the objects and purposes
above specified.

All the above bonds authenticated in compliance with the pro-
visions of this indenture shall be equally secured hereby with-
1519 out regard to the time or times when the said bonds shall have
been actually issued or otherwise, and without any discrim-
ination or preference of one over another.

Any of the foregoing bonds from time to time, at the option of
the party of the first part or its successors, may be executed, au-
thenticated, and certified originally either as coupon bonds or as reg-
istered bonds, but the aggregate amount of the bonds issued and out-
standing under this indenture shall never at any one time exceed
the principal sum of thirty-six million eight hundred and nineteen
thousand dollars ($36,819,000).

Only such bonds as shall bear thereon endorsed a certificate of the
trustee hereunder by it duly executed under the hand of its president
or a vice president thereof shall be secured by this indenture or shall
be entitled to any lien or benefit thereunder, and every such certificate
of the said trustee upon any bond executed in behalf of the party
of the first part, or its successors, shall be conclusive evidence that
the bond so certified has been duly issued hereunder and is entitled to
the benefit of the trust hereby created.

Before certifying or delivering any coupon bond hereby secured
the trustee hereunder shall cut off and cancel all coupons
1520 thereof then matured, and the said Trustee shall not certify
or deliver any registered bond bearing interest from any date
more than six months prior to such certification or delivery.

Whenever any coupon bond or bonds issued under and secured
by this indenture, together with all unmatured coupons thereto be-
longing, shall be surrendered for exchange for registered bonds,

party of the first part or its successors shall issue, and the said trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount of registered bonds without coupons. Such registered bonds shall be for $1,000 or for such multiples thereof as, from time to time, the party of the first part or its successors, may prescribe, and shall bear interest at the same rate as the surrendered coupon bonds and from the date of the last matured coupon thereof. In every case of such exchange the said trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the party of the first part or its successors.

Whenever any such registered bond shall be surrendered for transfer, the party of the first part or its successors shall issue, and the said trustee shall certify and deliver, to the transferee, upon
1521 surrender and cancellation of the bond or bonds transferred, a like amount of new registered bonds for $1,000, or for such multiples of $1,000 as the party of the first part or its successors, from time to time, may authorize, and bearing interest at the same rate as the surrendered registered bond or bonds, but no registered bond may be converted into a coupon bond.

For any exchange of coupon bonds for registered bonds, and for any transfer of registered bonds without coupons, the party of the first part or its successors, at its or their option, may make a charge not exceeding one dollar for each new registered bond issued upon such exchange or transfer.

Upon surrender by the party of the first part, or its successors, to the trustee for cancellation of any coupon or registered bonds issued hereunder and secured hereby, with a request that bonds be issued hereunder for the like amount at a reduced rate of interest, the trustee shall certify and deliver to the party of the first part or its successors bonds issued hereunder and secured hereby to the amount at their face value of the bonds so surrendered, and carrying interest at such lower rate of interest than four per cent per annum, payable semiannually, as the party of the first part or its successors
1522 may prescribe in that behalf, and the new bonds so certified and delivered shall be entitled to share in the security of these presents with the like effect as if they had been bonds originally issued under this mortgage.

In case any coupon bond issued hereunder, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed the party of the first part or its successors, in its or their discretion, may issue, and thereupon the said trustee shall certify and deliver a new bond of like tenor and date, bearing the same distinguishing number, in exchange and substitution for and upon cancellation of the mutilated coupon bond and its coupons or the mutilated registered bond, or in lieu of and substitution for the

coupon bond and its coupons or the registered bond so destroyed upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons or of such registered bond and upon receipt also of satisfactory indemnity.

Fourth. The party of the first part and its successors is and are to have the right, at its or their option, to redeem the bonds issued hereunder at par and accrued interest thereon upon giving
1523 previous notice of its or their intention so to do, by publication at least twice a month for three successive months in one newspaper in New York and one newspaper in London, England, the first such publication to be at least six months prior to the date at which such bonds are called for redemption, and the interest upon such bonds shall cease at the time for which the same shall have been so called for redemption, unless the party of the first part or its successors shall thereafter make default in the payment of said bonds at the rate above prescribed upon presentation thereof for that purpose.

Fifth. The party of the first part also covenants with the party of the second part that the party of the first part, its successors or assigns, shall and will punctually pay to the holders of the bonds aforesaid intended to be secured hereby the interest thereon when and as the same shall become due and payable according to the terms and conditions in the said bonds and coupons set forth and contained, and shall and will also, when the principal sums of the said bonds shall according to the provisions thereof become due and payable, fully and entirely pay, satisfy, and discharge the whole of said bonds, both principal and interest.

Sixth. Until default shall be made in the payment of the
1524 principal or interest of the bonds authenticated hereinunder and intended to be secured hereby, or some of them, the party of the second part, and its successors in this trust, shall permit and suffer the party of the first part, its successors and assigns, to retain all the authority, powers, rights, and privileges belonging or incident to the stock hereby pledged or agreed to be pledged or to the ownership thereof not inconsistent with the rights of the party of the second part, or its successors in this trust, as herein expressed.

And it is likewise an express condition of this indenture that until default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, or some of them, the preferred and common stock of the said Central Pacific Railway Company pledged by the party of the first part, or its successors, with the party of the second part, or its successors, in trust upon the trusts herein declared, shall remain or be registered in the name of the said party of the first part, or its successors or its or their nominees or assigns

provided the certificates representing such stock assigned in blank, with irrevccable power of transfer executed by the registered
1525 owners, shall be deposited with the party of the second part, or its successors in this trust, under and subject to the terms and conditions of this trust, the party of the first part, or other registered owners of such deposited stocks being entitled to have the same transferred upon the books of the Central Pacific Railway Company to such persons or parties as may be designated by it or them, provided arrangements satisfactory to the party of the second part, or its successors in this trust, are made for securing the deposit hereunder with the party of the second part, or its successors in this trust, of the new certificates representing such transferred stocks assigned in blank, with irrevocable power of transfer executed by the registered owner or owners; and the person or persons, corporation or corporations, in whose name the said stock shall be registered shall have and enjoy all the rights, powers, and privileges of a stockholder with respect to the said shares of stock, including the voting power thereon, and the right to collect and receive any and all amounts which may from time to time be paid on account of dividends upon either class of the said stock or otherwise in respect thereof, except by way of distribution of capital, and shall be entitled to take any and all proceedings which the party of the
1526 first part, or its successors or assigns, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

Seventh. The party of the first part further covenants that, while the bonds issued hereunder remain outstanding, neither the preferred nor the common stock of the Central Pacific Railway Company shall be increased beyond twenty million dollars ($20,000,000) par value of preferred stock and sixty-seven million two hundred and seventy-five thousand five hundred dollars ($67,275,500) par value of common stock, unless arrangements have been made for depositing hereunder (simultaneously with the issue of such increase of such stock) the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered hereby was of the whole outstanding stock of such class as it existed before such increase, and the said Central Pacific Railway Company shall not be merged or consolidated with any other railroad company without the consent of the holders of a majority in amount of the bonds issued hereunder and then outstanding.

Eighth. While any of the bonds issued under this indenture
1527 are outstanding no new mortgage other than the first refunding mortgage and three and one-half per cent mortgage of the Central Pacific Railway Company dated August 1st, 1899, shall be made of the properties covered by such mortgages (except to refund

the first refunding mortgage bonds and three and one-half per cent mortgage bonds secured thereby or either of such issues), and the party of the first part agrees that, while any of the bonds issued under this indenture are outstanding, it will not, nor shall its successors or assigns, vote the stocks pledged hereunder or permit the same to be voted in favor of any new mortgage except as aforesaid, nor as owner of such deposited stocks will it assent thereto.

Ninth. The existing lease of the properties of the Central Pacific Railway Company to the party of the first part shall terminate in case the pledged stocks above referred to shall be sold under the provisions of this indenture in reference to the sale of such stocks in consequence of default of the party of the first part hereunder; and while any bonds are outstanding hereunder the party of the first part will not as the owner of such pledged stocks vote for or assent to

any other lease of such properties, unless such lease shall have

1528 been approved by the holders of a majority in amount of the bonds outstanding hereunder, or shall contain a provision terminating the same in case such pledged stocks shall be so sold.

Tenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event, and while such default shall thereafter continue, the party of the second part, or its successors in this trust, shall be entitled to transfer the deposited stock into its own name and to receive (when and as the same shall be paid) all amounts which may from time to time be paid on account of dividends upon the stock pledged hereunder or otherwise in respect thereof, and shall be entitled to exercise the voting power thereon, and otherwise exercise the rights, powers, and privileges of a holder of such stock and shall be entitled to take any and all proceedings which the party of the second part, or its successors in this trust, may deem requisite for the protection of its or their rights and interests under or in respect of the said stock.

1529 Eleventh. In case default shall be made in the payment of the principal or interest of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, or in case of default under the provisions of article eighth hereof, then and in that event the party of the second part and its successors in this trust, is and are hereby authorized and empowered, at the request of the holders of one-fourth in amount of the said bonds then outstanding, to resort to any proceedings, legal or equitable, that may be deemed necessary or expedient for the enforcement of the lien hereby created upon all or any part of the preferred or common stock pledged under the provisions of this

trust. All moneys collected under the provisions of this or the preceding article of this indenture shall be applied in the manner provided in the next article of this indenture.

Twelfth. It shall also be lawful for the said party of the second part and its successors in this trust, in case default shall be made as aforesaid by the party of the first part and continued as aforesaid, upon like request of the holders of one-fourth in amount of the bonds issued and authenticated under the provisions of this indenture then outstanding (such default still continuing), to sell
1530 at public sale in the city of New York (after advertising notice of the time and place of such sale not less than once a week for six consecutive weeks in one or more daily newspapers published in the said city of New York) all the stocks hereby pledged which shall then be in its or their possession as trustee or trustees under the provisions hereof, or such portions thereof as may be necessary to pay the outstanding bonds of the party of the first part or its successors secured hereby, and all arrears of interest thereon, and all expenses attending as well the execution of this trust as the said sale, and any other costs and charges that may be necessarily incurred in consequence of such sale; such sale to be made in such lots or parcels as the party of the second part, or its successors in trust, may deem most beneficial. The party of the second part, or its successors in trust, may adjourn the sale of the whole or any part of the said stock from time to time in its or their discretion, and may make sale thereof at such adjourned date without further advertisement, and may make all necessary deliveries and transfers to the purchaser or purchasers, discharged from all and every the trusts hereby created, and without liability on the part of the pur-
1531 chaser or purchasers to see to the application of the purchase money.

After deducting from the proceeds of such sale or sales the costs and expenses thereof, or which may have been necessarily incurred thereby, and sufficient moneys to indemnify itself or themselves for all advances which may have been made, and against all liabilities which may have been incurred, in the execution of this trust, as well as a reasonable compensation for its or their own services, the said party of the second part, or its successors in the trust, shall apply the residue of the said proceeds, or so much thereof as may be necessary, to or towards the payment and discharge, with pro rata equality, of the principal and interest which shall then be due and unpaid upon all and singular of the said bonds issued by the party of the first part or its successors hereunder, and then remaining outstanding and unpaid, and without preference of interest over principal or principal over interest, and so that no priority or

preference shall be given to any bond which shall have been issued under and be secured by this indenture, and be then due and outstanding over any other bond so issued and secured; and if any surplus of such moneys shall thereafter remain, then the said
1532 party of the second part, or its successors in trust, shall pay over such balance of the trust funds in its or their hands, and transfer and assign any residue of the trust estate or property unto the said party of the first part, its successors or assigns. Any and every sale of preferred or common stock made pursuant to the foregoing power shall absolutely bar and foreclose all right, interest, and equity of redemption of the party of the first part, or its successors or assigns, in or to the stock so sold; and it is hereby expressly understood and agreed that in the event of any sale of the pledged stock pursuant to the provisions of this article, the party of the second part, or its successors in this trust, may declare the principal of all the bonds issued by the party of the first part, or its successors hereunder, and then unpaid and outstanding, to be due and payable forthwith, and thereupon the same shall become immediately due and payable, anything in the said bonds contained to the contrary thereof notwithstanding. And if it shall occur that after the exhaustion of all the stock hereby pledged as a security for the payment of the said bonds, or which shall be subject to the provisions of this trust, there shall be a deficiency in the payment of
1533 the principal or interest due on any of the bonds issued and authenticated under this indenture, then the party of the first part and its successors shall remain liable for the payment of such deficiency, and the said party of the second part and its successors in this trust is, and are hereby, authorized to take such further proceedings in law or equity as it or they may be advised to recover the same.

Thirteenth. In case default shall be made in the payment of the principal or interest of any of the bonds authenticated hereunder and intended to be secured hereby, and such default shall continue for six months, then and in that event, upon the written request of the holders of one-fourth in amount of the bonds hereby secured and then outstanding, the party of the second part, by notice in writing delivered to the party of the first part, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately; and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that at any time after the principal of said bonds shall have been so declared to be due and payable and prior to the sale of the stock
1534 pledged hereunder the holders of a majority in amount of the

bonds hereby secured and then outstanding, by written notice to the party of the first part and to the party of the second part, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

Fourteenth. The party of the first part from time to time will pay and discharge all taxes, assessments, and governmental charges lawfully imposed upon the shares of stock at any time pledged hereunder and subject to the lien hereof, or upon any part thereof, or upon the income and profits thereof, the lien of which upon such shares would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved in respect of such shares; provided, however, that nothing contained in this section shall require the party of the first part to pay any such tax, assessment, or charge so long as the party of the first part in good faith shall contest the validity thereof.

Fifteenth. The party of the first part agrees to use its best efforts to maintain and preserve the corporate existence of the Central
1535 Pacific Railway Company; and for such purposes it may from time to time sell, assign, transfer, and deliver so many shares of the stock of said company as may be necessary to qualify persons to act as directors of, or in any other official relation to, said company.

Sixteenth. In case of dissolution of the party of the first part or the sale of its properties or reorganization of its affairs the deposited stocks may be dealt with and disposed of in such manner as may be agreed upon by the party of the first part, its successors or assigns, and the trustee hereunder, or by the party of the first part, its successors or assigns, and the holders of a majority in amount of the bonds then outstanding hereunder and secured hereby; but all fruits and proceeds of such dealing with or disposition of said deposited stocks shall be held by the Trustee hereunder subject to the terms and conditions hereof; provided, however, that any assessments, contributions, or cash payments made in respect of such deposited stocks by or on behalf of the party of the first part, its successors or assigns, or the trustee hereunder or the holders of such bonds shall constitute a first charge prior to the lien of these presents upon such fruits or proceeds, and shall be forthwith repaid therefrom
1536 or from the sale of such portions thereof as may be requisite to provide for such repayment.

Seventeenth. In case of the resignation, insolvency, neglect, or incapacity to act of the said party of the second part or any successor in this trust the holders of a majority in interest of the bonds issued hereunder then outstanding may select or designate some other trust company or corporation authorized to hold and execute trusts of this nature, and the company or corporation so selected shall be thereupon entitled to receive and hold the pledged stocks belonging to this

trust upon the trusts herein mentioned and declared and shall have all the rights and powers and be subject to all the duties expressed in this indenture. In case of a failure of the bondholders to fill such vacancy in the manner above prescribed the president for the time being of the party of the first part or its successors shall make a temporary appointment for such vacancy, which shall continue until the holders of a majority in interest of said outstanding bonds shall have designated a new trustee to act hereunder. When holders of a majority in interest of the said outstanding bonds shall by an instrument in writing executed by themselves or their attorneys in fact

designate a new trustee under this indenture the estates,
1537 powers, rights, and privileges of any trustee hereunder under

any such temporary appointment shall immediately cease and determine and be transferred to and vest in the new trustee so designated, and such temporary trustee shall, upon request of the new trustee, execute and deliver any and all such assignments, transfers, or other instruments in writing as shall be requisite therefor, and thereafter such new trustee shall hold such estates, rights, powers, and privileges with like effect as if it had been designated as the party of the second part hereunder.

Eighteenth. Any and all costs, charges, and expenses incurred in or in respect of, or in connection with the execution of this trust by or on behalf of the said party of the second part, or its successors in this trust, or for which the said party of the second part, or its successors in this trust, shall be or become in anywise liable or responsible, shall be borne and defrayed by the said party of the first part, and said party of the first part undertakes, covenants, and agrees, for itself and its successors and assigns, that it and they will, upon demand, pay all such costs, charges, and expenses, including therein

just and reasonable compensation to said party of the second
1538 part, or its successors in this trust, for such services as it or

they may be called upon to render in or about or in respect of the trust hereby created.

Nineteenth. The party of the second part hereby accepts the trust created and declared by this indenture, and shall and will, at the request of the party of the first part or its successors, in accordance with the provisions of article third hereof, but not otherwise, certify the bonds intended to be hereby secured, and deliver the same to the party of the first part or its successors. But it is hereby expressly understood and agreed that neither the said party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever by reason of permitting or allowing the said party of the first part, or its successors or assigns, to exercise the rights, privileges, and authority hereinbefore reserved to said party of the first part, its successors or assigns, in regard to

stocks that now are, or may under the terms hereof become, subject hereto; and it is hereby further provided that neither the party of the second part nor any successor in the trust hereby created shall incur any responsibility or liability whatever, except for the
1539 negligent, willful, or intentional breaches by such trustee of the trust herein expressed and contained; and neither the said party of the second part nor any successor in this trust shall at any time be bound or required to undertake any proceeding at law or in equity, or otherwise, for the protection of the bondholders, involving expenditures of, or liability for, the payment of money, unless, if it shall see fit to require it, adequate indemnity against such liability or outlay be furnished by the bondholders asking such action or proceeding.

Twentieth. The said party of the first part shall from time to time execute any further instruments or assurances necessary or requisite to carry out the purposes hereof.

Twenty-first. Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor, and may be signed and executed by such bondholders in person or by agents appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture if made in the following manner:

1540 The fact and date of the execution by any person of any such request or other instrument of writing may be proved by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the city of New York that the person signing such request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution. The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, or bankers, or other depositary, wherever situated, if such certificate shall be deemed by the trustee to be satisfactory, showing that at the time therein mentioned such person had on deposit with such depositary the bonds therein described. The ownership of registered bonds, or of registered bonds without coupons, shall be proved by the company's registers of such bonds. Such proof shall be *prima facie* evidence in favor of the trustee with regard to any action by it taken under such request or other instrument. The bearer of any
1541 coupon bond hereby secured which at the time shall not be reg-

istered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether the same shall be registered or not, may be deemed and treated by the company and the trustee as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment thereof, and for all other purposes; and no notice to the contrary shall affect the company or the trustee.

Twenty-second. In case the trustee shall have proceeded to enforce any right under this indenture by foreclosure or otherwise, and such proceeding shall have been discontinued or abandoned because of any waiver or for any other reason, or shall have been determined adversely to the trustee, then and in every such case the party of the first part and the trustee shall be restored to their former position and rights hereunder in respect of the pledged stock, and all rights, remedies, and powers of the trustee shall continue as though no such proceedings had been taken.

Twenty-third. The company covenants and agrees that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby, and that it will not, directly or indirectly, be a
1542 party to any arrangement therefor by purchasing or funding said coupons or claims for interest or registered bonds, or in any other manner. In case the payment of any such coupon or claim for interest should be so extended by or with the consent of the company, such coupon or claim for interest so extended shall not be entitled in case of default hereunder to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder and outstanding and of all coupons and claims for interest on such bonds the payment of which has not been so extended, the intention of this agreement being to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds.

Twenty-fourth. The company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the pledged properties, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree of any court of competent
1543 jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State to redeem the property so sold or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay, or impede the exer-

tion of any power herein granted and delegated to the trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Twenty-fifth. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action, or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the trustee written notice of default hereunder and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent in amount of the bonds hereby secured then outstanding shall have made written request upon the trustee, and shall have afforded to it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to
1544 institute such action, suit, or proceeding in its own name; nor unless, also, they shall have offered to the trustee adequate security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby; and such notification, request, and offer of indemnity are hereby declared, in every such case, at the option of the trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb, or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided, and for the equal benefit of all holders of such outstanding bonds and coupons.

Twenty-sixth. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be
1545 cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Twenty-seventh. No delay or omission of the trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given hereunder to the trustee or to the bondholders may be exercised from time to time, and as often as may be deemed expedient, by the trustee, or by the bondholders severally and respectively.

Twenty-eighth. If the principal and interest of the bonds issued by the party of the first part, or its successors hereunder, and intended to be secured hereby, shall be paid to the holders thereof when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of this indenture, thereupon the trustee hereunder shall satisfy and discharge the lien of this indenture, and all the preferred and common stock hereby pledged or agreed to be pledged which shall then remain in the hands of the said trustee, and any residue
1546 of the trust estate or property, shall at once be transferred and delivered to the said party of the first part, its successors or assigns, and upon such transfer and delivery thereof the said trustee shall be thenceforth discharged from further duties under this trust.

In witness whereof the parties hereto have caused their respective corporate seals, attested by their respective secretaries or assistant secretaries, to be hereunto affixed, and these presents to be signed on their behalf by their respective presidents or vice presidents on the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By THOS. H. HUBBARD,
Vice President.

[Seal of Southern Pacific Company.]
Attest:
I. E. GATES,
Asst. Secretary.

UNION TRUST COMPANY OF NEW YORK,
By EDWD. KING,
President.

[Seal of Union Trust Company.]
Attest:
J. V. B. THAYER,
Secretary.

1547 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Thomas H. Hubbard and Isaac E. Gates, to me known, who, being by me severally duly sworn, did depose and say that they resided—the said Thomas H. Hubbard in the city of New York and the said Isaac E. Gates in the township of East Orange, county of Essex and State of New Jersey; that they are the vice president and assistant

secretary, respectively, of the Southern Pacific Company, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that they signed their names thereto by like order.

[Notarial seal.] GEO. H. COREY,
Notary Public, New York County.

1548 STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine, before me personally appeared Edward King and J. V. B. Thayer, to me known, who, being by me severally duly sworn, did depose and say that they resided in the city of New York; that they are the president and secretary, respectively, of the Union Trust Company of New York, the corporation described in and which executed the above instrument; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that they signed their names thereto by like order.

[Notarial seal.] GEO. H. COREY,
Notary Public, New York County.

2326 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *vs.* SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS.	No. 3575 (420). In Equity.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the United States against Southern Pacific Company et al., under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; and that said suit is in my opinion a case of general public importance.

I therefore request that in conformity with the act of Congress approved February 11, 1903 (32 Stat., 823), as amended by the act of June 25, 1910 (36 Stat., 854), providing for the expedition of suits brought under the above-mentioned act of Congress of July 2, 1890, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as provided by the said act of February 11, 1903, as amended June 25, 1910.

2327 Washington, D. C., April 28, 1915.

T. W. GREGORY,
Attorney General.

Filed May 3, 1915.
JERROLD R. LETCHER,
Clerk.

2328 United States Circuit Court of Appeals, Eighth Circuit.

Hon. Willis Van Devanter, Circuit Justice, Washington, D. C.; Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. William C. Hook, Leavenworth, Kans.; Hon. Elmer B. Adams, St. Louis, Mo.; Hon. Walter I. Smith, Council Bluffs, Iowa; Hon. John E. Carland, Washington, D. C., Circuit Judges.

ST. PAUL, MINN., *June 10, 1915.*

Hon. EDWARD F. MCCLENNAN,
Special Assistant to the Attorney General,
161 Devonshire St., Boston, Mass.

DEAR SIR: Your letter of June 7, 1915, has been received and submitted to the circuit judges. They will hear the case of United States *vs.* Southern Pacific Company and the Central Pacific Company at St. Louis on the first day of December, 1915. I return to

you the enclosed stipulation, for the hearing which you sent me. It should be filed with the clerk of the United States District Court at Utah together with the letter I send you fixing the date of the hearing.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

Rec'd & lodged June 17/15. J. R. L.

2329 In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *vs.* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al., defendants. } In Equity No. 3573. No. 420.

For the Government: Mr. E. F. McClennen, special assistant to the Attorney General, and Mr. James W. Orr, special assistant to the Attorney General. The Attorney General, Mr. C. Carroll Todd, assistant to the Attorney General, and Mr. Edward E. Gann, special assistant to the Attorney General, were with him on the briefs.

For the defendants: Mr. Garrett McAnerny and Mr. Peter F. Dunne. Mr. J. P. Blair and Mr. Wm. F. Herrin were with them on the briefs. Mr. Perry D. Trafford filed a memorandum for the Union Trust Company of New York.

Before SANBORN, HOOK, and GARLAND, Circuit Judges.

HOOK, Circuit Judge, delivered the opinion of the court:

This is a suit by the United States to enjoin and dissolve an alleged monopoly and combination in restraint of trade and commerce formed by a lease to the Southern Pacific Company until January 1, 1984, of the railroads of the Central Pacific Railway Company, and by the acquisition by the former company of

2330 all the stock of the latter, in violation of the Sherman Anti-trust Act of July 2, 1890.

It is also charged that the control so obtained by the Southern Pacific Company is contrary to the Pacific Railroad acts of July 1, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 356), and June 20, 1870 (18 Stat., 111).

The needs of the case do not require a history in detail of the origin and growth of the various railroads which the Government regards as composing two independent systems that should be kept separate and competitive. It will be sufficient to refer generally to the two companies and their respective constituents and predecessors inclusively, as the Southern Pacific and the Central Pacific, and to speak more precisely only when necessary. We may say in the beginning that the location and physical interdependence of the lines of these companies in California and Oregon give the distinct appearance of a single system of railroads. So clearly is this so of the lines in California and Oregon north of Sacramento that when an attempt was made in 1913, in the matter of the dissolution of

combination of the Union Pacific and Southern Pacific, also to divorce the Central Pacific from the Southern Pacific, it was generally agreed they should be left with the latter company. It is equally clear as regards the Central Pacific and Southern Pacific lines in California south from Sacramento and San Francisco. Those of the Central Pacific appear on the map as natural links and parts of the Southern Pacific system. Practically all of the spurs, branches, and tributary feeders of the Central Pacific lines are the property of the Southern Pacific.

2331 It is only when we consider the Central Pacific line from San Francisco to Ogden, Utah, on the one hand, and the Southern Pacific main line from San Francisco through Yuma and El Paso to New Orleans on the other that the propriety of their common control seems in any degree debatable. This aspect of the railroad map is confirmed in great measure by the history of the construction of the various roads. The Central Pacific Railroad Company of California, the ancestor of the present Central Pacific, was incorporated in 1861. Up to 1870 it had constructed or acquired and put in operation the lines from San Francisco to Ogden, from Niles to San Jose in California, and from Roseville to Chico in the same state. The Southern Pacific Railroad Company was incorporated in 1865, and in 1870 the construction of the Southern Pacific lines was actively commenced. There was not much of importance of the Southern Pacific before that year. In 1870 and prior thereto the Central Pacific was dominated and controlled by Leland Stanford, Charles Crocker, C. P. Huntington, and Mark Hopkins, and in that year, if not earlier, the same group of men were in control of the Southern Pacific. For at least fifteen years thereafter and during the most important constructive period of the Southern Pacific a common control and dominance over both companies was exercised by them or the representatives of their estates. Parts of the lines of both companies were built by the same construction companies owned by Mr. Stanford and his associates, under the same superintendence and with the same equipment.

2332 The primary financing of the enterprise was done by them. The Central Pacific was employed as the principal or parent company and the Southern Pacific as its subsidiary, or rather as the corporate instrumentality for the expansion of its system. Except as to corporate title and bookkeeping there were generally the aspects of a single enterprise. In this respect the conditions were not unlike those which have characterized the growth of many of the important railroad systems of the country in which, for necessity or convenience of financing and in some instances because of local laws, separate corporate organizations were utilized. Between 1870 and 1883, as fast as the Southern Pacific lines were built from Goshen, California, the terminus of the Central Pacific, south to Los Angeles, thence eastward to Yuma and across Arizona and New Mexico and into Texas, they were turned over by completed sections to the Central Pacific for operation. Up to 1885 all the Southern

Pacific railroads, including the main line to New Orleans (with an unimportant exception), were officially announced, advertised and operated by the Central Pacific as part of its system. The legal relation between the two companies was expressed in executed leases, and the system was known as "Central Pacific Railroad and Leased Lines." In February, 1885, the Southern Pacific having become the major factor the relation was reversed, and the Central Pacific leased all its railroads to the Southern Pacific (Company of Kentucky) for ninety-nine years from April 1, 1885. The old leases of the Southern Pacific lines to the Central Pacific were surrendered by the same instrument.

2333 This was five years before the passage of the antitrust act.

In December, 1893, another lease from the Central Pacific to the Southern Pacific was executed, modifying the terms of the lease of 1885 in matters not important here, and though the older instrument was canceled in terms, in legal effect the relation of lessor and lessee continued unbroken. The term of this last lease is until January 1, 1984. Whatever immunity or exemption from the operation of the antitrust act attended the proprietary relations existing prior to its passage was not destroyed by the change in the position of the parties effected by the lease of 1885. Nor did the amendment of that lease in immaterial respects in 1893 create a new starting point. It is not material that the amendment was by a revision substituted for the old instrument instead of by a separate supplement. The applicability of the anti-trust act can not be made to rest on such considerations. It is also argued that the leases mentioned were not authorized by the statutes of California. We need not consider that. We do not think the antitrust act picks up the laws of the States for original enforcement. It deals with actual conditions affecting interstate commerce whether they are authorized by those laws or not. In the case before us there was from 1870 an existing, continuous, common control of the railroads of both companies created by leases executed and observed by the parties and unquestioned by the State. This was the situation when the Central Pacific debt to the United States was settled in 1899 pursuant to the act of July 7, 1898 (30 Stat., 659) and when the Southern

2334 Pacific acquired all the stock of the present Central Pacific which was then organized to succeed the old company.

In United States v. Union Pacific, 226 U. S., 61, 85, the court said:

"We take it therefore that it may be regarded as settled, applying the statute as construed in the decisions of this court, that a combination which places railroads engaged in interstate commerce in such relation as to create a single dominating control in one corporation whereby natural and existing competition in interstate commerce is unduly restricted or suppressed is within the condemnation of the act."

Prior to the stock acquisition in 1899 and since there never was a time in our opinion when there was in any real substantial sense "a

natural and existing competition in interstate commerce" between the Southern Pacific and the Central Pacific within the intent of the antitrust act. Prior to 1870 the Southern Pacific lines were a negligible factor as a competitor in such commerce, and thereafter the situation has been as we have described. That competition of the kind mentioned might now result from an enforced independence of the two companies and a separation of their railroads may be true, but we do not think the statute was intended to create competition by destroying a proprietary relation formed long before its passage and by the very means of which a railroad system has been brought into existence.

That the Southern Pacific control of the Central Pacific
2335 was not regarded as contrary to the statutes of the United States appears from the proceedings under the act of July 7, 1898 (30 Stat., 659). By that act a commission consisting of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General was appointed to settle the Central Pacific debt to the United States. The act provided that "any and all settlements" should be subject to the approval of the President. William McKinley was then President, and the other officials were Lyman J. Gage, Cornelius N. Bliss, and John W. Griggs. The settlement was effected as of February 1, 1899. At that time the Central Pacific debt to the United States for Government aid in the construction of the lines between Sacramento and Ogden and Sacramento and San Jose amounted to $58,812,715.48. More than half of this amount was accrued interest, and it was secured by a statutory lien on the two bond-aided lines subject to prior first mortgages. In addition the Central Pacific bonded debt then amounted to $57,471,000, most if not all of which was secured by first mortgages upon its various lines of road. It had outstanding $67,275,500 of stock. Before stating the details of the settlement the conditions in the light of which the statute authorizing it was passed may be briefly mentioned. Congress had been fully aware for many years of the relations between the Central Pacific and the Southern Pacific. As early as 1886 the President transmitted to the House of Representatives a copy of the lease of 1885, and from that time on the connection of the two companies was frequently the subject of
2336 official and legislative communications and reports. In February, 1890, a copy of the lease was laid before the Senate with the report of a committee in which it was said: "It is manifest from the terms of their lease that any bill for the adjustment and settlement of the debt of the Central Pacific Company must, in order to be efficacious, contain provisions by which this lease and the obligations of the Southern Pacific Company under it shall become security to the United States, and that the consent of the Southern Pacific Company shall be obtained to such provisions of the bill."

The committee was of the opinion that the existing security of the Government on the Central Pacific property was inadequate and that in case of foreclosure of the first mortgages the property would be

substantially exhausted in satisfying them. They reported that among the plans suggested to them was one "That all the associated lines forming the Southern Pacific Company (and these include the Central Pacific as consolidated) become parties" to 2 per cent bonds of the United States secured by a first lien upon the consolidated properties of all the lines. The above is but a small part of a continuous history of legislative efforts in the years preceding the act appointing the commission. Congress was fully informed of the lease and its terms, and that in any conventional settlement the Southern Pacific could not be ignored but had to be reckoned with. Agreement or litigation with the Southern Pacific were unavoidable alternatives, and the remedy by foreclosure of the statutory lien meant probable substantial loss. While the bills introduced in Con-
2337 gress to effect a direct legislative settlement did not pass, it does not appear that the failure was due to a definite opposition of that body to the relation between the two companies. But, however that may be, the whole situation in all its angles and complications was public history, and with definite knowledge of it Congress committed the settlement to the commission. The commission was given "full power to settle the indebtedness * * * upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads." The power, however, was subject to the following limitations: The Government was to receive not less than the full amount of principal and interest due it; in equal semiannual installments; with interest not less than 3 per cent per annum, payable semiannually; "with such security as to said commission may seem expedient"; final payment and full discharge not to be postponed beyond ten years; all to become due upon default in any installment or interest; and if settlement was not perfected the President should proceed at once to foreclose.

No other conditions than these were prescribed.

An agreement of settlement as of February 1, 1899, was made and signed by the commissioners, the Central Pacific, and Messrs. Speyer & Co., who were managing the reorganization of that company. It was approved by the President. Contemporaneously with the consummation of the settlement the Central Pacific was reorganized under a plan that provided for a new Central Pacific company and its issue of $100,000,000 of first refunding 4 per cent mortgage bonds.

The plan also contemplated the guaranty of the bonds by
2338 the Southern Pacific and its acquisition of the stock of the new company. There was the same publicity of the details of this plan as generally attends the reorganization of important railroad systems, and the commission was advised of them in the early stages of its preparation. By the agreement of settlement the Central Pacific was to execute to the United States twenty promissory notes dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each for the sum of $2,940,635.48, or one-twentieth of the total debt, and

bearing interest at 3 per cent per annum, payable semiannually. Each note contained a provision for the maturity of all upon partial default as provided in the act appointing the commission. The Central Pacific "or its successor company having title to the aforesaid railroads" was also to make an issue of 45-year 4 per cent gold bonds not exceeding $100,000,000 in all, secured by a first refunding mortgage upon all its railroads, whether bond aided or not, and all its equipment and terminals. The bonds were to be further secured by the guaranty of the Southern Pacific and were to be, as expressed in the agreement of settlement, "prior in lien to any lease of the railroads of said Central Pacific." Of these bonds, $58,820,000 were to be deposited with the Treasurer of the United States as security for the twenty installment notes. In addition, Speyer & Co., reorganization managers, were within one month after the execution and delivery of the notes, to purchase from the United States without recourse the four earliest maturing and pay therefor the
2339 face amount, $11,762,543.12, and accrued interest. A proportionate amount of the collateral mortgage bonds was to go with the four notes. The above constituted the security which seemed expedient to the commission within the authority conferred by the act of Congress.

The agreement of settlement was carried out in all its details. The lease to the Southern Pacific was subordinated to the mortgage securing the new first refunding bonds by an indenture executed by that company which recited as consideration "the benefits and advantages to be derived by said party of the first part (the Southern Pacific) from the carrying out of the agreement between the United States, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899." On February 15, 1899, the commission reported to the House of Representatives. The report was in general terms and referred to the agreement of settlement a copy of which accompanied it. No reference to the guaranty of the Southern Pacific appeared in the report or the agreement, but the proof is convincing that the commission regarded it as a vital feature of a settlement. In the annual report of the Attorney General to the Senate and House of Representatives in November, 1899, the completion of the settlement was set out but the guaranty of the Southern Pacific was inadvertently stated as being upon the notes instead of upon the bonds securing them. With the exception of some credits which will be presently mentioned the notes held in the Treasury of the United States were paid by the checks of the Southern Pacific. That company charged the amounts to the
2340 Central Pacific upon their intercompany accounts.

The rule as to the persuasive force of an administrative construction of statutes is a familiar one and is frequently applied, but in the case before us there was more than the ordinary acts of public officers subject to legislative restraint. Here there was a commission composed of the very highest officials of the Government,

specially created and charged with the adjustment of a difficult and complicated business that had for years engaged the attention of Congress. Limitations upon their power and conditions to be observed were expressly set forth in the statute but none remotely suggesting any obstacle in the antitrust act. Except as to those limitations and conditions plenary power was given them. The relations between the Southern Pacific and the Central Pacific, long a matter of public history, naturally foreshadowed the engagement of the former in any adjustment of the financial condition of the latter; and additional considerations than affecting the other transcontinental railroad companies pointed the same way. So natural if not inevitable was the settlement that was made that the omission of limitations now urged is most significant. We do not say the commission was authorized to violate or to sanction the violation of the act of Congress, but the adjustment they effected necessarily involved the question of its pertinence to the business in hand. The acceptance of the guaranty of the Southern Pacific was a recognition that it had sufficient corporate interest in the Central Pacific to justify it. Without such interest its accommodation guaranty
2341 of $100,000,000 of bonds of another company would manifestly have been ultravires—a gross, indefensible excess of its corporate powers. Again, the acceptance of the guaranty implied a recognition of its possible, natural result, that is to say, the enforcement of the rights of a guarantor against the property of a debtor. The addition of the stock ownership by the Southern Pacific to its long leasehold interest did not so change the situation as to make unlawful what was not so before.

With knowledge of the settlement, and, it may be fairly presumed, of the details that were public history, Congress authorized the Secretary of the Treasury to dispose of "Any notes in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States," act of March 3, 1899, 30 Stat., 1245. Further, by the act of March 3, 1901, 31 Stat., 1023, the Secretary of the Treasury was authorized and directed to settle claims for interest growing out of transportation services for the Government "over nonbond aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting" the amounts upon the Central Pacific installment notes. This was done. The claims were just debts of the Government, and the legislative direction to credit them due the Southern Pacific upon the indebtedness of the Central Pacific was a recognition in some degree at least of a relationship between the two companies that justified it. There was no other warrant or authority than that which arose from the proprietary position of the Southern Pacific.

It is contended by both parties that the opinion and decision
2342 of the Supreme Court in United States v. Union Pacific supra, has a decisive bearing upon the case at bar. Aside from the controlling principles of law announced by the court and a matter

presently to be mentioned we do not think so. The Central Pacific was not a party to that suit, and though the relations between it and the Southern Pacific were mentioned in the opinion the references were not condemnatory, but were explanatory of the railroad situation and the movements of traffic. The court said, however, that nothing in its opinion should be considered as preventing the court below from approving or adopting a plan providing for the retention by the Union Pacific of the Central Pacific line from San Francisco to Ogden. There is a relevance here in the necessary inference that such retention by the Union Pacific would not have been regarded as contrary to the antitrust act. On the record then before the court it appeared that the Union Pacific already controlled the line from Portland, Oregon, to Granger, Wyoming, and was largely interested in the line from San Pedro, California, to Salt Lake City, Utah. The retention by the Union Pacific of the Central Pacific road from San Francisco to Ogden would have given the former company lines from the three important ports—Portland, San Francisco, and San Pedro—to connections with its main line in Utah and Wyoming. In corporate origin each of the three lines was separate and distinct from the others and from the Union Pacific in the same sense as the Southern Pacific and Central Pacific are corporately separate. With steamship connections with the Orient the three lines were theoretically at least competitors
2343 for foreign traffic destined through those ports eastward to the interior of the United States or to the Atlantic seaboard. But the control of all of them by the Union Pacific was evidently not deemed a suppression of competition sufficiently direct and appreciable to be repugnant to the antitrust act. The situation considered by the court in that case is not greatly different in its ultimate significance from the case at bar. If the antitrust act be construed to reach proprietary relations, as distinguished from those of a mere continuous operating character, formed long prior to its passage, whereby divergent or tangential lines of road to widely separated gateways or points in the currents of traffic movement are held in a single ownership or control, its enforcement accordingly would have such a destructive effect upon established, accepted railroad systems of the country that their inclusion within the intent of Congress may well be doubted.

After the decision of the Supreme Court that the combination of the Union Pacific and the Southern Pacific was unlawful, those companies, to meet the suggestions of the Attorney General, incorporated in the plan to dissolve the combination provisions for the surrender by the Southern Pacific to the Union Pacific of all the Central Pacific lines except one from northern California to the northern State line and a branch therefrom into Oregon. These provisions were in excess of the mandatory requirements of the Supreme Court and their consummation depended upon the approval of the Railroad Commission of California. Upon a consideration of them the commission expressed the belief that the

arrangement would "not substantially benefit the shippers of
2344 transcontinental freight either in rates or in service," and that it would be a distinct detriment to local commerce within the State. However, the commission made certain modifications and conditions as to features within its jurisdiction, but the railroad companies were unable to agree to them, and that part of the plan was abandoned. The failure to agree was followed by this suit to separate the Southern Pacific and Central Pacific, but we think the doubts of the California Commission would apply with equal force to the result now sought to be accomplished. It may be observed in this connection that this case of the Government, unlike others of similar character, finds little if any support in testimony from complaining shippers or the public generally.

Finally, it is contended that the control of the Central Pacific line from San Francisco to Ogden by the Southern Pacific is in violation of the Pacific Railroad acts. The proofs show no foundation in fact for this contention. When this suit was brought and since, the line was being maintained and operated in every particular required as a part of a continuous railroad from the Missouri River to the Pacific coast. In conjunction with the Union Pacific there were through rates, through billings and through freight, passenger and mail trains. There were no criticisms of the track, the service or the schedule. The Government and the public were being served adequately. Those statutes require physical connection with the Union Pacific to make a through line and the furnishing of
2345 equal advantages and facilities as to rates, time, and transportation without discrimination of any kind. If those requirements are met it does not seem material whether they are performed by the Southern Pacific as lessee and stockholder or by the Central Pacific independently.

The petition is dismissed.

Filed March 9, 1917.

JOHN W. CHRISTY, *Clerk.*

2346 CARLAND, C. J., dissenting.

It is difficult to determine from the opinion of the majority exactly upon what ground or grounds the bill in this case is dismissed. The opinion states that: "Prior to the stock acquisition in 1899 and since there never was a time, in our opinion, when there was in any real substantial sense 'a natural and existing competition in interstate commerce' between the Southern Pacific and the Central Pacific within the intent of the antitrust act." * * * "That competition of the kind mentioned might now result from an enforced independence of the two companies and a separation of their railroads may be true, but we do not think the statute was intended to create competition by destroying a proprietary relation formed long before its passage and by the very means of which a railroad system has been brought into existence."

If the language first quoted means natural and existing competition in fact, then it is entirely consistent with the claim of counsel

for the United States, which is that no such competition existed or could exist by reason of the common control since 1899 of the Central Pacific by the Southern Pacific. If the language means that there could be no competition between the two railroad systems, then the language is inconsistent with the language which follows, wherein it seems to be conceded that but for the common control there would be competition. As the breaking up of an unlawful combination does not create natural competition, but simply removes the barriers which prevent the free flow of interstate com-
2347 merce, the concession that there might be competition if the combination was broken is also a concession that there is a natural competition which is suppressed by reason of the control of the Central Pacific by the Southern Pacific.

The combination which is complained of in this case is alleged to have originated in 1899 in the acquirement of all the stock of the Central Pacific by the Southern Pacific. The fact that prior to the passage of the antitrust law there had been a practical control of the Central Pacific by the Southern Pacific through a leasing arrangement in no way validates the present combination if it be unlawful.

Standard Oil Co. vs. United States, 221 U. S., 1; United States vs. American Tobacco Company, 221 U. S., 106; United States vs. Trans-Missouri Freight Association, 166 U. S., 290; United States vs. Delaware & Hudson Company, 213 U. S., 366; Philadelphia, Baltimore & Washington R. R. Co. vs. Schubert, 224 U. S., 603; Waters-Pierce Oil Company vs. Texas, 212 U. S., 86; United States vs. Kissel, 218 U. S., 601; Armour Packing Co. vs. United States, 209 U. S., 56.

There does not seem to be any conflict in the authorities upon this proposition. The evidence in the record, in my opinion, establishes beyond question that the Southern Pacific, extending from San Francisco Bay to New Orleans, with its steamship connection with New York, is a natural competitor of the Central Pacific, both as to California-Atlantic seaboard freight and Central and Western United States freight to and from California. A mere inspec-
2348 tion of the different routes over which interstate commerce is moved through the El Paso and Ogden gateways would seem to show that the two roads are natural competitors. If they are competitors, and the Southern Pacific, as it is admitted, controls the Central Pacific, it follows that the free flow of interstate commerce is restrained. United States vs. Union Pacific Railroad Co., 226 U. S., 61; Northern Securities Co. vs. United States, 193 U. S., 197.

I do not think the evidence shows that the Central Pacific and the Southern Pacific were created originally and have always continued to be one system. They have always been and are now operated as separate systems. The settlement by the United States of the debt of the Central Pacific in 1899 can not be held to estop the United States from insisting at this time that the combination between the two roads are in violation of the antitrust act. It is not remarkable that in the proceedings resulting in the settlement so far as they

appear of record the antitrust law was not referred to, as little attention was given in those days to the antitrust law of July 2, 1890.

Finally, I am unable to reconcile the decision of the Supreme Court in the case of the United States vs. Union Pacific Railroad Company, 226 U. S., 61, with the conclusion reached by the majority in this case. The Union Pacific and the Central Pacific constitute one transcontinental line from Omaha, Nebraska, to the Pacific coast.

Of course, it would not be objectionable for the Union Pacific
2349 to control the Central Pacific so far as anything in the record in this case is concerned, because it would simply be the same through line with no competition involved as between these two roads, but the Supreme Court held in the case cited that the control of the Southern Pacific by the Union Pacific was a combination in restraint of commerce that should be broken up.

In this case the Southern Pacific, which the Supreme Court held was in competition with the Union Pacific, controls the Central Pacific or another section of the through line from Omaha to the coast. How is the decree of the Supreme Court in the Union Pacific case to become effective with the competitor of the Union Pacific controlling the Central Pacific?

If it was unlawful for the Union Pacific, being one section of the through line, to control the Southern Pacific, why is it not unlawful for the Southern Pacific to control the other section of the through line? It is said in the opinion that there is no evidence of complaint by shippers of the alleged unlawful combination. The Attorney General in instituting this action represents the public, including shippers.

For these reasons, briefly stated, I dissent from the conclusion reached by the majority.

Filed March 9, 1917.

JOHN W. CHRISTY, *Clerk.*

2350 In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al.

No. 3575. In Equity (420) Decree.

Upon final hearing of this cause it is adjudged and decreed that the petition of the petitioner United States of America be dismissed for want of equity.

March 6, 1917.

WALTER H. SANBORN,
Circuit Judge.
WILLIAM C. HOOK,
Circuit Judge.

Received, filed, and entered in minute book on this 9th day of March, 1917.

JOHN W. CHRISTY, *Clerk.*

2351 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS, defendants.
} Equity No. 3575 (420).

Petition for appeal.

The United States of America, the petitioner, alleging itself to be aggrieved by the final decree in the above-entitled cause, entered therein on March 9, 1917, does hereby appeal to the Supreme Court of the United States from said decree, and from each and every part thereof, and for the reasons set forth in the assignment of errors which is filed herewith, and prays that this, its claim of appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to said Supreme Court.

By its attorneys.

G. CARROLL TODD,
Assistant to the Attorney General.
JAMES W. ORR,
Special Assistant to the Attorney General.
EDWARD F. MCCLENNEN,
Special Assistant to the Attorney General.

Dated April 23, 1917.
Allowed April 23, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2352 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS, defendants.
} Equity No. 3575 (420).

Assignment of errors.

The United States of America, the petitioner, assigns as the errors of the proceedings and final decree entered March 9, 1917, in the above-entitled cause, on which errors it will rely in the prosecution of its appeal from said decree, that a decree should not have been entered dismissing the petition, but that on the contrary a decree

should have been entered granting relief to the petitioner to dissolve the combination and monopoly complained of, and to prevent the further infraction of the Pacific Railroad laws, and for greater particularity the petitioner assigns that said errors were committed in failing in said proceedings and decree to give sufficient consideration and effect to the matters of law and matters of fact apparent in the record as follows, namely:

First. In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic and the combination between them unreasonably, directly, substantially and wholly prevented and destroyed
2353 competition between them, and continues to do so, and the combination artificially created a monopoly to the public injury.

Second. The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal voluntary cooperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad, and the systematic and preconcerted discrimination which the Southern Pacific Company in operating the franchise of the Central Pacific Railroad has practiced against the Union Pacific Railroad in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad furnishing the incentive of self interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury of the public and to the defeat of the purpose of those laws, which was to create and develop three separate, competitive systems of railroad to the Pacific coast, with all the advantages that would come to the public from three railroads which were competitive.

Third. The payment by the Central Pacific Railroad Company of its debt to the United States, and the transactions leading thereto, did not exempt the Southern Pacific Company from the
2354 provisions of the Sherman Anti-Trust Act of July 2, 1890, or permit that company to make a combination which otherwise would be one in restraint of trade, because (1) the settlement commission did not seek any guaranty by the Southern Pacific Company, (2) the contract of settlement did not require such a guaranty, (3) the United States received only payment of a debt already due and adequately secured, (4) neither the commission, nor the President, nor the Congress purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all other corporations, and (5)

such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress.

Fourth. The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but, on the contrary, were always two distinct railroads; (1) separately projected by separate and unrelated groups of men; (2) separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate, competitive systems of railroad between the Atlantic Ocean and the Central United States on the east and the Pacific Ocean on the west, and enacted prior to 1867 and before any person interested in the one railroad was interested in the other; (3) separately owned by separate corporations organized by separate groups of men; (4) separately constructed at the expense of and for these separate
2355 corporations; (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads; (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899; and (7) separately stock-owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and in Europe.

Fifth. The Southern Pacific Company on February 20, 1899, had no contractual, or property, or vested interest, direct or indirect, in the Central Pacific Railroad, because (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Company was void for lack of power in that company to make it, both under the laws of California, and under the laws of the United States, the sovereignty from which it derived its franchises; (2) in 1893 this lease was cancelled and the new purported lease then given was equally void for the same reason; and (3) the leasehold interest was subject to immediate desctruction by the foreclosure of the underlying lien of the United States.

Sixth. Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Anti-Trust Act was passed, this would not render lawful a combination for
2356 the increase and perpetuation of that control, formed after this act as passed.

By its attorneys.

G. CARROLL TODD,
Assistant to the Attorney General.
JAMES W. ORR,
Special Assistant to the Attorney General.
EDWARD F. MCCLENNEN,
Special Assistant to the Attorney General.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2357 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC COMPANY and others. In Equity. No. (420) 3575.

Order of enlargement of time for docketing case and filing record.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of the Supreme Court be enlarged to June 1st, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

APRIL 23, 1917.

The appellees consent to the entry of the foregoing order.

J. P. BLAIR,
Attorney for appellees other than Union Trust Company.
MILLER, KING, LANE & TRAFFORD,
Attorneys for appellee Union Trust Co. of N. Y.

Filed May 1, 1917.

JOHN W. CHRISTY, *Clerk.*

2358 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC COMPANY AND OTHERS. | In Equity. No. 3575 (420).

Order of enlargement of time for docketing case and filing record.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of the Supreme Court be enlarged to August 1st, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

The appellees consent to the entry of the foregoing order.

J. P. BLAIR,
Attorney for appellees other than Union Trust Company of New York.
MILLER, KING, LANE & TRAFFORD,
Attorneys for appellee,
Union Trust Company of New York.

Filed and entered May 21, 1917,

JOHN W. CHRISTY, *Clerk.*

2359 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, *vs.* SOUTHERN PACIFIC COMPANY ET AL.	In Equity. No. 3575 (420).

Order of enlargement of time for filing of præcipe by appellees.

For good cause shown it is ordered that the time within which appellees, should they or their solicitors desire additional portions of the record incorporated into the transcript for filing with the clerk of the court their præcipe, be enlarged to June 27, 1917.

WALTER H. SANBORN,
United States Circuit Judge.

Appellant consents to the entry of the foregoing order.

EDWARD F. MCCLENNEN,
Special assistant to the Attorney General,
Solicitor for appellant, the United States of America.

WM. F. HERRIN,
Solicitor for appellees, Southern Pacific Company et al.

United States District Court, District of Utah.
Filed June 16, 1917.

JOHN W. CHRISTY, *Clerk.*
By WILLIAM HORNBEAK, *Deputy Clerk.*

2360 District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, *v.* SOUTHERN PACIFIC COMPANY ET AL.	In Equity. No. 420.

Order approving condensed statement of evidence.

On the request of the petitioner, appellant, and with the consent of the defendants, appellees, the following condensed statement of the evidence, together with all the exhibits, constituting printed pages twelve hundred twenty-three (1223) to twenty-three hundred twenty-five (2325), inclusive, of the printed record, is hereby approved as a condensed statement of all the evidence introduced in this case.

Dated June 23, 1917.

(Sgd) WALTER H. SANBORN,
Senior U. S. Circuit Judge.

2363 *Certificate of clerk to transcript of record.*

UNITED STATES OF AMERICA,
District of Utah, ss:

I, John W. Christy, clerk of the District Court of the United States for the District of Utah, do hereby certify that the foregoing pages I to X, inclusive, indexes of printed record, pages 1 to 82, inclusive of the printed record, the following 35 pages, and following those, 18 pages of indices to the condensed statement, and following that, pages 1 to 793 of the condensed statement, after which follows pages 1223 to 2325 of the printed record, being exhibits, after which follows copy of præcipe and original citation, contain a full, true, and complete copy and transcript of the papers filed and proceedings entered of record in said court in that certain cause numbered 3575 (420) in equity on the dockets thereof, wherein the United States of America is complainant and the Southern Pacific Company, and others, are defendants, with the exception of the following papers and record entries not called for by the præcipe, and therefore omitted, to wit:

Feb. 11, 14. Petition for and order for service on nonresident defendants.
Subpœna in equity.
14, 14. Return of subpœna served on S. P. & C. P. Cos.
20, 14. Return subpœna served on Wm. Sproule.
23, 14. Return subpœna served on defts. in New York.
Mch. 2, 14. Appearance of S. P. Co. and all defts. except Union Trust Company.
Stipulation giving defts. to Apl. 11, 1914, to answer.
Order on same.
4, 14. Appearance of Union Trust Company.
6, 14. Return served of subpœna served on Huntington.
Apl. 8, 14. Stipulation extending time to answer.
Apr. 8, 14. Order on stipulation extending time to answer.
Jul. 6, 14. Appearance of E. F. McClennen for plaintiff.
Jun. 10, 15. Stipulation to assign cause for argument.
Jul. 6, 15. Original report of Special Examiner and exhibits.
Deposition of A. H. Pratt.
Nov. 1, 15. Stipulation to transmit original papers to St. Louis and order on same.
Mch. 9, 17. Judgment roll.
May 8, 17. Proposed condensed statement lodged with clerk.

as full, true, and complete as the originals of the same remain on file and of record in my office.

I further certify that the original citation is hereunto annexed and returned to the Supreme Court of the United States, together with the aforesaid transcript of the record in this cause.

In witness whereof, I have hereunto set my official signature and affixed the seal of said court at Salt Lake City, in said district, on this 12th day of July, in the year of our Lord one thousand nine

hundred and seventeen and the one hundred and forty-second of the Independence of the United States of America.

JOHN W. CHRISTY, *Clerk*,
United States District Court, District of Utah.

2364 Supreme Court of the United States.

No. 21. October Term, 1920.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, Union Trust Company of New York, et al.

It is hereby stipulated and agreed by and between counsel for the parties in the above-entitled cause that the certified record filed in this case need not be printed, but that the case may be heard on the record as already printed contained in six volumes paged from 1 to 2325, inclusive, copies of which will be furnished by the parties. In addition to the record already printed, the orders of the court below, opinions, final decree, and appeal papers are to be printed from the certified record and added to volume 6 of the record already in print.

WM. L. FRIERSON,
Solicitor General.
A. A. HOEHLING, Jr.,
Counsel for Appellees.
de F. & Co.

2365 (Endorsement:) File No. 26050. Supreme Court U. S. October term, 1920. Term No. 21. The United States, app't., vs. Southern Pacific Co. et al. Stipulation as to record. Filed Sept. 3, 1920.

Minnesota State Library.
St. Paul, Minn.

94295

No. [redacted]5

FILED
APR 1 1921
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1920.

UNITED STATES OF AMERICA,
Appellant,

vs.

SOUTHERN PACIFIC COMPANY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEES.

JOSEPH PAXTON BLAIR,
Of Counsel.

WILLIAM F. HERRIN,
GARRET W. McENERNEY,
JOSEPH PAXTON BLAIR,
Counsel for Appellees.

The Evening Post Job Printing Office, Inc., 154 Fulton St., N. Y.

INDEX.

Outline of Argument.

PAGE

PART I. The case under the Anti-Trust Act of July 2nd, 1890 2–5

This argument is supplemental to the main brief and argument and is not intended to cover the whole case. Its central theme is the case of the *United States* vs. *Union Pacific, Southern Pacific, et al.*, 226 U. S. 61. Attention is thus focused upon the Unmerger Suit not only for the purpose of showing to what extent the issues in the present case are controlled or affected by the decision in the former case, but because a discussion of the distinguishing features of the two cases will present some of the main defenses relied on in the present case in the contrasting light of the facts of the former case.....

I. The Government's case as defined by its pleadings and as further restricted by the evidence..... 6–26

Under this heading the charges, *i. e.*, alleged violations of the Anti-Trust Act, contained in the petition are enumerated (pp. 8-10), the charges which have been abandoned stated (pp. 10-13), the single surviving charge disclosed (pp. 13-14), and the narrow basis of the case indicated by a statement of the matters and things which the Government has made no attempt to prove and of the matters and things established by defendants' evidence which the Government has made no attempt to rebut (pp. 16-24). The Southern-Pacific-domination myth is exposed and the immateriality of certain ancient traffic agreements pointed out (pp. 21-23).

PAGE

The conclusion is reached that the case which the Government claims to be analogous to the Unmerger Case is one of an attack upon a railroad system because of the inclusion therein of a divergent stem forming, with other connections, a through route competitive with another through route formed by lines of the system, the Government regarding its case as one of *res ipsa loquitur*, requiring no proof either of destruction of competition or of injury to the public or of increase of competition or benefit to the public to follow from the disruption of the system (p. 25).

II. Effect on the Government's case of the report of the Interstate Commerce Commission upon the application of the Southern Pacific Company, under the Panama Canal Act Amendment to the Interstate Commerce Act, to be permitted to continue to operate the line of steamships which forms a part of the Sunset-Gulf Route, notwithstanding its ownership of a part of the all-rail route via Ogden 26–34

The Commission has found in effect that the continued ownership by the Southern Pacific Company of the Central Pacific line to Ogden and of the whole of the Sunset-Gulf route is in the interest of the public, to the advantage and convenience of commerce, and will not exclude, prevent or reduce competition, actual or possible.

The implications of the Panama Canal Act Amendment and of the acts of Congress permitting the Southern Pacific Railroad Company to construct and operate railroads from San Francisco to form links in two competing transcontinental lines are opposed to the proposition of law underlying the whole of the Government's case (pp. 32-33).

III. The defense based on the origin of the common control of the lines composing the Southern Pacific System and on the manner of the formation and development of that system..... 35–44

PAGE

IV. The Union Pacific Unmerger Case (United States vs. Union Pacific Railroad Company, Southern Pacific Company, et al., 226 U. S. 61)..... 45–122

It is proposed to show that the decision in the Unmerger Case affords no authority for a judgment against defendants in the present case, and that the Government secured the unmerger of the Union Pacific and Southern Pacific systems upon propositions of fact and of law the reverse of which it now relies on to bring about a disruption of the Southern Pacific system.

The argument under this heading includes an analysis of the pleadings in the Unmerger suit (pp. 45-57), an examination of the brief and argument of the Attorney-General (pp. 57-67), and a discussion of the opinion and decree of the Supreme Court (pp. 67-121).

An analysis of the pleadings shows that it was alleged by the Government and denied by defendants that at and prior to the merger there was active competition between the "Ogden route" and the "Sunset route" and that such competition was destroyed by the merger. It was likewise affirmed and denied that the two systems were competing in many other fields at the time they were merged, and that all such competition was eliminated by the merger.

An examination of the brief and argument shows that the existence *vel non* at the time of the merger in 1901 of competition for coast to coast traffic between the Ogden route and the "Sunset route" was treated by the Attorney-General as an important issue in the case, as well as the complete neutralization thereof by the merger of the two systems. The position of the Government involved allegation and proof that ownership by the Southern Pacific of the Central Pacific had not prevented active and effective competition between the Ogden route and the "Sunset route", and such was its contention, the

PAGE

Attorney-General claiming that this was established by overwhelming proof and that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco" (p. 59). It was further contended that this prior existing competition was destroyed by the merger, and the claim that such competition as previously existed between the two routes still continued was ridiculed (pp. 65-66).

In the discussion of the opinion and decree of the Supreme Court the objectionable features which led to the condemnation of the merger are stated (pp. 68-70), and the absence of each of such features from the common control of the Central Pacific and other Southern Pacific lines is pointed out (pp. 70-121). Attention is called to the fact that the combination involved in the former case was connected with other great combinations or attempted combinations, while the mis-called combination complained of in the present case took place nearly a half century ago and was followed by no absorption or acquisition of competing properties but only by gradual, normal growth and development.

Among the differentiating features of the present case are:

(*a*) The Southern Pacific system is not a combination between previously competing or even previously existing lines of railroad (pp. 70-81).

Before the "Sunset route" was *in esse* or *in posse* or *in prospectu*, the common control complained of existed (p. 78).

(*b*) There were lawful and justifying reasons for the formation and development of the Southern Pacific system. It had neither for its pur-

PAGE

pose nor effect the elimination of competition (pp. 81-97).

The situation at the time of the lease of 1885 and the purchase of the Central Pacific stock in 1899 is stated (pp. 91-93).

Incompetence and immateriality of testimony and documents adduced before committees of Congress in years long past are shown (pp. 93-95).

(*c*) The inclusion of the Central Pacific lines in one system with the other Southern Pacific lines has not prevented or created the power or a motive to prevent the only competition alleged to exist between them, *i. e.*, that involved in the competition between the Ogden and the Sunset routes (pp. 97-116).

(*d*) The separation of the Central Pacific lines from the Southern Pacific system would not benefit but would injure the public. And the Interstate Commerce Commission has in effect so found (pp. 116-121).

V. The Government's case reviewed..... 122–130

PAGE

PART II. Discussion of the case under the Pacific Railroad Acts 131–203

The purpose of this argument, which again, on this branch of the case, is supplemental to the main brief and argument and is not intended to cover the whole case, is by a consideration of the pleadings and the general scope of the evidence to arrive at the precise question to be decided, and then to show that the Government's case essentially depends upon a construction of the statutes not justified by the plain meaning of the words used, not necessary to accomplish their purpose and, when subjected to the test of general application, productive of consequences obviously not intended—a construction, moreover, which remained concealed and unsuspected during thirty years notorious existence of conditions amounting to flagrant violation of the law, so construed, and was brought to light only in the search for grounds upon which to base the present divorce suit.

I. The Government's case as defined by the pleadings and as further restricted by the evidence 133–150

An analysis of the petition, in the light of the Government's evidence, reduces the violation of the Pacific Railroad Acts relied on to the single charge of discrimination against the Ogden route in favor of the "Sunset route", which discrimination is based solely on the preferential solicitation for the "Sunset route" of some traffic which might otherwise have moved by the Ogden route. To this should be added, perhaps, the general contention that the greater interest of the Southern Pacific Company in securing certain traffic for the longer haul via the "Sunset route" of itself makes its ownership of the Central Pacific line a violation of the acts (pp. 133-136).

PAGE

The alleged violations of the Pacific Railroad Acts have not prevented the construction and maintenance of a through connection for the Union Pacific west of Ogden infinitely superior to the bond-aided line of the Central Pacific, and the establishment and maintenance of a mutually satisfactory through service under which the Ogden route has become the strongest and most successful of the all-rail transcontinental lines. The alleged antagonistic affiliations have not prevented the Southern Pacific from giving to the Union Pacific at Ogden more freight than it receives from that road, and have not prevented the Union Pacific from being the preferred connection of the Southern Pacific for by far the greater part of transcontinental traffic, a traffic sufficient in volume and value to create the strongest motive and inducement in the Southern Pacific to do everything required by the Pacific Railroad Acts.

The Southern Pacific's ownership of the Central Pacific and of the "Sunset route" has never empowered it to control the routing of traffic which may pass over either the "Sunset route" or the Ogden route. The recent advent of water carriers through the Panama Canal has had such a revolutionary effect upon Atlantic Seaboard territory traffic that the matter of the preferential solicitation of such traffic for the "Sunset route" is now of no practical or legal consequence.

The evidence holds out no promise of either an improvement in the through service or an increase in the through business over the Ogden route to result from the separation of the Central Pacific lines from the Southern Pacific system.

PAGE

II. **Provisions of the Pacific Railroad Acts imposing obligations upon the railroad companies subject thereto in respect to operation and use of their roads** 150–157

Preferential solicitation through some other junction or gateway than the one where connection is made with a Pacific Railroad Acts company is not a violation of the statutes, since such conduct does not break the continuity of the through line or lines described in the acts, does not interfere with the existence over such lines of equal and non-discriminatory rates, time schedules, and every other element of through service, and does not amount to a discrimination in any sense heretofore given that term, and certainly is not a discrimination by one member against or in favor of another member of the Pacific Railroad Acts family.

III. **The provisions of the Pacific Railroad Acts requiring the railroad companies authorized to construct the through line or lines from the Pacific to the Missouri River to accord each other equal and non-discriminatory facilities and advantages in respect to rates, time and transportation will not support a charge of discrimination against said through line in favor of an outside line** 158–164

IV. **The mere fact that the Southern Pacific Company to the extent and in the manner shown by the evidence preferentially solicits for its "Sunset Route" some traffic which might otherwise pass over the Central Pacific-Union Pacific Line does not constitute a violation of the Pacific Railroad Acts** 164–168

The construction contended for by the Government is unwarranted, because it extends the obligations of the statutes beyond the express requirements or anything reasonably to be implied therefrom and beyond what is necessary either to secure the use and operation of the

PAGE

lines for all purposes of travel and transportation, so far as the public and Government are concerned, as one continuous line or to secure impartiality and equality in respect to advantages and facilities afforded as to rates, time or transportation, even if impartiality or equality is to be determined with reference to such advantages and facilities afforded any other connection whatever (pp. 167-173).

The Government's contention considered in the light of the general law as it existed at the date of the Pacific Railroad Acts and of subsequent legislation relating to connecting railroads (pp. 173-178).

Effect of applying the Government's construction of the statutes to conditions contemplated or authorized therein (pp. 178-181).

When subjected to the test of general application the Government's contention leads to absurd consequences.

It is discredited by the report of the Pacific Railway Commission (pp. 184-187).

V. The pleadings, arguments and decision of the Court in the Union Pacific Unmerger Suit considered with reference to their bearing on the Pacific Railroad Acts 188-203

The Pacific Railroad Acts figured in the Unmerger Suit only in connection with the question, whether it was necessary for the Union Pacific to acquire the Central Pacific in order to insure a continuance of the fair treatment which it had always received. As the Government characterized the conduct of the Southern Pacific as fair treatment of the Central Pacific-Union Pacific lines, as the Union Pacific was not aware that it was, and had been since 1883, the victim of an unlawful discrimination, the Court did not have before it any argument in favor of or

PAGE

against the construction of the Pacific Railroad Acts which the Government now urges upon this Court, and did not decide in favor of the Government the question whether the Pacific Railroad Acts were violated by the relations existing between the Central Pacific and the Southern Pacific Company or by the preferential routing of certain traffic over the "Sunset route".

If, by reason of the fact that the Union Pacific dominated the defense of the Unmerger Suit and by reason of other circumstances adverted to in the argument, the Unmerger Suit left the Court under the impression that it would be satisfactory all around to turn over the Central Pacific to the Union Pacific, there is enough in the present record completely to obliterate any such impression.

There is, however, a fundamental inconsistency between the attitude of the Government in the two cases. In the former suit it was urged that the Union Pacific had always been treated fairly and had nothing to complain of under the operation of the Central Pacific by the Southern Pacific, and that the Pacific Railroad Acts insured a continuance of such treatment. In the present suit it is urged that the Union Pacific is being discriminated against under the operation of the Central Pacific by the Southern Pacific within the prohibition of the Pacific Railroad Acts. In one case the Acts were invoked as securing a continuance of conditions, which were approved of and characterized as constituting fair treatment of the Union Pacific. In the other case the Acts are invoked as prohibiting the same conditions, which are declared to constitute discrimination against the Union Pacific.

In Conclusion 204–207

Appendix 207

CASES CITED.

The only cases cited are "Southern Pacific Company's ownership of Atlantic Steamship Lines", 43 Interstate Commerce Commission Reports, 168, which is discussed on pages 26-34; and the unmerger suit of United States *v.* Union Pacific Railroad Company *et al.*, 226 U. S. 61, to the discussion of which the whole of PART I of the brief is mainly devoted. It is again discussed in PART II, pages 188-203.

IN THE

Supreme Court of the United States.

UNITED STATES OF AMERICA, Appellant, v. SOUTHERN PACIFIC COMPANY, *et als.*, Appellees.	No. 21, October Term, 1920.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS DEALING PARTICULARLY WITH UNION PACIFIC-SOUTHERN PACIFIC UNMERGER CASE (226 U. S. 61), REPORT OF INTERSTATE COMMERCE COMMISSION ON APPLICATION OF SOUTHERN PACIFIC UNDER THE PANAMA CANAL ACT AMENDMENT, AND THE CASE UNDER THE PACIFIC RAILROAD ACTS.

PART I.

DISCUSSION OF THE CASE UNDER THE FEDERAL ANTI-TRUST ACT OF JULY 2, 1889.

This brief is to be regarded as supplemental to the main brief and argument for defendants. It is therefore not intended to cover the whole case. Its purpose, so far as relates to the case under the Federal Anti-Trust Act, is to take as its central theme the case of the *United States* vs. *Union Pacific Railroad Company, Southern Pacific Company, et als.* (226 U. S. 61), and to show to what extent the decision of the questions involved in this case may be regarded as predetermined, controlled or affected by the issues presented and decided in the opinion rendered in the former case. We shall refer to that case hereafter as the Unmerger Suit or Case.

Both the Government and defendants believe that the Unmerger Suit has an important bearing upon the present suit. Both sides will probably admit that but for the decree in the Unmerger Suit the present suit would not have been instituted. The Government regards the proceeding to disrupt the Southern Pacific System as the logical outcome of its successful effort to unmerge the Union Pacific and Southern Pacific systems. Defendants have shown by the testimony in this case that the idea of the Southern Pacific Company parting with its Central Pacific stock originated in the mind of the then Attorney-General as a

convenient method, through exchange of stock, of enabling the Union Pacific to dispose of its Southern Pacific stock. (II Vol., p. 782 ffg.) This idea grew upon the natural opposition of the Southern Pacific Company into the conviction that that Company must be dispossessed of its holdings by decree of court, under the mistaken theory that the union under one system of the Central Pacific lines and the other lines of the Southern Pacific System was of the same legal character and constituted the same kind of prohibited restraint of trade as the merger of the Union Pacific and Southern Pacific systems. The Government regards the decision in the Unmerger Case as authority for its contentions in the present case. Defendants take an entirely contrary view. They believe, moreover, that there are glaring inconsistencies in the contentions of the Government in the two suits. They have accordingly pleaded the record in the former suit as a bar and estoppel, and have offered the record, including the printed briefs of counsel for the Government, as conclusive evidence against the truth of the charge, so essential to the present case against defendants, that the ownership or control by the Southern Pacific Company of the Central Pacific lines was destructive of competition between the Sunset line and the line through Ogden formed by the line from San Francisco to Ogden, standing in the name of the Central Pacific Railway Company, in connection with the Union Pacific and its eastern connections.

For the reasons indicated and for an additional reason it is believed that a brief specially devoted to an analysis and discussion of the Unmerger Case will be worth while, the additional reason being that, in pointing out the differences between the two cases and the inconsistent contentions of the Government, in showing wherein the opinion in the former case does not support the Government and does help defendants in this case, many of the important points of our defense will be presented from a special point of view and with the advantage of contrast with the features of the other case.

A comparison between the two cases will bring out in special prominence the fundamental distinction between the merger of two independent, self-sufficient, previously competing railway systems and the organic union of lines of railway born of a common parentage, developed as parts of one whole, and so united and inter-dependent that a separation would leave each part crippled and capable of being operated only with impaired efficiency and at increased cost. A like contrast will be shown to exist in the matter of the element of competition. The charge in the earlier case was the destruction of competition previously existing in many fields between the two great systems concerned. In the present case, in the absence of any *status quo ante* of independent competitive existence, the charge is that, if the always existing common control had never existed, there might have been greater or more effective competition with a combination of the parts of the

Southern Pacific system under some different ownership; and that, if the common control were now terminated, the sum total of competition might be increased. Without waiving but insisting upon the defence that the alleged effect on potential competition is insufficient in law to show a cause of action, it will be shown in the discussion of the two cases that the allegation is not well founded in fact. In addition to the admission of record in the former suit and the uncontradicted evidence in this case to the effect that in the only field of competition concerned, that between the "Ogden route" and the "Sunset-Gulf route", there has always existed active and vigorous competition, the vigor and activity of which would not be increased by the proposed dismemberment of the Southern Pacific System, attention will be called to a report of the Interstate Commerce Commission, filed after the submission of this case in the Court below, in which the Commission declares that continued common ownership and operation of the line from San Francisco to Ogden, forming part of the "Ogden route", and of the steamship line from Galveston and New Orleans, forming part of the "Sunset-Gulf route" and essential to the integrity of that route, will have no harmful effect upon competition.

I. The Government's case as defined by its pleadings and as further restricted by the evidence.

Before comparing this case with the Unmerger Case we shall briefly discuss the Government's case now before the Court as disclosed by its pleadings and as further illumined by its evidence, especially in the light of what it has failed to prove or to attempt to prove. We shall thus get at the surviving issues in the case. We use the term "surviving issues", because many of the alleged violations of the statute have been abandoned, not expressly but by petitioner's failure to make any attempt to prove the facts upon which the charges are based. After the abandoned charges, inserted originally perhaps in ignorance of the facts, are eliminated, the case is reducible to practically one question, whether the fact that the Central Pacific line from San Francisco to Ogden forms part of a through line, in connection with the Union Pacific and eastern connections, which offers an alternative route for certain traffic with the through line owned by the Southern Pacific Company from San Francisco via El Paso and New Orleans or Galveston and thence by steamship to New York, makes the inclusion in one system of the Central Pacific lines and the lines composing the mixed rail and water line an undue and unreasonable restraint of trade within the condemnation of the law.

The petition starts out with a general charge that defendants are restraining and monopolizing, or attempting to monopolize, trade and commerce

in respect to transportation between the points afterwards mentioned, and that the individual defendants, as officers and agents of the Southern Pacific Company, are responsible for a continuance of the combination and monopolization complained of. Then follows the general description of the lines of railway and steamships controlled and operated by the Southern Pacific Company. The "Sunset route" is described as a joint rail and water route between New York City and the Pacific coast terminals in California and Oregon. This route is more accurately designated by defendants' witnesses as the "Sunset-Gulf route". The Southern Pacific Company's operation and control, by lease or stock ownership, of the lines composing this route are alleged. Mention is made of the Southern Pacific Company's ownership of a majority of the stock of the Pacific Mail Steamship Company and its consequent control of a line of steamships between San Francisco and Oriental points, and a line of steamships between San Francisco and Panama, the latter by means of connections at Panama forming part of a through line between San Francisco and New York. The lines of railway forming the Central Pacific Railway Company are stated; and reference is made to the ownership by the Southern Pacific Railroad Company of California of the line of railroad from the Rio Grande to Los Angeles and thence to San Francisco by the two routes, the Coast line and the west side San Joaquin

Valley line, its ownership of the roads leading up into Oregon, and its control of various railroad corporations in California, Oregon and New Mexico. The lease of the Central Pacific Railway and of the other lines above mentioned and their operation since 1885 by the Southern Pacific Company are alleged, as well as the Southern Pacific Company's ownership of the stock of the Central Pacific Railway Company.

These general and descriptive charges are followed by particular charges showing or intended to show facts and conditions in violation of the Anti-Trust Act.

(1) The Central Pacific, in connection with the Union Pacific and its eastern connections, is a "natural competitor" of the "Sunset route" of the Southern Pacific Company in the transportation of traffic between points on the Atlantic Seaboard and in the Middle West on the one hand and all points on the Pacific Coast, as well as points in the Orient, on the other.

(2) The Central Pacific connecting at Fresno with the Atchison, Topeka & Santa Fe Railway forms, with the connections of the Atchison, Topeka & Santa Fe, a route which is a natural competitor of the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and many other points in Central and Northern California, on the

one hand, and points in Arizona, New Mexico, Texas and Louisiana on the other, including Phœnix, El Paso, San Antonio, Houston, Galveston and New Orleans.

(3) The through routes formed by Central Pacific connecting at San Francisco Bay with various steamship lines (those operating via Panama to and from Alaska, Hawaii, the Philippines and Asia) are natural competitors of the Southern Pacific Company and its water connections.

(4) The union between the Southern Pacific and the Central Pacific has possibly prevented the existence of two independent competitive lines between San Francisco and Portland. The line now under construction by the Central Pacific from Weed to a connection at Natron with the Southern Pacific Company's line thence to Ogden, might be extended to Portland or the Central Pacific might, in exchange for trackage rights given the Southern Pacific over the line between Tehama and the northern boundary line of California, obtain trackage rights over the Southern Pacific line between Natron and Portland.

(5) The line of the Central Pacific from Hazen to Mojave connects at Mojave with the Atchison, Topeka & Santa Fe, and with the connections of the Atchison, Topeka & Santa Fe forms a route which, with joint traffic or prorating arrangements, would

be a natural competitor of the Southern Pacific Company and its connections for traffic between points on the Central Pacific and tributary territory and points in Arizona, New Mexico, Texas and other Southern States, but by reason of joint control of the Southern Pacific and Central Pacific such through traffic arrangements have not been made.

(6) It is alleged that prior to 1885 the lines of the Central Pacific were operated in connection with the lines of the Union Pacific and its connections in competition with the lines of the Southern Pacific. Then, after setting forth the lease of February 17, 1885, and its amendments, the organization of the present Central Pacific in 1899, the acquisition of its stock by the Southern Pacific Company in 1899, the control of both companies by a single management, it is alleged that the purpose and effect of said acquisition of stock and lease was to prevent competition between the lines of the two companies. It is further alleged that the ownership by the Southern Pacific Company of the stock of the Central Pacific and its leases of the properties of that company and its domination, management and control thereof, constitute a combination in restraint of trade and a monopolization thereof.

No evidence was adduced by petitioner to explain or support charge (2), that a line in the name of the Central Pacific connecting at Fresno with the Santa Fe forms, with connections of the Santa Fe,

a through route which is a natural competitor of the Southern Pacific Company and its connections for traffic between points in Northern and Central California and points in Arizona, New Mexico, Texas and Louisiana. We might safely leave this unsupported charge to fall by its own weight. But the evidence shows that the Santa Fe, by its own lines or in connection with the lines of the Western Pacific and several electric lines, has access to the territory and effectively competes for the traffic in question. Moreover, the Santa Fe has access to all territory served by the Southern Pacific System (including Central Pacific lines) under arrangements for through rates and divisions which enable it to successfully compete with the Southern Pacific Company. (See testimony of Spence, Vol. III, pp. 1024-5, 1029-1030, 1045; of Chambers, Vol. III, pp. 942, 954 ffg., 984; of Kruttschnitt, Vol. II, p. 769.) Such being the state of the record on the facts, it is not worth while to combat the legal proposition, that a system of lines becomes a prohibited restraint of trade when it is possible to form from a part of the system and some outside line a through route which is a "natural competitor" of a through route formed by other parts of the system with other lines.

Charge (3) as to routes formed by Central Pacific at San Francisco with various steamship lines (those operating via Panama, to and from Alaska, Hawaii, the Philippines and Asia) being natural competitors of the Southern Pacific Company and its water connections, was apparently not deemed by petitioner of sufficient im-

portance to be explained or supported by any evidence. We have only the testimony of defendants' witnesses which shows that there is active competition for all business passing through the port of San Francisco, that such competition is not affected in any way by the union under one control of the Central Pacific and the other lines of the Southern Pacific, and that in respect to such business there is not even "natural" competition between the Central Pacific lines and the other lines of the Southern Pacific System. (See testimony of Schwerin, Vol. II, pp. 698 ffg., 703-4; of Spence, Vol. III, pp. 1106-7, and p. 1037.)

Charge (4) accusing the common control of the Central Pacific lines and the other Southern Pacific lines of possibly preventing the construction of an extension of the California and Oregon line of the Central Pacific to Portland and of an extension of the Oregon and California line of the Southern Pacific to San Francisco, is so devoid of merit that we might safely ignore it, as petitioner has done in the evidence taken by it. We cannot forbear, however, calling attention to the absurdity of making such a charge in respect to two lines which Congress required to be constructed to connect with each other and thereafter to be operated as one continuous line (Act of July 25, 1866, 14 Stat., 239, Sec. 7). It is also worth while to call attention to the very imperfect information which the charge under discussion discloses to have been possessed by the Department of Justice respecting the system it was seeking to disrupt. It finds fault with the union under

one control of lines which the former head of the Department had insisted should remain under a common control after the separation of the Central Pacific from the Southern Pacific Company. When he was trying to enforce the sale to the Union Pacific of the Central Pacific stock, Mr. Wickersham, then Attorney General, recognized the advantage and necessity of the Southern Pacific Company retaining a through line between Portland and San Francisco, made up in part of Central Pacific lines, and insisted that the Southern Pacific Company should retain, after the sale, the Central Pacific line from Tehama north. (See testimony of Kruttschnitt, Vol. II, pp. 754-5 and p. 789.)

Charge (5) in respect to the possibilities of a through line, to be formed by the Hazen-Mojave branch of the Central Pacific in connection with the Santa Fe, as a "natural competitor" of the Southern Pacific Company, was also wholly neglected by petitioner when taking its testimony. The branch is in part a narrow gauge road with traffic not sufficient to justify its reconstruction on a standard gauge. It offers no possibilities as a connection of the Santa Fe. It was constructed by the Southern Pacific Company and put in the name of the Central Pacific. The charge in question has no merit even as a makeweight. Even if the Southern Pacific Company had been guilty of adding to its system by constructing a line which might form a part of a good through line with the Santa Fe, this would not serve to eke out a case of prohibited restraint of trade.

By this process of elimination we find the surviving

charges to be those enumerated above as (1) and (6). They are essentially one charge, consisting of three propositions: (*a*) The line standing in the name of the Central Pacific, in connection with the Union Pacific and its Eastern connections (the "Ogden route"), is a "natural competitor" of the "Sunset route" for certain traffic. (*b*) Prior to 1885 the Central Pacific line was operated in connection with the Union Pacific in competition with the lines of the Southern Pacific Company, *i. e.*, the lines forming the "Sunset route" or "Sunset-Gulf route". (*c*) The lease of 1885 and the acquisition of the Central Pacific stock in 1899 had for their purpose and effect to destroy previously existing competition between the two through routes.

In the argument in the court below counsel for the Government took the position that the so-called combination attacked was that charged to have taken place in February, 1899, when the Southern Pacific Company acquired the stock of the Central Pacific Railway Company, and that the lease of February 17, 1885, which was referred to when the petition charged that "under that and subsequent leases and amendments the Southern Pacific has ever since controlled and operated said properties and the additions thereto", was to be treated as without effect because *ultra vires* and invalid under the laws of California. This belated attack, *extra petitionem*, upon the validity of the lease of 1885 has been met in our main brief. Without repeating what is there said we submit that, so far as the United States and the charges in this suit are concerned, that lease and its

amendments must be regarded as valid and effective, unless and until set aside as in violation of the Federal Anti-Trust Act of 1890. Hence, when the Southern Pacific Company in 1899, with the knowledge and consent, and, indeed, at the invitation of the United States, purchased the stock of the Central Pacific Railway Company, it was not only acquiring the ownership of lines of railway which had always been parts of its system, with reference to which its through lines had been constructed, and without which its system would be disrupted, but it was acquiring the stock of a company all of whose property it already had in its possession and control under a lease, made before the Anti-Trust Act was adopted, which still had eighty-five years to run. If that lease was not a prohibited restraint of trade, neither was the stock purchase. If the property was lawfully acquired prior to the Anti-Trust Act, discharging a prior lien to protect such lawfully acquired property is certainly not a violation of that law.

It is important to observe that the competition complained of as destroyed is that in one field of competition, namely, for traffic for which the Ogden route and the Sunset-Gulf route offer alternative routes. The evidence shows that this field is restricted territorially to Northern and Central California on the one hand and Atlantic Seaboard territory on the other, and is restricted by natural and physical conditions to traffic which will stand trans-shipment. The evidence further shows that the traffic, as thus restricted, is the most highly competitive of transcontinental traffic, both in

respect to the number of competitors and the fierceness of the struggle therefor. There is no evidence, however, to justify the contention that so much of the traffic in question as is secured for the Sunset-Gulf route represents traffic which has been "diverted", to the prejudice of the public, to a more expensive route with inferior service. The witnesses stated with practical unanimity that the Sunset-Gulf route, in respect to such traffic, was at least the equal in service, time and otherwise of any of the several all rail lines, including the Ogden route, competing for such business.

Having reduced the scope of the Government's case to the charge that the Southern Pacific System is an unlawful combination in restraint of trade because of the inclusion therein of a link in a through line which is competitive with another through route made up of system lines, we shall now show from the Government's evidence the very narrow grounds relied on as constituting the alleged unlawful restraint of trade. It is not intended to discuss the evidence in detail. A general statement of its scope and purpose will suffice.

Abundant evidence was introduced to prove the conceded fact, that the Ogden route and the Sunset-Gulf route afforded alternative routes for the movement of traffic between California and Atlantic Seaboard territory. As was to be expected, there was no evidence of any "natural" or other competition between the parts of the Southern Pacific System standing in the name of the Central Pacific and the other parts of the system, except such as might be said to result from the

fact that a Central Pacific line formed part of the Ogden route.

There was no attempt to prove that the natural, necessary or actual effect of the union in one system of the Central Pacific line to Ogden and the lines constituting the Sunset-Gulf route was to destroy competition between the two routes. On the contrary, the witnesses for the Government agreed with defendants' witnesses in declaring that at all times, except during the Union Pacific-Southern Pacific merger, there had been active, vigorous and effective competition between the two routes (Lincoln, I Vol., pp. 121, 123; Schumaker, *Id.*, pp. 148, 163-7, 173; Kruttschnitt, II Vol., pp. 732-4, 740; Spence, III Vol., pp. 1037-1039, 1045-1048; Chambers, *Id.*, pp. 950-952, 967-968, 983). The testimony of these witnesses, as will be shown hereafter, is in accord with the contentions successfully made by the United States in the Unmerger Suit, and with the findings of the Interstate Commerce Commission on an application by the Southern Pacific Company, under the Panama Canal Amendment Act, for permission to continue to operate the water line part of the Sunset-Gulf route notwithstanding that company's ownership of the Central Pacific line to Ogden.

There was no attempt to prove any effort on the part of the Southern Pacific Company to destroy or neutralize competition between the two routes.

There was no attempt to disprove the abundance of competent testimony adduced by defendants showing, not only the absence of any power, but the absence of

any motive or inducement for the Southern Pacific Company to eliminate or lessen competition between the two routes by impairment of service or otherwise, using service in its broadest meaning.

There was no attempt to meet or rebut the testimony of numerous witnesses for defendants who testified, with convincing details, that the public had always enjoyed the full benefit of competitive service over the two routes and that both routes were better and rendered more efficient and economical service by reason of the unified management which the Government alone complains of (*infra,* pp. 116-117). This testimony is not met by the declaration that it is a general rule that the more railroads the more competition and the more competition the better service. It is not worth while to consider whether there is any such general rule or whether the exceptions thereto are so numerous as to deprive the rule of any value. Mr. Schumacher, one of the Government's best informed witnesses, who announced the rule (I Vol., p. 156), declared it was not true in the present case (*Id.,* p. 157). Testimony of defendants' witnesses, which include Mr. Eshelman, representing the views of the Railroad Commission of California, and Mr. Lynch, representing the experience of the shipping public, declaring that the Southern Pacific System, with the Central Pacific lines included therein, had not lessened competition and that its dissolution would not only not increase competition but would injure the public in just the respects in which competition is supposed to benefit it, cannot be said to be met

by the testimony of three Union Pacific officials to the effect that, if the Central Pacific were independent, its soliciting organization would be added to the army of solicitors striving to secure traffic for the Ogden route. We believe the Court will agree with defendants' witnesses (*e. g.*, Mr. Spence, Vol. III, pp. 1038-9) that the sum total of competitive striving for the particular traffic in question would not be appreciably or beneficially increased by such an addition to the soliciting force. As it is, the Union Pacific and forty or fifty other lines have agents at both ends striving to secure traffic for the Ogden route, offering every inducement in the way of service, not only their own service *but the service over the Central Pacific line.* It cannot be said that the service on the western end of the Ogden route is not competitive service. On the contrary, competition has its full influence on this service. The enormous traffic which passes over the Ogden route is subject to the fiercest competition, and can be secured and held only by the maintenance of the best service on the line between Ogden and San Francisco. And it is this competitive service which the army of solicitors working for the Ogden route offer the public. A new solicitor for an independent Central Pacific could not offer any more. He could not offer as much; for the uncontradicted testimony is that the present service over the Ogden route between Ogden and San Francisco, made up as it is not only of lines in the name of the Central Pacific *but of lines and facilities belonging to the Southern Pacific Railroad Company,* is a better

service than one made up only of the lines and properties of the Central Pacific. We are, therefore, justified in stating that there was a complete failure on the part of the Government to show that the proposed dismemberment of the Southern Pacific System would be followed by any increase of competition or any benefit to the public, and that defendants have proved the contrary. Of course, the Court will bear in mind that competition for the traffic which may move over either the Ogden route or the Sunset-Gulf route is not confined to those two routes, and that loss of good will or of business consequent upon impairment of service over one of the routes would not necessarily or probably benefit the other route, but would certainly injure the Southern Pacific Company in respect to the far greater part of transcontinental traffic which the Sunset-Gulf route cannot compete for.

There was no attempt to convict the so-called combination of restraint of trade by reason of its treatment of competitors or by reason of injury done the public. Defendants, however, have shown by competent uncontradicted evidence that the interests and convenience of the public are against the proposed dissolution, and that accounts for the conspicuous absence from the Government's list of witnesses of any complaining shipper or traveler. No competitor appeared to rebut the testimony of defendants' witnesses showing that the policy of the Southern Pacific Company towards its connections had been to promote the exchange of traffic and to give access to its territory to

every connection. It turned over its line from Mojave to Needles to the Santa Fe, as soon as the latter reached the California boundary, and it voluntarily made such arrangements in respect to business north of Mojave that the Santa Fe became an effective competitor for Central California business long before it reached San Francisco over its own rails.

There was no attempt to prove the present existence of any monopolistic conditions or trade-restraining control as resulting from the so-called combination. We mention, simply to call attention to its immateriality, testimony to the effect that many years ago the only rail lines in California were those of the system now known as the Southern Pacific System. If it once occupied the field alone, it was because its lines were first constructed and not because it excluded or had the power to exclude others from the field. It is a point upon which the witnesses on both sides agree, that whatever domination or influence over traffic (and especially traffic between California and Atlantic Seaboard territory, with which we are specially concerned) which the Southern Pacific System ever possessed, has been for many years on the wane until now it has reached the vanishing point. There was no attempt to rebut the testimony of Mr. Spence, which was in line with the testimony of other witnesses (I Vol., p. 169), that the competition for transcontinental traffic has been gradually increasing and the proportional takings of the Southern Pacific had greatly diminished even before the opening of the Panama Canal, and that the entrance

upon the field of the water carriers through the Canal, the most powerful of all the competitors, *who compete for all the traffic which is competitive between the Ogden route and the Sunset-Gulf route,* has caused the dominating influence of the Southern Pacific Company, if it ever existed, to be numbered among the things that were (III Vol., pp. 1031-2).

We mention simply to dismiss as immaterial the several contracts between the transcontinental lines which were put in evidence by the Government. The latest of them terminated in 1892, more than twenty years prior to the institution of this suit. There is no likelihood that they will ever be renewed. They were not due to the miscalled combination complained of, and the dismemberment of the Southern Pacific System is not necessary to prevent their recurrence. They were joined in by all railroads concerned in transcontinental traffic. If the Central Pacific Railroad Company had had no connection at the time with the other lines of the Southern Pacific System, the agreements would have been entered into just the same. Such agreements or associations were then being formed by all the rail carriers of the country. They belong to a period in the history of American railroads when they were seeking, by contracts with each other, to bring about stability of rates, the abolition of secret rate cutting, etc. They became unnecessary with the enforcement, after necessary amendment, of the Interstate Commerce Act. They disappeared entirely after the decisions rendered by the Supreme Court in the *Trans-*

Missouri Freight Association and *Joint Traffic Association* cases.

For similar reasons the several contracts between the transcontinental railroads and the Pacific Mail Steamship Company, and between the Steamship Company and the Panama Railroad Company, are unimportant and immaterial to the issue, whether the Southern Pacific System, with the Central Pacific lines included therein, constitutes a prohibited restraint of trade. These contracts were not due to or in furtherance of the alleged combination or conspiracy complained of, and they have long ago ceased to exist. It is a matter of public notoriety that the Southern Pacific Company no longer has any interest in the Pacific Mail Steamship Company, and all that could have been accomplished by this suit in respect to the Pacific Mail has already been accomplished.

We do not believe that either set of contracts should cause the Court to impose one demerit mark against the otherwise perfect record of good conduct which may rightly be claimed for the system, once Central Pacific now Southern Pacific, during its whole lifetime of more than forty years.

Reduced to a last analysis the Government's case is one of an attack upon a railroad system because of the inclusion therein of a divergent stem, forming with other connections a through route competitive with another through route formed by other lines of the system (the formation of the system preceding the construction of one of the through routes), without proof

of any destruction of competition or of any injury to the public and without promise of any increase of competition or benefit to the public to follow the disruption of the system.

There accordingly rests upon the Government the burden of showing, among other things, either that every railway system having a divergent stem forming by its connections a through route competitive with the parent system is unlawful, or that the Southern Pacific System is within the condemnation of the law upon grounds peculiar to it and not generally applicable to railway systems having such divergent stems. Now it is true of all such systems that, other things being equal, freight is preferentially solicited for the 100% haul, and it may be charged against all such systems that, if the divergent stem were separated from the parent system and independently operated, another corporation and another soliciting agency would be added to the number working for the through line of which it forms a link. Assuming that the Government does not claim that all railroad systems with divergent stems are unlawful, it will not advance the case against the Southern Pacific System to show merely that, if its divergent stem were operated by an independent corporation, there would be an addition to the number of railroad corporations working for the Ogden route, an addition which the record shows would amount practically to nothing more than another soliciting agency added to the now nearly half hundred fighting for that route, and would involve a decided decrease in the efficiency of the

Ogden route and in its force as a competitive factor. The Government is under the necessity of showing that there is something in the origin of the Southern Pacific System or in the manner of its growth and development or in its effect on competition between the two through routes in question which amounts to a violation of the Federal Anti-Trust Act. This necessity, however, the Government does not admit or has been unable to meet. It presents its case as if it were one of *res ipsa loquitur*. It shows that the Ogden route and the Sunset-Gulf route are competitive routes and that a link in one and the whole of the other route are under a common control or ownership, and claims, as a conclusion of law, that such common control or ownership constitutes a prohibited restraint of trade, despite the fact that such common control antedates both the conception and the construction of the lines in question, despite the fact that the conditions complained of are not only common but inevitable in practically every railway system of the country, despite the uncontradicted evidence that competition between the two routes has not been prevented or restricted, despite its own admission to that effect in the Union Pacific Unmerger suit, and despite the fact that the Interstate Commerce Commission has sanctioned the common control as neither preventing, excluding nor reducing competition, actual or potential. And this brings us to a report of the Interstate Commerce Commission which has an important bearing on the issues of this case.

II. Effect on the Government's case of the favorable report of the Interstate Commerce Commission upon the application of the Southern Pacific Company, under the Panama Canal Act Amendment to the Interstate Commerce Act, to be permitted to continue to operate the line of steamships which forms a part of the Sunset-Gulf route, notwithstanding its ownership of a part of the all-rail route via Ogden.

After the close of the testimony and the submission of the case in the court below the Interstate Commerce Commission acted upon an application of the Southern Pacific Company, under the Panama Canal Act Amendment of Section 5 of the Interstate Commerce Act (37 Stat. L. 564), to be permitted to continue to own and operate its steamship line between the port of New York and the ports of New Orleans and Galveston. This application was filed in February, 1914, submitted June 1, 1916, and decided January 24, 1917.

The Commission found the existence of competition between the rail lines of the Southern Pacific and their connections via the Ogden gateway and via the El Paso gateway and the Sunset-Gulf route, of which the steamship line in question formed a part, and hence that the Southern Pacific Company's rail lines may and do compete with its steamship lines operating between New York and the two Gulf ports. It remained then for the Commission to determine the effect on competition between the Ogden route and the Sunset-Gulf route

of the ownership by the Southern Pacific Company of a part of the all-rail line and the whole of the rail and water line, including the steamship lines in question. The finding of that body of experts is a shattering blow to the contentions of the Government in the present case. Under the terms of the Panama Canal Act Amendment the Commission was authorized to permit the Southern Pacific Company to continue to own and operate the steamships only if it found that such water service was "being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension (*i. e.*, permission to continue to own and operate) "will neither exclude, prevent, nor reduce competition on the route by water under consideration * * *". What competition? *Any* competition, including competition with the Ogden route, certainly, as well as competition through the El Paso gateway. The Commission granted the application of the Southern Pacific Company to be allowed to continue to own and operate the water part of its Sunset-Gulf route, and it necessarily and expressly decided that such operation and the ownership by the Southern Pacific Company of the rail and water line and, at the same time, of the link between Ogden and San Francisco of the all rail line was in the public interest, to the advantage of commerce, and did not exclude, prevent, nor reduce competition between the Ogden and Sunset-Gulf routes—not simply the actual, but any possible competition.

The report of the Commission, which bears date

January 24, 1917, will be found in the official volumes of the Commission's Reports, 43 I. C. C. 168, entitled "Southern Pacific Company's Ownership of Atlantic Steamship Lines". After explaining the rail system of the Southern Pacific Company and its connections, including the Ogden route, and the steamships operated by it, especially those forming part of the Sunset-Gulf route, the report states:

> "The record shows that the Southern Pacific Company's rail system and its rail connections form all-rail transcontinental routes via the El Paso gateway and via the Ogden gateway. The record also establishes that these all-rail routes engage in the 'most active and vigorous competition' with the Sunset-Gulf route and that the Southern Pacific Company, by its participation in the solicitation and carrying of traffic over these all-rail routes, actively competes with its Atlantic Steamship lines through both New Orleans and Galveston in their solicitation and carrying of traffic over the Sunset-Gulf route. We, therefore, find that the Southern Pacific Company's rail lines may and do compete with its Atlantic Steamship lines operating between New Orleans and New York and between Galveston and New York for through traffic. It follows that the time during which the petitioner may continue to operate or to have an interest in such service by water can not be extended by us, under the terms of the statute, unless the record shows that such extension will neither exclude, prevent, nor reduce competition on these routes by water and that the present operation is of advantage to the convenience and commerce of the people" (pp. 170-1).

After some discussion of water competition between the Gulf ports and New York, and after a very complimentary allusion to the character of the service maintained by the Southern Pacific Company and its universal endorsement (pp. 172-3), the Commission disapproved of certain practices in the port to port business, and then declared that the correction of those objectionable practices would leave no basis of record for withholding an order permitting the continued ownership and operation by the Southern Pacific Company of its steamship lines. The objectionable practices related to confining the benefit of a dry goods mixture rule to goods owned by one shipper and the practice of allowing shippers the benefit of the port to port rates in certain cases where the Commission thought the higher through rate should have been applied. These practices having been corrected by proper tariff amendments the Commission, at a general session held at its office in Washington, D. C., May 12, 1917, rendered an order in which it recited the application of the Southern Pacific Company under Section 5 of the Interstate Commerce Act, the investigation thereof by the Commission and its report thereon,

> "which said report contained findings that the petitioner's rail lines may and do compete with its Atlantic Steamship Lines operating between New York and New Orleans and between New York and Galveston, that under present conditions an extension of the time during which the petitioner may continue to operate or have an interest in

these steamship lines will neither exclude, prevent nor reduce competition on the routes by water, and that the correction of certain objectionable practices which were enumerated would leave no basis of record to justify the withholding of the requisite finding, under the act, that the existing service of these steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people;

"*And it further appearing,* That the petitioner by the filing of appropriate tariffs now effective from New York, N. Y., and points in Atlantic seaboard territory to Galveston and interior Texas points has corrected the objectionable practices above referred to."

And thereupon it was ordered—

"That the application of the Southern Pacific Company for an extension of time beyond July 1, 1914, within which it may continue the operation of its Atlantic Steamship Lines between New York and New Orleans and between New York and Galveston be, and it is hereby, granted, subject to such further order or orders as may hereafter be entered by the Commission.

"*It is further ordered,* That all rates, fares, schedules and regulations applying to the transportation of persons and property by the petitioner's Atlantic Steamship Lines between New York, N. Y., and New Orleans, La., and between New York, N. Y., and Galveston, Tex., subject to

the act, be filed with this Commission and posted as required by the act to regulate commerce and regulations of the Commission on or before July 1, 1917."*

We submit that this report of the Interstate Commerce Commission and the order based thereon are directly opposed to the fundamental proposition of the Government in the present suit. How can a common control or ownership whose continuance is in the public interest and to the advantage of commerce, or which does not exclude, prevent, or reduce competition, amount to an unreasonable restraint of trade? There is abundant evidence in this record in support of the Commission's finding, and there is no evidence to the contrary.

The fact of such a finding in respect to the negligible effect on competition of the common control of the Central Pacific lines and Sunset-Gulf route, and the impossibility of conceiving of such a finding in respect to the common control of the Southern Pacific System and the Union Pacific System, shows that there is a fundamental difference between the present case and the Unmerger Case.

The irreconcilable conflict between the report of the Commission and the contentions of the Government in this case will be made more manifest by a consideration of the extended scope which must be given to competition as used in the Panama Canal Act Amendment. The

*Note: The report of the Commission, after correction of objectionable practices, is found in 45 I. C. C. 505. The formal order is printed in the appendix of this brief.

competition which the common control of railways and a water carrier must not prevent or lessen is not simply the competition between the water line considered by itself and the rail lines considered by themselves. The Southern Pacific Company has no rail lines between the Gulf ports and New York. The Commission has always held that, in considering the public interest and the convenience and advantage of commerce, the competition to be regarded included competition between through lines made up in part of the water line and through lines made up in part of rail lines belonging to the owner of the water line. Moreover, the competition which must be protected is not only the competition which actually exists or has existed, but also any competition which might be brought into existence by a separation of the joint ownership or control in question. The mandate to the Commission is broader than any mandate given the courts by the Sherman Law. It follows, therefore, that no matter how broad a meaning the Government gives to competition in its complaint that competition between the Sunset-Gulf route and the Central Pacific line as part of the Ogden route has been destroyed, such competition is included within the competition which the Commission has found not to have been prevented or reduced.

The provisions of the Panama Canal Act Amendment prescribing the conditions under which the Interstate Commerce Commission may authorize the continued ownership by a railroad of a line of water carriers which

may or does compete with its rail lines are inconsistent with the theory upon which the Government is prosecuting this suit. The Government asserts as a proposition so universally true that it need not be supported, and cannot be overthrown, by any evidence, that common ownership or control of any parts of two lines of transportation which may or do compete, is so restrictive of competition as to constitute such common ownership or control, without more, an unreasonable restraint of trade. But the provisions in question of the Panama Canal Act imply that there may be a common ownership or control of two lines of transportation which are actual or possible competitors that is of public advantage or convenience and that does not exclude or restrict competition between them.

Congress seems always to have regarded the common ownership or control of links in two or more competing through routes as not necessarily so restrictive of competition as to be against the public interest. By the act of July 27, 1866 (14 Stat. 292, Sec. 18), it authorized the Southern Pacific Railroad Company to construct and operate a line from San Francisco to Needles, to form part of the transcontinental line along the 35th parallel of latitude, and by the Act of March 3, 1871 (16 Stat. 573, sec. 23), it authorized the same company to construct and operate a line from San Francisco to Yuma to form part of a transcontinental line along the 32nd parallel of latitude. And there is good reason to believe that Congress knew at the time that the Central Pacific and the Southern Pacific Railroad Companies were then under a common control.

We submit that the report and order of the Interstate Commerce Commission strongly support the practically unanimous testimony in this case to the effect that—

(1) The inclusion of the Central Pacific lines in the Southern Pacific System has not eliminated competition between the Ogden route and the Sunset-Gulf route, the finding of the Commission being that there is "most active and vigorous competition" between the two routes.

(2) The common ownership and operation of the Sunset-Gulf route and of the Central Pacific link of the Ogden route neither excludes, prevents nor reduces such competition.

(3) The present common ownership and operation is of advantage to the convenience and commerce of the people.

We believe, however, that it will not be necessary for the Court to consider whether any increase of competition may be effected by the separation of the Central Pacific lines from the other lines of the Southern Pacific System, because the origin and nature of the common control complained of is such as to exempt it from the condemnation of the Sherman Law even if some increase of competition might result from a termination of such control. And this brings us to the defense based on the origin and manner of the formation and development of the Southern Pacific System.

III. The defense based on the origin of the common control of the lines composing the Southern Pacific System and on the manner of the formation and development of that system.

An important and fundamental defense to the case under the Anti-Trust Act is afforded by the origin and nature of the common control complained of and the manner of the formation and growth of the resulting system of railroads. Here again it is not our intention to discuss in detail the facts upon which this defense is based or to show to what extent it is an answer to the alleged violations of the statute. The main brief for defendants does this. Attention is now called to this defense and its legal significance, because the facts upon which it is based serve to make the Southern Pacific System essentially different from the combination of railway systems attacked in the Unmerger Case.

The common control resulting from the union under one management of the railroads composing the Southern Pacific System did not originate from the combination of prior existing competing lines. It was coincident with the construction of each part of the system. It not only antedated the Sherman Law, but it antedated the construction of the railroads over which it extends. It may be said to have existed *ab initio,* and the railroads included in it to have never had an independent existence. The present system of railroads is the creation of that common control. Its growth and development, which has been by construction by the normal

means and in the usual manner according to which a system of railroads is naturally developed, was influenced and determined by the common control to which it has always been subject. That is to say, the different parts of the system were conceived and constructed as parts of one interdependent system of lines.

The manner of the growth and development of the system is graphically shown by the series of maps portraying the system at different stages of its development (Defendants' Exhibits 1 to 7) and by the testimony, among other witnesses, of Mr. Kruttschnitt (see particularly II Vol., pp. 725-6, 727). Exhibits numbers 1 to 6, inclusive, are maps which exhibit the growth and development of the Southern Pacific System (including as a part thereof lines standing in the name of the Central Pacific) by showing the lines in existence on successive dates, viz: January 1, 1870, January 1, 1875, January 1, 1880, January 1, 1882, March 1, 1885, and July 2, 1890. Exhibit No. 7 is a map intended to show the Southern Pacific System west of El Paso as it was on July 2, 1890, the date of the Federal Anti-Trust Act, and to show each subsequent addition or extension thereof. Every such addition or extension is designated and numbered, and the reason therefor explained and justified by Mr. Kruttschnitt (Vol. II, pp. 714-727). The gradual, ordinary, normal growth and development of the system as one interdependent whole is thus clearly demonstrated. (Exhibit No. 7 will be found at the beginning of Vol. V, Defendants' Exhibits.)

It follows from the foregoing that there has been no

elimination or restriction of any prior existing competition, and the system of railroads is to be regarded as one organic whole and not as an abnormal union or combination of two or more independent competing lines. It follows also that the proposed separation of the roads standing in the name of the Central Pacific from the rest of the system is not an unmerging of two systems. There are no separate and distinct units to be restored to a former independent existence. The division which the Court is asked to make amounts to a disintegration of one interdependent system into more or less incomplete parts. As would naturally be expected from a common control which has continued for more than forty years, with reference to which the lines of railway were constructed, to which business has become accustomed, and with which the public are satisfied, the result of the disruption which the Government seeks to obtain will be most injurious not only to the dismembered parts but to the public depending upon them for service. Neither the Central Pacific, separate from the system with which it has grown up, nor the other lines of the system, severed from the Central Pacific, in union with which they were born and raised, can serve the public as well or supply the same amount of useful, effective competition as they have done under unified management.

As to the legal significance of the manner of the formation and development of the system of railroads now charged with undue and unreasonable restraint of trade, it certainly distinguishes this

case from the Union Pacific-Southern Pacific unmerger and other cases relied on by appellant, all cases of combinations between railroad companies having an independent origin and existence which, prior to the combination, had been competing with each other, so that in each case it was found by the Court that the purpose and effect of the combination was to destroy or unduly restrict prior existing competition, and the dissolution of the combination restored self-sufficient units to the *status quo ante* of independent competitive existence.

That the distinction just pointed out is material will have to be supported by an appeal to reason rather than authority, because it does not seem to have occurred to any one before this suit to charge that the Sherman law was violated by a common control which did not result from a combination between previously independent competitors but from the construction of a system of lines by one and the same interest. To construct and thereafter operate two trading or manufacturing concerns doing the same kind of business in overlapping territory is not the same thing in fact or in the eyes of the law as the purchase by the owner of one such concern of another, similarly located, but independently owned and operated. In the one case there would be an extension of trading or manufacturing facilities with no effect upon any competition that ever existed; in the other case one competitor would absorb another competitor and a disappearance of

prior competition would result. One man may build two railroads so located that a part of the traffic carried by one could be carried by the other, and both may serve in some degree a common territory, so that, if they were independent enterprises under separate ownership, they would be competitors; yet it cannot be said that, by constructing two lines of railroad one of which was a potential competitor of the other in respect to some traffic, a person was guilty of suppressing or diminishing competition. No reasonable construction of the Sherman law can make it prohibit a man, or the same set of men acting under one corporate name or several corporate names, from constructing and thereafter owning and operating two or more lines of railroad so situated that one by itself or in connection with other lines may serve territory which overlaps the territory served by the other. And this is true, although at the same time it may be true that different parts of such a system, if they had had an independent existence and so had been competing with each other, could not thereafter lawfully be united in a common ownership or control because of the destruction or diminution of antecedent competition which would result. When the construction of the Central Pacific line to Ogden was followed by construction of the line from San Francisco which, with connections, reached the Gulf by a more southern route, and thence by steamships was extended to the Atlantic coast, the effect was

to add to the lines of transportation open to the public and not to diminish or restrict any existing competition. It is absurd to say that the construction and subsequent operation of this new line constituted a restraint of trade simply because such addition to the transportation facilities of the company was made by the same people who owned the Central Pacific.

In this connection the use of the adjective "natural" in the petition of the Government is significant. Heretofore the adjectives "actual," "existing," "prior existing," or the noun "competition," without any qualifying or restrictive words, have been sufficient to define the prohibitions of the Sherman law or to charge a violation of that law, but by reason of the origin and nature of the Southern Pacific system of lines it became necessary in this suit to seek a more comprehensive adjective than "actual," or "existing," or even "potential," to be used in describing the competition which defendants are charged with preventing. The word "natural" was therefore selected. It is used to denote competition which would exist if two or more concerns were not owned by the same person. To charge that two business enterprises or two lines of railway engaged in interstate commerce are "natural competitors" is not sufficient to show that their joint ownership or control is a restraint of trade or even an elimination of competition, unless it be further shown that such natural competitors came into exist-

ence under separate ownership, and that the joint control is a result of a subsequent contract, combination or conspiracy which had for its dominant purpose and effect to suppress the competition which before that time had existed between the parties to the combination. Otherwise there would be a restraint of competition whenever one person (individual or corporation) owns or constructs and thereafter operates two or more stores or manufactories or lines of railroad which, if separately owned, might compete with each other. And, in order to avoid the charge of elemination of competition, and, possibly, of restraint of trade, commercial and manufacturing enterprises would have to be confined to practically one store or plant; for the facilities of communication are such that the field of trade of commercial and manufacturing enterprises may be coextensive with this country, and those situated in remotely distant parts of the United States may have overlapping and competitive territory. The adoption of the Government's theory of what constitutes a restraint of trade would prevent a railroad company from building parallel branches or feeders or loops to serve different parts of tributary territory or any divergent stems or forks to put itself into connection with different gateways; for, considering the vast number of railroads in this country, it would always be possible for some part of a system of railways to form with some possible connection a through line which might compete for some traffic

with the parent road. The use of the term "natural competitor" in the petition may be characterized as an ingenious effort to extend the meaning of the Sherman law to an unprecedented and unwarranted extent.

The defense based on the origin and nature of the Central Pacific-Southern Pacific System amounts to as much as the difference between a charge of restraint of trade based on the elimination or lessening of previously existing competition and an alleged restraint of trade based on the hypothetical, uncertain, indirect effect on competition resulting from the same person constructing and thereafter operating lines of railway which, under different ownership, might have been differently constructed or combined differently with other lines so as to make the sum total of competition greater than under existing conditions. And the difference is as great as no cause of action and a possibly good cause of action under the Anti-Trust Law.

We are firm in the belief that the genesis of the Southern Pacific System is sufficient of itself to show that it is not within the condemnation of the Federal Anti-Trust Act. When we go further, as we shall do in this argument, and show that the system of railways so formed and developed possesses none of the characteristics of a prohibited combination or conspiracy in restraint of trade and has neither the power nor any motive to destroy competition, and that its preservation rather than its dissolution is demanded by the public

interest, we are really assuming the offensive, because we are showing, not only that there are no legal grounds for the dismemberment of the system, but no reasonable ground or excuse for an attempt on the part of the Government to accomplish such a result.

We claim that the defense under discussion, the origin and nature of the common control, is a complete answer to the whole of the Government's case under the Sherman Law, even if this control had prevented or lessened any competition which would otherwise exist between the Central Pacific lines and the other lines of the Southern Pacific System. This is true because the nature and origin of the common control gives to the system the same legal character it would have if it had been originally constructed and owned by one and the same corporation, and for the other reasons set forth in the briefs. But we do not admit that the effect of the common control is to prevent any competition which would otherwise exist between the Central Pacific lines and the other lines of the system. There is no competition between the "Sunset route" and the Central Pacific line to Ogden as such, or between the other lines of the system and the Central Pacific lines, considered by themselves. The only competitive relations alleged and attempted to be proved are those between the "Sunset route" and the Central Pacific-Union Pacific through line. While it is not necessary for our case, we shall endeavor to show that the contention of the Government, that the common control complained of has prevented or created the

power and incentive to prevent the competition between the Ogden route and "Sunset route", is not only contrary to the evidence in the present case, but contrary to the evidence, the pleadings and contentions of the Government and the findings of this Court in the Union Pacific unmerger suit. As the common control has always existed the contention of the Government means that there has never been a time when any real competition betweeen the two routes existed.

This brings us to a discussion of the issues and decision in the Unmerger Suit. We expect to show that whether at the time of the merger in 1901 actual competition existed between the Ogden and the Sunset routes, and the extent of such competition, and whether the control by the Southern Pacific Company of the Central Pacific created the power or incentive to prevent such competition, were material issues in the former suit. They were presented by the pleadings, testified to by witnesses, discussed in the briefs, and finally decided by the Supreme Court, the decision being in favor of the actual existence, prior to the merger, of "competition, sharp, well defined and vigorous", and of the absence of power or motive on the part of the Southern Pacific Company to destroy or control such competition. We expect further to show that the Southern Pacific System, with the Central Pacific lines included therein, is amenable to none of the objections which led to the condemnation of the Union Pacific-Southern Pacific merger.

IV. The Union Pacific Unmerger Case (United States vs. Union Pacific Railroad Company, Southern Pacific Company, et als., 226 U. S. 61).

The defendants have put in evidence the record in the above case, consisting of the pleadings and the orders, decrees and opinions of both courts (Defendants' Exhibits, Vol. VI, pp. 1990, ffg.). They have also put in evidence the brief and argument filed in this Court on behalf of the United States. We propose now to show the issues raised by the pleadings, to confirm and fortify the conclusions drawn from the pleadings by references to the brief and argument, and then to show how those issues were decided by this Court and upon what grounds. Such showing will make clear that the decision in the Unmerger Suit is no precedent for a judgment against defendants in the present case, and that the Government secured the unmerger of the Union Pacific and Southern Pacific systems upon propositions of fact and of law inconsistent with those it now relies upon to secure the dismemberment of the Southern Pacific System.

The Pleadings.

The parties defendant were the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, Northern

Pacific Railway Company, Great Northern Railway Company, Farmers Loan & Trust Company, E. H. Harriman, Jacob H. Schiff, and other individuals.

After alleging the interstate commerce business of the defendant railroad companies and the relations of the individual defendants to the Union Pacific Railroad Company, the petition (paragraph III) sets forth the corporate history of the Union Pacific and of the Central Pacific with special reference to the Pacific Railroad Acts, and cites the provisions of those acts requiring the operation of those roads as one continuous line, quoting Section 15 of the act of July 2, 1864, and stating the terms of the amendment of June 20, 1874. The petition, in the same paragraph, describes the location of the main lines of the Oregon Short Line and of the Oregon Railroad and Navigation Company, and alleges the ownership of those companies by the Union Pacific. It also shows the ownership in 1901 and since by the Oregon Railroad and Navigation Company of a line of steamships between Portland and San Francisco and of a line of steamships plying between Portland and Japan, China and other points of the Orient. It also alleges the ownership by the Southern Pacific Company of the lines of railroad from Portland to New Orleans and Galveston and the operation in connection therewith of the steamships to New York, as well as its ownership of the capital stock of the Central Pacific and the operation and management of the lines of that Company.

The competition existing at the time of the merger

betwen the Union Pacific System and the Southern Pacific System is thus described in paragraph III of the petition:

> "That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States; both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the lines of said Union Pacific Railroad Company for a large amount of traffic originating in the Atlantic coast and Central States;
>
> "That the rail line of said Southern Pacific Company from San Francisco to Portland was in active competition with the ships plying between San Francisco and Portland and owned by said Oregon Railroad & Navigation Company, as hereinbefore alleged;
>
> "That the said ships of the Portland and Asiatic Steamship Company, in connection with the rail lines of said Union Pacific Railroad Company and its subsidiary companies, as hereinbefore alleged, running from Portland, Oreg., to the East, were in active competition with the ships of said Pacific Mail Steamship Company and the rails of said

Southern Pacific Company running to the East from San Francisco;

"That the line of railroad composed of the tracks of said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company between Ogden, Utah and Portland, Oreg., were in active competition with the lines of said Southern Pacific Company, between said points;

"That the rail lines of the said Southern Pacific Company were in active competition with the ships and rail lines of the said Oregon Railroad & Navigation Company for a large amount of traffic between San Francisco and points in Montana, Idaho, and other States;

"That the competition hereinbefore alleged between the system of railroads and steamships owned and controlled by said Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by said Southern Pacific Company was substantial and included a large volume of traffic, both freight and passenger."

The remainder of the paragraph deals with competition of the Union Pacific System with the Santa Fe System and with the Northern Pacific and Great Northern systems.

It clearly appears from the foregoing that the petition alleges the existence at the time of the merger of "active competition" between the Union Pacific and the Southern Pacific systems in the following fields:

(*a*) Between the rail lines of the two systems for traffic to and from Colorado and other interior States.

(*b*) Between the Southern Pacific steamship line from New York and Galveston and New Orleans, in connection with its rail lines, and the Union Pacific for Atlantic Coast and Central States traffic. This is equivalent to the allegation of active competition at the time of the merger between the "Ogden route" and the "Sunset-Gulf route" in respect to Atlantic Seaboard territory.

(*c*) Between the rail line of the Southern Pacific and the steamship line of the Union Pacific between San Francisco and Portland.

(*d*) Between the steamships in the Asiatic trade of the Union Pacific running from Portland and those of Pacific Mail (in which the Southern Pacific had a majority stock ownership) running from San Francisco.

(*e*) Between rail lines of the two systems between Ogden, Utah and Portland, Oregon.

(*f*) Between the rail lines of the Southern Pacific and the ships and rail lines of the Union Pacific between San Francisco and points in Montana, Idaho and other States.

The important fact is the allegation then, forming an admission now, of "active competition" at and prior to the merger between the Ogden route and the Sunset-Gulf route, the charge made and sustained being, as we shall hereafter see, that such competition was

destroyed by the merger. Another important fact is that the competition between the Ogden gateway and the El Paso gateway was not the only competition between the two systems. They were striving for traffic in many other competitive fields at the time they were merged. (See also testimony of Mr. Spence in the present suit, Vol. III, p. 1178.)

Paragraph IV of the petition alleges the acquisition for the Union Pacific of $75,000,000, out of a total then outstanding $197,847,788, of the capital stock of the Southern Pacific Company, for the purpose and with the effect of eliminating the aforesaid prior existing competition, which holding of stock was afterwards increased to $90,000,000; and that by virtue of such stock ownership the management of the two systems was amalgamated and the competition previously existing between the two railway systems and their steamship lines was destroyed.

Paragraph V shows the efforts of the defendants, Harriman, Schiff, Kahn and Stillman to acquire control of the Great Northern, the Northern Pacific and the Chicago, Burlington & Quincy. Paragraph VI relates to their dealings with the San Pedro, Los Angeles & Salt Lake Railroad Company, and Paragraph VII to their efforts to secure control of the Atchison, Topeka & Santa Fe Railway Company.

The relief was a general prayer that the defendants, and each of them, be enjoined from carrying on the conspiracy charged as existing to restrain interstate and foreign trade and commerce, and a part of the spe-

cial relief prayed for was the unmerging of the Union Pacific and Southern Pacific systems by the sale of the Southern Pacific stock held by or for the Union Pacific. It was further prayed that the Court grant such other and further relief as the nature of the case may require.

Coming now to the responsive pleadings, the answer of the Union Pacific and its subsidiary companies, the Oregon Short Line and the Oregon Railroad & Navigation companies, admits, among other things, the construction of the Union Pacific and of the Central Pacific under the Pacific Railroad Acts, refers to those acts for an answer to the statements in the petition respecting the duties imposed upon the companies covered thereby, but makes no averment as to any failure on the part of the Central Pacific or Southern Pacific to discharge those duties. It admits the ownership by the Southern Pacific Company of the lines of steamships between New York and Galveston and between New York and New Orleans, and its ownership of the capital stock of the railroad companies owning the lines of railroad from New Orleans and Galveston, through the States of Louisiana, Texas, New Mexico and Arizona, to San Francisco, California, and Portland, Oregon.

The answer sets up the history of the Central Pacific Railroad Company, its indebtedness to the United States, the settlement of that indebtedness, involving the organization of the Central Pacific Railway Company. It is specially averred (paragraph III, clause 25) that the discharge of such indebtedness was caused

and brought about by the Southern Pacific Company, which provided the means for satisfying the same.

It is denied (clause 27),

> "that the steamship lines of the Southern Pacific Company between New York and New Orleans and between New York and Galveston, together with the rail lines in connection therewith, were in active competition with the lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic Coast and in the Central States."

It is averred, on the contrary (clause 28),

> "that in the transcontinental lines of railroad reaching the Pacific coast south of Portland, Oregon, the Union Pacific Railroad was but a link, about 1,000 miles in length, and the defendant Union Pacific Railroad Company merely an intermediate carrier without any power to make rates upon such traffic, and that the defendant Southern Pacific Company, through its possession and operation of the Central Pacific Railroad and its ownership of all the stock of the Central Pacific Railway Company, controlled that portion of such transcontinental line about 850 miles in length extending from Ogden, Utah, to the Pacific Ocean at San Francisco and other points in California, and no rate between the Missouri River or points east thereof and the Pacific coast south of Portland or Asiatic ports could be made by these defendants except with the consent of and by agreement with said Southern Pacific Company; and while these defendants separately owned connect-

ing lines of railroad, operated as a single system as aforesaid, extending from the Missouri River to Portland, Oregon, and operated certain small steamships between Portland and San Francisco, as aforesaid, yet they aver that such route via Portland was not only an impracticable route as a competitor of said Southern Pacific Company, but any attempt of these defendants to use it as such competitor would have greatly injured defendant Union Pacific Railroad Company, because said Southern Pacific Company would thereupon have preferred the rivals of said Union Pacific Railroad Company in routing and interchanging traffic at Ogden, and the business, in tonnage and revenue, which defendant Union Pacific Railroad Company would thereby have lost would have greatly exceeded the total volume of any business it could have secured over such impracticable route in competition with said Southern Pacific Company, so that the interest of defendant Union Pacific Railroad Company, and the companies formerly owning its lines, always prevented it and them from using or attempting to use the said route via Portland in competition, with said Southern Pacific Company upon any business to or from the Pacific coast south of Portland or to or from Asiatic ports."

Specific denials are made of the existence of competition in other fields described in the petition.

Then follows, in Paragraph IV, Clause 14, the reasons alleged for the acquisition of the stock of the Southern Pacific Company, namely:

"That although the railroad of the Union Pacific Railroad Company and the said Central Pacific

Railroad physically formed a continuous line from the Missouri River to the Pacific Ocean, yet almost one-half the length of said line, to wit, from Ogden to San Francisco, with many branches, was owned by the Central Pacific Railway Company, and was controlled and operated by the Southern Pacific Company, and no rate for the transportation of passengers or property over the said line between the Missouri River and the Pacific Ocean could be made without the concurrence of both the Union Pacific Railroad Company and the Southern Pacific Company; and the only means by which the Union Pacific Railroad Company could secure control of the said Central Pacific Railroad was to secure control of the said Southern Pacific Company, which owned every share of the stock of said Central Pacific Railway Company. That the lines of railroad now owned by defendant Union Pacific Railroad Company had been greatly improved while in the hands of receivers in the foreclosure proceedings hereinbefore mentioned and prior to January 1, 1901, it recognized the necessity, in the interest of the public as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved, and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over

the Union Pacific Railroad, the improvement of the latter, as contemplated, would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring, by improvements, its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad; and the Southern Pacific Company was also without such means or credit, as practically all of its assets, and the assets of the various corporations controlled by it were mortgaged or otherwise pledged. The stock of defendant Southern Pacific Company formerly owned by Collis P. Huntington, who died in August, 1900, together with other stock amounting to nearly one-half of the shares of said company, was for sale, and if the same had been acquired by any interest adverse to defendant Union Pacific Railroad Company, its plans, efforts and object to improve its line of railroad between Council Bluffs and Ogden, and the substantial object of the aforesaid acts of Congress providing for a continuous line and system from the Missouri River to the Pacific Ocean, would have been defeated and rendered futile, and defendant Union Pacific Railroad Company would furthermore have been deprived of any opportunity to become, and rival lines would have become, the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, Utah, and the value of the lines of railroad and the credit of the Union Pacific Railroad Company would have been greatly and permanently depreciated

and impaired. For the purpose of procuring the improvement of the said Central Pacific Railroad, and to bring it up to the standard and degree of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and without any intent or purpose in anywise to suppress or restrain any competition in interstate or foreign commerce the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants Union Pacific Railroad Company and Oregon Short Line Railroad Company and are now so held by the company last named."

It is significant that the reasons for the acquisition of the Central Pacific line are based upon apprehended trouble should the stock of the Southern Pacific Company pass into hostile hands, not upon any past misconduct or failure of the Central Pacific, under the control of the Southern Pacific, to discharge its duties under the Pacific Railroad Acts.

The remainder of the answer deals with matters with which we are not presently concerned.

As was to be expected under the circumstances, the

Southern Pacific Company in its answer makes the same defenses as the Union Pacific. It also denies competition between the Ogden route and the Sunset-Gulf route and avers that no through rate could be made over either without its consent. It denies the existence of competition between the two systems in the other respects charged in the petition.

It is significant that it especially defends its control of the Central Pacific and its acquisition of the stock of the Central Pacific Railway Company.

The answers of the other defendants are not material to this inquiry. To all the answers general replications were filed.

The Brief and Argument of the United States.

We have put in evidence the briefs on the facts and on the law filed on behalf of the United States for the light they throw upon the issues and upon the materiality of the several issues.

The Attorney General treated as one of the issues in the case, and one of the most important issues, the existence *vel non* at the time of the merger in 1901 of actual competition between the Union Pacific and the Southern Pacific in respect to traffic between California and the Atlantic coast, and contended that such competition existed because of the active competition for such traffic which existed between the alternative routes, now familiar to us as the Ogden route and the Sunset-Gulf route. This necessarily implied the assertion that the ownership of the Central Pacific by the Southern

Pacific Company had not prevented such competition, and counsel for the United States expressly claimed that such was the proven fact.

This contention, which as we shall see prevailed in this Court, is absolutely inconsistent with the present contention that the competition between the Ogden route and the Sunset-Gulf route or the El Paso gateway was prevented by the Southern Pacific's ownership of the Central Pacific, and with the present contention that such competition as is claimed to have existed and to exist between the two routes was unaffected by the merger of the Southern Pacific with the Union Pacific.

One of the main headings of the Government's Brief of Facts is "Competition Between Union Pacific and Southern Pacific Previous to Merger" (p. 34 of the brief). This is referred to as perhaps the most prominent issue tendered by the pleadings, which are analyzed to show the allegation on the one hand and the denial on the other of such competition. On page 35 will be found an enumeration of the different competitive fields, seven in number, in which the Union Pacific and the Southern Pacific systems were striving for traffic at the time of the merger. That such competition was actual and in respect to traffic important in amount, is shown under seven subdivisions of the brief.

The first of these subdivisions "Competition As to Traffic Between the Atlantic Seaboard and the Pacific Coast", is discussed on pages 36-90. After a preliminary description of the alternative through lines in

question and of the efforts of the Southern Pacific to secure the routing of traffic via El Paso, New Orleans, and thence to destination via its steamship lines, and the efforts of the Union Pacific organization to secure the traffic via the Ogden route, and of the rates and divisions, the following conclusion was stated (p. 39):

> *"Therefore there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco."*

This statement is supported by quotations from the testimony of a large number of witnesses showing the existence prior to the merger of active, vigorous, effective competition between the Ogden gateway and the El Paso gateway, and especially between what we now term the Ogden route and the Sunset-Gulf route (pp. 39 ffg.).

From page 78 of the brief we quote as follows:

> "It is a significant fact that the defendants spent several weeks in introducing testimony to show with infinite detail the improvements made since 1901 on the right-of-way and equipment of the Union Pacific and Southern Pacific, but made no effort to break down the showing made by complainant as to the active competition thus existing up to the time of the merger between the two systems."

On page 86 it is said that from this "great mass of testimony" it would seem to be "conclusively estab-

lished" that not only was there competition between the Southern Pacific and Union Pacific as to traffic in the handling of which "neither system used a foot of the rails of the other, and as to which competition no witness has suggested a doubt", but "these lines were also competitive as to an enormous traffic moving between New York common points and California". And the brief goes on to present the competitive situation as follows, pages 86-88:

> "The only difference between the movement to California and to Portland and Oregon points consisted in the fact that from Ogden to San Francisco the California traffic moved over the rails of the Southern Pacific. But the Union Pacific line is a thousand miles long. Through its friendly connections east of the Missouri River, it constitutes a direct line from the seaboard to Ogden, 2,500 miles in length in round figures. Under the laws of Congress, as we will show in our brief of the law, the Union Pacific and the Central Pacific lines were required to be operated as a continuous line without discrimination; but irrespective of the law, the Southern Pacific, as a matter of self-preservation, was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul, the division of the through rate accorded to it by consent, from 1870 down to the present time, as testified to by Mr. Stubbs. The fact that at Omaha the Chicago, Milwaukee & St. Paul, the Chicago & Northwestern, Chicago, St. Paul, Minneapolis & Omaha, the Chicago, Burlington & Quincy, the Rock Island, the Wabash, the Chicago

Great Western, and the Illinois Central, were pouring vast streams of traffic into the Union Pacific to be transported thence to the coast, made that a very powerful transcontinental line; and in addition to this traffic moving through Omaha, there are many lines connecting with the Union Pacific at Kansas City, with which transcontinental business was interchanged.

"The statistics to which we shall later refer show the immense earnings accruing monthly to that system for the handling of business to and from California points. These two great routes from the east were open at equal rates, the business was fought for by the one against the other by all means known to railroad solicitors, and it is idle speculation to consider what might have been done by the Southern Pacific in the way of diverting traffic, or raising divisions or anything else of that sort. It was, as a matter of practical railroading, an impossible suggestion that the Southern Pacific would deliberately refuse to do business turned over to it by the Union Pacific and its eastern connections, to secure which it was at no expense, and which was worked in connection with its local and intermountain business. This did not in any way, however, prevent the Southern Pacific from endeavoring to take every pound of freight it could by its own through line from one coast to the other. Every railroad man who testified, and it must be remembered that the natural sympathies of railroad men are not with the complainant here, was emphatic as to the strenuous competition and active efforts of the Southern Pacific on the one hand, and the Union Pacific on

> the other, to get and keep from each other this great traffic; and it is a new suggestion, born out of the necessities of this case, that the Union Pacific could not be a competitor of the Sunset Route of the Southern Pacific because it does not reach through to California, and hence had no power, independent of its connections, to make rates. As we have shown above, the power it condededly possesed to make rates to Portland included the power to make rates to San Francisco."

Pages 91 to 275 of the Brief of Facts are devoted to showing competition between the Union Pacific and Southern Pacific systems as to traffic between points in the interior and the Pacific coast, between the Atlantic Seaboard and Colorado and Utah common points, between Portland and Utah and Colorado common points, including certain points in Nevada, between San Francisco and Portland, between San Francisco and points in Montana, Idaho, and other States, and between various ports in the Orient and points east of the Missouri river in the United States.

Having demonstrated the existence prior to the merger of active competition between the Ogden route and the El Paso route, including the Sunset-Gulf route, notwithstanding the Southern Pacific Company's ownership of the Central Pacific, counsel for the United States then present an argument (which also was successful in the Supreme Court) to the effect that this competition was not merely permissive on the part of the Southern Pacific but existed independently of its

grace or favor. On page 276 of the Brief of Facts we find in large type the following proposition:

> **"The possession of a through line from the Missouri River to Portland with the additional strength given by the boat line from there to San Francisco, made the Union Pacific so powerful in maintaining and conducting this competitive struggle for business that the Southern Pacific was helpless to destroy that competition simply by the ownership of the line from Ogden to San Francisco over which the traffic secured by the Union Pacific ordinarily moved."**

This is followed by the statement that, "This is a fact that has at all times been recognized both by the Union Pacific and Southern Pacific companies, and has also been clearly established by the testimony in this case." It is not necessary to refer in detail to the portions of the brief dealing with this branch of the case. It is interesting to compare what was said as to the controlling influence of the Portland route on transcontinental rates, which convinced the Court and contributed to the Government's victory in the former case (pp. 283 ffg.), with the efforts of Government's counsel in the instant case to belittle and belie the exercise by the Portland route of any such influence. The argument showing want of power and of interest in the Southern Pacific Company to prevent competition between the two routes is closed (p. 317) with the declaration:

> "It was a physical impossibility for the Union Pacific to be excluded from the California

traffic. The Southern Pacific would not only have lost the business it was carrying at remunerative rates from Ogden to San Francisco, but its revenue upon traffic moving over its long line from New York and from New Orleans would have been so shot to pieces that there would have been a speedy ending to any effort to 'bottle up' the Union Pacific at Ogden, to use the expression of some of the witnesses, which was adopted by the trial court."

In order to make out this branch of the case against the Union Pacific it remained only to show that the merger of the two systems effectually destroyed competition between them, including the competition between the Ogden and Sunset-Gulf routes, and this showing was made in pages 318-395 of the Brief of Facts.

It is not necessary to repeat here the argument of the Government. It sufficed to convince the Supreme Court. Its general character may be seen from the three headings of the argument:

> **"The purpose and effect of the consolidation of the traffic departments has been to destroy competition"** (p. 318).
>
> **"After the purchase of the control of the Southern Pacific by the Union Pacific, not only were agencies consolidated and the competitive efforts of soliciting agencies withdrawn, but the agents of the two systems were instructed to handle traffic in a way to produce the most revenue for the consolidated system"** (p. 360).
>
> **"Previous to the acquisition of the control of the Southern Pacific by the Union Pacific, as to such business as the Southern Pacific could not get by its**

own route to the East by New Orleans, and which had to move by Ogden, there was an active competition kept up between the Union Pacific and the Rio Grande, but this competition on the part of the Rio Grande was substantially destroyed through the joint efforts of the Union Pacific and Southern Pacific agencies" (p. 372).

We call attention to the fact that counsel for the Government demolished the contention, evidently made by the Union Pacific, that the continued competitive solicitation of traffic for the Ogden and Sunset-Gulf routes by the agents of the Union Pacific-Southern Pacific organization was as effective to produce competition between the two routes as the previous competitive striving for traffic independently by the Union Pacific and the Southern Pacific. Notwithstanding such demolition counsel for the Government in the present suit seeks to revive the Union Pacific's contention and urges it now against the Southern Pacific. We may be pardoned, therefore, for reproducing one of the shafts with which such contention was punctured (p. 319):

> "A fanciful idea has been born out of the necessities of this extraordinary situation, to the effect that competition can go on just the same, even though there is a common head to the various parts of the system, which were formerly in competition. Of course, that is absurd on its face, but in the case of the Union Pacific and Southern Pacific systems, the farce of maintaining separate commercial agents who come in immediate contact with the shipper, has

been abandoned, except in the case of New York City and San Francisco, and those offices, as we will show by the testimony, have practically been consolidated because of the instructions given as to the way business should be worked."

In the Government's Brief on the Law the same propositions in respect to the existence of active competition at the time of the merger between the Union Pacific and Southern Pacific systems, including competition between the Ogden route and the Sunset-Gulf route, are advanced and supported by cases defining competition and the effect thereon of a combination between competing railroad companies.

Whatever be the ruling of the Court upon the pleas of estoppel, we will certainly not be denied the right to avail ourselves of the arguments made by the Government in the former suit. And we may safely assume that they will suffice in this suit, as they did in the former suit, to overcome the contention that the ownership of the Central Pacific lines by the Southern Pacific Company prevented or created the power to prevent or had an interest in preventing competition between the Ogden route or the Sunset-Gulf route, and the contention that the competition, if any, between the two routes remained the same after the merger of the Union Pacific and Southern Pacific systems. The fact that in the former case those contentions were denounced, and

the present case are adopted, by the Government, does not make the arguments any the less convincing.

Opinion and Decree of the Supreme Court.

We ask special attention to the discussion of the opinion of the Court which follows because, in showing that a decision against the lawfulness of the combination of the Union Pacific and Southern Pacific systems is not authority for the separation of the Central Pacific lines from the Southern Pacific System, we at the same time show that the Southern Pacific System, whether considered with reference to its origin and subsequent development or with reference to past, present or prospective conditions, is not an unlawful combination in restraint of trade. In order to make clear the radical difference between the inclusion of the Central Pacific lines with the other Southern Pacific lines in one system and the merger in 1901 of the Union Pacific and Southern Pacific systems, we shall state the objectionable features which led to the condemnation of the merger and then show the absence of such features from the common control of the Central Pacific and other Southern Pacific lines.

When, in addition to the various points of difference to which we are about to call attention, it is remembered that the common control now complained of took place nearly a half century ago and has been followed by no absorption or acquisition

of any competing properties but only by gradual, normal, natural growth and development, and that over the combination of the two systems involved in the former case there was the shadow of a powerful personality, ambitious for domination over the railroads of this country, and more than a hint of other great combinations or attempted combinations, it will be seen that the general conditions and atmosphere, as well as the particular facts of the two cases, differ *toto coelo* from one another.

First, as to the combination between the Union Pacific and Southern Pacific systems—

(*a*) It was a combination between two great systems of previously independent and competing railroads which, prior to the combination, were actively competing for traffic in many different fields of competition. They were distinct in origin and met only at the junction at Ogden. Each was a complete, self-sufficient whole.

(*b*) The combination was voluntary, without justifying necessity or legitimate purpose or lawful cause.

The justification alleged, that the Union Pacific was at the mercy of the Southern Pacific as owner of the line from Ogden to San Francisco, whose *future* treatment of the Union Pacific might not be as blameless as its past conduct was conceded to have been, was not accepted by this Court. The con-

trary contention of the Government was approved, namely, that the ability of the Union Pacific to operate a through competitive line to the Coast via Ogden did not depend upon the favor or permission of the Southern Pacific Company; that the Southern Pacific Company's own interests and the requirements of the Pacific Railroad Acts sufficed to insure for the Union Pacific in the future the continued operation of the through line via Ogden under reasonable conditions as to rates, divisions and otherwise. Subsequent developments, disclosed by the evidence in this case and elsewhere discussed (*infra*, pp. 107-108, 202), have demonstrated the correctness of the conclusion of the Court, that a merger of the two systems was not necessary to protect the through line via Ogden, and have shown with equal conclusiveness that the continued existence of the through line does not require, nor will its efficiency be improved by, a separation of the Central Pacific line from the Southern Pacific System.

(*c*) The result of the amalgamation into one of the two systems was to effectually destroy the active competition previously existing between them in many important fields, including that between the Ogden route and the "Sunset route".

Such was the contention of the Government, as we have already shown. Such was the conclusion of the Supreme Court; otherwise the decision would have been for defendants.

(*d*) The public interest would be subserved by the dissolution of the combination.

There was nothing to rebut the inference that the public was being injured by the destruction of the incentive to good service afforded by the prior existing competition. On the contrary, it appears from the Government's Brief on the Facts that evidence tending to show impaired service was in the record (See Brief on the Facts, pp. 19; 519-565).

(*e*) It did not appear that the unmerger would be accompanied by any consequences unjust or even injurious to the parties or that it would be otherwise than to the advantage of the public. It simply involved the renewal of the independent competitive existence of two complete self-sufficient systems, with no impairment of the service and with the probability of better service under re-created competition.

Now as to the union under one control or management, the inclusion in one system, of the Central Pacific and the other lines composing the Southern Pacific System. There is a radical difference between the organic union of lines embraced in the Southern Pacific System and the combination formed between the Union Pacific and Southern Pacific systems in respect to each of the features, indicated above, which led to the unmerger of the Union Pacific and Southern Pacific.

(*a*) The railroad system now attacked was not formed by a combination between previously existing and competing lines of railroad.

The lines of railway in question, in whatever corporate names they once stood or now stand, had a common origin and grew up together as interdependent parts of one system, without any *status quo ante* of independent operation or competitive existence. The common control preceded the building up of the system. The different parts which are now claimed to be competitive and are sought to be torn asunder were conceived and constructed, and have ever since been managed and operated, as parts of one system. They do not constitute two complete or sufficient wholes; they are interdependent parts of one whole. The resulting system of lines has the same legal character it would have had if its different parts had been constructed and had been, originally and ever since, owned and operated by one corporation. They are in a real sense one enterprise.

The distinction we are making is of such controlling importance that, at the risk of repeating what may be said elsewhere in the briefs, we shall state in a summary way the origin and formation of what is now the Southern Pacific System. For, in determining the legal character of a common ownership or management of lines of railway, one of the matters to be considered is the origin of the common control and the then existing relations of the parts. The union under one control and management, or the inclusion in one system of the Central Pacific lines and of the lines now in the name of the Southern Pacific Railroad Company began so far back in the past that its exact date cannot now be

shown. It probably antedated the construction of any lines of the Southern Pacific Railroad Company. It certainly antedated the existence, actual or contemplated, of the parts of the system which are now alleged to be competitive with the Central Pacific part. Practically every mile of the Southern Pacific System, other than the Central Pacific line between Ogden and Oakland, came into existence during the regime of the common control and management, and is the creation of the common ownership or control.

The Southern Pacific System existed before the Southern Pacific Company was created. It began when those who were in absolute control as owners of the Central Pacific Railroad Company obtained like absolute control of the Southern Pacific Railroad Company. From that time on the union between the lines and properties was as complete as if they had been owned by one and the same person. Huntington, Stanford, Crocker and Hopkins, the "big four", the men who constructed and owned the Southern Pacific system, were no ordinary men. It is not a mere figure of speech when we say that they *were* the Central Pacific Railroad Company and the Southern Pacific Railroad Company. The Southern Pacific System was their single enterprise. This was true in the seventies, and in 1883, when the Sunset-Gulf route was opened for business, and in 1885, when the Southern Pacific lease was made. The Southern Pacific Company was in the beginning the "big four" incorporated, a convenient agency for the operation of the previously existing system, before then

known as the Central Pacific System and after that time as the Southern Pacific System. The lease did not create the common control or management or alter its essential character. It had no practical effect upon the operation or management of the properties. The same officers and employees with the same functions and work continued as before. The testimony of these men is to the effect that they went to bed one night all "C. P.'s" and woke up the next morning all "S. P.'s", and that was all there was to it.

Let us now try to get at the date when the Central Pacific lines and properties, so far as they then existed, and the Southern Pacific Railroad Company's lines and properties, such as then existed, if any, came under that common control and management from which sprang the Southern Pacific System.

The Central Pacific was under the control of the "big four" *ab initio*. As to the Southern Pacific Railroad Company, there is some reason for believing that it was initially an enterprise of Mr. Huntington and his associates. Its first report to the Secretary of the Interior under the Pacific Railroad Acts, for the year ending June 30, 1868, was forwarded in a letter from the office of the Central Pacific Railroad Company and signed by C. P. Huntington. Defendants' Exhibits No. 23, Vol. V, page 1704.

But be that as it may, certain it is that on October 12, 1870, the existence of the common control in question became manifest. On that date the Southern Pacific Railroad Company of California was formed by

a consolidation, under the laws of California, of the Southern Pacific Railroad Company and three other small railroad corporations. The "big four" appear in the articles of association as constituting a majority of the new board. (See Vol. IV of Petitioner's Exhibits, pp. 1282 ffg., Exhibit 13.) From that time on the destinies of the Southern Pacific Railroad Company were united with the Central Pacific Railroad Company. The properties ever after continued under a common control and management and developed and grew up as interdependent parts of one whole.

Taking then October 12, 1870, as the date when the union under one control of lines of the Central Pacific and of the Southern Pacific Railroad Company was a manifest fact, when the nucleus or germ of the system of railways now attacked as an illegal combination was in existence, let us note what lines of railroads were then in existence or in contemplation. This can be seen from the outline history of the corporate organization of the Central Pacific Railroad Company and of the Southern Pacific Railroad Company, Petitioner's Exhibits 12 and 13, Vol. IV of Exhibits, pages 1277, 1282. The lines in being at the time are also shown in Petitioner's Exhibit 42, IV Vol. of Exhibits, pages 1638 ffg.

On October 12, 1870, the constructed lines of railway of the Central Pacific Railroad Company consisted of the line from near Ogden to Sacramento, thence via Stockton, Lathrop, Niles and San Jose to Oakland, and two branches, the California, and Oregon, which then stopped at Chico, a short distance above Marysville,

and the San Joaquin Branch which extended from Lathrop nearly to Modesto.

On the coming into existence on October 12, 1870, of the Southern Pacific Railroad Company of California, the only constructed line was a line from San Francisco south to Gilroy, a distance of eighty miles. (IV Vol. of Petitioner's Exhibits, p. 1283.) This line as subsequently extended gradually along the coast was not connected with the rest of the system until some time in 1901. Of the four companies parties to the consolidation, the San Francisco and San Jose Railroad Company had a completed line from San Francisco to San Jose (*Id.*, p. 1283), and the Santa Clara and Pajaro Valley Railroad Company had a completed line from San Jose to Gilroy (*Id.*, p. 1284). Neither the Southern Pacific Railroad Company nor the California Southern Railroad Company had any constructed roads (*Id.*, pp. 1284-5).

The articles of consolidation contain the corporate powers of each party to the consolidation and of the consolidated company. In this way we may ascertain the extent of railroad enterprise then in contemplation.

The charter purposes of the San Francisco & San Jose Railroad Company were to construct and operate a railroad from the city of San Francisco to the city of Jan Jose (*Id.*, 1283).

The charter purposes of the Santa Clara & Pajaro Valley Railroad Company were to construct a railroad from the city of San Jose in Santa Clara County (joining there with the San Francisco & San Jose Railroad)

to a point near the town of New Gilroy in the same county (*Id.*, 1284).

The charter purposes of the Southern Pacific Railroad Company were to construct a railroad from some point on the Bay of San Francisco to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the town of San Diego; thence eastward through the county of San Diego to the eastern line of California, there to connect with a contemplated railroad from said eastern line of the State of California to the Mississippi River (*Id.*, 1284).

The charter purposes of the California Southern Railroad Company were to construct a railroad beginning at the town of Gilroy, and thence through the counties of Santa Clara, Santa Cruz and Monterey to a point near the town of Salinas (*Id.*, 1284-5).

It will be observed that the railroads contemplated by the San Francisco & San Jose Railroad Company, the Santa Clara & Pajaro Railroad Company, and the California Southern Railroad Company formed a connecting railroad from San Francisco to Salinas City, and that the railroad contemplated by the Southern Pacific Railroad Company was one passing through the counties named in the charter to Los Angeles and San Diego, and thence across to the eastern line of the State of California, there to connect with a contemplated railroad wholly *in futuro*.

The charter purposes of the Southern Pacific Railroad Company of California, formed by the consolida-

tion, was to own and operate a continuous line of railroad from the city and county of San Francisco through the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego to some point on the Colorado River in the southeastern part of California, a distance of 720 miles, as near as may be; also, a line of railroad from the town of Gilroy to the County of Santa Clara, passing through the counties of Santa Cruz and Monterey to a point near Salinas City, a distance of nearly 45 miles (*Id.*, 1283).

It appears from the foregoing that at the time of the alleged illegal union under one control of lines of the Central Pacific and Southern Pacific Railroad companies, the only line of the Southern Pacific Railroad constructed was a short non-competitive line from San Francisco to Gilroy, and the only line in contemplation or authorized by the charter was a line from San Francisco southward to San Diego, or in the direction of San Diego, and thence eastward to a point on the Colorado River in the southeastern part of California. This line afterwards materialized as a line from Goshen to Mojave, and thence to the Needles, where it joined the Atlantic and Pacific (or Santa Fe). The portion between Mojave and the Needles was immediately after construction turned over to the Santa Fe and was operated by that Company under a lease until it acquired the full ownership by purchase. It is clear, therefore, that if we consider the lines constructed or authorized to be constructed at the time when the

authors of the Southern Pacific System did the first and only thing in the history of the system resembling even remotely a combination of railway lines, there was no destruction or prevention of competition. Indeed the competition, the elimination of which is the basis of this suit, is that between the through route via Ogden, of which the Central Pacific line forms a part, and the through route formed by the Southern Pacific Railroad Company's line from San Francisco via Yuma to El Paso and its connections thence to New Orleans and Galveston and the steamship lines to New York.

But at that time neither this through line nor the Southern Pacific Railroad Company's part thereof was in being or in contemplation. The Sunset-Gulf route was not then *in esse* or *in posse* or *in prospectu*. The act of Congress incorporating the Texas and Pacific Railway Company, Section 23 of which authorized the "Southern Pacific Railroad Company of California" to construct a line of railroad from Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific Railroad at or near the Colorado River (the line to Yuma) was not passed until March 3, 1871 (16 Stat. 573). And it was not until April 2, 1871, that the articles of incorporation of the Southern Pacific Railroad Company were amended so as to include within its charter purposes the line to Yuma (Vol. 4 of Petitioner's Exhibits, p. 1285). Hence in its origin or conception, as well as in its construction, the Sunset-Gulf route is a creature of the common control. The common ownership or control which extended the Central Pacific line to

Goshen built under a different name the line thence to Mojave, to Los Angeles, to Yuma, to El Paso and beyond, using the same organization, even the same contractors, and operating the line as constructed by the same operating organization as had charge of the Central Pacific line. At the time the Sunset-Gulf route was opened for business in 1883 and at the time of the lease to the Southern Pacific Company in 1885, and at the date of the Sherman Law, *the part of the Sunset-Gulf route north of Goshen was a line belonging to the Central Pacific Railroad Company* (Kruttschnitt, II Vol., 723). At no time from the beginning, at least from October 12, 1870, has there been a time when the Central Pacific lines and the other lines of the system, as they came into existence, were not parts of one system. There has never been a break in the continuity of the unified management and common control. There is no date subsequent to October 12, 1870, which can reasonably be taken as the origin of the union into one system of the Central Pacific lines with the other lines of the system.

Such being the nature and origin of the railway system now attacked, can it be said to be a combination between previously competing lines? Can it be said to be a combination which had for its purpose or effect to eliminate competition between the Central Pacific line to Ogden and the Sunset-Gulf route? Is it a "combination" at all in the sense in which the word is used in the federal Anti-Trust Act? To call the Central Pacific line and the lines forming part of the Sunset-

Gulf route "natural competitors" does not advance the Government's case. It is a novel proposition that the Attorney-General may look over any railroad system and, when he finds that there have been constructed as parts of the system lines of road which furnish alternative routes for traffic and under independent ownership might compete with each other, he can dismember the system on the ground that it is a combination of natural competitors. It is also an absurd proposition. A common ownership or control cannot be at the same time the creator of competitive units and the destroyer of competition between them. A case of undue and unreasonable restraint of trade is not shown against a corporation owning or controlling a system of railroads by showing simply that an increase of the general stock of competition might result if some parts of its system were separated and either placed under independent ownership or turned over to some rival company.

We might pursue the subject further, but we submit enough has been said to show the radical difference between the Southern Pacific System, the manner of whose origin and gradual growth from within has been fully developed by the evidence, and the amalgamated system artificially created at one time by the combination of the Union Pacific and the Southern Pacific systems. This difference extends to the nature and effect of a decree of dissolution. In one case there was an unmerger; in the other there would be a dismemberment. In one case self-sufficient units were left to renew their previous independent existence; in the

other, parts which were not intended to exist apart would be left to a maimed existence of impaired efficiency. In one case the public is benefited by a restoration of competition which had formerly existed; in the other the effort to convert into competitors lines constructed as parts of one system would injure the public by substituting imperfect parts for a well-rounded whole.

(*b*) The formation and development of the Southern Pacific System was for lawful and justifying purposes. It was neither its purpose nor effect to eliminate competition.

While it may not be necessary for our case, we desire to show under this heading that it cannot be said that, by reason of the absence of any reason or necessity or useful purpose to be served by the construction of the Southern Pacific System, including therein the Central Pacific lines, it must be presumed that the union of the lines into one system had for its direct and intended purpose the suppression of any competition resulting therefrom.

The genesis of the Southern Pacific System, fully disclosed by the evidence and indicated under the previous heading, establishes this second point by showing that the competitive potentialities which form the basis of the alleged restraint in trade were not in existence at the time the common control was created. But there is still more to be said on the subject.

The "big four" were great men who had the vision,

but there is nothing in the record to justify the statement that they had in mind the Sunset-Gulf route when they gradually extended southward the Central Pacific line from Goshen. They built this extension in the name of the Southern Pacific Railroad Company, doubtless for financial reasons and because of the land grant to that company. They had in mind two purposes, to feed the Central Pacific and to meet the Texas and Pacific at Yuma. It does not appear how much of the Texas and Pacific had been constructed when the Southern Pacific line reached Yuma in September, 1877, but the Texas and Pacific was certainly not then in sight nor was the prospect very encouraging, since it did not reach the vicinity of El Paso until 1882. Yuma was not a desirable terminus and the mining fields of Arizona were inviting, so the line was extended into Arizona in 1879. Exactly when the idea of a through coast to coast line under one management was first conceived is not known. The evidence shows that the line was extended through New Mexico to El Paso, the road of the Galveston, Harrisburg & San Antonio Railway was constructed between El Paso and east of San Antonio, and connecting lines between Houston and New Orleans acquired, together with a steamship line from New Orleans to New York; so that on February 1, 1883, there was opened for business a through mixed rail and water line between San Francisco and New York, with the then unique advantages and efficiency of unified management. Until the lease to the Southern Pacific Company in 1885, this through line, the

Sunset-Gulf route, was operated by the Central Pacific Railroad Company. It had been constructed in connection with the Central Pacific lines, beginning as an extension of those lines, which formed an essential part thereof.

That the only enterprise in contemplation for several years after the formation of the system (first called Central Pacific, now Southern Pacific) was the construction of lines to develop Southern California and to feed the Central Pacific from the traffic thus developed, and that the line from Tehachapi to Yuma was regarded as a branch of the main line to the Needles, is shown by the following extracts from reports to the Secretary of the Interior by the Southern Pacific Railroad Company and the Central Pacific Railroad Company, the reports being generally copies of reports of the President to the stockholders and of reports of officers of the companies to the President.

In the report of the Southern Pacific Railroad Company of California for the year ending June 30, 1874, Mr. Huntington, the President, referring to the consolidation of October 12, 1870, declared (V Vol. Defendants' Exhibits, p. 1717):

> "The object of the new corporation was to construct, equip, maintain and operate a line of railroad from the city of San Francisco to a point on the Colorado River, in the southeastern portion of the State, a distance of, say, six hundred and twenty-nine miles, *with a branch from Tehachapi Pass to the Colorado River, at or near Fort Yuma,* a distance of, say, three hundred and fifty-three miles." (Italics ours.)

Further on in his report, under the heading of "Prospective Business of the Road," we find the following (*Id.*, pp. 1719-1720):

> "*Fourth.*—The general location of the Southern Pacific Railroad is peculiarly favorable for developing and controling a large and remunerative miscellaneous business, for it occupies almost the only passes through which a railroad extending from San Francisco to the Colorado River can be built, and must therefore command the entire business between San Francisco and the southern portion of California, as well as northern Mexico and Arizona. At the Colorado River it will meet the Texas & Pacific Railroad, and when this connection is made it will give your road a direct communication by rail with all the southern and southwestern portions of the United States, and the shortest line from San Francisco to New Orleans and the country bordering the Gulf of Mexico, over which you may look for much of the surplus grain from the southern half of California to pass on its way to the European market.
>
> "*Fifth.*—The country tributary to your road embraces nearly one-third of the entire State of California, say 50,000 square miles. In traversing this large extent of country the road passes through some of the finest valleys in California, such as the San Jose, Santa Clara, Pajaro, Salinas, Tulare and the large and fertile valleys south of the Sierra Madre, in the counties of Los Angeles and San Bernardino. The soil in those valleys is exceedingly fertile, and produces all kinds of vegetables and grain of the

temperate zones, and most of the fruits of the semi-tropical regions, such as oranges, lemons, limes, olives, apricots, figs, etc., in great abundance. Recent experiments in the culture of tobacco, near Gilroy, where some four hundred acres were planted the past season, have shown that the soil in that part of the State is peculiarly adapted to that crop, the yield per acre being from 1,500 to 2,000 pounds of a superior quality, equal to the best Havana, and from 2,500 to 3,000 pounds per acre of the coarser varieties. Recent experiments have also demonstrated that jute, ramie and cotton can be grown in great abundance along the line of your road, for which the producer will always find a ready sale and remunerative prices, as these products will bear transportation and thus have access to the world's markets.

"Among the foot-hills and on the slopes of the mountains are vast tracts of land abounding in wild oats and native grasses, which are very nutritious, and afford pasturage for sheep and cattle throughout the entire year; and the temperature is so mild, even in winter, that shelter is seldom required. Nearly all the land in the foot-hills also produces the grape in great abundance, and much of it is considered the best vine-land in the world, as it never fails to yield a crop. There are also immense tracts of timberland covered with red-wood, red-cedar, pine and other varieties, which will afford an extensive lumber business for the road; in short, the country traversed by and tributary to the Southern Pacific Railroad has almost every

variety of land adapted to every branch of agriculture, with a mild and healthful climate, and is already attracting the attention of emigrants from the Eastern States, as well as from the nations of Europe, and is being rapidly taken up along the line of the road, and even in advance of its construction.

"With all these vast and varied interests awaiting the construction of your road, the villages and cities with their rapid increase of population, the fertile valleys with their great abundance and variety of agricultural resources, the forests with their wealth of lumber, the mines with their vast supplies of coal and untold millions of the precious metals, we think you may reasonably hope for satisfactory dividends on your investments when the road is completed."

From the report of the Central Pacific Railroad Company for the year 1873, we extract the following statements regarding the San Joaquin Valley arm of the Central Pacific (the line from Lathrop to Goshen) and its extension under the name of the Southern Pacific Railroad Company (II Vol. Defendants' Exhibits, pp. 1742-3):

"The latter diverging from the main line at Lathrop runs southeasterly in a nearly direct line for a distance of one hundred and forty-six miles to Goshen, where it connects with the Southern Pacific Railroad, which is already constructed from this point to Delano, a distance of some forty-one miles further south, and is

ultimately, as I understand, to be extended southerly through the State to the Colorado River, thus forming an important feeder to this part of your road, making it, in fact, a link in the great Southern transcontinental route, which must eventually find its most eligible terminus at San Francisco Bay. In view of its importance in this respect, as well as with regard to the heavy local traffic which must result from the development of the agricultural resources of this valley, the road has been constructed upon a maximum grade of ten and one-half feet per mile ascending and with a grade of but five and one-fourth feet per mile against freight descending the valley. The alignment is also very favorable, the total curvature after leaving Lathrop being, in a distance of one hundred and forty-six miles, but two hundred and fifty-five degrees, with a minimum radius of five thousand seven hundred and thirty feet.

"This great valley, extending from the confluence of the San Joaquin and Sacramento Rivers, southeasterly for a distance of two hundred and forty miles, with a width of from sixty to seventy miles, nearly all susceptible of cultivation is as yet sparsely populated, though the large grain shipments from the comparatively small area under cultivation fully attest its value as a grain-producing region.

"With the completion of the system of irrigation already in contemplation by resident and foreign capitalists, and for which the topography of the country is admirably adapted, the

population of this valley must rapidly increase; and when this is accomplished, its productive capacity can hardly be over-estimated."

In the report for 1876 we find the following reference to the traffic expected from the lines south of Goshen (*Id.*, p. 1755):

"While the traffic of the Visalia and Tulare divisions is comparatively light, it is very encouraging to note the extensive arrangements which are being made for irrigation and for general agricultural development all along the line, especially in the rich region of the State embraced in Fresno, Tulare and Kern counties; which development is made possible by the extension of the road through the San Joaquin Valley to Caliente, three hundred and twenty-four miles from San Francisco. This road offers to that section of the country the long-desired outlet to market, and a large increase of business may be expected in the near future from it, and the rich mining districts beyond."

The traffic expected from the extension into Arizona and New Mexico is referred to in the report for 1877 as follows (*Id.*, p. 1757):

"The completion of that portion of the Southern Pacific Railroad (leased to the Central Pacific Railroad Co.) to the Colorado River, secures to that company the traffic to and from Arizona, which promises to be very large, and as the road shall be extended beyond the river, through this rich mining territory, it will largely

develop and secure the trade also of New Mexico and the adjacent country.

"The looked for remunerative business over this long line will, we confidently believe, materially increase the earnings for the current year, and more than compensate for the loss of traffic we may expect from the short harvest, consequent upon the drouth more or less affecting the southern portion of the State."

The statements in these reports are corroborated by the testimony of Mr. Chambers (Vol. III, pp. 939, ffg.). They not only show that the alleged competitive conditions, the supposed elimination of which is the basis of this suit, were not in existence or contemplation at the time when the common ownership or control complained of originated, but they show also that the construction of the line which brought about the alleged competitive conditions was a natural, normal railroad development with the usual and justifying purpose of reaching new fields and feeding existing lines.

There is no competent evidence in the record to support a finding that, when it was determined to build or secure a line through to New Orleans and thence to New York, the controlling motive was to effect a restraint of trade by eliminating competition. The natural inference from the competent evidence is that the extension of the line beyond Yuma was due to the breakdown of the Texas and Pacific enterprise, and to the desire to reach a promising field of business in Arizona and New Mexico, and that when the adven-

ture had proceeded so far the practicability and advantages of a through route to the Atlantic coast, under unified management, dawned upon the owners of the Central Pacific and Southern Pacific Railroad companies. What these advantages were has been explained in the testimony of Mr. Spence and other witnesses. In the then stage of development of the railroad business, the arrangements for handling through traffic over several independent connecting roads did not produce good service. It had not been found possible, and it did not seem possible, to secure that degree of co-operation necessary to afford satisfactory service over the numerous independent companies concerned in the all-rail route across the continent. Neither in time nor in the character of the service nor in the settlement of claims or otherwise was the service calculated to attract or develop transcontinental traffic. The men in control of what was then the Central Pacific System, and is now the Southern Pacific System, believed that by means of a through line under a unified management great improvements in the service, with consequent increase in the volume of the traffic, could be effected, and to this belief is due the Sunset-Gulf route. Its construction was abundantly justified. It rendered better service than had been before considered possible. It developed an enormous traffic. And, what is more important, it set a standard of service which the all-rail lines had to meet. It conferred an inestimable benefit both in opening up new lines of traffic and in applying the spur of competition

to existing lines. It not only did not close the all-rail line via Ogden, but it aroused the rail lines engaged in transcontinental traffic to the necessity of better service and forced the Eastern connections of the Central and Union Pacific, as well as the Santa Fe and its connections, to join in arrangements which resulted in vastly improved service (Spence, III Vol., pp. 1028-9, 1041-2). To charge the railway system or its management with lessening competition and restraining trade by reason of bringing this new competitor in the field seems absurd, and yet, in the last analysis, this is what the Government's case under the Sherman law really amounts to.

Prior to the lease to the Southern Pacific Company in 1885 the Benicia Cut-Off, the line from Tracy to Martinez and various other additions and extensions had been constructed as parts of the system. These new lines did not belong to the Central Pacific, but were so connected with its lines as to improve the service over them, by affording shorter and better routes or by relieving congestion through alternative routes.

The situation then in 1885, at the date of the lease complained of, was that the Central Pacific lines and the other lines of the system were essential constituents of the new through line, the Sunset-Gulf route, and that the two sets of lines were also jointly used, and necessarily so used, to give the best service on the through line via Ogden as well as locally. The controlling, dominant purpose, and the lawful purpose, of the lease to the Southern Pacific Company was to afford

a convenient means of operating together lines which were already parts of a system, which had been conceived and constructed as parts of a system, which were necessary to each other, and the separation of which would cripple the service on all parts of the system. To say that the lease made at that time and under those circumstances had no justifying cause or lawful purpose, but must be regarded as having for its main and direct purpose to destroy previously existing competition between the leased lines is absurd.

What has been said of the lease of 1885 applies *a fortiori* to the acquisition by the Southern Pacific Company in 1899 of the stock of the Central Pacific Railroad or Railway Company. The taking over of this stock was, moreover, necessary to effect the readjustment of the affairs of the Central Pacific Railroad Company and the settlement of its indebtedness to the United States. And such readjustment and settlement was necessary to prevent the disruption of the Southern Pacific System, the separation of lines which had been constructed together, and the immense loss to the Southern Pacific Company and injury to the public which would result from such dismemberment of a long established system. The Government, which was practically a party to the plan of readjustment involving the stock purchase and knowingly profited by it, should be the last person to make the absurd charge that the direct object and effect of the purchase was to suppress competition between the parts of the system standing in the name of the Central Pacific and

the parts standing in other corporate names. The two sets of lines which were born of a common parentage and had grown up as members of one family, were already yoked together under a one hundred years lease, and in the only respect in which they are charged to be naturally competitive, *i. e.*, in respect to the Ogden and Sunset-Gulf routes, their union had not then, nor has it at any time since, prevented or created the power or a motive to prevent the most active and vigorous competition. Read in this connection Mr. Spence's summary statement of the value to the Southern Pacific System of the Central Pacific lines (III Vol., p. 1070).

Excerpts from the voluminous testimony and documents adduced before Committees of Congress at various times seem to be relied on by the Government to overcome the evidence afforded by the testimony of witnesses produced in this case by defendants or to supply the lack of such evidence by the Government. We submit that testimony before Congressional Committees is not competent evidence in this case, and that, were it otherwise, the excerpts in question are not inconsistent with, and certainly do not overcome, the evidence adduced in this case in support of what has been said above respecting the history, nature and purposes of the Southern Pacific System. The investigation which culminated in the report of 1887 had for one of its objects to ascertain whether the United States, as a creditor of the Central Pacific Railroad Company, had not a claim against Huntington, Stanford, Crocker and Hopkins or the Southern Pacific Company, on the the-

ory that the revenues or property of the Central Pacific had been diverted or sacrificed. Hence, the efforts of those concerned were directed to show that all that had been done was done to "protect" the Central Pacific lines by having the feeders and extensions southward in "friendly hands". Considering the conditions we have shown as existing on October 12, 1870, the acquisition by the "big four" of the lines of the Southern Pacific Railroad Company then in being or in contemplation is not tainted with illegality even if we assume *at that early date the existence of a desire to protect the Central Pacific Railroad Company by having in "friendly hands" a then unthought-of line of railroad.* There is no force in the contention that the Southern Pacific System is proved to be an unlawful combination in violation of the Sherman law of July 2, 1890, because there is found in some public document or in some letters of questioned authenticity something tending to show that in the late seventies, when the failure of the Texas and Pacific to build its road to Yuma within the required time had caused the extension of the Southern Pacific Railroad across Arizona and New Mexico, Mr. Huntington and his associates opposed the granting of additional government aid to the Texas and Pacific to build a parallel road. They had constructed their road through the deserts without government assistance. Their natural protest against a subsidy in bonds, in addition to a land grant, being accorded the Texas and Pacific to help it parallel their road through the deserts would not have violated the Federal Anti-

Trust Act, if it had been on the statute books at that time. It is certainly not a continuing offense so as to constitute a violation of a law enacted twelve years afterwards.

Of the same character and even less entitled to any consideration are the minority reports and documents annexed thereto, showing hostility to the Southern Pacific System by some people in California twenty years ago. It redounds to the credit of the Southern Pacific Company that its conduct has been such as to overcome any hostility which might have existed and so completely to disprove the prophesies of evil of an earlier day that the strongest opponents now of the proposed dissolution are the people it serves on the Pacific coast. We have faith to believe that this case will be decided by the facts as they are disclosed by the evidence contradictorily adduced in this case and not by the slander and gossip and political accusations of a by-gone era.

When a man's character is assailed or his motives impugned, he has a right to be judged by his past life. The history of the Southern Pacific System from the beginning is found in detail in the evidence. It is a sufficient refutation of the charge that its purpose or effect was to suppress competition or establish a monopoly. If the object of the system or its authors was to neutralize competition between the Ogden route and the Sunset-Gulf routes, why is it that the Central Pacific line has always been so maintained and operated in connection with the Union Pacific as to make the

through line a most active, vigorous and successful competitor of the Sunset-Gulf lines? If the object was to secure a monopoly of transcontinental traffic, why do we find the relinquishment of one of its lines to the Santa Fe, and the consistent policy of liberal arrangements for through traffic with all connections, so that every new junction marked the entrance of an able competitor in the field of transcontinental carriage? If the object was to establish a system which would dominate the field, why is it that from October 12, 1870, to the present time, we find only a gradual, normal growth from within, with no combinations or absorptions of competing lines?

In endeavoring to show that the common ownership or control to which the Southern Pacific System owes its existence was not originally tainted by any illegal purpose, we are not to be understood as conceding that proof of such an original taint is proof or evidence that such common ownership or control has produced or has a tendency to produce conditions prohibited by the Anti-Trust Act. A suit, brought twenty-four years after the enactment of that law, to remove an alleged existing restraint upon commerce attributed to a so-called combination originating nearly twenty years before the law was passed, essentially depends upon proof of the present existence, as a result of the so-called combination, of an undue and unreasonable restraint of trade. In the absence of such proof, and *a fortiori* in the face of proof to the contrary, the Southern Pacific System cannot be condemned by reason of the unrealized expec-

tations or of the unaccomplished or abandoned purposes of the original parties. We take it that the Court, if it finds it necessary to determine the inherent nature of the common control in question, will not deem it worth while to consider uncertain evidence of what might have resulted or might have been intended to result from the common control when it has before it the actual results of forty years of its continued existence. Conjecture and prophecy yield to the demonstration of conduct and experience.

(*c*) The result of the union under one control and management of the Central Pacific lines and the other lines now composing the Southern Pacific System, unlike the amalgamation of the Union Pacific and Southern Pacific systems, was not to destroy active competition previously existing between the lines of railway concerned. Not only so, but the inclusion in one system of the lines in question does not destroy or create a motive for destroying the competition alleged in the petition, namely, competition between alternative through routes, one of which is made up of lines constructed under the regime of the common control complained of.

It cannot be said that on October 12, 1870, when the two sets of lines, one partly *in esse* and the other practically altogether *in futuro,* passed under the common control and management under which they have remained to the present day, there was any previous competition to be destroyed, since one of the sets of

lines was not only not in existence, but, as to the alleged competitive portion, was not even in contemplation.

It is not alleged in the petition, and it was not attempted to be proved by the testimony of witnesses, that the lines standing in the name of the Central Pacific, considered by themselves, are competitive with the other lines of the system. In its opening testimony petitioner's questions to its witnesses were directed to showing that the through line via Ogden, formed by the Central Pacific line and the Union Pacific and eastern connections, was a competitive route with the line formed by other lines of the Southern Pacific System through El Paso and New Orleans or Galveston and thence to New York. As we read the petition, the charge as to the natural competition prevented or destroyed is confined to competition between the Ogden route and the through rail and water route between San Francisco and New York, designated in the pleadings as the "Sunset Route" and in the testimony as the "Sunset-Gulf route". At any rate, in the discussion to follow, we shall deal mainly with the competitive relations between the Ogden and Sunset-Gulf routes, as defined, because the complaint seems to be confined to those two routes and because, if we show that the Government has made out no case in respect to the mixed rail and water line wholly owned by the Southern Pacific Company, it has certainly made no case in respect to the all-rail routes via El Paso, formed by the Southern Pacific line to El Paso and railroads of other companies *subsequently* constructed and connected with

the Southern Pacific line to form alternative through routes.

The petition charges that "the lines now owned by the Central Pacific Railway Company, in so far as then existing, were operated prior to 1885 in connection with the lines of the Union Pacific Railroad Company as a continuous connecting route between the San Francisco and the Missouri River, with connections eastward to the Atlantic Ocean, and were in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation" (clause IV, p. 14 of the printed petition, I Vol., p. 8), and that the purpose and effect of the lease to the Southern Pacific Company in 1885, as well as the acquisition of the Central Pacific stock in 1899, was to prevent this competition (clause V, I Vol., p. 9). Among other defenses to this charge, the defendants denied (clause IV of answer, I Vol., p. 29):

> "* * * that the line owned by the Central Pacific Railroad Company as operated prior to 1885, in connection with the line of the Union Pacific Railroad Company, was in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation, except that both prior and subsequent to 1885 the through route or routes formed by the line of the Central Pacific Railway Company from San Francisco to Ogden in conjunction with connecting railroads, including the Union Pacific Railroad Company, and their eastern connections, have carried traffic in competition with the said Sunset

> Route and with other transcontinental lines; but they deny that the common control of the Central Pacific Railway Company and the said Sunset Route, which has always existed, and under which the said Southern Pacific System of lines (always included therein being the line of the Central Pacific Railway Company) were originally constructed and have subsequently grown and developed by usual and normal means, as hereinafter more fully stated, has prevented or created the power to prevent competition between said through routes or constitutes a restraint of trade or a monopoly or an attempt to monopolize trade, within the prohibition of the said act of July 2, 1890, or otherwise."

We desire to preface what we have to say under the present heading by the statement that, in undertaking to show that the inclusion of the Central Pacific lines and the other Southern Pacific lines in one system has not prevented or created an incentive or the power to prevent active, vigorous and effective competition between the two through routes in question, we are going beyond the necessities of our case. We have already shown that the competition referred to in the petition is "natural" competition between the original nucleus of the system and parts constructed after the formation of the system, and that is sufficient to dispose of the case. The Federal Anti-Trust Act has nothing in it analogous to the after-acquired property clause of a mortgage in virtue of which a union of railroads, lawful originally because between non-competitive

lines, becomes unlawful whenever at any subsequent stage of development lines are constructed which under independent ownership might have competitive relations with other parts of the system. Such a construction of the law, if not itself condemned by the rule of reason, would condemn to disintegration every railway system in this country. It would be equally fatal to large industrial enterprises, all of whom have doubtless constructed plants in different states which under independent ownership might compete with each other.

Hence, by undertaking to show that the inclusion of the Central Pacific lines in the Southern Pacific System has not prevented the competition referred to or intended to be referred to in the Government's petition, and that its separation from the system would not benefit the public by any appreciable addition to the general stock of railroad competition, we must not be understood as conceding that the possibility or even certainty of an addition to existing competition in the field of influence of the Southern Pacific System to result from its proposed disruption would suffice to make out the Government's case or even to put the Company on the defensive.

We enter upon the discussion of the effects upon competition of the Southern Pacific System, with the Central Pacific lines included, the more willingly because it will show that in the remote contingency of the decision of this case ultimately depending upon the question—Does the Southern Pacific System, as at present constituted and under the existing transconti-

nental shipping conditions, constitute such a monopolistic aggregation, such an undue and unreasonable restraint of trade, as to come within the condemnation of the Federal Anti-Trust Act, irrespective of the date and manner of its origin and of the character of its growth and development—the Government cannot expect to secure the necessary affirmative answer. Of course the date and manner of the origin of the Southern Pacific System and the character of its growth and development are facts which cannot be disregarded, and which, when regarded, afford adequate defense against the Government's attack. But the impossibility of answering the above question in the affirmative, and so the impossibility of the Government making out any part of a case under the Sherman Law, becomes manifest when, in addition to showing that from very small beginnings the system grew from within gradually by construction to its present dimensions, we further show that the competition it is charged with destroying, that between two alternative routes in each of which portions of its system participate, happens to be of such character as, notwithstanding such participation, to enjoy an active, vigorous and effective existence.

That the union under one control and management of the Central Pacific lines and the other Southern Pacific lines in one system has never prevented actual competition, "sharp, well defined and vigorous", between the Ogden route and the Sunset-Gulf route, is established by the record in the following ways:

(1) It is admitted in the Government's petition.

In the last paragraph of Clause IV, on page 8, Vol. I, of the petition, quoted above, it is alleged that the Central Pacific Railroad Company was operated *prior to 1885* in connection with the Union Pacific and eastern connections *in competition with* the lines now operated by the Southern Pacific Company. This is tantamount to the allegation that the Ogden route was being operated prior to 1885 in competition with the Sunset-Gulf route, which was opened for business in 1883. But according to all the witnesses, including those of petitioner who were questioned on the subject (see testimony of Monroe, I Vol., pp. 386-7), the Central Pacific lines and the lines composing the Sunset-Gulf route, from the date of the opening of the latter route, were operated under a common control and management and were then just as much parts of one system as they were under the Southern Pacific lease after 1885. The only difference was the change of name from Central Pacific System to Southern Pacific System. Hence, the allegation referred to is a judicial admission that a common control and management of the Central Pacific lines and of the lines composing the Sunset-Gulf route is not incompatible with the operation of the Ogden route, including the Central Pacific line, and the Sunset-Gulf route in competition with each other.

It must be presumed that by "competition" the Government meant actual, beneficial competition, the kind of competition which it would be satisfied to have continue after 1885. Well, it *has* continued according to all the witnesses.

(2) It is conclusively established by the record in the Union Pacific Merger Case.

We have already shown that in the former case the Government asserted in its petition, and the Union Pacific and its owned Southern Pacific denied in their answers, that prior to the merger in 1901 there was active competition between the Ogden route and the Sunset-Gulf route; that the Government in its brief argued that it had proved by practically unanimous testimony that such competition existed and that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco" (p. 39 of Brief on the Facts); that this Court, adopting the Government's contention, held that prior to the merger there had been competition, "active, well defined and vigorous" between the two routes, notwithstanding the Southern Pacific's ownership of the Central Pacific lines, which competition was effectually destroyed by the merger; and, wholly or partly because of such holdings, the merger was declared unlawful.

Now a fact which in the former suit the Government alleged in its pleadings, proved by evidence, and contended for in argument, and which the Court decided, and the decision of which was one of the material steps to the final conclusion of the Court, cannot be denied by the Government in this suit. Hence, we have offered the record in the former suit as conclusive evidence of the fact that the ownership of the Central Pacific lines

by the Southern Pacific Company had not prevented sharp, vigorous and well defined competition for traffic via Ogden and via the El Paso routes and had not created the motive or power to prevent such competition, up to the time of the merger in 1901 (Vol. III, p. 932).

If such competition existed prior to the merger, it exists now, for the uncontradicted evidence is that the competition is even more active since the unmerger than it was before the merger. As to the absence of motive or power to prevent the competition, the Supreme Court so held when it declared, for reasons stated, that the competition in question did not exist by the mere grace or sufferance of the Southern Pacific Company.

Counsel for the Government will hardly question the correctness of our statements as to what was decided by the Supreme Court in respect to the existence of competition for through business via Ogden and via the Sunset-Gulf route and the destruction of that competition by the merger of the two systems. But that such was the decision of the Court will clearly appear when the opinion is read in the light of the pleadings and the brief of counsel for the Government. We have seen that in its petition the Government alleged the existence of the active competition between the Ogden and the Sunset-Gulf routes and its elimination by the merger of the two systems, and supported its allegations by the testimony of numerous witnesses. In its opinion the Supreme Court referred to the

Ogden route as the route over which the Union Pacific's through traffic to California was carried (226 U. S., p. 89), and said (p. 93), that the Ogden route was the one used largely, if not exclusively, by the Union Pacific for traffic to and from California. Hence, it was undoubtedly referring to competition between the Ogden route and the Sunset-Gulf route when it declared (pp. 86-7)

> "A large amount of the testimony in this voluminous record was given by railroad men of wide experience, business men and shippers, who, with practical unanimity, expressed the view that prior to the stock purchase in question the Union Pacific and Southern Pacific systems were in competition, sharp, well-defined and vigorous, for interstate trade. To compete is to strive for something which another is actively seeking and wishes to gain. The Southern Pacific, through its agents, advertisements and literature had undertaken to obtain transportation for its 'Sunset' or southerly route across the continent, while the Union Pacific had endeavored in the same territory to have freight shipped by way of its own and connecting lines, thus securing for itself about 1,000 miles of the haul to the coast."

And traffic for which the Ogden route and the Sunset-Gulf route offered alternative routes was in the mind of the Court when it said (pp. 88-9):

> "Before the transfer of the stock this traffic was the subject of active competition between these systems, but by reason of the power arising from

such transfer, it has since been placed under a common control. It was by no means a negligible part, but a large and valuable part, of interstate commerce which was thus directly affected.

"The fact that the Southern Pacific had a road of its own from the Gulf to the Pacific Coast did not prevent competition for this traffic. The Union Pacific and its connections were engaged in the same carrying trade, and as a matter of fact were competing for that trade, by all the usual means of competition resorted to by rival railroad systems. As this court said, speaking by Mr. Justice Holmes, in *Swift & Co.* v. *United States, supra,* 398: 'Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business.' That commerce, as conducted from the East to the Pacific Coast, was in a substantial part the subject matter of rivalry and competition between these two systems. Since the stock transfer the companies have common officers and the rival soliciting agencies have been for the most part abandoned."

The decision of the Supreme Court as to the absence of domination by the Southern Pacific Company over the Ogden route has lost none of its effect by reason of any subsequent change in conditions. The changes which have taken place all tend to confirm the conclusion reached in the former case. The control of the San Pedro line to Los Angeles has doubled the retaliatory powers of the Union Pacific. The completion of the Western Pacific gives it a connection paralleling the Central Pacific. The amendments to the Interstate

Commerce Act empowering the Interstate Commerce Commission, not only to compel the making of through routes and joint rates by connecting lines, but to fix the divisions of the joint rates, and requiring the issuance of through bills of lading and the observance of shippers' routing directions, have reduced to a negligible quantity the control over a through line by a railroad company owning a link thereof. And such control is reduced to the vanishing point in view of the plenary powers over connecting lines conferred on the Commission by the Transportation Act, 1920.

It is now the well settled construction of the Federal Anti-Trust Act that it prohibits only contracts and combinations which amount to an unreasonable or undue restraint of trade in interstate commerce. Can a restraint resulting from the common control complained of in this case be said to be unreasonable or undue, when it does not prevent or create a motive or power to prevent competition, "sharp, well defined and vigorous"? If the competition which existed unrestrained by the inclusion of the Central Pacific line in the Southern Pacific system was sufficient to make the elimination thereof an unreasonable or undue restraint of trade, does not this of itself show that the competition had not been previously eliminated to any unreasonable or undue extent?

Is there not a fatal inconsistency between a suit claiming that certain prior existing competition had been eliminated by a certain combination, and a second suit claiming that such competition had already been

eliminated by a preceding combination? In its first suit the Government charged that the competition existing prior to 1901 between the Ogden route and the "Sunset route" had been eliminated by the merger of that year. In the present suit the Government charges that the competition between the two routes was eliminated by the Southern Pacific's control of the Central Pacific, which took place years prior to 1901. The existence of such competition in 1901 was an essential part of the first case. Its destruction long prior to 1901 is an essential part of the present case.

(3) It is established by the findings of the Interstate Commerce Commission in its report upon the application of the Southern Pacific Company to be permitted to continue to operate the water line part of the Sunset-Gulf route (supra).

(4) It is established by the unanimous testimony of a large number of witnesses specially qualified to testify on the subject.

It was established by indisputable evidence that as a matter of fact there had been at all times (except during the merger) active, vigorous and successful competition between the Ogden and Sunset-Gulf routes, and that as a matter of fact there had never been any attempt to use the common control of the Central Pacific line and the Sunset-Gulf line to prevent or blunt the sharpness of the competition (*supra*, 17). It was further shown by competent and uncontradicted testimony that this common control did not create a motive or incentive to prevent or reduce this competition. Mr.

Kruttschnitt and Mr. Spence testified with convincing clearness on this point, and no attempt was made to contradict them (II Vol., 733-4, and III Vol., 1407. See to same effect Chambers, III Vol., pp. 950 ffg.). Even under conditions existing in 1901 and prior thereto the Supreme Court found that the active competition then existing between the two routes was not merely permissive on the part of the Southern Pacific Company. To close the Ogden gateway by refusing to join in through rates or to make reasonable divisions is legally impossible under the provisions of the Interstate Commerce Act and the Pacific Railroad Acts. To impair the service over the Central Pacific line or to fail to keep it up to the highest standard would be suicidal, since the benefit to the Southern Pacific Company in respect to the comparatively small proportion of traffic competitive between the two routes would be nil and the injury to it in respect to the immensely larger volume of traffic, non-competitive with the Sunset-Gulf route but the subject of intense competition between the Ogden route and other all-rail lines, would be certain and very great. Either course, moreover, would excite the Union Pacific to retaliatory measures, and would divert to rival roads the enormous volume of westbound traffic which that company now delivers to the Southern Pacific line at Ogden.

The direct testimony on the subject is corroborated in many ways. For example, the fact that the Central Pacific-Union Pacific line is, in the opinion of the witnesses, the strongest and best maintained of the trans-

continental lines is a tribute to the standard of service maintained. The evidence showing the satisfactory relations which have always existed between the Union Pacific and the Southern Pacific in respect to the operation of the through line via Ogden strongly negatives any neglect of service over the part west of Ogden. The successful efforts of the all-rail lines, including the Central Pacific-Union Pacific and eastern connections, to meet the initial success of the Sunset-Gulf route, due to its unified management, affords convincing proof both of the existence of actual competition between the two routes and of the beneficial effects to the public of such competition in the way of constantly improving service. Finally, there is Mr. Lovett's refusal to support the theory of the Government (which, after such refusal, it made no further effort to support) that the separation of the Central Pacific from the Southern Pacific System would be followed by better service west of Ogden or increase of traffic over the Ogden route (*infra*, pp. 144, 147).

In the face of such testimony it seems hardly necessary to call attention to the comparatively small extent of territory and traffic for which the Ogden route and the Sunset-Gulf route afford alternative routes. It is restricted territorially to traffic between Northern and Central California and the Atlantic Seaboard. It is further restricted by the fact that a large part of this traffic will not stand transshipment, and hence cannot move over the mixed rail and water line. As to all the remainder of the traffic, it is the subject not only of

active competition with other all rail lines and the Santa Fe-Mallory line, but of competition by the water lines through the Panama Canal, a competition which has come into existence since this suit was instituted, and the revolutionary effects of which were not known when the testimony for petitioner was taken. These Panama Canal carriers, at the time defendants' testimony was taken, dominated the situation (Spence, III Vol., 1066-8). No one reading Mr. Spence's testimony can fail to see how absurd it is to talk of any domination or control, or even of any appreciable influence, over the only traffic competitive between the Ogden and Sunset-Gulf routes which the Southern Pacific Company can exercise by reason of its ownership of the Central Pacific line, and how far from the truth it is to contend that such ownership can have any effect upon rates or upon competitive service in respect to traffic between California and Atlantic Seaboard territory.

Considering the foregoing, in connection with the interests of the Southern Pacific Company as the owner of the stock of the Central Pacific and the guarantor of its bonded debt, we submit that it must be taken as a fact, established beyond controversy in this case, that the common ownership or control complained of has not prevented competition or created an incentive or motive or the power to suppress competition or deprived the public of the benefits of competition in respect to service or otherwise. How essentially it differs in this respect from the combination of the Union Pacific and Southern Pacific systems is too clear for comment.

Neither the record in the former suit nor the evidence in the present suit permit counsel for the Government to contend that such competition as prior to the merger of 1901 existed between the Ogden and Sunset-Gulf routes continued thereafter unimpaired by the amalgamation of the two systems. When such a contention was urged by the Union Pacific, it was unmercifully ridiculed by the then counsel for the Government, who styled it "a fanciful idea * * * born out of the necessities of this extraordinary situation", "absurd on its face", etc. (Government's Brief on the Facts, p. 319, quoted from above under the heading of "The Brief and Argument of the United States", *supra*, p. 57).

It follows from the foregoing that there are two answers to the argument that the decision in the Union Pacific Merger case, inasmuch as it holds that the Union Pacific, being a link in the Ogden route, stood in a competitive relation with the Southern Pacific Company as owner of the Sunset-Gulf route in respect to traffic competitive to the two through routes, and inasmuch as it holds that the combination in 1901 between the Union Pacific and the Southern Pacific Systems destroyed this competition and thus violated the Sherman Law, is an exact precedent for a similar holding in the present case. If this argument is based on the assumption that the essential facts of the two cases are the same, that there is no essential difference, in respect to nature, purpose, effect on competition or otherwise, of the merger between the Union Pacific

and Southern Pacific systems and the formation of the Southern Pacific System by gradual, normal growth and development, with the Central Pacific lines as the original nucleus, then we answer that the argument is based on a false assumption, and rely upon what has been already written to show that practically the only feature in common between the two cases is that there was in each case a common control of a through line and of a part of another through line, the two through lines being capable of competing with each other. If the argument is based on the assertion that the mere fact of a common control of a through line and of a link in another through line which may or does compete with the first line constitutes of itself, without more, a restraint of trade within the prohibition of the Federal Anti-Trust Act, the answer is that the argument is based on an erroneous proposition of law, and we rely upon the manifest unreasonableness of such a construction, which would condemn every railroad system in the country (*supra,* p. 24, and *infra,* p. 127), and upon the implications of the Panama Canal Act Amendment and of the Acts of Congress authorizing the Southern Pacific Railroad Company to construct and operate lines to form links in two competing transcontinental lines (*supra,* pp. 32-33, and *infra,* pp. 126 ffg). Whether a railroad system which includes a divergent stem, forming in connection with other lines a through route that may compete for some traffic with the parent system, is unlawful or not depends upon the particular facts and circumstances of each case. The most im-

portant of these facts is the nature of the origin and development of the system; the effect on competition between the two routes may be an important feature, if the circumstances under which the divergent stem became a part of the system do not of themselves afford a complete justification. It would be difficult to think of any circumstances tending to disprove an unlawful restraint of trade which have not been shown in this case to exist in favor of the Southern Pacific System. This is true in respect to its origin, the manner of its growth, and its effect on transportation conditions.

In this connection we call attention to the testimony of Mr. Spence to the effect that it is quite a common characteristic of the railroad systems of this Company to have included in one system lines which form parts of alternative and competing routes of traffic, thus duplicating in all essentials the situation resulting from the inclusion in the Southern Pacific System of the Central Pacific line to Ogden. For illustration he took up seriatim the different systems of railroads which participate in the transportation of traffic across the continent and showed that each system included within itself different lines which form parts of competing routes for transcontinental traffic. In connection with his testimony there were filed in evidence maps of each system to which he referred. (Defendants' Testimony, III Vol., pp. 1070-7, and Defendants' Exhibits, numbered 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94; see testimony of Mr. Kruttschnitt, II Vol., pp. 737 ffg.) If the

Government is right in its contention that the inclusion in one system of lines of railroad which form parts of competing through routes is in violation of the Federal Anti-trust Act, then, to be consistent and impartial, the Government should at once institute suits to disrupt the numerous railroad systems which in like manner violate the law. Such a crusade to un-group the railways of the existing railroad systems of this country would be in startling contrast with the public policy announced in Section 407 of the Transportation Act, 1920 (Kruttschnitt, II Vol., p. 773).

(*d*) and (*e*) The separation of the Central Pacific lines from the Southern Pacific system would not benefit but would injure the public, and would be accompanied by consequences most injurious and unjust to the Southern Pacific Company.

It has been established by an overwhelming amount of testimony that the proposed disruption of the system would increase the cost and greatly decrease the value of the service which the public now receives from the Southern Pacific System, *both in respect to through and in respect to local traffic*. The lines and properties of both sets of lines enter into the Ogden route and the Sunset-Gulf route. The service via neither through route would be as efficient after the separation. The local service would be deranged and impaired. Operated indiscriminately as parts of one system, the two sets of lines avoid congestion by affording alternative routes, shorten distances, and make a one-line haul of what, after a separation, would be two or three-line

hauls. Their separation would necessitate duplication of facilities at enormous cost and by no feasible arrangement could the service equal in cost or efficiency the existing service. This is the natural consequence of the separation of two sets of lines which were constructed as interdependent parts of one system (Kruttschnitt, Vol. II, pp. 740-752, 799-800; Spence, Vol. III, pp. 1015, 1039, 1069; Chambers, *Id.*, pp. 946-950, 987-991).

That such would be the consequences of the proposed dissolution was not testified to only by officers of the Southern Pacific Company, although their testimony was accompanied by convincing detail. The opinion of the railroad officials is shared by unusually competent representatives of the shipping public, Mr. Eshelman, for a long time president of the California Railroad Commission (III Vol., pp. 877 ffg.; pp. 882 ffg.), and Mr. Lynch, who spoke not only for the merchants of San Francisco, but for the shipping interests generally of the State (II Vol., pp. 835, 865). There was no attempt to rebut the testimony of these witnesses. Hence, it must be accepted as an established fact in this case that the separation of the Central Pacific lines from the other lines of the Southern Pacific system would result in impaired service to the public rendered at greater cost. That it is neither required nor desired by the public may be inferred both from the testimony in the record as well as from the failure of the Government to produce as a witness a single shipper to complain of existing conditions or to advocate a change.

The evidence is barren of any suggestion of any compensating advantages to the public. The vast preponderance of the evidence is to the effect that the separation would not bring about any increase of competition or have any tendency to decrease rates. As to the effect of a separation upon rates, there was no attempt to contradict the proof offered by defendants, that local rates would probably be increased by the separation, and that through rates would not be affected. Mr. Spence demonstrated the absence of any effect on through rates when he showed that all the traffic competitive between the Ogden and the Sunset-Gulf routes was also competed for by the water carriers through the Panama Canal, who were the rate-making factor and who had already reduced the rates so low between California and Atlantic Seaboard territory as practically to put the all-rail lines out of the business (III Vol., pp. 1066 ffg.).

As to increase of competition to result from the separation, all that the Government has to rely upon is the opinion of Mr. Munroe and of a soliciting agent of the Union Pacific in Cincinnati territory, Mr. Connors, and the only reason for their opinion is the general theory, the more railroads the more competition! Mr. Lovett cannot be said to have directly committed himself either way; but his statements in respect to the unlikelihood of improvement in the service or business over the Ogden route to result from an independent or even a Union Pacific-owned Central Pacific is an indirect negation of the Government's contentions.

Any increase of competition is at most problematic, theoretical and improbable. It is opposed to the testimony of the host of witnesses who vouched for the present existence of active, vigorous and effective competition between the Ogden route and Sunset-Gulf route, to the testimony of numerous witnesses who told of the splendid service maintained on the Central Pacific line, as open to the public now as it could possibly be after a separation, to the testimony that the army of solicitors seeking to route traffic over the line through Ogden could offer better facilities and service to induce the public to patronize that route now than after a separation, and to the positive testimony of Mr. Kruttschnitt and Mr. Spence, supported by facts and reasons, that no increase of competition could reasonably be expected to follow a separation. If there was any doubt on the subject before, there is certainly none now since the decision of the Interstate Commerce Commission on the application of the Southern Pacific Company for permission to continue to operate the steamship line constituting an essential part of the Sunset-Gulf route (*supra*, p. 26). The Commission has unsurpassed information concerning trans-continental lines and traffic. It has declared that, notwithstanding the common control complained of, there exists "active and vigorous competition" between the Ogden route and the Sunset-Gulf route, and that the continued ownership and operation by the Southern Pacific Company of the railroad between San Francisco and Ogden and of the whole of the Sunset-Gulf route will not

exclude, prevent or reduce competition. And by the requirements of the statute the Commission was considering not only actual but possible competition.

It does seem absurd to contend for a dissolution of a railroad system, which was formed, as the Southern Pacific System was, without the destruction of any previously existing competition, on the theory that, by the disintegration of the system, it was possible, though not probable, that some increase of competition might result!

Because the Court was dealing with a combination between two great systems which had been competing in several fields, which had the effect of destroying that prior existing competition, which, being without justifying cause, was presumed to have had for its dominant purpose the elimination of competition, which was shown by the affirmative testimony of numerous shippers to operate to the prejudice of the public interest, which might be regarded as a part of a scheme to acquire a dangerous domination over commerce in respect to transportation, the Union Pacific Unmerger case is worthless as a precedent for the relief sought by the Government in the case at bar.

To secure an authority for the proposed dismemberment of the Southern Pacific System, the Government must find a case condemning as an undue and unreasonable restraint of trade a union of railway lines in one system which resulted from the original construction of the lines as parts of a system, which destroyed no prior existing competition, which was not shown to

have prevented any competition that would otherwise have existed, which, on the contrary, produced and continuously applied a competitive spur of peculiar efficacy, which did not tend to create monopolistic conditions or trade-restraining control, which was not complained of by any one except the Department of Justice, and the dissolution of which was shown by competent uncontradicted testimony would result in impaired service at greater cost, without any compensating advantages. The quest for such a case is manifestly hopeless, and so, we submit, is the Government's success in this suit.

V. The Government's case reviewed.

An analysis of the petition in this case makes it evident that the main reliance of the Government when it instituted this suit, and doubtless the reason which accounts for the suit, was the belief of the Department of Justice in the truth of the charges that prior to the common control complained of, alleged to have been effected by the lease of 1885, the Central Pacific lines and the other lines covered by the lease were competing lines or systems and that the purpose and effect of the common control was to destroy such competition. But it has now been shown that the common control began at least as far back as 1870, a date not only prior to the construction but prior even to the conception of the lines composing the Sunset-Gulf route. The authority of the Southern Pacific Railroad Company to build to Yuma was obtained in 1871. The idea of extending that line to El Paso and thence by connections to the Gulf was the slow product of developments in after years. Hence the common control not only destroyed no existing competition, but it is not chargeable with having been formed for the purpose of preventing expected competition. Moreover, defendants have been able to show that the Department of Justice was not only misinformed as to the origin of the common control which it was attacking but that it was also mistaken as to its destructive effect on competition. We need not repeat what has been written above as to the evidence in this case establishing the actual existence, with full vigor

and effect, of the competition which the Government alleged had been destroyed. In view of the contentions of the Government in the Union Pacific Unmerger case and the report of the Interstate Commerce Commission upon the application of the Southern Pacific Company for permission to continue to operate the through Sunset-Gulf route, notwithstanding its ownership of the Central Pacific lines, it cannot be said that the evidence upon which we rely represents simply the peculiar and erroneous views of the witnesses on the subject of competition.

The defense based on the origin and nature of the common control complained of is the defense which prevailed in the court below. It is independent of the question whether or not the inclusion of the Central Pacific lines in one system with the other Southern Pacific lines has prevented or reduced any competition. It is only in the event that the Government overcomes this defense and the several other defenses presented in the main brief that the question of the present effect of the common control on competition will become material. Assuming now, solely for the sake of argument, that the Government has surmounted all the other defenses, and that the controlling question in the case is whether or not the effect of the common control on competition between the Ogden route and the Sunset-Gulf route is such as to constitute an undue and unreasonable restraint of trade, the inquiry arises whether the Government can meet the evidence in this case, which is all against it and which is supported by the

Government's own contentions in a former suit and by findings of the Interstate Commerce Commission.

Will it avail the Government to contend that the competition which it referred to in the former suit, the competition which the Interstate Commerce Commission was dealing with in its report, and the competition which the witnesses were dealing with in this case, was competition between the Sunset-Gulf route and the Ogden route as a whole, whereas the competition the destruction of which it now complains is the competition of the Central Pacific part of the Ogden route?

This contention admits of several answers. It is not true that in the former case the Government left out of consideration the effect on competition between the two routes of the Southern Pacific Company's control of the line between San Francisco and Ogden, because in its Brief of Facts (p. 39) it said that "there was the same incentive to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco". It is not true that the Interstate Commerce Commission was not dealing with the competition between the two routes which the Central Pacific line did or might contribute. On the contrary, it was dealing mainly, if not solely, with the competition which any rail lines *owned* by the Southern Pacific Company might make with the line between the Gulf ports and New York. It is not true that the testimony of the witnesses in this case as to the existence of active, vigorous, and effective competition between the two

routes is consistent with the contention that in estimating the sum total of such competition the contribution of the line between Ogden and San Francisco must be regarded as a minus quantity, a handicap rather than an aid in securing the movement of traffic over the Ogden route.

In these days competition between rail carriers consists largely, if not altogether, of competition in service. Now the service over the line between San Francisco to Ogden, whether offered to secure the vast volume of transcontinental traffic for which the Sunset-Gulf route does not offer an alternative route or to secure the less than 16% of the remaining transcontinental traffic which may move over the Sunset-Gulf route, is competitive service. No part of the traffic could be obtained except after the fiercest competition, and it was impossible, as well as against the interest of the Southern Pacific, to discriminate in respect to such service between traffic open to and traffic not open to the Sunset-Gulf route. Mr. Lovett was unable to say that the separation of the Central Pacific lines from the Southern Pacific System would be followed by any improvement in the service or any increase of traffic over the Ogden route, and this is tantamount to an admission that the service over the line between Ogden and San Francisco and the competitive striving for traffic over the Ogden route has not been handicapped by the Southern Pacific Company's ownership of the Central Pacific lines. The admission is by no means a generous one, when we consider that the deficiencies

of the Central Pacific line between Sacramento and San Francisco are supplied by rail lines and facilities belonging to the Southern Pacific Railroad Company, without which the Ogden route would be seriously handicapped in the fierce struggle for traffic participated in by many powerful competitors. In a case of this kind the Court will look at the substance of things. What the public are really interested in is the benefits resulting from the Ogden route being an actual and effective competitor for all transcontinental business it is capable of moving. Under present conditions such competition exists with a maximum efficiency of service and with consequent maximum results. With the Central Pacific separated from the Southern Pacific system the resulting competition would be conducted with greatly impaired service and naturally with a corresponding lessening of beneficial results, the only additional factor being the presence among the now forty or fifty solicitors for the Ogden route of a new man with "C. P." on his cap, and this would not be a real increase in numbers if "U. P." were joined to "C. P." Such an addition to the soliciting force would hardly compensate for the subtraction of facilities and lines essential to efficient service and effective competition. Can it be said that the maintenance of the present conditions and the prevention of the conditions which will follow the proposed separation amount to an undue and unreasonable restraint of trade?

The Government is forced by the necessities of its case to find some weapon which will overcome both the

defense based on the nature and origin of the common control and the defense that, irrespective of its nature and origin, the common control does not operate an undue and unreasonable restraint of trade. It attempts to do this by the contention that whenever it is shown that one railroad company owns a part or a link in each of two competing through lines, or whenever it is shown that some part of a railroad system forms, by connection with other railroads, a through line which is a competitor of the parent system, then, without more, a violation of the Sherman Law is conclusively established. The approval of such a proposition would be equivalent to finding that the railroad systems of this country, practically each and all, constitute unlawful restraints of trade (Spence, III Vol., pp. 1070-7). If, by wholesale pruning or dismemberment, a condition in harmony with such construction of the law were brought about, either the railroads would have to cease to build feeders or lateral extensions or the law requiring such branches and extensions to form connecting lines with other railroads would have to be repealed, or every few years the pruning process would have to be repeated; for a railroad company cannot have branches or divergent stems or lateral extensions without the formation of one or more through lines competing with that railroad and formed in part by one of its branches or extensions. Such a construction of the law would convict the Congress of the United States of authorizing, and encouraging by grants of land, the making of restraints of trade; for Congress authorized

the Southern Pacific Railroad Company, by the act of July 27, 1866 (14 Stat., 292, sec. 18), to construct and operate a line from San Francisco to Needles, to form part of the transcontinental line along the 35th parallel of latitude, and by the act of March 3, 1871 (16 Stat., 573, sec. 23), to construct and operate a line from San Francisco to Yuma, to form part of a transcontinental line along the 32nd parallel of latitude. And there is good reason for believing that Congress knew at the time that the Central Pacific and Southern Pacific Railroad companies were then under common control. That the Government had not, prior to the institution of this suit, found anything objectionable in the common control of or interest in a transcontinental line and a link in any other such line, is shown by a reference in the 1913 report of the late Attorney-General to the permitted acquisition by the Pennsylvania Railroad Company of some $38,000,000 of the stock of the Southern Pacific Company in exchange for Baltimore & Ohio stock. "No new combination in restraint of trade was created by the exchange, *since the Pennsylvania and the Southern Pacific systems are non-competitive,* and the same is true of the Union Pacific and Baltimore and Ohio." (Annual Report of the Attorney-General, 1913, p. 17.) We call attention to the similar relations between the "Sunset route", which reaches New York by the Morgan line of steamships, and the Pennsylvania Railroad, whose main line to Chicago forms the eastern link of a through all-rail route across the continent, on the one hand, and the

"Sunset route", terminating at San Francisco, and the Central Pacific, whose line to Ogden forms the western link of the same all-rail through route, on the other hand. In other words, the Pennsylvania line stands in the same relation to the Sunset-Gulf route on the east as the Central Pacific's Ogden line does on the west.

As the evidence shows that there are no peculiar objections to the inclusion in the Southern Pacific System of the Central Pacific line to Ogden, which may be regarded as a divergent stem or tangential off-shoot of the main line from Portland via San Francisco to El Paso and beyond, but, on the contrary, shows the presence of every condition which would make its inclusion unobjectionable, it is fair to subject the contention under discussion to the test of generalization, as we have done. We submit that its unreasonableness becomes manifest when it is expressed in general terms or when it is generally applied. Before the Southern Pacific System can be condemned because of the inclusion therein of the line to Ogden the Court must be prepared to condemn as unlawful all the class of railway systems having divergent stems.

With the element of destruction of prior existing competition out of the case, with the element of the prevention of competition subsequent to the alleged combination out of the case, with the element of power or motive to prevent competition out of the case, in the absence of any monopolistic absorption or trade-restraining control, is there enough material left

wherewith to construct a case of unlawful restraint of trade?

The Government essays to make out such a case on the theory that if the Central Pacific and the "Sunset route" had not been built by the same people, if they had not been developed as parts of the same system, if they had belonged originally to different owners, or if they were now separated and placed under different managements, there might have been or might be more active and beneficial competition in respect to transportation from and to points on the Pacific Coast than now exists. This, then, is what remains of the Government's case —an alleged contingent, uncertain, indirect, possible restriction of hypothetical competition. The argument in its support involves a pyramid of assumptions, based on no evidence, which is capped by an assumption in conflict with the evidence.

PART II.

DISCUSSION OF THE CASE UNDER THE PACIFIC RAILROAD ACTS.

Here again it is not the purpose of this argument to cover the whole case. But, on account of the importance and novelty of the questions involved, it is believed that something of value may be contributed to the presentation of the case by a discussion of some of the main points from more than one point of view. We shall endeavor first, by a consideration of the pleadings and the general scope of the evidence, to arrive at the precise question for decision; next, to point out the provisions of the law to be construed and applied; and then to show that the construction of the statute upon which the Government's case essentially depends is not justified by the language of the law and is not only not necessary to accomplish the purpose of the law but would give it a meaning and effect clearly not within the contemplation of Congress. It will be brought out in the course of the argument that the conditions now complained of as prohibited by the Pacific Railroad Acts have been in existence for over thirty years and during that period have been frequently brought to the attention of Congress and the Department of Justice through Congressional investigations and otherwise, but that it had never occurred to any one prior to the institution of this suit that such conditions, repeatedly the subject of public scrutiny and comment, were violative of the express require-

ments of the acts. The meaning now sought to be given the statutes was not discovered by successive Committees of Congress on Pacific Railroads or by successive Attorney-Generals, including the one in charge of the Unmerger Suit, or by the Union Pacific Railroad Company, the supposed sufferer for many years from the alleged illegal acts, and remained hidden and unsuspected until brought to light in the search for grounds upon which to divorce the Central Pacific from the Southern Pacific System.

I. The Government's case as defined by the pleadings and further restricted by the evidence.

The respects in which the Pacific Railroad Acts are violated, as charged in the petition, may be thus summarized (Vol. I, pp. 10-11):

(1) "In respect to traffic between points on the Atlantic and Pacific coasts and tributary territory, it is to the interest of the Southern Pacific Company to carry, and by reason of its control of the Central Pacific it has the power to and does carry, as much of such traffic as possible via its 'Sunset route', sending through the Ogden gateway only such portion thereof as it is unable to control for the 'Sunset route', thereby 'discriminating against the Central Pacific Railway Company'."

(2) "By reason of its greater interest in the 'Sunset route', the Southern Pacific Company, in the operation of the Central Pacific from San Francisco to Ogden as a part of a continuous line from the Missouri River to the Pacific Ocean, does not give to such line equal advantages and facilities as required by the Pacific Railroad Acts but discriminates against it by forwarding via the 'Sunset route' traffic originating or ending on the lines of the Central Pacific or in territory tributary thereto."

(3) "Through its control of the Central Pacific Railway Company the Southern Pacific Company pre-

vents joint traffic or prorating arrangements between the former and the Union Pacific Railroad Company, naturally its most important transcontinental and interstate connection."

(4) "The Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific railroads and other eastern connections, thereby preventing competition and denying equal advantages and facilities as to rates, time, and transportation."

(5) "Maintenance by the Southern Pacific Company of Central Pacific Company's properties, moreover, compared with that of the 'Sunset route', is so inefficient as to discourage eastern travel and transportation via the Ogden route, and does not afford and secure thereto equal advantages and facilities as to time and transportation."

(6) "The Southern Pacific Company has heretofore, and does now, control, maintain and operate said Central Pacific Railway Company in the interest of its 'Sunset route' and adverse to the interest of the Central and Union Pacific companies, and has not and does not afford or secure to said Central and Union Pacific companies equal advantages and facilities as to rates, time, and transportation, all in violation of the Pacific Railroad laws."

Although the Government produced as witnesses the head of the Union Pacific Railroad Company, its Vice-President and chief traffic officer and its soliciting agents, and Mr. Schumacher, who was connected in early times with the Traffic Department of that Company in California, no attempt was made to prove by those witnesses, or by any other witness, that the Southern Pacific Company had ever, through its control of the Central Pacific Railway Company or otherwise, prevented or attempted to prevent joint traffic or prorating arrangements between the Central Pacific and the Union Pacific, or that the Southern Pacific Company had ever adjusted its freight rates and passenger fares on traffic originating in Central Pacific territory north of San Francisco, so as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific railroads, or that the maintenance by the Southern Pacific Company of the Central Pacific Company's properties, compared with that of the "Sunset route", was ever so inefficient as to discourage eastern travel and transportation via the Ogden route. The contrary was proved by defendants by an overwhelming amount of uncontradicted testimony. We may, therefore, treat as abandoned charges numbered 3, 4 and 5.

Charge No. 6 is nothing more than a general conclusion from the more specific charges by which it is preceded, and is of no assistance or effect in determining precisely what is relied upon as constituting a violation of the Pacific Railroad Acts.

By this process of elimination the Government's case is reduced to charges numbered 1 and 2 above, which will now be subjected to further analysis. In both the violation of the law charged is discrimination, and the discrimination alleged is forwarding over the "Sunset route" some traffic which might move over the Central Pacific-Union Pacific line via Ogden. In the first charge or count the alleged discrimination is against the Central Pacific Railway Company and in respect to traffic moving between the Atlantic and Pacific coast; in the second the alleged discrimination is against "both the Central Pacific and Union Pacific lines" and in respect to traffic originating or ending on the lines of the Central Pacific Railway Company or in territory tributary thereto. In the second charge it is expressly stated that the discrimination is in favor of the "Sunset route"; in the first, it is a necessary inference that the discrimination is in favor of the "Sunset route". Considering the pleadings alone we are unable to determine whether the pleader originally intended to present in charges or counts 1 and 2 independent or materially different kinds of prohibited discrimination. In the light of the evidence it would seem that the Government regards the two charges as amounting to a single charge of discrimination against the "Ogden route" in favor of the "Sunset route" resulting from the preferential solicitation of certain traffic for the latter route.

One of the questions to be decided in this case is whether the provisions of the statute alleged to be

violated by the discrimination charged are applicable to any other cases of discrimination than those resulting from one of the several companies authorized to construct the railroads mentioned in the Pacific Railroad Acts refusing to give to another of such companies advantages and facilities as to rates, time and transportation equal to those it affords any other of such companies or resulting from any discrimination of any kind in favor of the road or business of any of *said companies* or adverse to the road or business of any of "*the others*". In other words, the mandate against discrimination is addressed to the railroad companies forming the group or family of railroads who were authorized to construct the railroads described in the acts. It prescribes a rule of conduct only for members of the group or family, only in respect to their treatment of each other, and only in respect to railroads forming part of the through line to the Missouri River. The provisions prescribing the facilities which members of the family should afford each other and the physical and operating conditions which should be maintained on their respective roads, and enjoining equality of treatment of each other, have no application to outside lines or companies. No outside railroad or company can claim, by force of the provisions in question, from any of the Pacific Railroad Acts companies facilities and advantages equal to those accorded to any of that group or family. By the same token no one of the family can make out a case of discrimination under the statute against another one of the family based on

denial to it of advantages or facilities accorded an outside railroad, nor can any outside railroad be guilty of any discrimination prohibited by the acts.

The question just indicated will be discussed hereafter. It is stated now in order that the Court may see the significance of the fact that the discrimination on which the Government's case is based is not a discrimination by one of the Pacific Railroad Acts companies in refusing to another of such companies advantages or facilities afforded others of the family or in giving to one of the family advantages and facilities denied the others. It is based on a discrimination made by or in favor of the "Sunset route", an outside railroad, which forms no part of the railroads authorized to be constructed by the Pacific Railroad Acts. It would seem that whether the railroads composing the "Sunset route" have discriminated in favor of or against any of the Pacific Railroad Acts companies or whether any of the latter companies have discriminated in favor of the "Sunset route" railroads, is a question to be determined by the provisions of the Interstate Commerce Act, which, as amended, deals very fully with the rights and obligations of connecting railroads, prohibits discrimination in their treatment of each other and provides adequate machinery to enforce its requirements and to establish all proper through routes, under reasonable joint rates and divisions. Hence, it would seem that the discrimination charged is not within the purview of the Pacific Railroad Acts. It is no answer to say that the allegations of the petition may be con-

strued as leveled against the Central Pacific Railway Company and as charging that member of the Pacific Railroad Acts family, under the dominance of the Southern Pacific Company, with discriminating against the Union Pacific Railroad Company, another member of the family. For the discrimination is not based on the Central Pacific Railroad Company treating another member of the family more favorably than it treats the Union Pacific Railroad Company, but it is based on treatment accorded railroads not embraced in the Pacific Railroad Acts. The Pacific Railroad Acts do not require equality of treatment except in the family. Just as facilities and advantages which members may afford each other are not made the measure of the facilities and advantages which must be afforded outside railroads, so what is afforded outside companies by any Pacific Railroad Acts company is not the criterion of what the acts require that company to afford other members of the group.

Returning now from the digression we have made to suggest the point, to be hereafter discussed, namely, that the discriminations charged are not within the purview of the Pacific Railroad Acts, a point not essential to defendants' case, but, if sustained, fatal to the Government's case, let us consider the evidence as it bears upon this branch of the case, in order that, by ascertaining the facts upon which the Government relies as constituting a violation of the requirements of the acts in question, we may see more clearly upon just what construction of the statutes the Government

depends. We shall find that the issue on this branch of the case is reduced to a very narrow compass.

In order that the Court may have in mind what the Pacific Railroad Acts require of the companies named therein, we shall anticipate the more detailed summary of the statutes to follow by stating that they require the roads in contemplation to be constructed of a uniform gauge with prescribed maximum grades and curves, and the several companies authorized to construct the same are required to operate and use said railroads for all purposes of travel and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation or use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

It clearly appears from the evidence that the efforts of the Government were mainly directed to showing (indeed, it may be fairly said they were limited to showing) that the Southern Pacific organization did not strive to persuade shippers to route via the Ogden route every pound of transcontinental traffic which might reach its destination over that route, but that, as to a part of such traffic, the Southern Pacific organization actively solicited shippers to direct the routing thereof over the "Sunset route", meaning the Sunset-Gulf route, the mixed rail and water line from San Francisco to the port of New York. In other words,

when there is traffic to be moved from or to, say, points in Northern or Central California to or from Atlantic Seaboard territory, the Southern Pacific agents go to the shipper or consignee or both and try to secure the routing of the traffic via the Sunset-Gulf route, provided it is traffic which will stand transshipment from car to boat at Galveston, and again from boat to car, if destined elsewhere than to New York City. At the same time the shipper or consignee, whichever controls the route, is solicited by agents of the Union Pacific and its numerous connections (over forty of which maintain agencies for the purpose throughout California and the Pacific Coast generally, as well as in the East) to favor the Ogden route, and at the same time the agents of the Santa Fe and the agents of the Rock Island system and the agents of the Western Pacific and of the Gould system, etc., etc., as well as the agents of the various Panama Canal lines, seek to secure the shipment for their respective lines. When the traffic about to move belongs to the very much larger class of traffic having origin or destination in the vast territory west of a line from Toronto, through Buffalo and Pittsburg, to Bristol, Tennessee, the western boundary of Atlantic Seaboard territory, or when it belongs to the very large class of seaboard territory traffic which will not stand transshipment, the Southern Pacific joins forces with the Union Pacific and its connections in striving to secure the traffic for the Ogden route.

There was no evidence showing that, by reason of the Southern Pacific Company's interest in the "Sunset

route", the effort to secure traffic for the Ogden route was hampered or handicapped in any way by any failure to operate the road west of Ogden in connection with road east thereof as one continuous line or by any withholding of any advantages or facilities in respect to rates, time or transportation or in any other way. Whenever any shipper concluded to prefer the Ogden route and issued his instructions accordingly, it is not claimed (the evidence certainly does not support any claim) that either the shipper or the Union Pacific ever complained or had cause to complain of the through service over the Ogden route either as to its continuity or as to rates, train schedules, maintenance of track or equipment or as to any other matter relating to time or transportation or to anything connected with the use and operation of the line through Ogden as a through line for any purpose of travel or transportation.

The sole ground afforded by the evidence for charging defendants with violating the Pacific Railroad Acts is that, as to certain transcontinental traffic, it is more to the interest of the Southern Pacific Company to move such traffic over the "Sunset route" than the Ogden route, and it accordingly solicits the same preferentially for the "Sunset route".

The record is not only barren of evidence showing disobedience of any of the express requirements of the statutes, but there is abundent competent and uncontradicted evidence affirmatively showing compliance therewith. At all times since the through line was

completed in 1869 a through service via Ogden has been maintained up to the highest standard, the service keeping pace with railroad development and, hence, constantly improving. There are joint through rates and divisions thereof, satisfactory to the Union Pacific, through contracts of carriage (tickets and bills of lading), through billing, through cars and through trains under satisfactory schedules. There have always been the most friendly relations between the representatives of the Southern Pacific and Union Pacific and the closest co-operation to make the Central Pacific-Union Pacific line in its use and operation one continuous through line for all purposes of travel and transportation. The charges of discrimination and unfair treatment of the Union Pacific contained in the Government's petition make queer reading in connection with the testimony showing that the Union Pacific had never complained of its treatment at the hands of the Southern Pacific Company. From 1901 to 1913 the Union Pacific absolutely controlled the Southern Pacific Company, including the line between Ogden and San Francisco. Yet it does not appear that it could add anything to the arrangements existing prior to the merger for the use and operation of the lines west and east of Ogden as one continuous line. The arrangements for through service as they were at the termination of the merger in 1913 continue to exist. In respect to the use and operation of the roads, for all purposes of travel or transportation, as one continuous line, so far as the public and the Government

are concerned, it is clear that neither the Southern Pacific Company nor the Union Pacific Company know how to improve upon the existing arrangements. The same is true in respect to the "advantages and facilities" now being afforded "as to rates, time and transportation". For the rates are mutually satisfactory and the service has not been complained of in any respects. The only attempt of the Government to show that an improvement in the service on the Central Pacific end of the through line might result from a separation of the Central Pacific from the Southern Pacific System met with failure, when Mr. Lovett stated in substance that that part of the through line was so efficiently operated by the Southern Pacific Company that he could not say that it would be better operated if placed in other hands (Vol. I, p. 297).

In considering the general bearing of the Pacific Railroad Acts upon the situation created by the inclusion of the Central Pacific lines in the Southern Pacific System, the following facts and circumstances should be borne in mind:

1. It is not true that the portion west of Ogden of the through line to the Missouri River is composed entirely of the Central Pacific Railroad, and much less is it true that it is composed of the bond-aided line, which is the line authorized and aided by the Pacific Railroad Acts and is the line to which the requirements of the acts apply. Essential parts of the line west of Sacramento belong to the Southern Pacific Railroad

Company. By "essential" we mean necessary to make the through line an efficient and successful competitor for transcontinental traffic. The bond-aided line from Sacramento west, with a five mile break at Brighton, passes through Stockton, Lathrop, Tracy and Niles and ends at San Jose. It does not now afford a practicable line for the transcontinental traffic in question. To meet the standard of efficiency necessary for successful competition, as well as to avoid congestion, the bond-aided line west of Sacramento has been replaced, in the actual operation of trains, by the Sacramento-Elmira-Benicia line (the property of the Southern Pacific Railroad Company), the Sacramento-Tracy-Martinez line (the property of the Southern Pacific Railroad Company from Tracy to San Francisco), and the Sacramento-Tracy-Niles line continuing via the Dunbarton cut-off to Redwood City, from which point it reaches San Francisco over the coast line of the Southern Pacific Railroad Company (Spence, Vol. III, pp. 1017, 1039; Kruttschnitt, Vol. II, pp. 742-3, 751).

2. It is not true that the Southern Pacific Company's ownership of the Central Pacific and of the "Sunset route" gives it control of Atlantic Seaboard territory traffic, with power to route as much of it as it chooses over the "Sunset route". Notwithstanding the Southern Pacific Company's interest and its effort to secure such traffic for the "Sunset route", the proportion of Atlantic Seaboard territory traffic, having origin or destination in territory on the Pacific coast constituting

the field of competition between the two routes, secured by the Ogden route in the year ending June 30, 1914, was over two and a half times the amount secured for the "Sunset route". (See Defendant's Exhibit 80, Vol. VI, p. 2255.) This statement is still true if we deduct from the traffic over the Ogden route all that had origin or destination in Nevada, which is shown by Exhibit 70 (VI Vol. of Defendant's Exhibits, p. 2251) to amount to only 30,372 tons. The deduction of Nevada traffic reduces the territory in the west (covered by Exhibit 80) to points in Northern and Central California, which Mr. Spence's testimony shows to be the Pacific coast territory to which the competition between the two routes is naturally confined. Hence, in the strife between the Ogden route and the "Sunset route" for Atlantic Seaboard territory traffic, the Ogden route is very far from being under the control or at the mercy of the Southern Pacific Company.

3. It is not true that the Central Pacific Railroad, under the control of the Southern Pacific Company, is not holding up its end of the through line or that the through line is handicapped in the strife for traffic by the inclusion of the Central Pacific in the Southern Pacific System. This point has probably been sufficiently covered in the discussion of the case under the Sherman law. We call attention, however, to Mr. Spence's testimony showing that the amount of eastbound traffic delivered to the Union Pacific at Ogden exceeds the amount of westbound traffic received from

the Union Pacific (Spence, III Vol., pp. 1062-3), and to Mr. Lovett's statement that the business of the Ogden route would not be increased by the separation of the Central Pacific from the Southern Pacific System (Lovett, I Vol., pp. 295 and 300).

4. It is not true that the proportion of transcontinental business which it is to the interest of the Southern Pacific Company to move by the "Sunset route" is so large as to characterize the relation of the Southern Pacific Company to the Ogden route as antagonistic. In respect to by far the larger proportion of transcontinental traffic there is no natural competition between the "Sunset route" and the Ogden route. As to all such traffic the Union Pacific is the preferred connection of the Southern Pacific Company. It is sufficient in volume and value to create the strongest motive and inducement in the Southern Pacific Company to maintain the highest possible standard of service on its end of the Ogden route, and to do everything required by the Pacific Railroad Acts. Competition between the Ogden route and the "Sunset route" is naturally confined to traffic between Atlantic Seaboard territory and points in Northern and Central California, and is further restricted by the fact that a large part of this traffic will not stand transshipment and hence will not move over the "Sunset route". Now, it is shown by the testimony of Mr. Spence that *all* the Atlantic Seaboard territory traffic passing over the Ogden route

(including that which will not stand transshipment) is only 16.3 per cent. of the transcontinental traffic moving via that route (Spence, III Vol., p. 1048).

5. It is not true that so much of the traffic in question as is secured for the Sunset-Gulf route represents traffic which has been "diverted", to the prejudice of the public, to a more expensive route with inferior service. Such a contention is contrary to the evidence in this case.

6. Since the Government instituted this suit, and since its testimony was taken and the statistics as to the movement of transcontinental traffic were prepared, the Panama Canal has been opened for business, and the effect, present and prospective, on that part of the Atlantic Seaboard territory traffic for which the Ogden route and the "Sunset route" were competing of the all-water carriers through the Canal has been revealed. The testimony shows that these carriers have not only enormously reduced the takings of this traffic by the lines over which it formerly moved, but that they have reduced the rates to such an extent that the eastern connections of the Central Pacific-Union Pacific line and of the other all-rail lines are not willing to meet them. The result is to put the Ogden route practically out of business in respect to the only traffic upon which the complaint under the Pacific Railroad Acts is based (Spence, Vol. III, pp. 1065-1068). *How can the Cen-*

tral Pacific-Union Pacific through line be discriminated against or prejudiced in any way by the Southern Pacific Company soliciting for the "Sunset route" traffic for which the Ogden route, through no fault of the Southern Pacific Company, is practically out of the market? How can the public be benefited or any useful purpose be subserved by impairing the efficiency (through separation therefrom of its Central Pacific elements) of practically the only through line which remains to compete with the all-water carriers? (See *supra*, pp. 21-22, 111-112.)

II. Provisions of the Pacific Railroad Acts imposing obligations upon the railroad companies subject thereto in respect to operation and use of their roads.

The title of the act of July 1, 1862, declares its object to be to aid in the construction of "a railroad and telegraph line from the Missouri River to the Pacific Ocean", and to secure to the Government the use of the same for postal, military and other purposes. Section 18 further defines the object to be accomplished, namely, "to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes".

The enterprise to receive Government aid is sometimes referred to, as in the title and in section 18, in the singular as a railroad from the Missouri River to the Pacific Ocean, and sometimes in the plural, as in Section 15 hereafter quoted, as the railroads authorized to be constructed. What the acts really contemplated was, not one straight single railroad, but a number of railroads constructed by numerous independent companies, the whole to result in railroad connection between the river and the ocean. It was probably expected at the time that the western part would be a single or trunk line and the eastern part composed of a number of forks. In other words, it was possible, if not actually expected,

under the terms of the acts, that the result of the railroad construction would be a number of lines of the shape of a fan, the handle toward the west and the fan part proper composed of numerous lines radiating therefrom, each in connection with some other of the lines forming a through line from the Pacific Ocean to the Missouri River. One of the problems which Congress had before it was to prevent family quarrels between these various railroads, and to secure arrangements between the component parts of the various possible through lines necessary to cause them to be operated as through lines, and especially to prevent the main stem or handle of the fan from discriminating in favor of or against any of the contemplated radiating lines. Discrimination in respect to rates, time or transportation might result in preventing one of the lines from securing any traffic and this would operate unfairly against the territory served by it. For instance, a discrimination in favor of the line to Omaha or against the line to Kansas City would be likely to give just cause for complaint to the merchants of Kansas City and of the country farther east dependent upon the line through Kansas City.

Congress solved this problem, not by requiring single ownership, control or management, or a partnership of interests, but by the provisions of the acts upon which the present suit is based, section 12 of the act of July 1, 1862, as amended by section 15 of the act of July 2, 1864, with the additions thereto made by the act of June 22, 1874.

Section 12 of act of 1862 (12 Stat., 489) is as follows:

"And be it further enacted, That whenever the route of said railroad shall cross the boundary of any State or Territory, or said meridian of longitude, the two companies meeting or uniting there shall agree upon its location at that point, with reference to the most direct and practicable through route, and in case of difference between them as to said location the President of the United States shall determine the said location; the companies named in each State and Territory to locate the road across the same between the points so agreed upon, except as herein provided. The track upon the entire line of railroad and branches shall be of uniform width, to be determined by the President of the United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast; the grades and curves shall not exceed the maximum grades and curves of the Baltimore and Ohio Railroad; the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line; and the companies herein named in Missouri, Kansas, and California, filing their assent to the provisions of this act, shall receive and transport all iron rails, chairs, spikes, ties, timber and all materials required for constructing and furnishing said first-mentioned line between the aforesaid point, on the one hundredth meridian of longitude and western boundary of Nevada Territory, whenever the same is required by said first-named com-

pany, at cost, over that portion of the roads of said companies constructed under the provisions of this act."

Section 15 of the act of 1864 (13 Stat. 356) provides:

"And be it further enacted, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the other, and it shall not be lawful for the proprietors of any line of telegraph authorized by this act, or the act amended by this act, to refuse or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offence, the sum of one hundred dollars, and such other damages as he may have suffered, on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any State or Territory of competent jurisdiction."

The act of June 22, 1874 (18 Stat. 111) adds to Section 15 of the act of 1864 as follows:

"And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said

roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act it amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States in the territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble the amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such territory, district, or circuit, process may be served upon any agent of the defendant found in the territory, district or circuit in which such suit may be

brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyennne, as provided in the act of March third, eighteen hundred and sixty-nine."

The act of June 22, 1874, does not add to the requirements of section 12 of the act of 1862 or section 15 of the act of 1864. It simply provides penalties for disobediences of the earlier acts. But it confirms what we have said in respect to the purpose and scope of the provisions requiring the different railroads participating in the construction of the through line to form through lines and accord to each other equal and non-discriminatory facilities and advantages in respect to rates, etc. It was evidently aimed at the Union Pacific, and was provoked by its failure to accord to the through line via Cheyenne and Denver and thence over the then Kansas Pacific Railroad Company to Kansas City the same through rates, etc., which prevailed over its road to Omaha, the latter part of which is designated in the Pacific Railroad Acts as the Iowa Branch. All of these roads belonged to the Pacific Railroad Acts family of roads, and the object which the provisions of sections 12 and 15 were intended to accomplish had been frustrated by the failure of the Union Pacific to make through arrangements with the Kansas City

branch. Subsequently the Union Pacific acquired the Kansas Pacific.

The objectionable conduct which gave rise to the legislation of 1874 may be inferred from its terms. It is made clear also in the debates in the Senate which preceded its passage. The Union Pacific had practically closed the through line via the Kansas Pacific. (Congressional Record, 43rd Congress, First Session, pp. 5021 to 5026.) If the testimony before the Pacific Railroad Commission, annexed to its report of 1887, can be regarded as before the Court for any purpose, there will be found on page 132 of the report the statement of Mr. Adams, chairman of the Union Pacific's Directors, that the act of 1874 was the result of efforts of the Kansas Pacific to enforce its rights on the subject of through passenger and freight rates.

Section 16 of the act of 1862 and the same numbered section of the act of 1864 gave any two or more of the companies named in the acts the right to consolidate. But consolidation was authorized, not required. The acts permitted and contemplated, not only construction of the railroads, but the subsequent ownership and operation thereof, by many independent corporations of different States. This involved separate control and management and diverse interests, the only restriction being the construction of the various roads so as to form, by connections at various junction points, a through line or through lines of uniform gauge, and the subsequent use and operation thereof as continuous lines according to each other equal and non-discrimina-

tory facilities in respect to rates, time and transportation. Physical and transportation continuity was required; but, provided these requirements are met, the railroad companies in question are free to form such other connections or affiliations as they may see fit to form. They are not tied to each other in any other way than is involved in the formation, physically and by appropriate equal traffic arrangements, of the contemplated through line or lines. They may operate through other gateways, by direct extension or by connections. They may become more interested in other through lines. They run counter to the Pacific Railroad Acts only when they break up the through lines therein provided for, by a physical break in connection, by refusing to give the necessary through service or to make the necessary through rates, etc., or by discriminating in rates, time or transportation in favor of one of the through lines so as to put the others out of business or by discriminating against one or more of the through lines so as to close them. Preferential solicitation through some other junction or gateway than the one where connection is made with a Pacific Railroad Acts company is not a violation of the statutes, since such conduct does not break the continuity of the through line or lines described in the acts, and does not interfere with the existence over such lines of equal and nondiscriminatory rates, time schedules and every other element of through service. The Ogden route has flourished, notwithstanding the preferential solicitation complained of.

III. The provisions of the Pacific Railroad Acts requiring the railroad companies authorized to construct the through line or lines from the Pacific to the Missouri River to accord each other equal and non-discriminatory facilities and advantages in respect to rates, time and transportation will not support a charge of discrimination against said through line in favor of an outside line.

The charge we have to meet is that the Southern Pacific Company, as operator of the Central Pacific, discriminates against the Union Pacific, or that, as operator of the "Sunset route", it discriminates against the Central Pacific-Union Pacific line, the discrimination being *in favor of the "Sunset route"* and consisting of the preferential solicitation of some traffic for the "Sunset route."

Pretermitting for the present the question whether a case of discrimination otherwise within the meaning of the Pacific Railroad Acts has been made out, we now suggest for consideration by the Court the preliminary question, whether discrimination by or in favor of a railroad line or a railroad company not included among the railroads or railroad companies mentioned in the Pacific Railroad Acts is covered by the provisions of the acts prescribing the rule of equality in respect to rates and service accorded. A decision of this question in defendants' favor is not essential to their case, but is fatal to the case of the Government.

We submit that it is clear from the language of the

law that the requirements in question must be considered as a family rule to secure impartial treatment of each other by different members of the group of railroads authorized to connect the Pacific Coast with the Missouri River. The equal advantages and facilities required by section 15 are commanded to be afforded only by "the several companies authorized to construct the aforesaid roads" and only to some one or more of such companies. The equality required to exist is equality between the different members of this same group of railroads. The statute does not concern itself with the advantages and facilities which may be afforded to some outside railroad. It does not make the character of the advantages and facilities afforded an outside railroad a standard of comparison for determining what shall be afforded to the companies included in the statute or a test for determining the existence of the equality required. We can no more read into the statute that each one of the Pacific Railroad Acts companies must furnish to the others advantages and facilities equal to those afforded any outside railroad, than we can read into it a requirement, for the benefit of outside railroads, that they shall be afforded by any member of said group advantages and facilities equal to those which it affords to any other member of the group.

So the complementary prohibition against discrimination is confined to discrimination by any member in favor of or against any member or members of the family of railroads authorized to participate in the construction of the railroad and its numerous branches

III. The provisions of the Pacific Railroad Acts requiring the railroad companies authorized to construct the through line or lines from the Pacific to the Missouri River to accord each other equal and non-discriminatory facilities and advantages in respect to rates, time and transportation will not support a charge of discrimination against said through line in favor of an outside line.

The charge we have to meet is that the Southern Pacific Company, as operator of the Central Pacific, discriminates against the Union Pacific, or that, as operator of the "Sunset route", it discriminates against the Central Pacific-Union Pacific line, the discrimination being *in favor of the "Sunset route"* and consisting of the preferential solicitation of some traffic for the "Sunset route."

Pretermitting for the present the question whether a case of discrimination otherwise within the meaning of the Pacific Railroad Acts has been made out, we now suggest for consideration by the Court the preliminary question, whether discrimination by or in favor of a railroad line or a railroad company not included among the railroads or railroad companies mentioned in the Pacific Railroad Acts is covered by the provisions of the acts prescribing the rule of equality in respect to rates and service accorded. A decision of this question in defendants' favor is not essential to their case, but is fatal to the case of the Government.

We submit that it is clear from the language of the

law that the requirements in question must be considered as a family rule to secure impartial treatment of each other by different members of the group of railroads authorized to connect the Pacific Coast with the Missouri River. The equal advantages and facilities required by section 15 are commanded to be afforded only by "the several companies authorized to construct the aforesaid roads" and only to some one or more of such companies. The equality required to exist is equality between the different members of this same group of railroads. The statute does not concern itself with the advantages and facilities which may be afforded to some outside railroad. It does not make the character of the advantages and facilities afforded an outside railroad a standard of comparison for determining what shall be afforded to the companies included in the statute or a test for determining the existence of the equality required. We can no more read into the statute that each one of the Pacific Railroad Acts companies must furnish to the others advantages and facilities equal to those afforded any outside railroad, than we can read into it a requirement, for the benefit of outside railroads, that they shall be afforded by any member of said group advantages and facilities equal to those which it affords to any other member of the group.

So the complementary prohibition against discrimination is confined to discrimination by any member in favor of or against any member or members of the family of railroads authorized to participate in the construction of the railroad and its numerous branches

and extensions between the Pacific coast and the Missouri river. The prohibition is not violated by discrimination in favor of an outside railroad against a member of the family any more than it is violated by discrimination against an outside railroad in favor of one of the family. We repeat the provisions of section 15 in respect to discrimination constitute a family law to prevent partiality as between members of the family.

The Attorney-General was doubtless misled as to the purpose and scope of the provisions in the Pacific Railroad Acts regulating the operation and use of the railroad authorized to be constructed by regarding those provisions as exclusively or mainly concerning the relations between the Central Pacific Railway and the Union Pacific Railroad. As the Union Pacific was the only connection of the Central Pacific at Ogden there was little room for violation of the provisions, especially in regard to discrimination, unless a much broader meaning was given to the words of the statute than their literal or usual significance would justify. Hence the temptation to unduly extend the scope of the requirements. But abundant *raison d'être* for the provisions appears, and abundant scope for their operation will be seen to exist, when we consider that the requirements apply, not only to the Union Pacific and the Central Pacific, but to the numerous other companies and through lines to be formed by their connections with each other and with the Union Pacific Railroad. These provisions must be construed to be applicable to any system of railroads which might have come into exist-

ence under the authority of the acts; that is, if the roads authorized had been constructed and had made connections with the Union Pacific Railroad at any of the places contemplated by the acts.

For instance, there was the Leavenworth, Pawnee & Western Railroad Company (Kansas Pacific) authorized to construct a railroad from Kansas City to connect with the Union Pacific Railroad either at a point on the 100th meridian or east or west of the 100th meridian (sections 9 and 10 of the act of 1862) and even, under certain contingencies, to meet and connect with the Central Pacific Railroad (section 12 of the act of 1864). And there was the line authorized to be constructed by the Hannibal and St. Joseph Railroad Company to connect with the Kansas Company's line or with the line from Omaha (the Iowa branch) or with the main line at the point on the 100th meridian (section 13 of the act of 1862). And there was the line to be formed by the connection between the Kansas Company and the Pacific Railroad Company of Missouri (sections 9 and 10 of the act of 1862). And there was the Sioux City branch to be constructed from Sioux City to a connection with the Iowa branch or with the main line at the 100th meridian (section 14 of the act of 1862). This road was first required to be built by the Union Pacific Railroad Company, but another company was afterward authorized to construct it (section 17 of the act of 1864). There was also the line which the Burlington & Missouri River Railroad Company was authorized to build from the Missouri

River south of the Platte River to connect with the Union Pacific Railroad not farther west than the 100th meridian (section 18 of the act of 1864). Finally, there were the connections with the Iowa branch and the Kansas City branch formed by the railroad of the Denver Pacific Railway and Telegraph Company between Denver and Cheyenne, which probably occasioned the passage of the act of June 22, 1874 (act of March 3, 1869, section 2, and act of June 22, 1874). Moreover, there was the general permission in section 15 of the act of 1862, authorizing any railroad, then or thereafter incorporated, to connect its road with the road and branches provided for by the act. And, again, as the act contemplated that different companies might construct the railroad in the different States and territories, many other connections might result (section 12 of the act of 1862).

It appears from the foregoing that the acts contemplated several branches east of the 100th meridian, and many, if not all, of these branches might connect at the point on that meridian. The Union Pacific Railroad was accordingly required not to discriminate for or against any of these connections. The necessity for such requirements is shown by the explanation, *supra*, of the passage of the act of June 22, 1874.

The construction for which we are contending does not tend to weaken the provisions looking to the formation of a through line or through lines which shall be continuous, physically and in their operation, for all purposes of travel and transportation, so far as the

public and the Government are concerned. The requirements in respect to through lines and through service are absolute. The requirements of equal and non-discriminatory advantages and facilities in respect to rates, time and transportation are from their nature relative. The railroad companies mentioned in the act are under the absolute obligation to accord each other such advantages and facilities as are necessary to the maintenance of uninterrupted through service, and, in complying with this obligation, they are under the further obligation of not discriminating against each other. The relations of the numerous Pacific Railroad Acts companies with other railroad companies are governed by general laws.

IV. The mere fact that the Southern Pacific Company, to the extent and in the manner shown by the evidence, preferentially solicits for its "Sunset route" some traffic which might otherwise pass over the Central Pacific-Union Pacific line does not constitute a violation of the Pacific Railroad Acts.

That the preferential solicitation in favor of the "Sunset route" is not inconsistent with the existence of a through route via Ogden operated as one continuous line is too clear for argument. Such preferential solicitation has been going on since 1883; it has not interfered with the Ogden route becoming in the meantime the strongest and most efficient through all-rail line between the Pacific Coast and the Missouri River and beyond. *Res ipsa loquitur.* The position of the Government seems to be that such solicitation amounts to a prohibited discrimination, and to this claim we shall now direct the argument.

The contention involves an extension of the obligations of the Pacific Railroad Acts far beyond the making of proper and usual arrangements between the group of railroads included in the acts for uninterrupted service under nondiscriminatory joint rates, with divisions mutually satisfactory. To support the Government's case Section 15 must be construed as imposing the further requirement upon each one of the Railroad Companies authorized to construct any part of the railroad and its branches from the Pacific Coast to the Missouri River, not only to afford such facilities

and advantages, without discrimination as to rates, time or transportation, to any other of such companies, but, after having done so, to abstain from soliciting the movement of any freight over any other route, or from having any interest or affiliations with any other lines which would give it an interest in the routing of any traffic adverse to the through line constructed under the Pacific Railroad Acts. Such a construction would practically limit each of such companies as a part of a joint transcontinental line to a connection with some other of the group of railroads mentioned in the acts. It would tie the Central Pacific to the Union Pacific and compel it to deliver to that connection all the traffic which it could secure and which could be further transported by that line; and, by parity of reason, it would tie the Union Pacific in like manner and to like extent to the Central Pacific—a tie or obligation inconsistent with the Union Pacific's ownership of the lines from Ogden to Portland and from Ogden or Salt Lake City to Los Angeles.

This contention involves, moreover, an extension of the obligations imposed by the Pacific Railroad Acts unwarranted by the plain meaning of the language employed. Neither the obligation to operate and use the roads for all purposes of transportation, so far as the use thereof by the public and the United States is concerned, as one connecting continuous line, nor the additional obligation to accord to each other in such operation and use equal and non-discriminatory advantages and facilities in rates, time and transportation,

include or involve the additional obligation, in cases where any of the public is indifferent as to the routing of certain traffic, to forward such traffic by the route formed by its connection with one of the Pacific Railroad Acts companies instead of by some other route. Nor is there anything in the obligations imposed which expressly or impliedly prohibits any railroad company subject thereto from soliciting the privilege of selecting the route over which traffic offered shall move or from exercising the privilege thus obtained in favor of any route it may select. So long as the public and the United States have open to them through service under through rates, with all the other usual arrangements for uninterrupted interchange of traffic, over the Central Pacific-Union Pacific line, such line is being operated and used, so far as they are concerned, as one continuous, connected line. So long as the Union Pacific Railroad Company is afforded satisfactory or reasonable arrangements as to service, rates and divisions for interchange of traffic, and so long as those arrangements are equal to those afforded to any other of the companies or railroads covered by the Pacific Railroad Acts, the Union Pacific cannot complain of discriminatory treatment in respect to "advantages and facilities" in the matter of "rates, time or transportation" accorded it by the Central Pacific Railway Company. And it has never complained. It may be said of the existing arrangements that they go beyond the requirements of the acts, in that they are not only as favorable as those accorded any of the Pacific Railroad Acts family of roads, but as favor-

able as those accorded any other connection at the junction point of the two roads *and as favorable as those made with any line of railroad at any point.* That they are sufficient to admit of the successful operation of the two lines as a through route from the Pacific to the Missouri River and beyond is conclusively shown by the amount of competitive traffic moving over that route, whether this amount be considered absolutely or in comparison with similar traffic passing over competitive routes.

Let us scrutinize closely the language of the statutes in order to arrive at the exact meaning of the "advantages and facilities" which must be afforded. Neither the adjective "equal" nor the complementary provision as to discrimination serve to define the terms "advantages and facilities". Their effect is to require that the "advantages and facilities", such as are required, shall be impartially afforded. But there are other expressions which qualify and define the words whose scope we are seeking to determine. And we shall now examine those defining or qualifying expressions to see whether they include the idea of solicitation or preferential routing. That is to say, whether they require or justify the Court in holding that a violation of the law results from simply exercising the option, secured by solicitation or by indifference of shippers, of routing traffic by forwarding the same or a part of it by some other gateway or connection than that formed by connection with some other of the railroads covered by the acts. The Government in this case demands even more

It claims that the statute forbids any railroad company subject thereto from even having any connection or affiliation with any other carrier which would give it an interest in the movement over the line of such carrier of any traffic which might otherwise pass over the line formed by it and one of the group of railroads mentioned in the Pacific Railroad Acts. Immediately qualifying the words "advantages and facilities" is the expression "as to rates, time and transportation". Neither "rates" nor "time" nor "transportation" involve the idea of soliciting traffic. Equal advantages or facilities in respect to *"rates"* means simply that the through rates shall be the same by the different connections, and the divisions thereof arranged on the same basis. Equal advantages or facilities as to *"time"* refer simply to time schedules for through movement of cars or freight. Equal facilities and advantages as to *"transportation"* relate simply to the physical movement of traffic including equipment, switching arrangements, etc.

The words "without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others" constitute an adjective clause which relates back to the nouns "advantages and facilities" which are themselves qualified or limited by the words "as to rates, time and transportation". They are the negative complement of the adjective "equal". The law-makers might, with the same effect, have said—equal and *non-discriminatory* advantages and facilities—if they had not wished to emphasize the prohibi-

tion and at the same time confine it to the companies authorized to construct the railroads in question. The words "without discrimination of any kind", etc., do not constitute an independent sentence but a dependent qualifying clause which must be construed with what precedes. So construed the discrimination prohibited is a discrimination in respect to "advantages and facilities as to rates, time and transportation". They do not enlarge or add to the character of the facilities or advantages which are to be non-discriminatory. These are determined by the words "as to rates, time and transportation", and by what is necessary or usually incident to the operation of a continuous through line. They simply forbid discrimination in the matter of such advantages and facilities. The use of the word "business" does not enlarge the scope of the law so as to include the entire corporate business or interests. "Business" manifestly means the business or traffic tendered by one line to another for through transportation. It was not intended to impose upon the railroad companies included in the acts an alliance covering all their corporate interests and business, an alliance which would be violated when any of such companies formed connections or affiliations which gave rise to interest or policies opposed in any way to the interests or policies of other members of the through lines. The requirement that advantages or facilities as to rates, time and transportation shall be without discrimination, etc., we repeat, does not affect the nature or extent of the

advantages or facilities. They are still limited to the matter of rates, time and transportation.

The other qualifying expression, "so far as the public and the government are concerned", certainly does not indicate any intention to protect interests peculiar to the railroad companies. The Government is here regarded as a user of the railroad, not as a creditor. Its interests as a creditor were taken care of by other provisions, and it no longer has any interest as a creditor. If the railroads are so operated and used that the Government or any of the public are afforded the opportunity to ship goods over the through line under a through bill of lading upon joint rates in through trains, the rates, etc., being equal to those afforded by any other line, the Government and public are not concerned, and certainly not prejudiced, by having another alternative route open to them and by being solicited at times to make use of such alternative route.

We submit that we have shown that section 15 does not expressly prohibit the Central Pacific or the Union Pacific or any other of the several railroad companies referred to from owning or having affiliations with other lines which would create an interest in the movement over such other lines of traffic that might otherwise pass over the through line which was to be constructed under the acts of 1862 or 1864, or from routing or soliciting the routing of any such traffic over such other lines. It remains to consider whether a prohibition against such affiliation or preferential routing is a necessary or proper implication from what is

expressly required or prohibited. This depends upon whether having an interest in an alternative route, or preferential routing of some traffic by another line or gateway, is inconsistent with the requirement that the line constructed under the statute shall be operated and used, so far as the Government and the public are concerned, as one continuous line, etc.

In providing how the many forked line or lines between the Missouri River and the Pacific Coast should be operated and used Congress contented itself with requiring (1) operation and use for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line, and (2) impartiality and equality of treatment of each other by each of the roads forming part of the lines in respect to advantages and facilities extended to each other as to rates, time and transportation. There was no attempt to enumerate or define the advantages and facilities to be afforded. Obviously and necessarily they are such, and such only, as are usual and necessary for the operation and use of the railroads concerned, so far as the public and the Government are concerned, as one continuous line for all purposes of communication, travel and transportation. In other words, neither the requirements of the law nor its implications go beyond what is necessary or usually incident to the formation and operation of a continuous through line. We believe we can safely leave to counsel for the Government the impossible task of showing that, among the necessary and usual inci-

dents of the formation and operation of a continuous through line, is the condition that neither of the connecting railroads can have any interest in another line or gateway or solicit the movement of freight by any other route, but must work exclusively for each other and must make what has been referred to in the testimony as a 100 per cent. interchange at the junction point. (See testimony of Mr. Schumacher, Vol. I, pp. 172-3.)

We shall endeavor to show hereafter that the contention of the Government in this case in respect to the Pacific Railroad Acts is inconsistent with its position and the decision of the Supreme Court in the Union Pacific Merger case. We shall say in this connection, however, that the declaration or intimation of the Court in that case that the statute did not require only physical connection or physical continuity but might be construed as requiring such facilities as joint rates and other usual arrangements for through transportation, is not in conflict but in harmony with the argument we have advanced. There is certainly nothing in the language of the Court to support the contention that the law required facilities or advantages or anything else beyond what would be necessary or usually incident to the formation and operation of a continuous through line. The operation of the Central Pacific by the Southern Pacific Company as well as its operation of the "Sunset route", and all the essential facts now relied on to show the existence of conditions inconsistent with the requirements of the Pacific Railroad

Acts, were then before the Court. There was also before it the affiliation of the Union Pacific with the two lines reaching the Pacific coast at Portland and at Los Angeles. If either the then Attorney-General or this Court had considered the Pacific Railroad Acts to mean what the present Counsel for the Government are claiming, neither would have failed, in such an appropriate case as was then up for decision, to make known their views. The construction of the statute now contended for would have suggested and led to a decree which would have accorded to the Government in the former suit all the relief it seeks in this suit under the Pacific Railroad Acts.

The construction of the statute upon which the Government's case essentially depends is such an obvious attempt to enlarge the provisions beyond the plain meaning of the language used that further argument is hardly necessary. But a consideration of the subject matter of the Pacific Railroad Acts and of the consequences which would result from the adoption of the construction we are combatting will still further discredit the Government's contention.

Additional light will be thrown upon the requirements in question when we remember that in 1862 and 1864 there was no law requiring physical connection between railroads which met each other or requiring connecting railroads to make any arrangements for through service or through rates. The provisions in the Pacific Railroad Acts anticipated requirements of like character now common in the railroad laws of the

different States and now applicable to railroad companies generally through the requirements contained in the *amended* Interstate Commerce Act and the powers given to the Interstate Commerce Commission. We pointed out above that to construe the provisions in question as applicable solely or mainly to the connection at Ogden between the Union Pacific and the Central Pacific might mislead one into reading into the statute more than the language used would justify, and that a corrective to this misleading tendency would be afforded by considering the many other connections to which the provisions were applicable and for which they were mainly intended. So now we suggest that to construe the acts with reference to the present state of the law in regard to connecting railroads will mislead one into stretching the scope of the provisions, and that a proper corrective is to consider the provisions in question with reference to the state of the law when the Pacific Railroad Acts were adopted. If it be true that, in the course of the development of the law and of improvements in through rail transportation, connecting railroads now, voluntarily or by compulsion of law, co-operate as closely in giving through service as the companies named in the Pacific Railroad Acts were required to do, this circumstance would afford no reason for now extending those requirements beyond the scope which would otherwise be given to the language employed.

If the members of Congress who drafted and who voted for those acts could have foreseen how through

freight and passengers are carried over the through route formed by the Union Pacific-Central Pacific lines and the mutually satisfactory arrangements for the handling of through business under which the two roads have been for so long operated as one continuous connecting line, can it be doubted that they would have been perfectly satisfied with such compliance with their mandates and equally satisfied with the results?

We challenge the Government to produce any precedent or authority for the contention that the requirement imposed upon the railroad companies mentioned in the Pacific Railroad Acts to afford to each other equal advantages and facilities as to rates, time and transportation, without any discrimination for or against any other of such companies, means that, after making reasonable, equal and non-discriminatory arrangements for through routes, joint rates, etc., none of such companies may preferentially route any traffic by any other connection (even at some other gateway) than the one it may make with one of the other Pacific Railroad Acts companies, not even in case of its own line. Certainly no such precedent or authority is found in the construction placed upon the provisions of the Interstate Commerce Act, as those provisions have been amended from time to time with the same general purpose which Congress had in view in framing section 12 of the act of 1862 and section 15 of the act of 1864. Considering the amendments in 1906 and 1910 to section 15 of the Interstate Commerce Act, giving the Commisssion full power to establish through rates;

the Carmack Amendment in 1906 to section 20, requiring the issuance of through bills of lading; the power conferred upon the Commission by amendment in 1906 to prescribe the terms and conditions upon which through routes shall be operated; the amendment of 1910 making it the duty of all interstate railroads "to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to the exchange, interchange and return of cars used thereon, and for the operation of such through routes, and for providing for reasonable compensation to those entitled thereto"; and the provisions of section 13 for complaint to the Commission for anything done or omitted to be done in contravention of the act, and section 15, empowering the Commission to make appropriate orders upon the hearing of such complaint—in connection with sections 3 and 7 of the act forbidding discrimination between connecting lines—it cannot be doubted that under the Interstate Commerce Act, either by its direct requirements or through order of the Commission, connecting railroads may be required to do as much as is required by the Pacific Railroad Acts of the companies therein mentioned. Yet it has never been intimated in any decision of any court or in any complaint before the Commission that we have been able to find that, if a railroad connects with two other railroads, both reaching by their connections the same territory, one through Gateway A and the other through

Gateway B, that the railroad having these two connections may not preferentially forward traffic by the road reaching Gateway A or solicit the privilege of forwarding traffic that way. It has never been charged that such conduct would amount to a discrimination as to rates, time or transportation against the road leading to Gateway B or a denial to it of equal advantages or facilities in respect to rates, time or transportation.

Since the institution of this suit the Transportation Act, 1920, has been enacted. This Act confers upon the Interstate Commerce Commission practically unlimited powers over all that concerns connecting lines of railroad and the operation thereof as continuous lines, &c., including the matter of through routes, joint rates, reasonable divisions thereof, car service, use of terminals, &c. Had the Interstate Commerce Act as amended by the Transportation Act, 1920, been in existence in 1862 and 1864, the provisions in the Pacific Railroad Acts to secure the operation of the connecting lines of the Central Pacific and of the Union Pacific as one continuous line, so far as the public and the Government are concerned, without discrimination as to rates, time and transportation, &c., would have been unnecessary. It is within the power of the Interstate Commerce Commission to secure for the Union Pacific all that it is entitled to under section 12 of the act of 1862 or section 15 of the act of 1864, and more. There is no necessity or reason for the United States, even if it has the right, which we deny, to invoke the provisions of the Pacific Railroad Acts on behalf of the

Union Pacific, and to insist upon the disruption of the Southern Pacific System, a Draconian remedy, to insure the operation of a through line via the Ogden gateway. Neither the Union Pacific nor any of the public have ever complained of the manner in which the Southern Pacific Company has fulfilled its obligations in the premises. And the rights and interests of both in the future are amply protected by the present plenary powers of the Interstate Commerce Commission.

It is a fair test of the correctness of the Government's construction of the requirements in question to apply it to conditions which were contemplated or authorized by the terms of the Pacific Railroad Acts. As we have seen, it was contemplated that there would be several branches, probably radiating from a point on the 100th meridian. One of these branches, the one to Omaha, referred to as the "Iowa Branch", was to be constructed by the Union Pacific. Another, the one to Kansas City, was to be constructed by the Pawnee, Leavenworth and Western Railroad Company (afterwards the Kansas City). And there were several others. After such construction the Union Pacific would own a continuous line from point of connection with the Central Pacific to Omaha. If we should impose upon the Union Pacific, in respect to the extension of its own line and to the other branch roads, at the contemplated meeting point on the 100th meridian, the obligation, not only to make fair and equal arrangements for interchange of traffic, but not to solicit eastbound traffic via Omaha or to prefer its own line in

the forwarding of such traffic, we would be construing the act consistently with the Government's contention as to the obligation of the Central Pacific to the Union Pacific; but would we not have a *reductio ad absurdum* of that contention?

Suppose the Union Pacific should complete its through line to the Coast by the purchase of the Western Pacific. Would it have to observe a position of impartial neutrality as between its own line west of Ogden and the line of the Central Pacific? Would the mere preferential routing of traffic over this part of its own line constitute a violation of the Pacific Railroad Acts? Is this Court prepared to declare unlawful any voluntary routing of traffic by the Union Pacific over the Western Pacific? Is it willing to render a decision which would prevent the Union Pacific from acquiring the Western Pacific?

In determining whether the requirements of those acts have been violated the case stands just as it would stand if the Southern Pacific Company and the Sherman Law were out of the case and the stock of the Central Pacific Railway Company were owned by the same persons who owned the stock of the other railroad companies composing the Southern Pacific System, or as it would stand if the Central Pacific Railway Company had in its own name constructed and owned or was operating the "Sunset route." The case is not altered in any sense by the introduction of the Southern Pacific Company. The terms of section 15 of the Pacific Railroad Acts do not acquire a different mean-

ing or a wider scope or application from the fact of the common ownership by one company of the stock of the Central Pacific Railway Company and of the stock of the companies owning the "Sunset route". The meaning of the words "equal advantages and facilities" or non-discrimination in respect to rates, time or transportation remains the same.

Now, suppose the Central Pacific Company, after the construction of its road to Ogden, had built a road along the route now occupied by the lines composing the "Sunset route," would it have been a violation of the Pacific Railroad Acts for the Central Pacific, after according to the Union Pacific Railroad the arrangements for through service, rates, etc., it now accords, to have favored, in the way the Southern Pacific now does, its own road via Yuma, El Paso, Galveston, etc.? Or again, is there anything in the Pacific Railroad Acts which would have prevented the Central Pacific, after connecting with the Union Pacific, from building a line of its own eastward to or towards the Missouri River, or which would have prevented the Union Pacific Railroad Company after such connection from extending its line to the Pacific coast. Would it be a violation of those acts now for either company to construct or acquire railroads competitive with the lines of the other? If the Central Pacific, after connecting with the Union Pacific at Ogden, had extended its line eastward, say to Denver, would the Pacific Railroad Acts require it to observe an attitude of strict neutrality in respect to solicitation of traffic as between its own line and the

line of the Union Pacific Railroad? An affirmative answer to these questions would condemn the acquisition by the Union Pacific Railroad Company of its line from Ogden to Portland and its line from Salt Lake City to Los Angeles. This Court in the Unmerger Case found nothing objectionable in the ownership and operation by the Union Pacific of either of these lines, both of which compete with the Central Pacific Railway Company, and the Court expressly approved the control of the line to Los Angeles. It is absurdly inconsistent for the United States under these circumstances to proceed to enforce, on behalf of the Union Pacific Railroad Company, a line of conduct for the Central Pacific so utterly at variance with the conduct of the Union Pacific towards the Central Pacific.

The petition in this suit justifies the belief that the construction of the Pacific Railroad Acts now asserted is of such recent origin that the effect of its general application has not been considered. A part of the Central Pacific Railway Company is a railroad from Roseville to the Oregon boundary line, a land grant railroad, formerly the California and Oregon Railroad Company, constructed under the act of Congress of July 25, 1866 (14 Stat. 239). One of the railroads operated by the Southern Pacific Company is a continuation of this line to Portland, also constructed under the California and Oregon Grant of July 25, 1866, by the Oregon and California Railroad Company. Section 7 of that act imposes upon these two railroads the same obligations as did the acts of 1862 and 1864 upon the

railroads mentioned therein, requiring that the owners thereof operate and use them so far as the public and the Government are concerned as one connected and continuous line, with equal advantages and facilities, without discrimination, etc. How utterly inconsistent with the Government's construction of the obligations resulting from such provisions upon the Central Pacific with reference to the Union Pacific is the contention that the two lines constructed under the California and Oregon Grant could or would have been extended to parallel and compete with each other, had they not fallen under common control, and that the resulting operation of the two lines as one continuous, connecting line is contrary to public policy and a restraint of trade.

Equally inconsistent is the charge now made of discrimination against the Union Pacific with the contention which characterized, as we shall see, the Government's argument in the Union Pacific Unmerger Suit, namely, that the Union Pacific had always received fair treatment and had no cause to complain of the arrangements under which the two lines had been operated as a through route.

To construe the acts as they must be construed to support the Government's contention would tend to discourage all of the several railroad companies mentioned in the act from extending or constructing their lines of railway, since they would not be free to work for their own lines or to make advantageous arrangements in reference to interchange of traffic or divisions of rates with other systems of railroads. The

obligation never to be interested in the routing of freight in any other way than by the line of railroad authorized to be constructed by the Pacific Railroad Acts and never to solicit the privilege of forwarding freight by any other route, would forever hamper and discourage the development of these companies. We submit that such a construction is not justified by the plain significance of the terms of the statutes, nor by their general purpose, nor by the particular reasons for the requirements in question, nor by the construction which has been given to similar provisions now applicable as a general rule to all connecting lines of railway.

The conditions complained of as being violative of the requirements and subversive of the purposes of the Pacific Railroad Acts have been in existence for over thirty years. It may be truly said that the lines have never been used or operated under any other conditions. It is passing strange that their unlawful character was not suspected until, in the search for weapons with which to disrupt the Southern Pacific System, the hitherto unnoticed scope and effect of sections 12 and 15 were discovered. The relations and mutual obligations of the Central Pacific and Union Pacific under the Pacific Railroad Acts have been the subject of repeated investigation by successive committees of Congress. The resulting reports have discussed and commented upon the operation of the Central Pacific and the other Southern Pacific lines as part of one system. They have called attention to the forwarding over the "Sunset route" of traffic which might otherwise have moved

over the Central Pacific-Union Pacific line; but it has never been charged that this was a discrimination within the prohibition of the Pacific Railroad Acts. At the time of these investigations the United States was a creditor of both the Central Pacific and Union Pacific, dependent upon their revenues for payment of its debt, with a right to receive directly a certain percentage thereof. The Government then had a direct interest, other and stronger than any interest it now has, in discovering and enjoining any unlawful diversion of traffic. While the potentialities of the union under one management of the Central Pacific and "Sunset route" were commented on, it was never urged that anything in the Pacific Railroad Acts gave the United States, although a creditor, any right to separate the Central Pacific from the Southern Pacific System, and it was never even intimated that sections 12 or 15 of the act of 1864 or the act of 1874 were being violated.

We refer particularly to the report of the Pacific Railway Commission of 1887, the most extensive and thorough of the reports, which furnished the material that was largely drawn upon by subsequent reports. Senate Executive Documents, 1st Session, 50th Congress, 1887-8, Vol. II, pp. 1 ffg. At the time of this Commission's investigation the proportional movement of transcontinental traffic via the "Sunset route" was very much larger than at present or at any date in the near past. In commenting upon this, it was said (p. 115):

> "In the judgment of the Commission the controlling motive, which has lead to this alteration in the transit of freight, has been the question of convenience and public advantage. It has not arisen from an intention to reduce the net earnings applicable to the percentage due to the United States. In the report of the Postmaster-General it is stated that this same diversion is practised by his department, and that he selects the best and the quickest routes because he thereby promotes public convenience."

The rights and interests of the United States as a creditor of the Central Pacific and of the Union Pacific are one thing, and the obligations *inter sese* of those railroads as to the operation and use of their lines under sections 12 and 15, as amended, are another and quite a different thing. The Pacific Railway Commission was required by the act which created it (act of March 3, 1887, 24 Stat., 488) to investigate and report as to whether the aided railroads had observed all the obligations imposed upon them by the Pacific Railroad Acts. If, in the opinion of the Commission, the forwarding of such a large amount of traffic as was then moving over the "Sunset route" constituted a forbidden discrimination it would have so reported. But it did not do so. It reported the fact, commented on the possibilities of prejudice therefrom to the interests of the United States as creditor, but did not even on that score find anything therein contrary to the statute. It even justified the forwarding of traffic by the "Sunset route", as is shown by the quotation *supra* and by the observa-

tion contained in the following paragraph of the report (p. 115):

> "It appears to us that this question of the diversion of traffic must be regulated by the interest and demands of the people who use the railroads. Trade will always find the easiest and most natural channel."

The only violation of the provisions in respect to discrimination found by the Commission was that practised by the Union Pacific against the Kansas Pacific in refusing "to prorate through business, east or west" (pp. 109-114).

The failure of any Congressional Committee, in investigations and reports made from time to time during a long period of years, to find anything violative of sections 12 or 15, as amended, in the relations between the Central Pacific and the Southern Pacific Company or in the influence which such relations had or might have upon the movement of traffic, justifies the statement that Congress never construed the requirements of the Pacific Railroad Acts as does the Attorney General in the present suit. And the same may be said of the Executive Department of the Government. We may add that the Department of Justice was likewise in darkness as to the scope and effect of the provisions in question until the exigencies of the instant case cast a new light upon the statutes. It was to the interest of the Government in the Union Pacific Unmerger suit to have the fullest effect given to the

requirements of section 12 and of section 15, as amended. If the United States then believed that the mere union of the Central Pacific line to Ogden and of the "Sunset route" in one system was forbidden by the Pacific Railroad Acts, it would and should have said so. For it could thus not only have completely removed the Union Pacific's justification for the merger, but have put a stop to such violation of the law. But the contention of the Government was that the Pacific Railroad Acts would prevent the Southern Pacific Company or the Central Pacific from closing the Ogden gateway by refusing to make through routes and joint rates with the Union Pacific, *and that the Union Pacific had no reason to complain of its treatment by the Central Pacific or the Southern Pacific Company in respect to the Ogden route, and, hence, could not justify the merger attacked on the ground of self-preservation.*

This suggests a consideration of the decision in the Union Pacific Unmerger suit.

V. The pleadings, argument and decision of the Court in the Union Pacific Unmerger Suit considered with reference to their bearing on the Pacific Railroad acts.

The members of this Court who participated in the decision of the unmerger suit do not need to be informed that that case was not prosecuted or defended on the theory that the Southern Pacific Company, as owner of the Central Pacific and of the "Sunset route", had been guilty of discrimination or any other objectionable conduct in its treatment of the Union Pacific. The Pacific Railroad Acts figured in the case only in connection with the question whether it was necessary for the Union Pacific to acquire the Central Pacific in order to insure a continuance of the fair treatment it had always received. However, when in the course of the direct-examination of Mr. Connor in this case, counsel for the Government expressed *his* opinion that preferential solicitation of some transcontinental traffic for the "Sunset route" constituted "systematic and preconcerted discrimination" against the Union Pacific, we were warned that the opinion in the unmerger case would be relied upon to support the Government's contentions on this branch of the case. As the Government in the former suit characterized the conduct of the Southern Pacific Company as fair treatment of the Central Pacific-Union Pacific line, as the Union Pacific was not aware that it was, and had been since 1883, the victim of an unlawful discrimination, this Court

did not have before it any argument in favor of or against the construction of the Pacific Railroad Acts which the Government now urges upon this Court. We shall endeavor to show that it did not intentionally, or even casually and unwittingly, decide in favor of the Government the questions presented in this case under the Pacific Railroad Acts.

It is well to bear in mind throughout this case that the Union Pacific dominated the defense of the unmerger suit. Hence, when the Government took and maintained the position that the Southern Pacific ownership of the Central Pacific had not prevented competition between the Ogden route and the "Sunset route" and was not inconsistent with observance of the requirements of the Pacific Railroad Acts, the Union Pacific, in fighting to preserve the union of the two systems, naturally emphasized the importance to it of the Central Pacific and ignored the greater importance of that property to the Southern Pacific system. The result was that the rights and interests of the Southern Pacific, when separated from the Union Pacific, received no consideration. The Court's attention was not called to the genesis of the Southern Pacific system, to the essential part played by the Central Pacific lines in that system, to the impairment in the service which would result from a separation, etc. There was nothing in the record in the former suit to prevent this Court from being left with the impression that it might give general satisfaction to turn over the Central Pacific to the Union Pacific. But we submit that there is

certainly enough in the present record to completely obliterate such an impression. Even if the question whether the Southern Pacific or the Union Pacific should have the Central Pacific depended upon which needed the property more or upon how the public interests would be served under one ownership or the other, the decision would be for the Southern Pacific. But a person canot be deprived of his property because it would be more useful to another. Whether the Southern Pacific Company shall be deprived of the Central Pacific depends, so far as the Pacific Railroad Acts are concerned, upon whether such ownership is prohibited by those acts.

The petition of the United States in the Unmerger Suit contains in the recitals or narrative part a reference to the acts of 1862 and 1864 and a quotation from section 15 of the latter act; but the acts are not afterwards mentioned in the petition. The defendants simply referred to the Pacific Railroad Acts for their answer to the allegations of the petition in respect thereto. There is therefore nothing in the pleadings to indicate what claims either side intended to base upon these acts of Congress.

The majority opinion rendered by the Circuit Court refers to the contention that the Pacific Railroad Acts obligated the Union Pacific and Central Pacific to the establishment of through routes and maintenance of joint rates, and took these roads out of the operation of the rule announced in the case of *Southern Pacific Company* v. *Interstate Commerce Commission* (200 U. S.

536), and declares that the Court does not so interpret them.

> "These acts," says the Court, "were obviously intended to secure a permanent physical connection between the roads and to provide generally for equal accommodation to the public on the basis of independent carriers; but we discover in them no provisions or machinery by which the Southern Pacific, as successor to one of them, could have been compelled by the courts or otherwise to make agreements governing interchange of traffic or through rates, or fixing the division of the through rates between the two roads. Section 15 of the act of 1864 is not substantially different, so far as the matter under consideration is concerned, from section 3 of the Interstate Commerce Act of 1887 (24 Stat., 380). They both forbid discrimination in rates between connecting lines. Section 3 has been held by the Interstate Commerce Commission and by the Court of Appeals of this Circuit not to invest the Commission or the courts with power to compel carriers to make contracts or agreements for through billing of freight or for joint rates" (p. 113).

The dissenting opinion does not refer to the Pacific Railroad Acts.

The contention made by the Government in its brief filed in the Circuit Court was that the Act of 1884 "insured the Union Pacific a connection with California without discrimination of any kind in favor of any road. Therefore, it was unnecessary for the Union Pacific to buy the Southern Pacific Company in order to have

its cars and freight transported on a 'continuous line.'" (See Brief on the Law, p. 14.) Accordingly, in its Brief on the Facts, the Government declared:

> "Under the laws of Congress, as we will show in our brief of the law, the Union Pacific and the Central Pacific lines were required to be operated as a continuous line without discrimination; but irrespective of the law, the Southern Pacific, as a matter of self-preservation, was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul the division of the through rate accorded to it by consent, from 1870 down to the present time, as testified to by Mr. Stubbs" (Brief of Facts, p. 268).

This Court had before it the contention made by the Union Pacific, that the control of the Central Pacific's line between San Francisco and Ogden gave to the Southern Pacific the power to close the Ogden gateway to the Union Pacific by refusing to make arrangements for through routing, joint rates, etc., or by discriminations in respect to such arrangements against the Union Pacific. In combating this contention, and the argument based on it, that the acquisition of the Central Pacific was justifiable on the plea of self-protection, the Court said:

> "Nor do we think it can be justly said that because of the connection with the Rio Grande road at Ogden the Southern Pacific was in position to discriminate at will against the Union Pacific in such wise as to greatly impair the latter road's

carrying trade upon eastbound freight. In this connection it is said that since the consolidation, notwithstanding the former published rates are maintained, the favoring attitude of the Southern Pacific to the Union Pacific practically destroyed the carrying trade from Ogden to the East for the Rio Grande System and necessitated the construction by the latter road of a new connection for California points, and that such would have been the fate of the Union Pacific upon disagreement as to rates with the Southern Pacific. In reference to this point we think it is pertinent to consider the acts of Congress known as the Pacific Railroad Acts. These acts required the two roads, the Central Pacific and Union Pacific, to be 'operated and used for all purposes of communication, travel and transportation, so far as the public and government are concerned, as one connected, continuous line' (12 Stat., 489, 495, act of July 1, 1862, c. 120, Sec. 12), and in such operation and use 'to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others. * * *' (13 Stat. 356, 362, act of July 2, 1864, c. 216, Sec. 15.) They also authorized the consolidation of the roads. These acts, it is said, are only intended to secure the permanent physical connection of the roads and to provide for equal accommodations upon the basis of independent carriage, and outline no method by which the two roads can be compelled to make a joint through rate, and that at the time of the stock transfer there

was no such provision in the Interstate Commerce Acts. Therefore, it is said that the Union Pacific, no less than the Rio Grande, would have been practically at the mercy of the Southern Pacific in the favorable or unfavorable treatment which might have been accorded to it in the matter of through business to be transported eastwardly. The purpose of Congress to secure one permanent road to the coast so far as physical continuity is concerned is apparent, but we do not think the acts stop with that requirement. It is provided that facilities as to rates, time and transportation shall be without any discrimination of any kind in favor of either of said companies or adverse to the road or business of any or either of the others, and the purpose of Congress to secure a continuous line of road, operating from the Missouri River to the Pacific Coast as one road, is further emphasized in the act of Congress of June 20, 1874, c. 331, 18 Stat., 111, making it an offence for any officer or agent of the companies authorized to construct the roads or engaged in the operation thereof, to refuse to operate and use the same for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as one continuous line, and making it a misdemeanor to refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of or adverse to any or either of said companies. Such practices of systematic and preconcerted discrimination as are said to have destroyed the Rio Grande's carrying trade as a connection for the

East for business at Ogden would have violated the statute as discriminations adverse to the Union Pacific and be equally violative of the letter and spirit of the acts of Congress. Certainly such discriminations could be restrained by the courts (*Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.,* 163 U. S., 564, 603, 604), and might possibly have resulted in a forfeiture of all rights under the acts of Congress. The obligation to keep faith with the Government continued, as did the legislative power of Congress concerning these roads, notwithstanding changed forms of ownership and organization. *Union Pacific Railroad Company* v. *Mason City, &c., Railroad Co.,* 199 U. S., 160."

The questions decided by the Supreme Court were (1) That it cannot justly be said that "because of the connection with the Rio Grande road at Ogden the Southern Pacific was in a position to discriminate at will against the Union Pacific in such wise as to greatly impair the latter's carrying trade upon eastbound freight". (2) That the Pacific Railroad Acts require not only permanent physical connection between the roads which they authorized to be constructed by the several railroads named therein, but also required that "facilities as to rates, time and transportation shall be without discrimination of any kind in favor of either of said companies or adverse to the road or business of any or either of the others". And the conclusion was that "Such practices of systematic and preconcerted discrimination as are said to have

destroyed the Rio Grande's carrying trade as a connection for the East for business at Ogden would have violated the statute as discriminations adverse to the Union Pacific and be equally violative of the letter and spirit of the acts of Congress".

These questions were decided solely with reference to the point made in argument, that acquisition of Central Pacific line was the only way by which the Union Pacific could be assured of adequate arrangements for the operation of the line between Ogden and San Francisco, in connection with its line to Omaha, as a continuous line for through transportation under through rates, etc. There is no warrant for the claim that such preferential solicitation for the Sunset Gulf route as this record discloses is of the same character as "such practices of systematic and preconcerted discrimination" as the record in the Unmerger Suit disclosed to have been practiced against the Denver & Rio Grande with the effect of destroying that road's business through Ogden, and, hence, that this Court has already decided that such preferential solicitation is a violation of the Pacific Railroad Acts. We do not know, and this Court cannot know in deciding this case, what the record in the former suit disclosed as to the facts in reference to the treatment of the Denver & Rio Grande. We have as a part of this record the Brief of the Government on the Facts, filed in the former suit. We doubt if that brief can be referred to except as to the plea of estoppel, and then only to show the position of the Government upon the question of competition between the Ogden

and the Sunset-Gulf route. But in the remote contingency that it becomes necessary to try to ascertain what were the traffic relations between the Southern Pacific and Denver & Rio Grande during the merger, referred to in the above quoted paragraph, the Court will find on pages 372 and following, of the Government's brief, enough to convince it that the discriminating practices against the Denver & Rio Grande went far beyond routing unrouted traffic preferentially over the Union Pacific, and extended to refusal to agree to divisions of through rates, discrimination in rates, refusal to allow equipment of Southern Pacific to be loaded for freight consigned via the Denver & Rio Grande.

It remains to consider whether the decision in the former suit covers the questions presented in the instant case. These questions are:

(1) Has the Central Pacific, or the Southern Pacific as owner of the Central Pacific, failed or refused to accord to the Union Pacific the equal non-discriminatory facilities and advantages required by the Pacific Railroad Acts?

This question was certainly not decided in the affirmative by this Court in the former case. On the contrary, it was not denied by either party, and was assumed by the Court, that the past conduct of the Central Pacific had given the Union Pacific no cause for complaint. The Government referred in its Brief of Facts to "the fair treatment always extended to the Union Pacific by the Central Pacific line" (p. 303). The Court simply

decided that this fair treatment was not a mere concession or favor on the part of the Southern Pacific, but was required by the Pacific Railroad Acts, and that its continuance was secured and could be enforced under those acts.

(2) Are the requirements of the Pacific Railroad Acts violated if either the Central Pacific or the Union Pacific forwards over some other line traffic, the routing of which it controls, which could move over the through line formed by them, or is it a violation of the acts for either of those companies to have connections or affiliations which would make it to the interest of either to forward any traffic, the routing of which it controls, over such connections or affiliated line, when such traffic could otherwise move over the line formed by the two companies?

This Court certainly did not decide either of these questions in the affirmative. On the contrary, the affirmative answer to these questions, which the Government now contends for, is inconsistent with the pleadings and argument of the Government and of the decision of the Court.

The connection between the Southern Pacific Company and the Central Pacific Railway Company existed, to the knowledge of the Government, at the time of the Unmerger Suit and for many years prior thereto. The connection and affiliation between the Central Pacific line and the "Sunset route" have always existed, and the routing over the "Sunset route" of some traf-

fic which might move over the Ogden route has always been practiced, except possibly during the period when the Union Pacific controled both lines. The object of the Unmerger Suit being to relieve the Central Pacific-Union Pacific transcontinental line from all unlawful restraints, it would have been appropriate for the Government, if the control of the Southern Pacific Company over the Central Pacific and the "Sunset route" or the practices of the Southern Pacific Company in respect to solicitation or routing of traffic, amounted to an unlawful discrimination against the Ogden route, to have so charged in its petition and asked for a decree terminating such unlawful conditions or practices. That it did not do so clearly indicates that it did not believe that the existence of such control or the manner of its exercise were unlawful. There can be no doubt that after all the evidence was in, the Government believed that the Union Pacific's rights under the Pacific Railroad Acts had not been violated by the Southern Pacific or the Central Pacific.

The Court would not have referred to the use which the Union Pacific might have made of its line to San Francisco via Portland or sanctioned the arrangement by which the Union Pacific obtained control of the San Pedro, Los Angeles and Salt Lake Railroad Company (the Portland and the San Pedro lines being competitors, on either side, of the Central Pacific) if that Court had construed the Pacific Railroad Acts as forbidding the Central Pacific, and hence the Union

Pacific, from forwarding or having an interest in forwarding over some other line traffic which might move through the Ogden gateway over the line of the other. Would it be consistent with the reasoning or conclusion of the Court in the former case to assert that the Union Pacific may not lawfully forward by its Portland line or its San Pedro line any traffic which might otherwise move over the Central Pacific line?

The Court referred in its opinion to the statement in the lease of the Central Pacific to the Southern Pacific in 1885, that the acquisition by the Union Pacific of a line to the coast through the Oregon Short Line gave it an interest adverse to the Central Pacific. Its subsequent control of a second route to the coast through the San Pedro line has doubled this adverse interest. Can it be possible that the Pacific Railroad Acts created a one-sided partnership, requiring the Central Pacific to work exclusively for the Union Pacific, without liberty to solicit the forwarding of freight by other connections, while the Union Pacific is permitted to prefer its affiliated lines to the north and south of the Central Pacific? What public interest will be subserved by thus neutralizing any competition between the Central Pacific line and the two lines on either side of it?

There is a fundamental inconsistency between the attitude of the Government in the two cases, the present case and the one against the Union Pacific, both in respect to the effect of the operation of the Central Pacific by the Southern Pacific and as to the legality

under the Pacific Railroad Acts of the conditions resulting from the union under one management of the Central Pacific and the Southern Pacific route. In the former suit it was urged that the Union Pacific had alwas been treated fairly and had nothing to complain of under the operation of the Central Pacific by the Southern Pacific, and that the Pacific Railroad Acts insured a continuance of such treatment. In the present suit it is urged that the Union Pacific is being discriminated against under the operation of the Central Pacific by the Southern Pacific within the prohibition of the Pacific Railroad Acts. In one case the Pacific Railroad Acts are invoked as securing a continuance of conditions, which are approved of and characterized as constituting fair treatment of the Union Pacific. In the other case the Pacific Railroad Acts are invoked as prohibiting the same conditions, which are declared to constitute discrimination against the Union Pacific.

There has been no change in conditions since the unmerger suit which can account for the change in the attitude of the Government in respect to the requirements of the Pacific Railroad Acts or their observance by the Southern Pacific Company. There has been no change in the arrangements for the operation of the through line or for the rates, fares, facilities, etc., in connection therewith. They have continued to be mutually satisfactory and apparently leave nothing to be desired. The Union Pacific was never less at the mercy of the Southern Pacific in the matter of through

traffic via Ogden than at the present time. When it sought to justify its merger with the Southern Pacific on the ground that it had no assurance that their satisfactory relations as connecting lines would continue, the Central Pacific line was its only outlet to San Francisco, the initial railroad absolutely controlled the routing of through traffic and the Interstate Commerce Commission had no power to establish through routes or to fix joint rates and the divisions thereof. The Western Pacific has since been constructed and affords another direct line to San Francisco. Shippers' routing directions are now controlling. The Interstate Commerce Commission has now, under the Transportation Act, 1920, such complete jurisdiction and powers over the whole subject of connecting lines, through routes, joint rates and reasonable divisions thereof, proper facilities, undiscriminating treatment, etc., as to insure to the Union Pacific from the Southern Pacific as owner of the Central Pacific all that the public interest demands and more than was contemplated when Congress formulated Section 12 of the Act of 1862 or Section 15 of the Act of 1864. During the long period of years when the Central Pacific line was the Union Pacific's sole direct connection with the coast, when shippers had no right to prescribe the routing of through traffic, when the Interstate Commerce Commission had no power to establish or regulate through routes and service, neither the Union Pacific nor the public nor the Government found any conflict between the inclusion of the

Central Pacific lines in the Southern Pacific System and the due observance by the Southern Pacific of the requirements of the Pacific Railroad Acts. It is hard to understand why at this time, when the continued observance of such requirements are insured by new legislation and changed conditions, the Government should demand further assurance in the form of the dismemberment of the Southern Pacific System. It is equally difficult to find in the provisions of the Pacific Railroad Acts any legal support for such a demand.

In Conclusion.

This supplemental brief can now speak for itself, and it is, therefore, unnecessary to repeat that it does not cover the whole case for the defense. The questions not discussed have been omitted, not from want of faith in defendants' contentions in respect thereto, but because they are fully presented in the main brief, and because it did not fall within the proposed compass of this supplemental argument to deal with matters of defense, the presentation of which involved citation and discussion of authorities. It is believed that a decision in favor of defendants will follow from the application of well-settled principles of law to facts, undisputed or established beyond dispute.

To make out its case under the Federal Anti-trust Act the Government must convince the Court that the Southern Pacific System is a prohibited combination which for more than thirty years has been continuously guilty of an undue and unreasonable restraint of trade, although its origin involved no destruction of existing competition, its development was by normal and natural growth, without absorption or elimination of competitors, and its present status has no element therein of monopolization or trade control; and this upon a record which not only fails to show that any increased competition, improved service or other public benefit will follow the disruption of the system, but contains very strong evidence to the contrary; upon a record, moreover, showing absence of any complaint by any com-

petitor of unfair treatment or by any patron of unsatisfactory service or charges, and opposition of the communities served by the system to its dissolution.

To make out its case under the Pacific Railroad Acts the Government must establish the contention that certain conditions are inconsistent with or destructive of the purposes of the Acts, when thirty years of experience has demonstrated the contrary. It must be able to persuade the Court to accept a construction that escaped the frequent scrutiny to which the statutes have been subjected from time to time by different departments of the Government and remained unsuspected for over thirty years, until suggested by the exigencies of this case, a construction which involves an addition to the plainly expressed requirements of the Acts, not necessary to make the expressed requirements effective and not justified by the context, a construction moreover which, if accepted by this Court, will convict of ignorance or disregard of the law successive committees of Congress who undertook from time to time to investigate the matter of compliance with the statutes in question, the President of the United States and the Cabinet members who in 1899 arranged the settlement of the indebtedness of the Central Pacific Railroad Company, and the Department of Justice, which failed to bring the acts now complained of to the attention of the Court on the opportune occasion of the suit to unmerge the Union Pacific and the Southern Pacific.

As might naturally be expected of a litigation from fourteen to thirty years behind time, this suit is out of date, uncalled for, anachronistic; and, fortunately for the public as well as defendants, the Government has failed to show that it is entitled to the relief prayed for.

Respectfully submitted,

JOSEPH PAXTON BLAIR,
Of Counsel.

WILLIAM F. HERRIN,
GARRET W. MCENERNEY,
JOSEPH PAXTON BLAIR,
Counsel for Appellees.

"ORDER.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 12th day of May, A. D., 1917.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF ATLANTIC STEAMSHIP LINES.

No. 6606.

APPLICATION OF SOUTHERN PACIFIC COMPANY UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT IN CONNECTION WITH ITS OWNERSHIP OF THE ATLANTIC STEAMSHIP LINES.

It appearing, That on February 18, 1914, the Southern Pacific Company filed an application under section 5 of the act to regulate commerce, as amended by section 11 of the Panama Canal act, seeking authority to continue the ownership and operation beyond July 1, 1914, of the Southern Pacific Company-Atlantic Steamship Lines; and a full investigation of the matters and things involved having been had, and the Commission, on January 24, 1917, having made and filed a report containing its findings of fact, which said report is hereby referred to and made a part hereof, which said report contained findings that the petitioner's rail lines may and do compete with its Atlantic Steamship Lines operating between New York and New Orleans and between New York and Galveston, that under present conditions an extension of the time during which the petitioner may continue to operate or have an interest in these steamship lines will neither exclude, prevent nor reduce competition on the routes by water, and that the correction of certain objectionable practices which were enumerated would leave no

basis of record to justify the withholding of the requisite finding, under the act, that the existing service of these steamship lines between New York and New Orleans and between New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people;

And it further appearing, That the petitioner by the filing of appropriate tariffs now effective from New York, N. Y., and points in Atlantic seaboard territory to Galveston and interior Texas points has corrected the objectionable practices above referred to:

It is ordered, That the application of the Southern Pacific Company for an extension of time beyond July 1, 1914, within which it may continue the operation of its Atlantic Steamship Lines between New York and New Orleans and between New York and Galveston be, and it is hereby, granted, subject to such further order or orders as may hereafter be entered by the Commission.

It is further ordered, That all rates, fares, schedules and regulations aplying to the transportation of persons and property by the petitioner's Atlantic Steamship Lines between New York, N. Y., and New Orleans, La., and between New York, N. Y., and Galveston, Tex., subject to the act, be filed with this Commission and posted as required by the act to regulate commerce and regulations of the Commission on or before July 1, 1917.

By the Commission:

(SEAL) GEORGE B. MCGINTY,
Secretary."

INDEX.

	Page.
Introduction	1
Argument:	
I. The combination pursuant to the agreement of February, 1899, was a restraint of trade	3
II. These were two railroads and not one	4
III. The lease was void	5
IV. The control exercised before the Sherman Antitrust Act became law would not justify a combination to perfect and to perpetuate such control thereafter	5
V. The competition of the Union Pacific Railroad and its eastern connections did not justify the suppression of the competition of the Central Pacific Railroad	6
VI. The action of the Interstate Commerce Commission as to the water lines of the Southern Pacific Company is not inconsistent with the appellant's position	7
VII. The United States did nothing in 1899 authorizing the appellees to restrain trade	9
VIII. The Pacific Railroad laws have been violated	10
IX. The principle of the decision in *United States* v. *Union Pacific Railroad Company*, 226 U.S. 61, requires a dissolution of the combination between the Southern Pacific Railroad and the Central Pacific Railroad	12
X. The lapse of time is not a bar	13

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

THE UNITED STATES OF AMERICA, Appellant,
v.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, et al. } No. 5.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

REPLY BRIEF FOR APPELLANT.

In March and April, 1921, a brief for the appellant, a brief for the appellees, and a supplementary brief for the appellees were filed in this case. No reply brief was filed. The case was argued beginning April 18, 1921. It has been ordered for reargument.

The briefs in the case already filed are long. They deal with the evidence and with the arguments in detail. Most of the arguments for the appellees have been anticipated in the briet originally filed for the appellant. Therefore an effort will be made not to repeat, but to make this reply as far as possible by reference to the original brief.

The facts are outlined at pages 9–18, and the case is summarized at pages 283–286, of the appellant's original brief.

In this reply brief, the appellant submits that—

I. The combination pursuant to the agreement of February, 1899, was a restraint of trade.

II. These were two railroads and not one.

III. The lease was void.

IV. The control exercised before the Sherman Antitrust Act became law would not justify a combination to perfect and to perpetuate such control thereafter.

V. The competition of the Union Pacific Railroad and its eastern connections did not justify the suppression of the competition of the Central Pacific Railroad.

VI. The action of the Interstate Commerce Commission as to the water lines of the Southern Pacific Company is not inconsistent with the appellant's position.

VII. The United States did nothing in 1899 authorizing the appellees to restrain trade.

VIII. The Pacific Railroad laws have been violated.

IX. The principle of the decision in *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61, requires a dissolution of the combination between the Southern Pacific Railroad and the Central Pacific Railroad.

X. The lapse of time is not a bar.

I.

THE COMBINATION PURSUANT TO THE AGREEMENT OF FEBRUARY, 1899, WAS A RESTRAINT OF TRADE.

It appears not to be disputed by the defendants (1) that the Central Pacific Railroad with its eastern connections, and the Southern Pacific Railroad with its water lines and eastern connections, are competitive lines of railroad and have been so since 1883; (2) that the area as to which they are competitive is large and the volume of the competitive freight substantial; and (3) that the two companies owning these railroads do not compete and that competition between them, as now related, is impossible.

The vast amount of competitive freight and wide extent of territory of competition (Appts. Br. pp. 23 to 33) may not be conceded, but that the competitive area is large and that the volume of competitive freight is substantial, are no longer in dispute.

The total absence of competition between the two railroads in their present control is indisputable on the evidence. (Appts. Br. pp. 136 to 162; pp. 33 to 109.)

The evidence that the combination creates a monopoly as to certain areas and as to certain classes of freight has not been met and can not be met. (Appts. Br., pp. 109 to 118.)

The burden of the argument for the appellees appears to be—first, that these were one railroad and not two; and, second, that the competition of the Union Pacific Railroad and its eastern connections with the Southern Pacific Railroad excuses the

destruction of any competition by the Central Pacific Railroad. Neither argument is well grounded. (*Infra*, sections II, III, and V.)

II.

THESE WERE TWO RAILROADS AND NOT ONE.

The briefs for the appellees repeatedly assert that the Southern Pacific Railroad and the Central Pacific Railroad were a single railroad. This is argumentative *assertion only*. The evidence is clear. Nowhere is there any denial of the *facts* which show that these were two railroads (Appts. Br. pp. 196 to 234) separately projected by separate and unrelated groups of men; separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote them as two separate competitive systems of railroad; separately owned by separate corporations organized by separate groups of men; separately constructed at the expense of these separate corporations for these separate corporations; separately leased by them under separate leases, making the amount of the rent dependent on the net earnings of the separate railroads; separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899; and separately stock-owned always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation held by widely scattered stockholders in the United States and in Europe.

These were not separate subsidiaries commonly owned by a single corporation or by a single group of men. They were always separately owned. They were separately conceived and separately Government-aided. Such measure of control as was obtained by one over the other prior to 1899 was obtained because competition was foreseen and in order to prevent it (Appts. Br. p. 45; pp. 201 to 206.) This *de facto* control was through a lease only, which was void when made and in danger of being terminated in 1899 by the foreclosure of the underlying liens. (Appts. Br. pp. 40 to 42; pp. 252, 253.)

III.

THE LEASE WAS VOID.

The briefs for the appellees do not disclose any right or power in the Central Pacific Railroad Company to make the lease of February 17, 1885. In 1885 it was void for lack of authority from the Legislature of California and for lack of authority from Congress. (Appts. Br. pp. 237 to 249.)

The lease was cancelled expressly in 1893. The new lease in 1893 was equally void, and was also in violation of the Sherman Antitrust Act. (Appts. Br. pp. 249 to 251.)

IV.

THE CONTROL EXERCISED BEFORE THE SHERMAN ANTITRUST ACT BECAME LAW WOULD NOT JUSTIFY A COMBINATION TO PERFECT AND TO PERPETUATE SUCH CONTROL THEREAFTER.

The appellees seem to concede that a control of two separately owned competing railroads before 1890 would not justify the continuance of such a

combination after 1890. They seek to avoid the application of the principle by contending that prior to 1890 there was more than a control—namely, that there was a common ownership. This contention is merely a repetition of the arguments that these were one railroad, and that the lease of the Central Pacific Railroad to the Southern Pacific Company in 1885 put the ownership of the Central Pacific Railroad in the Southern Pacific Company. The answer is that already given—namely, that these were two railroads and not one, and that the lease was void.

Even if the lease had not been void, it would not have justified the more complete combination which was made in 1899 under which the Southern Pacific Company acquired all the stock in the Central Pacific Railroad Company and its successor, the Central Pacific Railway Company. (Appts. Br. pp. 253 to 258.)

V.

THE COMPETITION OF THE UNION PACIFIC RAILROAD AND ITS EASTERN CONNECTIONS DID NOT JUSTIFY THE SUPPRESSION OF THE COMPETITION OF THE CENTRAL PACIFIC RAILROAD.

The appellees refer repeatedly to the competition between the Ogden route and the El Paso route. By this they mean the competition of the Union Pacific Railroad and its eastern connections for freight through the Ogden gateway and the competition of the Southern Pacific Railroad for freight through the El Paso gateway. They do not mean—and the evi-

dence would not permit of such a contention—that the Central Pacific Railroad competes against the Southern Pacific Railroad for freight through the Ogden gateway. The Union Pacific Railroad and its eastern connections get what they can for the Ogden gateway. The effort of the Southern Pacific Company, and of the Central Pacific Railway Company under its control, is directed toward the El Paso gateway. There is no competition by the most powerful element in the Central line toward the development of the Central line against the Southern line. (Appts. Br. pp. 34 to 40; pp. 136 to 162.)

This suppression of the competition of the Central Pacific Railroad for the Ogden gateway against the El Paso gateway was accompanied by the usual evils resulting from the suppression of competition. (Appts. Br. pp. 64 to 118.)

This illegality, this injury, is not overcome by the fact that some other competitive railroads remain in a part of the field. (Appts. Br. pp. 52 to 64.)

VI.

THE ACTION OF THE INTERSTATE COMMERCE COMMISSION AS TO THE WATER LINES OF THE SOUTHERN PACIFIC COMPANY IS NOT INCONSISTENT WITH THE APPELLANT'S POSITION.

The appellees make an extended argument based on the decision as to facts, made by the Interstate Commerce Commission on the application of the Southern Pacific Company for permission to continue to operate its water lines from New Orleans and Galveston to New York. This decision is not

in the record in the case at bar. It was made after the decree in the case at bar was entered. It was made on evidence and arguments not in this record. If the decision were injurious to the position of the appellant in the case at bar, it would become necessary to determine whether it can properly be brought to the attention of the court, in the case at bar; but the decision is not injurious to the appellant's position.

Under the terms of the act, on the application of the Southern Pacific Company for permission to continue to operate its steamship lines notwithstanding the competitive rail routes through El Paso and through Ogden, the Interstate Commerce Commission was called upon to determine whether the operation of these steamship lines by the Southern Pacific Company would exclude, prevent, or reduce competition "*on the route by water*" (i. e., by these steamship lines) or would operate to the disadvantage of the public. The commission decided that it would not.

So, far from being inconsistent with the position of the appellant in the case at bar, this decision is favorable to that position. The record in this case shows that the Southern Pacific Company is putting forth its greatest efforts—and has done so for years—in favor of the southern route with its water connections to New York. The thing now complained of is the suppression of the countervailing effort which should exist on the part of the Central Pacific Railroad in favor of the central route. There is nothing

in this situation which would lead the Southern Pacific Company to go slack in the operation of the water lines which form the eastern end of its southern route. To deprive the Southern Pacific Company of that necessary part of the southern route would not increase any competition over either route. On the other hand, it would make the Southern Pacific Company a less efficient and less serviceable competitor of the Union Pacific Railroad and of any other railroad competing for transcontinental business against the Southern Pacific Company.

VII.

THE UNITED STATES DID NOTHING IN 1899 AUTHORIZING THE APPELLEES TO RESTRAIN TRADE.

The appellees fail to meet the position expressed by Judge Carland in the minority opinion below. (Appts. Br. p. 164.) The action of the Settlement Commission has no bearing on the question of whether or not these two railroads were competitive railroads, or whether or not the combination of them would suppress competition. The evidence in this case shows indisputably that they were competitive and that the combination suppressed this competition. The action of the Settlement Commission can not throw light on these facts or overcome this evidence.

The commission's only action was to consent to the refunding of the debt. This was a concession to the Central Pacific Railroad Company. The debt was adequately secured. If the concession had not been made, the road would have been acquired by the

United States or by some other purchaser on foreclosure. The guaranty of the bonds was a proposal of the reorganizers to make them more salable. It was not demanded by the commission. It was not included in the written agreement. It was not thought to be of enough importance to be mentioned in the report which the commissioners made on February 20, 1899, to Congress. It was mentioned incidentally months later in the annual report of the Attorney General. It was never reported to Congress that the Southern Pacific Company was to become the owner of the Central Pacific Railroad or of the stock of the Central Pacific Railway Company. The railroad always has been and now is amply sufficient to pay the amount of the bonds. There is nothing from which it can be said that Congress, or any officers of the United States for it, gave the Southern Pacific Company permission to violate the Sherman Antitrust Act. (Appts. Br., pp. 162 to 196.)

VIII.

THE PACIFIC RAILROAD LAWS HAVE BEEN VIOLATED.

The appellees do not meet the evidence which shows the discrimination which has been practiced by the Southern Pacific Company in the operation of the Central Pacific Railroad against the Union Pacific Railroad. (Appts. Br. pp. 136 to 162.) It is urged for the appellees that the Government is contending that the Pacific Railroad laws required the Central Pacific Railroad Company to give one hundred per cent of its transcontinental freight to the Union

Pacific Railroad. This is not the contention. Such a contention is unnecessary. The Government contends that the Pacific Railroad laws required the Central Pacific Railroad Company to abstain from discriminating against the Union Pacific Railroad. As stated by this court in the Union Pacific case—practices of systematic and preconcerted discrimination in the solicitation and routing of freight adversely to the Union Pacific Railroad violated the Pacific Railroad laws. (Appts. Br., pp. 119 to 132.)

The appellees suggest that this discrimination against the Union Pacific Railroad is "ancient history," and has ceased. All the evidence is against this suggestion. This discrimination was unabated in 1901. From 1901 to 1913 it was tempered somewhat by the Union Pacific Railroad Company's control of the Southern Pacific Company. Even in this period, discrimination continued as to California-Atlantic seaboard freight. This was because the Union Pacific Railroad Company's 46 per cent ownership of the Southern Line, *having the whole of the haul*, gave a greater return than its 100 per cent ownership of the Union Pacific Railroad, having less than a third of the haul. On the dissolution of this combination in 1913 the Southern Pacific Company returned to its pre-merger policy. (Appts. Br., p. 159.) Only two years elapsed thereafter before the evidence in the case at bar was closed (May, 1915). In this period the Southern Pacific Company was restrained by the knowledge that Attorney General Wickersham had informed them in January,

1913, that this suit was to be brought. It was brought in February, 1914. If the period of danger were ended by a decision of this court to the effect that the Southern Pacific Company could continue to hold the Central Pacific Railroad, there is no reason to doubt that the Southern Pacific Company would continue the practices of systematic and preconcerted discrimination in violation of the terms and purposes of the Pacific Railroad laws as defined by this court in the Union Pacific case. The owners and officers of the Southern Pacific Company are human. The old incentive remains. A combination which furnishes a powerful and controlling incentive to such a discrimination, and facilitates it, is in itself in violation of those laws. (Appts. Br., pp. 132 to 136.)

IX.

THE PRINCIPLE OF THE DECISION IN UNITED STATES v. UNION PACIFIC RAILROAD COMPANY, 226 U. S. 61, REQUIRES A DISSOLUTION OF THE COMBINATION BETWEEN THE SOUTHERN PACIFIC RAILROAD AND THE CENTRAL PACIFIC RAILROAD.

The appellees urge at length that the Government contended in the Union Pacific case, and that the court found, that prior to 1901 there was vigorous competition between the Ogden gateway and the El Paso gateway. They urge that such a position and decision are inconsistent with the position now taken by the Government. There is no such inconsistency. (Appts. Br., pp. 259 to 271; p. 34.) On the contrary, the Government now relies on the decision in the Union Pacific case as establishing principles which are conclusive in favor of the petitioner in the case

at bar. The competition which was relied on and which was found to exist in the Union Pacific case was the competition between the Southern Pacific Company promoting the use of the El Paso gateway, and the competition of the Union Pacific Railroad promoting the use of the Ogden gateway. It was not contended that the Central Pacific Railroad, under the control of the Southern Pacific Company, was promoting the use of the Ogden gateway.

On the other hand, the decision in the Union Pacific case established that the Central line, made up of the Central Pacific Railroad, the Union Pacific Railroad, and its eastern connections from California to the Middle West and Atlantic seaboard, was competitive with the Southern Pacific Railroad and its connections between the same territories, and that it was unlawful for a portion of one of the through lines to control the operations of the other through line. This applies to the Central Pacific part of the route just as much as it does to the Union Pacific part of the route. This implication of the decision was apparent to Attorney General Wickersham as soon as the decision was rendered. (Record, vol. 2, p. 785.) Hence this suit. The appellees have failed to point out any distinction in principle between the two cases.

X.

THE LAPSE OF TIME IS NOT A BAR.

The appellees contend that they have made out the defense of laches. This overlooks the fact that the combination was criminal and that there is no de-

fense of laches in such a case. (Appts. Br. pp. 274 to 283.) The Union Pacific combination, which was dissolved by this court, was only two years later (1901), and the Reading combination, which was dissolved by this court in 1920, was three years earlier (1896), than the combination in the case at bar (1899).

There were special reasons for not bringing this suit between 1901 and 1913, because during that period the Union Pacific combination overrode the Southern Pacific combination. (Appts. Br. p. 273.)

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

EDWARD F. MCCLENNEN,
JAMES W. ORR,
Special Assistants to the Attorney General.

APRIL, 1922.

○

FILED
APR 19 1921
JAMES D. MAHER,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1920

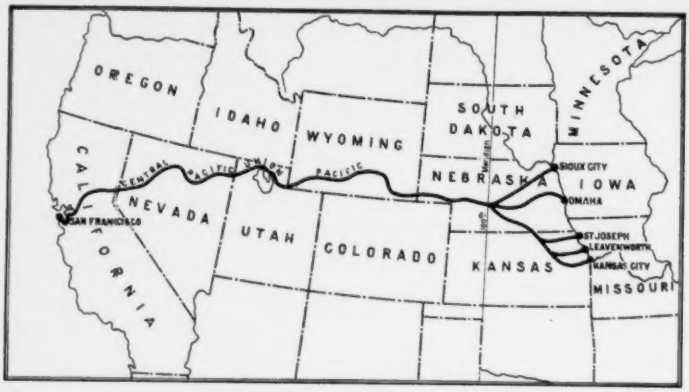
THE UNITED STATES OF AMERICA,
Appellant,

vs.

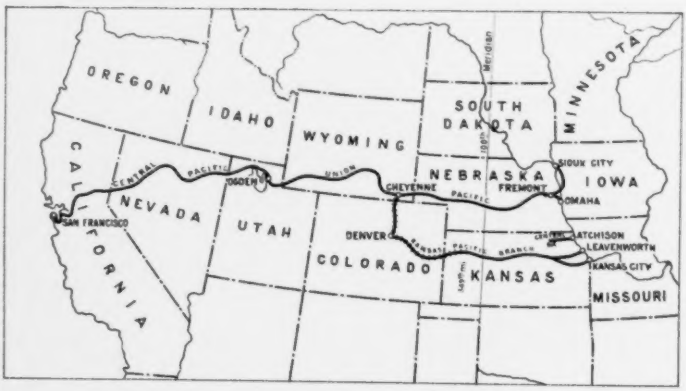
No. 215

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al.,
Appellees.

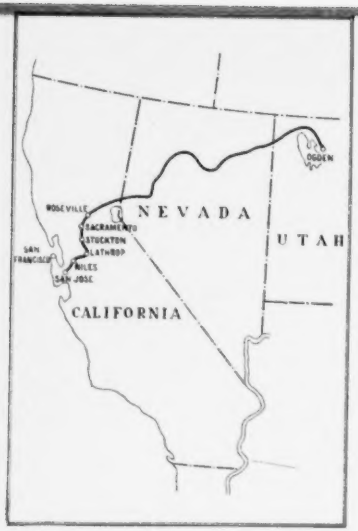
THE CONSTRUCTION OF THE CENTRAL PACIFIC (1861-1872) AND SOUTHERN PACIFIC (1872-1883) DIAGRAMATICALLY PRESENTED.



PACIFIC RAILROADS AS CONTEMPLATED BY THE ACT OF JULY 1, 1862.

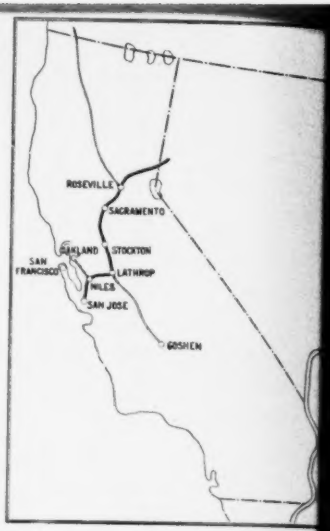


PACIFIC RAILROADS AS CONSTRUCTED.



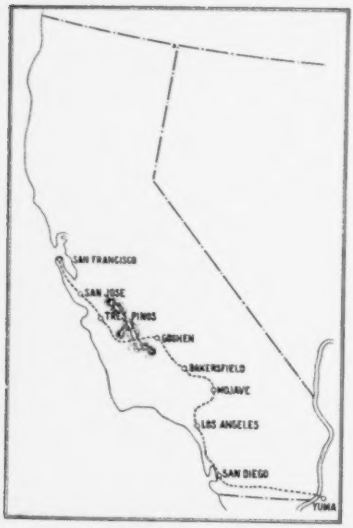
BOND-AIDED LINE.

Central Pacific: Ogden-Sacramento.
Western Pacific: Sacramento-San Jose.
(W. P. absorbed by C. P. 1870.)

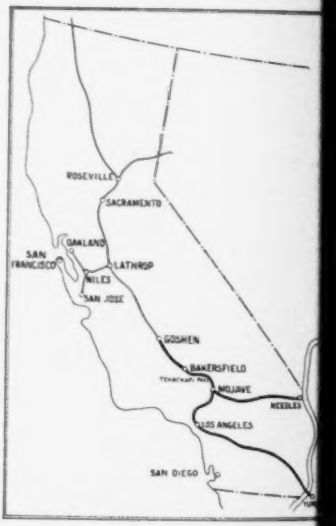


CENTRAL PACIFIC NON-BOND-AIDED EXTENSIONS.

(Shown in hatched lines.)



APPROXIMATE ROUTE OF SOUTHERN PACIFIC LINE CONTEMPLATED IN ARTICLES OF ASSOCIATION, DECEMBER 2, 1865.



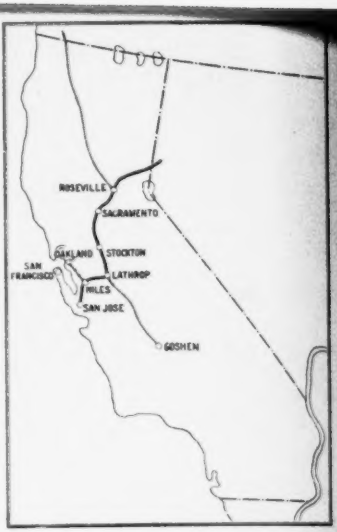
CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

(Constructed under 12 Stat. 489, 14 Stat. 2[illegible] 14 Stat. 292, 16 Stat. 573.)

—— Central Pacific.
▬▬ Southern Pacific.

BOND-AIDED LINE.

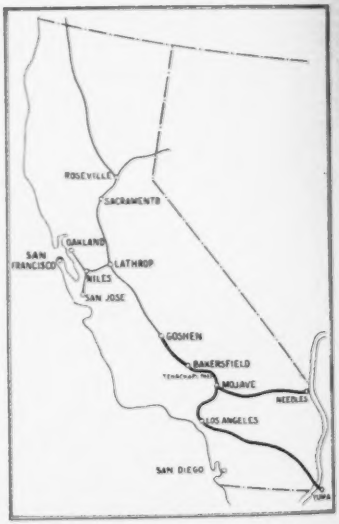
Central Pacific: Ogden-Sacramento.
Western Pacific: Sacramento-San Jose.
(W. P. absorbed by C. P. 1870.)



CENTRAL PACIFIC NON-BOND-AIDED EXTENSIONS.

(Shown in hatched lines.)

XIMATE ROUTE OF SOUTHERN PA-
LINE CONTEMPLATED IN ARTICLES
SSOCIATION, DECEMBER 2, 1865.



CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

(Constructed under 12 Stat. 489, 14 Stat. 239, 14 Stat. 292, 16 Stat. 573.)

—— Central Pacific.
▬▬ Southern Pacific.

PHOTOGRAPHIC RELIEF MAP OF CALIFORNIA.

IN THE

Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Appellant,

against

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, *et al.*,
Appellees.

No. 21.
October
Term 1920.

BRIEF FOR UNION (NOW CENTRAL UNION) TRUST COMPANY OF NEW YORK, APPELLEE.

This suit was brought upon the theory that the ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company, and the lease by the latter of its lines to the former, constitutes a combination in restraint of trade; and the petitioner has requested that the said Southern Pacific Company be directed to dispose of the said capital stock which was pledged long ago with the said Union Trust Company, as trustee for bondholders.

Facts.

The facts bearing upon the issue as to whether the ownership of the capital stock of the Central Pacific Railway Company by the Southern Pacific Company constituted a combination in restraint of trade under the terms of the Sherman Anti-trust Act will be set forth in the brief submitted on behalf of those parties.

The facts relating to the pledge and present situation of the said stock are as follows (the references, unless otherwise indicated, being to the pages of the printed record): On August 1st, 1899, a mortgage or deed of trust was made by and between Southern Pacific Company and the Union Trust Company of New York by the terms of which the said Southern Pacific Company agreed to pledge and deposit with the said Union Trust Company of New York certificates of the preferred stock of the Central Pacific Railway Company to the amount at its face value of $12,000,000, and certificates of the common stock of said company to the amount at its face value of $67,274,200, the said certificates to be assigned in blank with irrevocable powers to transfer the same; and it was provided and agreed that the certificates so pledged and deposited should be held by the said Union Trust Company of New York, subject to the terms and conditions expressed in said instrument, upon trust for the benefit of the persons who should become holders of the bonds to be issued under said mortgage, to secure to such holders the punctual payment of the said bonds and the interest thereon as it should become due; and it was further provided and agreed that additional preferred stock of said

Central Pacific Railway Company, not exceeding in the aggregate $8,000,000, should be deposited in a similar manner, and upon the same terms, conditions and trusts, with the said Union Trust Company of New York when delivered from time to time to the said Southern Pacific Company. (Mortgage, Defendants' Exhibit No. 98, pp. 2304-25).

Pursuant to the terms of said instrument the said Southern Pacific Company has deposited with the said Union Trust Company of New York, as trustee as aforesaid, certificates of preferred stock to the amount at its face value of $17,400,000, and certificates of common stock to the amount at its face value of $67,274,200, of the said Central Pacific Railway Company, the said certificates being assigned in blank with irrevocable power to transfer the same.

Bonds secured by the said mortgage have been issued and there are now outstanding such bonds secured by said mortgage to the amount of $34,-218,500 (1220-21) which bonds will not become due until August 1, 1949.

It should be noted that since this appeal was taken (*i. e.*, on June 18, 1918) the respondent Union Trust Company of New York was merged into the Central Union Trust Company of New York.

Pleadings.

The bill of complaint sets forth as against the trustee only the execution of the mortgage by the Southern Pacific Company to Union Trust Company of New York to secure $36,818,500 of bonds, the pledge of practically all of the stock of the Central Pacific Railway Company to secure the

payment of said bonds, and the holding by the said trustee of said stock as collateral security for said indebtedness (2, 5). There is, of course, a prayer for general relief; but *no specific relief against the trustee is asked for,* although it is prayed that the Central Pacific Railway Company be enjoined "from recognizing as valid any transfer, mortgage, pledge or assignment of such stock by said Southern Pacific Company," etc. (11, 12).

The answer of the trustee prayed that if any relief should be granted to the petitioner, the decree should "not in any way affect the lien of the mortgage" (80).

POINT I.

This court should affirm the decision of the court below and should not direct that the stock be sold.

That the ownership of the capital stock of the Central Pacific Railway Company by the Southern Pacific Company is not contrary to the terms of the Sherman Anti-trust Act will be argued fully in the brief submitted on behalf of the Southern Pacific Company. There seems to be no occasion, therefore, for this trustee to do more than to point out that its position on this subject is the same as that of the Southern Pacific Company since the interests of the bondholders which it represents are opposed to such a sale.

The said stock of the Central Pacific Railway Company is pledged with this trustee to secure absolutely, or at any rate as far as possible, the re-

payment to the bondholders in the year 1949 of the sum of $34,218,500, advanced by them, and the interest thereon. So long, therefore, as this stock has a *market* value of well over $34,218,500 the bondholders will be protected. Still further, the Central Pacific Railway Company would seem to be such an important part of the system now operated by the Southern Pacific Company, that the latter Company, and any successor, can not permit the stock of the Central Pacific Company to be sold by the trustee under any circumstances. If, however, it should be decreed that the Southern Pacific Company must sell this stock, and cannot thereafter repurchase it, it would follow, in the event of a foreclosure of the mortgage, that the stock would have, practically speaking, no "market" value at all, since the only probable purchaser would be the Union Pacific Railroad Company; and we may be reasonably sure that the Union Pacific Railroad Company would not pay as much for the stock of the Central Pacific Railway Company, if bidding alone, as it would in competition against another company.

If therefore we are right in thinking that a decree directing that this stock cannot now or hereafter be owned by the Southern Pacific Company would be equivalent to a decree that the stock must be owned by the Union Pacific Railroad Company, then it follows, we urge, that such a decree would very greatly impair the value of the stock which has been pledged with this trustee.

POINT II.

If this court should reverse the decision of the court below and direct a sale of the stock, the interests of the bondholders should be fully protected.

A. IF THE STOCK IS TO BE SOLD IT SHOULD BE SOLD SUBJECT TO THE LIEN OF THE DEED OF TRUST.

It seems hardly conceivable that the Government, in seeking to compel the Southern Pacific Company to sell this stock, should attempt also to destroy the lien of the bondholders; and no such claim has been made in the bill of complaint, or in the court below, or in the brief for the Government in this court. It has happened, however, that the requests of the trustee that the Government disclaim any intention to ask that the lien be destroyed, or stipulate to that effect, have been refused. It seems necessary, therefore, to make a brief statement of the position of the trustee. This is so especially, because to both the Government and the Southern Pacific Company the tremendous question is whether the stock shall be sold, and the question whether if sold the sale shall be subject to the lien of the trustee is to them of comparatively trifling interest. That question, however, is of great importance to the bondholders as we have intimated above.

The Southern Pacific Company, as the owner of this stock, had the power to sell it, and therefore to pledge it. If, instead of raising money by *pledging* this stock, the Southern Pacific Company had *sold* some of it, the situation of the purchaser

would be the same, in substance, as that of the pledgee here. The Government in that case would hardly attempt, for reasons of convenience or otherwise, to compel the purchaser to sell back his stock to the same person who had bought, or might wish to buy, the balance of the stock. So here, the Government if it had made out a case, might have asked this court to direct the Southern Pacific Company to sell *whatever interest it still had* in the stock, but *not*, of course, any *interest with which it had already parted.* To be sure the trustee has been made a party to this suit; but the reason for compelling the Southern Pacific Company to dispose of its interest (or equity) in the stock has no application whatever to the Central Union Trust Company of New York and its interest in (or lien upon) the stock.

If this suit, *instead* of being brought for the purpose of requiring the Southern Pacific Company, (because a competitor of the Union Pacific Railroad Company) to *dispose* of its interest in the stock of the Central Pacific Railway Company, had been brought in the exercise of the power of *eminent domain* to enable the Government to obtain the ownership of this stock for itself, then the trustee would have been a proper party, and the decree might determine the amount which should be paid to it in satisfaction of its lien upon the property.

In the case at bar, however, since the Southern Pacific Company has power only to sell its undisposed of interest in the stock, that is all that this court could have been asked to compel that Company to do. But if it is conceivable that the Southern Pacific Company may be required to sell an

interest which it has disposed of already, there is no occasion to make a direction that the stock be sold free from the lien, as a purchaser of the stock should be willing to take it subject to the trust deed.

We have urged above, in substance, that *even if* the Government had asked to have the stock sold free from the lien of the mortgage, such relief could not under any circumstances be granted. The facts are, however, that the Government in its complaint did *not* pray to have the lien of the trustee destroyed, and that, although the position of the trustee on that subject was at once asserted in its answer, the Government has not made any claim to the contrary, either in the court below or in its brief in this court. It has thus waived any right to such relief.

B. If the stock is to be sold, and free from the lien of the mortgage, it should be only at a price sufficient to pay the indebtedness secured by the stock with interest to the date of maturity of the bonds.

While, as we have said above, this is not a condemnation proceeding, and the trustee ought not therefore to have its rights in this stock taken from it without its consent, or sold in any way except under its direction, yet, if its right to control the time and terms of sale of the pledged property should be thus taken from it, the decree should provide—at least—that the sale be made only upon such terms and with such safeguards as will absolutely insure the payment of all indebtedness

to the bondholders and all interest to the date of its maturity.

Respectfully submitted,

PERRY D. TRAFFORD,
JAMES GORE KING,

Of Counsel for UNION (now CENTRAL UNION) TRUST COMPANY OF NEW YORK.

Supreme Court of the United States

OCTOBER TERM, 1920

THE UNITED STATES OF AMERICA,
Appellant,

vs.

No. [redacted]5

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, et al.,
Appellees.

MAPS PREPARED BY APPELLEES

INDEX

I. Pacific Railroads as Contemplated by the Act of July 1, 1862.

II. Pacific Railroads as Constructed.

III. Bond-Aided Line: Ogden-Sacramento-San Jose.

IV. Central Pacific Non-Bond-Aided Extensions.

V. Approximate Route of Southern Pacific Railroad Company's Line. Contemplated in the Articles of Association, December 2, 1865.

VI. Central Pacific-Southern Pacific Arterial System.
Showing the four lines to the Boundaries of California authorized by Congress.

VII. Eastern Rail Connections of the Southern Pacific.

VIII. Northern Division of Southern Pacific Railroad Company as it existed in 1873, and its relation geographically to the Central Pacific-Southern Pacific Arterial System.

IX. Southern Pacific Company's Coast Line opened 1901. San Francisco-Los Angeles.

X. San Joaquin Valley Lines.

XI. Routes between Sacramento and San Francisco.

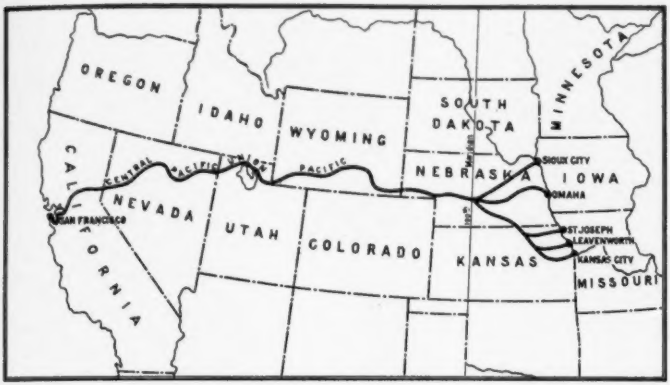
XII. Rail Connection between Tehama and Portland.

XIII. Union Pacific Lines to the Pacific Coast, and their relation geographically to the Central Pacific Main Line.

XIV. Union Pacific Lines to the Pacific Coast, and their relation geographically to the Central Pacific Main Line, Feeders and Extensions.

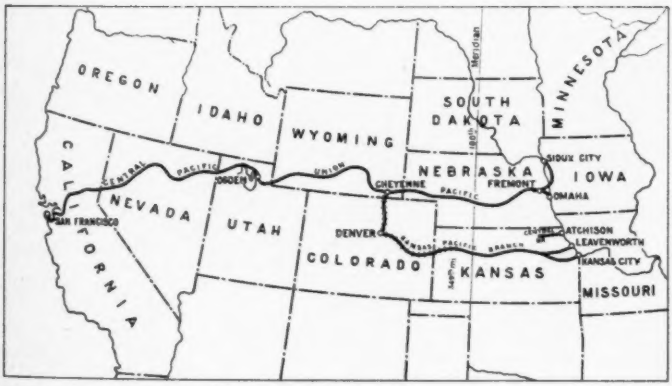
XV. Photographic Relief Map of California.

XVI. Southern Pacific System.



I.

PACIFIC RAILROADS AS CONTEMPLATED BY THE ACT OF JULY 1, 1862.



II.

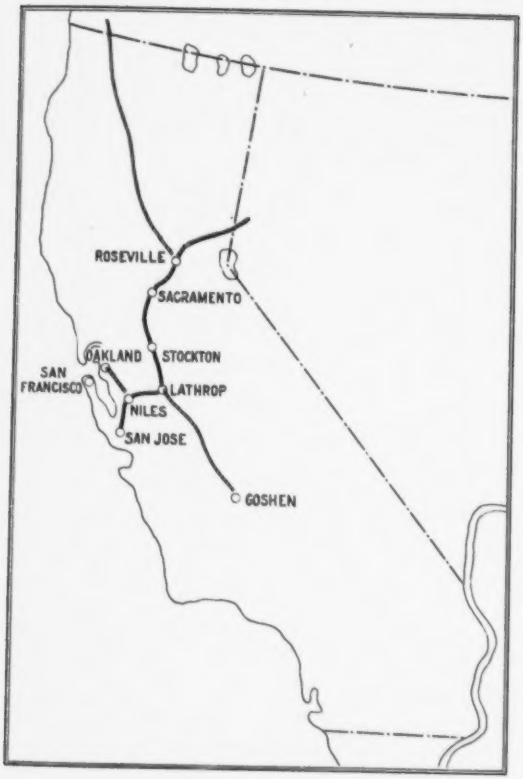
PACIFIC RAILROADS AS CONSTRUCTED.

III.

BOND-AIDED LINE: OGDEN-SACRAMENTO-SAN JOSE.

Ogden-Sacramento: Central Pacific Construction.
Sacramento-San Jose: Western Pacific Construction.

Note: The Western Pacific was absorbed by the Central Pacific in the consolidation of June 23, 1870.

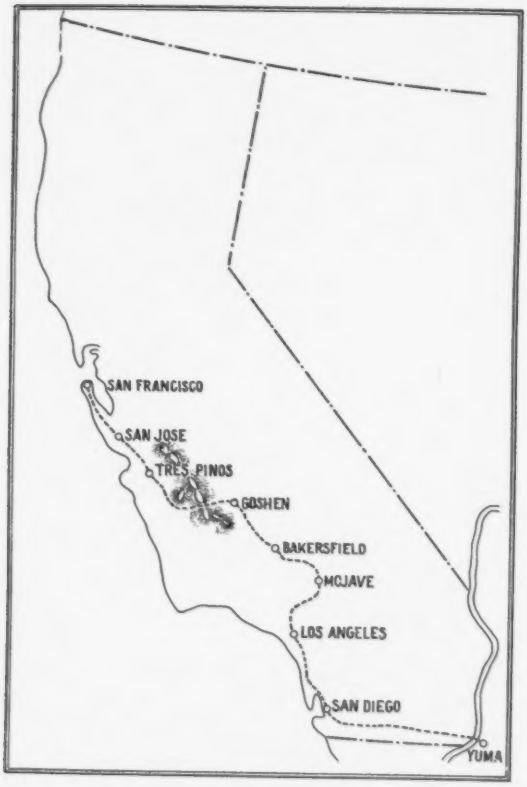


IV.

CENTRAL PACIFIC NON-BOND-AIDED EXTENSIONS.

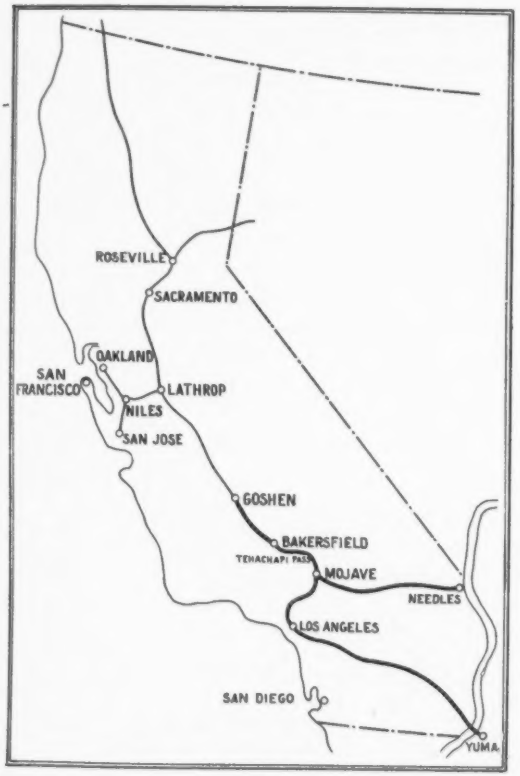
1. Roseville-Oregon line.
2. Niles-Oakland.
3. Lathrop-Goshen.

Non-bond-aided extensions.
Main bond-aided line.



V.

APPROXIMATE ROUTE OF SOUTHERN PACIFIC RAILROAD COMPANY'S LINE, CONTEMPLATED IN THE ARTICLES OF ASSOCIATION, DECEMBER 2, 1865.



VI.

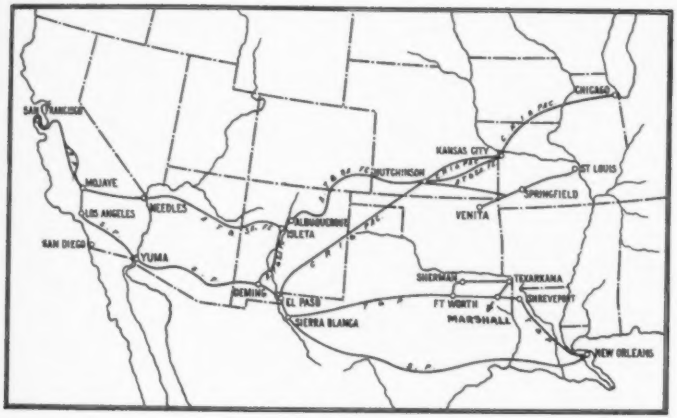
CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

Showing the four lines to the boundaries of California authorized by Congress:

1. Sacramento-Ogden: Act of July 1, 1862 (12 Stat. 489).
2. Roseville-Oregon Line: Act of July 25, 1866 (14 Stat. 239).
3. Goshen-Mojave-Needles: Act of July 27, 1866 (14 Stat. 292).
4. Mojave-Los Angeles-Yuma: Act of Mar. 3, 1871 (16 Stat. 573).

——Central Pacific.
——Southern Pacific.

(Note: The Mojave-Needles line was leased by the Southern Pacific to the Santa Fe when completed in 1883, and was purchased by the Santa Fe in 1911.)



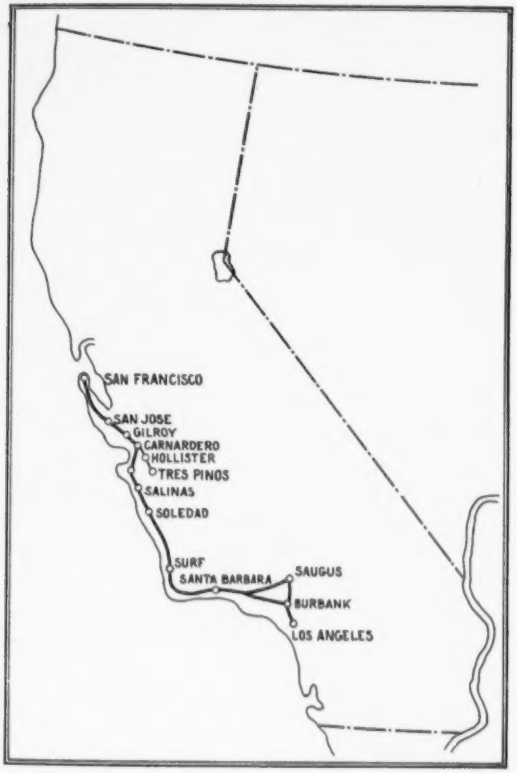
VII.

EASTERN RAIL CONNECTIONS OF THE SOUTHERN PACIFIC.

VIII.

NORTHERN DIVISION OF SOUTHERN PACIFIC RAILROAD COMPANY AS IT EXISTED IN 1873, AND ITS RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

Northern Division of Southern Pacific Railroad Co.
Central Pacific-Southern Pacific Arterial System.
Unbuilt connection between Tres Pinos and Alcalde.



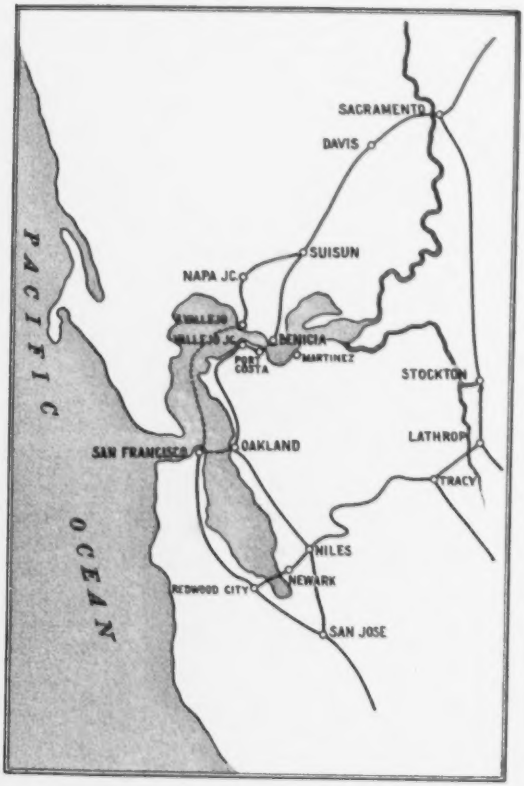
IX.

SOUTHERN PACIFIC COMPANY'S COAST LINE OPENED 1901. SAN FRANCISCO-LOS ANGELES.

X.

SAN JOAQUIN VALLEY LINES.

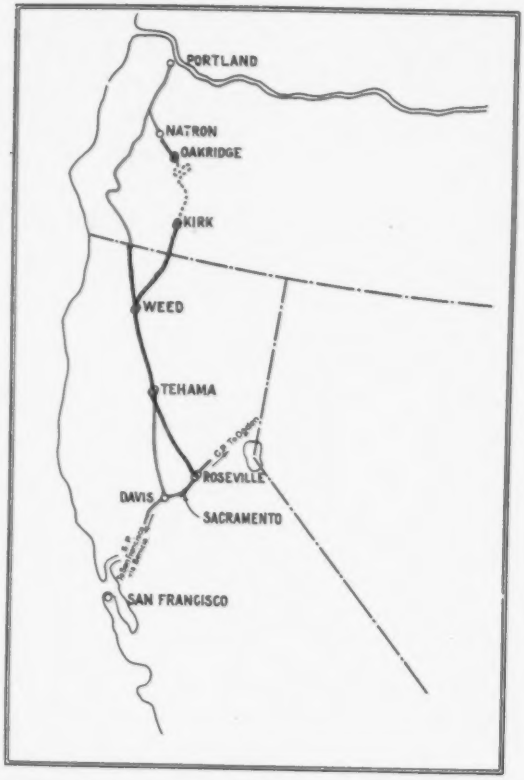
1. Main Line (C. P.): Lathrop-Goshen (1872).
2. West Side Line (S. P.): Tracy-Ingle-Kerman-Armona-Goshen (1891).
3. West Side Line (S. P.): Tracy-Ingle-Kerman-Fresno-Goshen (1892).



XI.

ROUTES BETWEEN SACRAMENTO AND SAN FRANCISCO.

1. Sacramento-Lathrop-Niles Oakland-San Francisco.
2. Sacramento-Napa Junction-South Vallejo-San Francisco.
3. Sacramento, via Benicia cut-off-Suisun-Benicia-Oakland-San Francisco.
4. Sacramento-Lathrop-Niles-San Jose-San Francisco.
5. Sacramento-Lathrop-Niles, via Dumbarton cut-off-Newark-Redwood-San Francisco.



XII.

RAIL CONNECTION BETWEEN TEHAMA AND PORTLAND.

Southern Pacific.
Central Pacific.
Central Pacific-Unfinished section.

N. B. Tehama is the most northerly point in California reached by the Southern Pacific over its own rails; all points in California north of Tehama are reached by Central Pacific rails only.

San Francisco to:

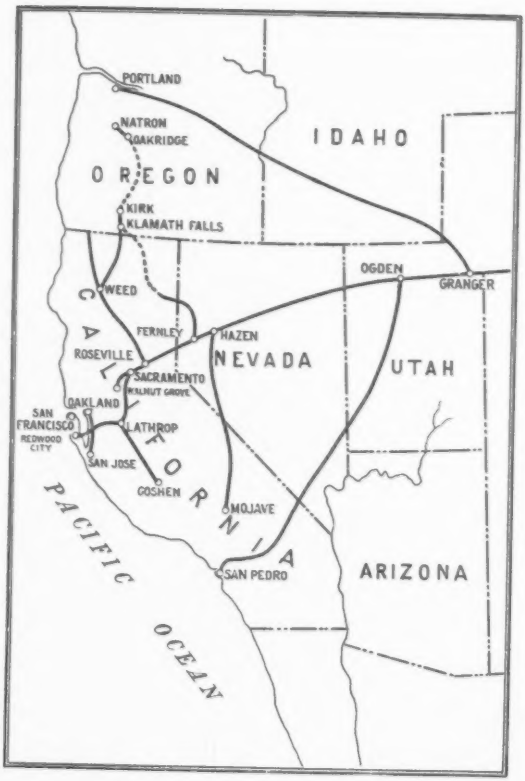
	Miles
Tehama—S. P. via Benicia and Davis	186
Tehama—S. P. to Sacramento, C. P. via Roseville	212

Tehama to:

	Miles
Red Bluff	1?
Redding	46
Delta	112
Weed	163
Oregon State Line	217

XIII.

UNION PACIFIC LINES TO THE PACIFIC COAST, AND THEIR RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC MAIN LINE.



XIV.

UNION PACIFIC LINES TO THE PACIFIC COAST, AND THEIR RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC MAIN LINE, FEEDERS AND EXTENSIONS.

XV.

PHOTOGRAPHIC RELIEF MAP OF CALIFORNIA.

MAPS

TOO

LARGE

FOR

FILMING

Office Supreme Court, U. S.
FILED
APR 19 1921
JAMES D. MAHER,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

[redacted]5

SOUTHERN PACIFIC COMPANY,
CENTRAL PACIFIC RAILWAY COMPANY, et al.,
Appellees.

OUTLINE OF ORAL ARGUMENT FOR APPELLEES.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 21.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, ET AL., APPELLEES.

OUTLINE OF ORAL ARGUMENT FOR APPELLEES.

Introduction.

The date of the alleged conspiracy to suppress competition is February 20, 1899. The outstanding events which occurred on that day were these:

(*a*) The Secretary of the Treasury, Secretary of the Interior, and Attorney General, as a Commission created by the act of July 7, 1898, reported to both Houses of Congress the settlement of the Central Pacific debt amounting to $58,812,715.48 under an agreement between the United States of

America, the Central Pacific Railroad Company, and Messrs. Speyer & Company, dated February 1, 1899, and executed February 15 and 16, 1899, by President McKinley and the three Cabinet officers. A copy of the agreement was appended to the report. (See Report, Main Br.,* p. 176; also Agreement, which is a part of the Answer, I. R., 47.)

(*b*) Speyer & Co. put out to the world the plan of reorganization of the Central Pacific properties, dated February 8, 1899, upon which the agreement with the Government was based, and in that plan stated that under an agreement with the Southern Pacific Company, copies of which were available to persons in interest, the latter company had agreed to buy the common stock and the preferred stock of the proposed new company and to guarantee the payment of two issues of bonds of the new company, *i. e.*, (*a*) an issue of one hundred million, whereof fifty-eight million were allocated as security for the payment of the Government debt, and (*b*) an issue of twenty-five million, applicable immediately, with other assets, to the discharge of the general bonded indebtedness of the old company. (See Plan, in Answer, I. R., 60.) The agreement and the plan of reorganization were integral parts of a single transaction (Main Br., 149-176, 294-302) which was long the subject of negotiation as shown by the fact that there were twenty or thirty revises of the plan (Main Br., 180).

The Department of Justice now urges that this transaction, participated in, as we have seen, by the President of the United States and three members of his Cabinet, was an unlawful conspiracy for the suppression of competition.

---

*Brief for Appellees.

The argument is made that the Southern Pacific suppressed competition by preventing it from coming into existence, and that it accomplished this result by the payment to the Government of its debt. The argument is that, had the Government not been paid its debt, it would have foreclosed and, as a purchaser at foreclosure, would itself have become a competitor, or the property might have passed into the hands of third persons who would have become competitors. In other words, the Department of Justice discovers an illegal prevention of competition from coming into existence in the fact that the Government chose to accept payment instead of foreclosure. The Department of Justice, therefore, is seeking to nullify Government action of the most formal and important character and to do so by most attenuated argument—by an argument indeed which all the time overlooks the fact that, as the holder of the leasehold interest in the properties of the Central Pacific, the Southern Pacific would have been entitled to bid at the foreclosure sale or to have redeemed in protection of its theretofore lawfully acquired interest.

Outstanding Propositions in the Case.

There are several outstanding propositions upon which we think this case should turn, and which lend themselves readily to oral argument. We here enumerate seven of these propositions, noting that the lower court sustained our position in respect of each of them:

(1) Reading the record in the light of the history of the railroad systems of the country, viewing this particular system in the light of its own history and considering the phys-

ical aspect of the system by an inspection of the map, it is immediately apparent that the lines here sought to be divorced present the case of a single system of railroads. The case, therefore, does not involve any combination of competitive units or any combination at all, inasmuch as the Southern Pacific and Central Pacific lines were projected and built and have been operated since their origin as one property.

(2) At the time of the passage of the Anti-trust Act (July 2, 1890) the Southern Pacific and Central Pacific lines were owned by a single proprietor, although the Central Pacific lines were held under a 99-year lease, made February 17, 1885, instead of in fee; but "it is obvious that in principle the right of a lessee is the same as that of a purchaser in fee" (224 U. S., 565).

(3) *In view of the proceedings in Congress during the period 1885 to 1898* (covering both administrations of President Cleveland, the administration of President Harrison, and the first fifteen months of the first administration of President McKinley) *respecting the Southern Pacific and Central Pacific lines, and considering that during this same period Congress was fully acquainted with the existence of the lease of 1885 and subsequent modifications, and had frequent occasion to deal therewith, and with the relations between the Southern Pacific and the Central Pacific,* it is plain to see that the act of July 7, 1898 (30 Stat., 652, 659), creating the Commission for the settlement of the Central Pacific debt, contemplated as natural, if not inevitable, the agreement subsequently made; and by its own terms the statute invested the Commission with full authority to agree

to the plan which was adopted for the payment of the indebtedness, including (*a*) the provision by which the Southern Pacific acquired the stock of the Central Pacific, and (*b*) the provision taking account of the lease made to the Southern Pacific in 1885 and subsequent modifications, whereby it was provided that all leases should be subordinated to the lien of the new mortgage to secure the bonds which were to be delivered to the Government as collateral for the notes given in settlement of the debt.

(4) Considering that the settlement dated February 1, 1899, but executed February 16, 1899, under the act of July 7, 1898, and all the details thereof were matters of public history and necessarily within the knowledge of Congress (see Report made to both Houses of Congress February 20, 1899, the plan publicly issued by Speyer & Co. February 20, 1899, and the publication of the full details thereof in *The Commercial & Financial Chronicle* of February 25, 1899), the acts of March 3, 1899, and March 3, 1901, are to be treated as Congressional confirmation and recognition of and acquiescence in the settlement as made. This argument is fortified by the circumstance that from February 20, 1899, to the commencement of this suit, February 11, 1914 (fifteen years), no suggestion was ever made that the settlement was beyond the power of the Commission in any of its details, or that the Government had been overreached in respect of any of the provisions therein involved.

(5) The control of the Central Pacific lines by the Southern Pacific Company does not constitute or give rise to an undue restraint of commerce, for the following reasons:

(*a*) As stated by Mr. Justice Holmes in the Swift case quoted by Mr. Justice Day in the Union Pacific case, "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business" (Supp. Br.,* 107), and judged by conditions which had their origin thirty-six years ago (1885), it is established as a fact that the ownership by the Southern Pacific of the Sunset-Gulf route and the Central Pacific does not involve an undue restraint of commerce.

(*b*) This very argument *upon this question of fact* was successfully made by the Government in the Union Pacific case (Main Br., 318-320), but the Government now seeks to establish the very contrary.

(*c*) The fact that the railroad system under consideration involves no *undue* restraint of commerce is established by the direct testimony of witnesses of experience whose testimony is in harmony with the Government contentions in the Union Pacific case.

(*d*) This testimony is corroborated and confirmed by evidence that it is impossible to dismember the Southern Pacific-Central Pacific system without substantial deterioration in the service (Main Br., 375-380), as shown by a finding to that effect by the Railroad Commission of California, which declared that it was problematical whether such a dismemberment would at all improve interstate commerce, and that it was certain to inflict material injury upon commerce moving wholly in California—a view with which the court below agreed (Main Br., 380).

"The Central and Southern Pacific Railroads are so thoroughly bound together that no man can fore-

*Supplemental Brief for Appellees.

see the result of tearing them asunder" (The President of the University of California, in The Outlook, 1914, Vol. 106, p. 609).

(6) There was no violation of the Pacific Railroad Laws because:

(*a*) "The proofs show no foundation in fact for this contention" (Hook, J., quoted, Main Br., 372).

(*b*) The argument that the Pacific Railroad Laws forbid one of the constituent roads to compete with another constituent road, or become the property of a competitor, has no foundation whatever in the statute.

(*c*) As held below, "the Government and the public were being served adequately." The Central Pacific, in point of maintenance and operation, ranks with the best railroads of the country, and although the Government called the Union Pacific officials as witnesses, they could not testify that service could be improved by dismemberment or that the Union Pacific would get any more traffic or revenue after dismemberment than they now obtain.

(*d*) The argument of the Government respecting the Pacific Railroad Laws flies in the face of that portion of the Union Pacific decision which affirmed the validity of the ownership by the Union Pacific of the Granger-Portland route and the acquisition of a fifty per cent interest in the Ogden-San Pedro route (Main Br., 267, Maps XIII and XIV).

(*e*) The Government's contentions respecting the requirements of the Pacific Railroad Laws is contrary to long-continued administrative construction. Indeed every department of the Government has, at one

time or another, declined to regard as violative of the statutes the very conditions and conduct which in this suit are charged to be prohibited.

(*f*) The cause of action under the Pacific Railroad Laws when analyzed does not present the Government in the light of a person aggrieved but suggests a liability over to the Union Pacific (see quotations from Acts of 1862, 1864 and 1874, Supp. Br., 152-155) which that company shows no disposition to pursue and which, if the liability existed, would be remediable through the Interstate Commerce Commission, and, if need be, in a District Court upon petition by the Interstate Commerce Commission—all as provided in the Transportation Act of 1920 (Supp. Br., 177, 202).

(7) In its last analysis the relief sought by the appellant is experimental and not judicial in its nature. The Government does not seek the destruction of a new and unlawfully created condition which took the place of an old and natural one; it seeks the destruction of an old and natural condition in order that it may create, by a new and untried experiment, a condition which has no prototype.

The Government's Petition and Incorrect Definitions Respecting Fundamental Matters.

The petition or bill of complaint presents a two-fold case (*a*) under the Anti-trust Act and (*b*) under the Pacific Railroad Laws.

(1) The case under the Anti-trust Act is based upon the allegations (*a*) that prior to 1885 competitive conditions ex-

isted between the Ogden route (meaning the C. P., U. P. and eastern connections) and El Paso (meaning the Sunset Gulf route); (*b*) that by the lease of 1885 this competition was suppressed, and (*c*) that the stock acquisition of 1899 was an additional means for the suppression of competition. There is no suggestion in the petition that either the lessor or the lessee was wanting in authority to execute the lease of 1885, or that there was any infirmity therein save that which arose from the allegation that at the time of the execution of the lease the lines of the lessor were, and before that time had been, in competition with the lines of the lessee.

(2) The case under the Pacific Railroad Laws may be separated into two compartments (*a*) an alleged cause of action grounded in the idea that the Pacific Railroad Laws were violated by the fact alone that one of the constituent Pacific Railroads (the Central Pacific) became the property (through the lease of 1885, followed by the stock purchase in 1899) of a company (the Southern Pacific) which was a competitor of another constituent Pacific Railroad (the Union Pacific), thereby creating a status which without more was unlawful; (*b*) an alleged cause of action based upon the claim that the operation of the Central Pacific by the Southern Pacific violated the Pacific Railroad Laws by not affording to the Union Pacific "equal advantages and facilities as to rates, time and transportation without any discrimination of any kind." (See Act quoted, Supp. Br., 153.) Here, again, there is no suggestion in the petition that either the lessor or the lessee was wanting in authority to execute the

lease of 1885, or that there was any infirmity therein save that which arose from the allegation that at the time of the execution of the lease the lines of the lessor were, and before that time had been, in competition with the lines of the lessee.

In the proofs the Government totally failed to show any improper practice upon the part of the appellees in respect of a denial or withholding of facilities or of any discrimination whatsoever, but on the contrary (as we have already stated) it was shown that in maintenance and in operation the Central Pacific had attained and maintained an excellence comparable with the best railroads of the country and far better than most of them.

The Government, however, argues that there has been a withholding of facilities from the Union Pacific and discriminatory practices against that company, on account of acts which we say do not fall within any definition of either of those terms. The Government contends that there has been such a withholding of facilities and such discriminatory practices because the defendants (*a*) have withheld cooperation with the Union Pacific in a one hundred per cent exchange of business and (*b*) because the ownership of the Central Pacific by the Southern Pacific has caused the Central Pacific to be indifferent to or opposed in interest to an increase in traffic and earnings of the Union Pacific-Central Pacific line.

The argument, therefore, as we have seen, is that the lease of 1885, followed by the stock purchase in 1899, created an unlawful status under the Pacific Railroad Laws. This argument, as we have also seen, flies in the face of that

portion of the decision in the Union Pacific case which affirmed the validity of the ownership by the Union Pacific of the Granger-Portland route, and the acquisition of a fifty per cent interest in the Ogden-San Pedro route (Main Br., 267, Maps XIII and XIV).

Furthermore, this argument denies to the Union Pacific the power to parallel the Central Pacific from Ogden to the Pacific Coast (say, by purchase of the present Western Pacific or by independent construction) and it also denies to the Central Pacific the power, even if divorced, to parallel the Union Pacific line from Ogden to the Missouri River (either through purchase or by construction).

It is to be noted further that the cause of action under the Pacific Railroad Laws is not grounded in the idea that there has been any violation of these laws "so far as the public and the Government are concerned" (see Act quoted in Supp. Br., 153). The Government's contention under the Pacific Railroad Laws is really, in its final analysis, an attempt to maintain a cause of action which if it exists at all is not in favor of the Government, but of the Union Pacific Company, which that company, however, has elected not itself to assert, even though there has been an act since 1874 providing for suits by persons and companies aggrieved by violations of the Pacific Railroad Laws (Supp. Br., 1854), and although the cause of action, if it exists at all, first arose as early as 1883, more than thirty years ago.

Indeed, the obligations of the Central Pacific as a connecting carrier have in the course of years been enlarged by modern legislation applicable to all of the connecting carriers in the country—and it is plain that had these laws of our time been in force in 1862, the special provisions in the

Pacific Railroad Laws would not have been introduced. Under the Transportation Act of 1920 every connecting carrier is bound to afford to its connections all of the facilities, etc., which were secured to the constituent Pacific Railroads by the Act of 1862 and amendments, and in addition there are other important facilities provided in the Act of 1920, which were not provided for in the Act of 1862 and amendments, or in any acts of those early days. Moreover, the Act of 1920 provides ampler and fuller legislation in matters of procedural law, as well as substantive law, and affords machinery whereby one carrier may have redress against another before the Interstate Commerce Commission for a violation of its substantive provisions, and furthermore provides that the awards of the Commission may be enforced by a District Court upon petition by the Commission.

In our briefs (Main Br., pp. 253-259; Supp. Br., 26-34) note is taken of two decisions made by the Interstate Commerce Commission, one before and one after the decree was entered below. (The decisions were in January and May, 1917, and the decree was entered in March, 1917.) These decisions arose out of an application by the Southern Pacific to the Interstate Commerce Commission under Section 11 of the Act of August 24, 1912, for permission to operate its steamers from the Gulf to New York, because it was a carrier having lines in competition, *i. e.*, one through Ogden and the other through El Paso, and the Interstate Commerce Commission dealt with these lines as in competition, but held that public interest justified the granting of the permission to maintain the steamers. If these lines had not been in competition, the permission of the Interstate Commerce Commission would not have been necessary.

We have already spoken of the incorrect use of the phrases respecting "facilities" and "discriminatory" practices which underlie the argument of the Government relating to the Pacific Railroad Laws. We come now to the incorrect use of terms underlying the argument based upon the Anti-trust Act. The Government speaks of "a *natural* competitor" (Petition, I. R., 12), meaning thereby not "a competitor" at all, but two units which might be made competitive by dismemberment. The Government also uses the word "combination," not to indicate an artificial joinder creating a new condition in place of one which existed before, but as indicating a single proprietorship of units which never existed independently but which the Government contends are capable of separation and could be operated competitively if in diverse ownership.

Chronological Outline of Facts (1846-1921).

1846-1861.

CALIFORNIA.—Military authorities of the United States took possession of California (1846). Mexico ceded California to United States (1848). California admitted to Union (1850). Memorials addressed to Congress by California Legislature for transcontinental road (1850-1859). Inaction of Congress due in part to dispute over location of route and problematical effect of transcontinental line on slavery question. Discussion of thirty-third and thirty-fifth parallels of latitude as probable line of future railroad.

OREGON.—The country called Oregon from Pacific Ocean to the Rocky Mountains between forty-second parallel (now southern boundary of Oregon) and forty-ninth parallel (now

northern boundary of State of Washington) acknowledged to be territory of this country in settlement of northwest boundary dispute with Great Britain (1846). Oregon created a territory with boundaries above mentioned (1848), which boundaries now embrace the states of Washington, Oregon, Idaho, etc. Oregon admitted to the Union (1859).

1861-1872—Central Pacific, Its Incorporation, Congressional Aid, and Lines Built by It.

Fort Sumter fired on in April, 1861. Incorporation under laws of California of Central Pacific Railroad Company of California (June 28, 1861), by four Californians—Leland Stanford, C. P. Huntington, Mark Hopkins and Charles Crocker. Act of Congress, July 1, 1862, created Union Pacific as federal corporation, incorporating one hundred and fifty-eight individuals and certain departmental officers of the Government. C. P. Huntington was one of the persons. The act authorized the Central Pacific to build eastward from Sacramento or the Pacific Ocean to meet the Union Pacific coming westward, and provided for Government bond aid and land grants, etc. The Act of 1864 enlarged the land grant and authorized the issuance of bonds having priority over the Government lien for advances in aid of construction. Central Pacific assigned to Western Pacific a portion of the construction which it was authorized to make, *i. e.*, from Sacramento to San Jose; and this assignment was approved by Congress (1865).

The Pacific Railroads were constructed from the Missouri River to the Pacific Coast (1864-1869):—(*a*) Omaha to Ogden by Union Pacific, (*b*) Ogden to Sacramento by Cen-

tral Pacific, and (*c*) Sacramento to San Jose by Western Pacific (Maps II and III). Non-bond-aided lines, (*a*) Niles to Oakland, (*b*) Lathrop to Goshen, and (*c*) Roseville to Redding (en route to Oregon), were constructed in California (1869-1872). (See Map IV.)

In 1870, the Central Pacific absorbed in consolidation, (*a*) the Western Pacific, which built from Sacramento to San Jose, (*b*) the Alameda Company which built from Niles to Oakland, (*c*) the San Joaquin Company which built from Lathrop to Goshen, and (*d*) the California & Oregon Company then building from Roseville north en route to the Oregon line.

1865-1872—Southern Pacific, Its Incorporation, Congressional Aid, and First Fifty Miles of Road Built by It.

Southern Pacific Railroad Company, incorporated under laws of California (1865), to build southerly from San Francisco on a line between the Pacific Ocean and the Coast Range for, say, 100 miles (to Tres Pinos), thence through the Coast Range into the heart of the San Joaquin valley, say, to Goshen, thence, say, to Yuma (32° 40′) via San Diego (32° 40′). (See Map V.)

This proposed route was evidently predicated upon the idea that Congress would authorize a transcontinental line along approximately the thirty-third parallel, reaching California at Yuma. Congress, however, did not at that time authorize such construction but passed the Atlantic and Pacific Act (1866) providing for a road along the thirty-fifth parallel, and authorizing the Southern Pacific to construct from San Francisco to a junction with the Atlantic and Pa-

cific at the place where the line would cross the California boundary—a point which later turned out to be Needles (34° 50′, Map VI). *The Southern Pacific Railroad Company then abandoned the line of its proposed route south of Mojave, substituting therefor the line Mojave to Needles.*

In fulfilment of the conditions imposed by the Atlantic and Pacific Act, the Southern Pacific (*a*) acquired the local company which had constructed by 1864 the fifty miles from San Francisco to San Jose; (*b*) was the proprietor of a second company which built the thirty miles from San Jose to Gilroy in the year ending June 30, 1870, and (*c*) likewise became the proprietor of a third company which built the twenty miles from Gilroy to Tres Pinos in the year ending June 30, 1871. This hundred miles (San Francisco-Tres Pinos) is the only line of the Southern Pacific Railroad Company between the Pacific Ocean and the Coast Range referable to the Atlantic and Pacific Act. The only other construction by the company under that act was the line Goshen-Mojave-Needles, and 61 miles built westward from Goshen via Huron to Alcalde on the eastern slope of the Coast Range (Map VIII). The section from Tres Pinos to Alcalde was never built (Main Br., p. 36 foot-note). The construction under the Atlantic and Pacific Act was completed to Needles in 1883, when the Mojave-Needles section was leased to the Santa Fe, and later sold to it in 1911.

The precise date at which Stanford, Huntington, Hopkins and Crocker became connected with the Southern Pacific is not known but we do know that C. P. Huntington was interested therein as early as 1868, and it is undisputed that these four men were in control of the Southern Pacific Railroad Company in 1870, when it absorbed by consolida-

tion the companies which had constructed the lines (*a*) San Francisco to San Jose; (*b*) San Jose to Gilroy, and (*c*) Gilroy to Tres Pinos.

We now pass from the construction under the Atlantic and Pacific Act of July 27, 1866, to the construction under the Texas and Pacific Act of March 3, 1871. This act authorized the Texas and Pacific Company to construct a road along the thirty-second parallel through Yuma and into California, and authorized the Southern Pacific Railroad Company to build from Mojave through Los Angeles to Yuma, in the expectation that it would there make a junction with the Texas and Pacific building west. Thus the Southern Pacific Railroad Company, by lines diverging from Mojave, would connect San Francisco with two transcontinental roads (Map VI).

The two outstanding facts of this early period are these: (*a*) When Congress passed the Texas and Pacific Act, authorizing the Southern Pacific to build to Yuma, Stanford, Huntington, Hopkins and Crocker were publicly known to be in control of both the Southern Pacific and Central Pacific; and (*b*) the Southern Pacific Railroad Company did not at this time own any trackage, and had not constructed any mileage, except the 100 miles from San Francisco to Tres Pinos (fifty miles purchased, and fifty miles built). The main line through the San Joaquin Valley (Goshen to Mojave under the Atlantic and Pacific Act) was not begun by the Southern Pacific until 1871, when in that year Stanford, Huntington, Hopkins and Crocker began building south from Goshen, the point where their Central Pacific line had stopped (Main Br., 36, 42). We deal with this construction in the next period.

1872-1883—Southern Pacific Construction, Lease of Operative Units to Central Pacific as Soon as Built, and Operation Thereof Under Name of Central Pacific and Leased Lines.

This period is devoted to Southern Pacific Railroad Company construction (*a*) from Goshen via Mojave to Needles under the Atlantic and Pacific Act, and (*b*) from Mojave via Los Angeles to Yuma under the Texas and Pacific Act, and (*c*) from Yuma eastward.

As already stated, the line to Needles was completed in 1883, and the Mojave-Needles section was leased to the Santa Fe in that year and sold to it in 1911. In 1877 the line from Mojave via Los Angeles reached Yuma, but there was no Texas and Pacific construction there to form a junction, and hence the Southern Pacific Railroad carried on through Arizona and into New Mexico, where it made its first junction. This occurred at Deming in 1881 when connection was made with the Santa Fe. Thence the construction proceeded through El Paso, where connection was later made with the Rock Island, to Sierra Blanca, Texas, where it met the Texas and Pacific in 1882. It then continued south and east by construction and the acquisition of two Texas and two Louisiana railway companies, opening the line to New Orleans in 1883.

It is to be noted that the Sunset-Gulf line here under review became a through line of the Southern Pacific Railroad not because originally so designed, but in consequence (either wholly or partially) of the fact that it was not met as contemplated by Texas and Pacific construction coming westward.

When the Sunset-Gulf route was opened to New Orleans in 1883, Central Pacific lines formed a part of that route and it was not until eight years afterward (1891) that it was possible to travel from San Francisco to New Orleans over Southern Pacific rails alone. This first became possible by reason of the building by the Southern Pacific of a second line of trackage through the San Joaquin valley for purely local purposes in 1891 (Map X). The now well-known Coast route from San Francisco to Los Angeles via Santa Barbara was not opened until 1901, eighteen years after the completion of the line to New Orleans (Map IX).

This summarizes the history of construction during the period 1872-1883. Two important facts remain to be noted.

(*a*) The Southern Pacific Railroad lines were built by the same crews and engineers as the Central Pacific; the equipment was interchangeable throughout the entire system; and there was identity of management in both construction and operation.

(*b*) As soon as the Southern Pacific Railroad operative units were constructed, they were turned over to the Central Pacific to be operated, and the system was everywhere known as "Central Pacific and Leased Lines."

1883-1885—The Completed Central Pacific-Southern Pacific System Operated as "Central Pacific and Leased Lines."

For two years after the opening of the Sunset-Gulf route, the entire Central Pacific-Southern Pacific system continued to be operated as "Central Pacific and Leased Lines." (See table of this leased mileage in Central Pacific *v.* United States (21 Ct. Cl., 180 [1886]; aff'd 118 U. S., 235 [1886].) The

Southern Pacific Railroad lines had, however, become the larger part of the system and this circumstance led to the events with which we are now to deal.

Southern Pacific Company of Kentucky was incorporated March 17, 1884. A few months later, Senator Stanford, Mr. Huntington, Mr. Crocker, and Mr. Timothy Hopkins, adopted son of Mark Hopkins (d., 1878), met in New York and agreed among themselves upon the leasing to the Southern Pacific of Kentucky of all the railroad lines then in operation under the name of Central Pacific and Leased Lines, etc. These conferences (of which formal minutes were kept), resulted in the leases of 1885, *i. e.*, the lease of the Central Pacific lines, dated February 10, 1885, effective that day, and the lease of the Southern Pacific Railroad lines on February 17, 1885, effective April 1, 1885.

1885-1899—Southern Pacific of Kentucky as Proprietor of Southern Pacific-Central Pacific System, and Congressional Proceedings Appertaining Thereto.

Throughout this period, the Southern Pacific of Kentucky operated the entire Southern Pacific-Central Pacific system under the leases of 1885, and the modifications of the Central Pacific lease of 1888, 1893, 1894, and 1897. (The report of the Secretary of the Interior for the year ending June 30, 1885 [p. 50], records the execution of the Central Pacific lease of 1885.) Congress had occasion frequently to review and consider the lease of 1885 and the above-mentioned modifications and the relations of the Central Pacific and Southern Pacific lines, as shown, in part, by the following events:

(*a*) January 27, 1886. House of Representatives called for all Southern Pacific Company leases, etc. (Main Br., 125).

(*b*) February 5, 1886. The President submitted to the House of Representatives all outstanding leases (Main Br., 125).

(*c*) March 3, 1887. Act passed creating United States Pacific Railway Commission to investigate the affairs of the Pacific Railroads (Main Br., 127).

(*d*) January 17, 1888. Report of the Commission, consisting of one volume accompanied by evidence taken (in ten volumes) (Main Br., 127).

(*e*) February 17, 1890. Report of Special Committee of the Senate upon report of United States Pacific Railway Commission, for convenience called the Frye-Davis Report (Main Br., 129).

(*f*) July 21, 1894. Report of House Committee on Pacific Railroads, for convenience called Reilly Report (Main Br., 131).

(*g*) January 28, 1895. Report of Senate Committee on Pacific Railroads, for convenience called the Brice Report (Main Br., 131).

(*h*) April 17, 1896. Mr. Gear introduced Senate Bill 2894, providing, among other things, for the refunding of the debt of the Central Pacific and for the guarantee thereof, etc., by the Southern Pacific Company (Main Br., 133).

(*i*) April 25, 1896. Introduction of H. R. 8189 by Mr. Powers, with a report in support thereof from the House Committee of Pacific Railroads, for convenience called the Powers Report, calling for, among other things, the assumption of the obligations of

the Central Pacific by the Southern Pacific Company (Main Br., 134).

(*j*) May 1, 1896. Report of the Senate Committee on Pacific Railroads in support of Senate Bill 2894 above mentioned, for convenience called Gear's 1896 Report (Main Br., 136).

(*k*) January 13, 1897. Mr. Gear, Chairman Senate Committee on Pacific Railroads, submitted copies of Southern Pacific leases furnished at Mr. Gear's request by C. P. Huntington in letter January 8, 1897 (Main Br., 138-139).

(*l*) January 13, 1897. Mr. Gear introduced Senate Bill 3522 providing for a commission and containing other provisions similar to those later incorporated in the act of July 7, 1898 (Main Br., 139-140).

(*m*) March 16, 1897. Mr. Gear introduced Senate Bill 119 to similar effect (Main Br., 140).

(*n*) April 1, 1897. Report of Senate Committee on Pacific Railroads in support of Senate Bill No. 119, called for convenience Gear's 1897 Report (Main Br., 140).

(*o*) July 12, 1897. Mr. Hepburn introduced H. R. 3750, providing for settlement of debt by commission of cabinet officers (Main Br., 146).

(*p*) December 7, 1897. Mr. Gear introduced an amendment to Senate Bill 119, making it more nearly conform to the later enactment of July 7, 1898 (Main Br., 146).

(*q*) June 29, 1898. Senate Committee on Pacific Railroads, through Mr. Morgan, offered certain amendments; some adopted and some rejected,

whereupon Mr. Morgan announced his support of the measure for the appointment of the commission (Main Br., 147).

(*r*) June 29, 1898. Amendment suggested by Senator White of California and agreed to (Main Br., 148).

(*s*) July 6, 1898. Amendment suggested in the House by Mr. Barham of California and debate closed by remarks of Speaker Cannon in support of the bill. Bill passed (Main Br., 148).

(*t*) July 7, 1898. President approved the bill and the commission became created by law (Main Br., 148).

Throughout the reports, the following points were repeatedly made:

(*a*) The Central Pacific had no practicable entrance into San Francisco; (*b*) the lien of the Government did not extend to the non-bond-aided lines; (*c*) the security possessed by the Government was inadequate because the Central Pacific, without the Southern Pacific lines to supplement it, was an incomplete property; (*d*) in any settlement the lease by the Central Pacific would have to be subordinated to the claims of the Government; and (*e*) the Southern Pacific should guarantee the payment of the Central Pacific debt.

1899-1901—The Settlement of the Central Pacific Debt, the Reorganization of the Company, and Confirmatory Legislation: Death of C. P. Huntington and Purchase of Control of Southern Pacific by Union Pacific.

February 16, 1899. Execution of agreement between United States of America, Central Pacific Railroad Company,

and Speyer & Co., which included, among other provisions, one which required the outstanding leases of the Central Pacific properties to be subordinated to the new issues of securities. This was later done.

February 18, 1899. *The Commercial & Financial Chronicle* published a summary of the reorganization (VI R., 2258).

February 20, 1899. Report to both Houses of Congress by Commission created by act of July 7, 1898, to settle Central Pacific debt, subject to approval of the President. Agreement accompanied report.

February 20, 1899. Speyer & Co. made public plan of reorganization of Central Pacific Railroad Company, on which agreement with Government was based. Notes of the Central Pacific Railroad Company to the United States of America of the face value of $58,812,715.48 in the hands of the Secretary of the Treasury as reported by the Commission.

February 25, 1899. Full details of Speyer & Co.'s plan of reorganization published in *The Commercial & Financial Chronicle* (VI R., 2258-2268).

March 3, 1899. Act of Congress approved by President whereunder Secretary of the Treasury was authorized to sell any of the notes of the Central Pacific Railroad Company received by the Government—an act necessary to consummation of the provision in the agreement of February 1, 1899 (executed February 16, 1899), whereby Speyer & Co. agreed to purchase from the Government the four earliest

maturing notes of the Central Pacific Railroad Company and to pay therefor $11,798,314.14.

March 10, 1899. Purchase by Speyer & Co. of these four notes and payment of $11,798,314.14 therefor.

July-October, 1899. Reorganization of Central Pacific, issuance of bonds, subordination of lease from Central Pacific to Southern Pacific, guarantee of bonds by Southern Pacific, delivery to the Government of bonds, par for par, with Southern Pacific guaranty, to secure the sixteen unpaid Central Pacific notes then in the Government's hands.

March-October, 1899. *The Commercial and Financial Chronicle* contained articles dealing with settlement of debt and recording progress of reorganization (VI R., 2268-2279).

December, 1899. Attorney General's report showing settlement of the debt and reciting guarantee by Southern Pacific.

December 31, 1899. Reorganization of Central Pacific fully achieved before this date.

August 13, 1900. C. P. Huntington died, his associates having predeceased him: Mark Hopkins, March 28, 1878; Charles Crocker, August 14, 1888, and Leland Stanford, June 13, 1893.

March 3, 1901. Act of Congress (31 Stat., 1010, 1023) authorizing the Secretary of the Treasury to credit against the notes of the Central Pacific Railroad Company held in the Treasury of the United States interest on judgments which had been recovered for Government transportation by

the Southern Pacific Company and Central Pacific over non-bond-aided lines.

1901. Union Pacific purchased Southern Pacific stock theretofore held by C. P. Huntington and shortly afterward acquired other stock, building its total holding up to forty-six per cent of the Southern Pacific stock outstanding.

1901-1913—The Union Pacific Merger.

During this period of twelve years, the Union Pacific controlled the Southern Pacific, including the Central Pacific. In 1913, the control came to an end in consequence of the decree in United States *vs.* Union Pacific R. Co., 226 U. S., 61 (1912). The action just mentioned was commenced in 1908, and was based upon the fact, among others, that until 1901 the lines operating through Ogden (C. P. and U. P.) were in "sharp, well-defined and vigorous" competition with the Sunset-Gulf route owned by the Southern Pacific; that the Southern Pacific was helpless to destroy that competition; that there was the same incentive for the competition that there would have been had the Southern Pacific not owned the Central Pacific; and that the Southern Pacific as a matter of self-preservation was compelled to co-operate with the Union Pacific (Main Br., pp. 192-200, 318-320; Supp. Br., 45-122). This theory of the Government was adopted by this court and is the basis of its decision in the Union Pacific case (226 U. S., 61).

1913-1914—The Failure of the Plan for Union Pacific Acquisition of the Central Pacific.

Upon the going down of the mandate in the Union Pacific case, it became necessary to devise a plan for the Union Pa-

cific to dispose of its stock in the Southern Pacific. In seeking a solution of this problem, the then Attorney General took the position that it was unlawful for the Southern Pacific to hold the Central Pacific and he declared that unless the Southern Pacific sold the Central Pacific to the Union Pacific he would bring a suit to dissolve the "combination" under the Anti-trust Act; but on the other hand, if the Southern Pacific would agree to part with the Central Pacific, he would see to it (*a*) that the Union Pacific paid a higher price therefor than could reasonably be expected at forced sale; and (*b*) that the Southern Pacific would be permitted to retain certain Central Pacific trackage indispensable to the Southern Pacific in a peculiar degree (Kruttschnitt, II R., 753, 755, 786). In these circumstances, the Southern Pacific, still under the control of the Union Pacific, and with a threatened suit in sight, took up negotiations with the Union Pacific for the acquisition by it of the Central Pacific. Terms were arranged which required the submission of the plan to the Railroad Commission of California, which refused to approve the same except upon conditions specified by it, which were not agreeable either to the Union Pacific or the Southern Pacific. The plan accordingly broke down and this action was brought in the following year. The plan broke down because the Union Pacific was not prepared to buy the Central Pacific unless it obtained in connection therewith important trackage facilities over rails of the Southern Pacific without which, it may be said, the Central Pacific is an incomplete property. The Railroad Commission was unwilling to give a preferential and exclusive privilege to the Union Pacific over Southern Pacific

rails and the Southern Pacific was unwilling to throw open its trackage to all railroad carriers.

In the course of their decision upon this subject, reviewing the traffic problems appertaining to the Central Pacific lines, both interstate and intrastate, the Commission said it was very doubtful whether interstate traffic would be improved by the dismemberment, but it was absolutely certain that intrastate commerce would be injured. They declared in terms "that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line" (Main Br., p. 263).

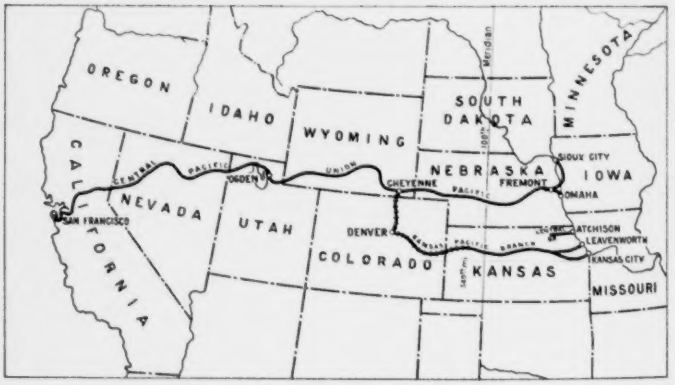
1914-1921—Pendency of Present Suit.

This suit was brought February 11, 1914, heard December 1, 1915, and dismissed by decree filed March 9, 1917.

The Interstate Commerce Commission gave the Southern Pacific permission to continue to use its steamers from New Orleans to New York in January and May, 1917, under Section 11 of the Act of August 24, 1912, *i. e.,* Panama Canal Amendment to Interstate Commerce Act.

Also, in this period, the Transportation Act of 1920 has become a law, enlarging the duties of connecting carriers as amongst themselves and providing for redress through the Interstate Commerce Commission, which is empowered to apply to the District Courts in aid of their authority. The Interstate Commerce Commission is authorized to prevent discriminatory practices, to compel the furnishing of facilities, and generally to enforce mandatory and prohibitive provisions of a much more comprehensive nature than those contained in the Pacific Railroad Laws.

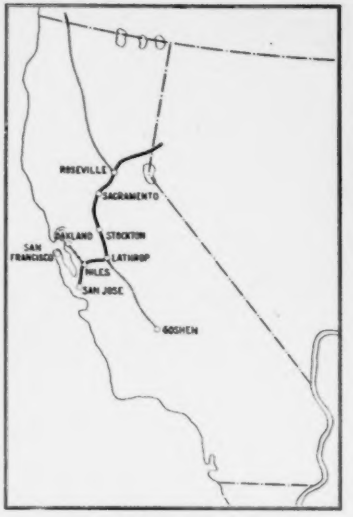
PACIFIC RAILROADS AS CONTEMPLATED BY THE ACT OF JULY 1, 1862.



PACIFIC RAILROADS AS CONSTRUCTED.

BOND-AIDED LINE.

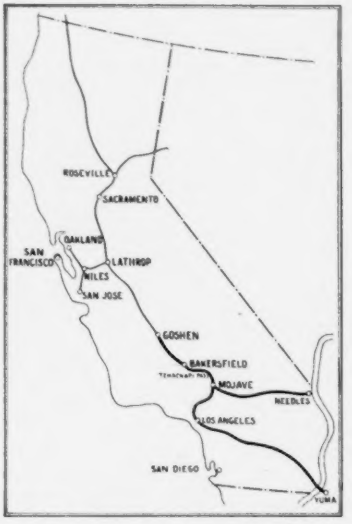
Central Pacific: Ogden-Sacramento.
Western Pacific: Sacramento-San Jose.
(W. P. absorbed by C. P. 1870.)



CENTRAL PACIFIC NON-BOND-AIDED EXTENSIONS.

(Shown in hatched lines.)

APPROXIMATE ROUTE OF SOUTHERN PACIFIC LINE CONTEMPLATED IN ARTICLES OF ASSOCIATION, DECEMBER 2, 1865.



CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

(Constructed under 12 Stat. 489, 14 Stat. 239, 14 Stat. 292, 16 Stat. 573.)

—— Central Pacific.
▬▬ Southern Pacific.

PHOTOGRAPHIC RELIEF MAP OF CALIFORNIA.

INDEX OF MAPS

Page

Pacific Railroads as Contemplated by the Act of July 1, 1862 14

Pacific Railroads as Constructed 17

Central Pacific Bond-aided Line 22

Central Pacific Non-bond-aided Extensions 30

Approximate Route of Southern Pacific Line Contemplated in Articles of Association, December 2, 1865 33

Central Pacific-Southern Pacific Arterial System, showing the Four Lines to the Boundaries of California Authorized by Congress 43

Northern Division of Southern Pacific 68

Rail Connection Between Tehama and Portland 214

Routes Between Sacramento and San Francisco 215

Eastern Rail Connections of the Southern Pacific 233

Union Pacific Lines to the Pacific Coast, and Their Relation Geographically to the Central Pacific Main Line 267

Union Pacific Lines to the Pacific Coast, and Their Relation Geographically to the Central Pacific Main Line, Feeders and Extensions 267

San Joaquin Valley Lines 274

Southern Pacific Coast Line from San Francisco to Los Angeles, Opened 1901 276

INDEX.

Statement of the Case.

Page

Outline of Case..... 1

(1) Events from the cession of upper California to the United States by Mexico under the treaty of Guadalupe Hidalgo, February 2, 1848, to the incorporation of the Central Pacific Railroad Company under the laws of California, June 28, 1861, followed by the Act of July 1, 1862 (12 Stat. 489)..... 9

(2) The Act of July 1, 1862 (12 Stat. 489), and the construction of the bond-aided lines from the Missouri River to the Pacific Ocean, including (a) the construction between Ogden and Sacramento by the Central Pacific, and (b) the construction between Sacramento and San Jose by the Western Pacific, which latter company was absorbed by the Central Pacific in consolidation proceedings June 23, 1870..... 12

(3) The construction of the Central Pacific non-bond-aided lines in California..... 26

(a) Roseville to the Oregon boundary..... 27

(b) Niles to Oakland..... 28

(c) Lathrop to Goshen..... 29

(4) The history of the Southern Pacific Railroad Company from its incorporation in 1865 including its acceptance on November 30, 1866, of the grant made to it by the Atlantic and Pacific Act of July 27, 1866, and its acceptance on April 3, 1871, of the grant made to it by the Texas Pacific Act of March 3, 1871, and thenceforward until its road reached Yuma, October 22, 1877..... 32

(5) The history of the Southern Pacific Sunset-Gulf line from the completion of the road to Yuma, October 22, 1877, under the Texas Pacific Act, to the opening of the line to New Orleans February 1, 1883..... 52

(6) The operation of all the Southern Pacific lines by the Central Pacific, commencing with the construction south of Goshen in 1872 and ending April 1, 1885... 55

(7) The leasing of the Southern Pacific lines to the Central Pacific Railroad Company..... 67

Page

(8) Identity of management and equipment in the construction and operation of the Central Pacific-Southern Pacific system and its control by Stanford, Huntington, Hopkins and Crocker..... 74

(9) Steps taken between March 17, 1884, and April 1, 1885, for the organization of the Southern Pacific Company, for the termination of the leases to the Central Pacific Railroad Company, and for the leasing of the Central Pacific and Southern Pacific Lines to the Southern Pacific Company..... 102

(10) The change from Central Pacific operation to Southern Pacific operation March 1, 1885, to April 1, 1885.... 110

(11) The operation of the lines and the intercorporate relations of the corporations comprising the Southern Pacific-Central Pacific system from April 1, 1885, to the filing of the petition herein February 11, 1914... 121

(12) Governmental action—Congressional and executive—between April 1, 1885, and the passage of the Act of July 7, 1898 (30 Stat. 652, 659), creating the commission for the settlement of the Central Pacific debt.... 124

(13) The Act of July 7, 1898 (30 Stat. 652, 659), and the preliminary negotiations which led to the settlement of February 1, 1899 (executed February 16, 1899), together with plans for the readjustment of the Central Pacific Railroad Company, all of which immediately became matter of general and public knowledge 149

(14) The settlement with the Government, dated February 1, 1899, but actually executed February 16, 1899..... 154

(15) The part which the Southern Pacific was obliged to and did take in the readjustment of the Central Pacific Railroad Company's affairs, including the subordination of its 99-years' lease, without which the reorganization could not have been accomplished..... 166

(16) The approval by Congress of the settlement of February 1, 1899, by the passage of the Act of March 3, 1899 (30 Stat. 1245), conferring authority upon the Secretary of the Treasury to carry the settlement into effect 176

Page

(17) The payment of $11,798,314.14 to the Government by Speyer & Company March 27, 1899, as a part of the Central Pacific settlement..... 181

(18) The incorporation of the Central Pacific Railway Company in August, 1899, the transfer to that company of the assets of the old company, the issuance of the securities of the new company, the purchase from the new company of its preferred stock by the Southern Pacific Company, and the purchase by the Southern Pacific Company of the stock of the old company from the holders thereof..... 182

(19) The Act of March 3, 1901 (31 Stat. 1023) as a further recognition and confirmation of the readjustment plan..... 185

(20) The payment to the Government of the $47,050,172.48, with interest, in discharge of the sixteen notes remaining in the hands of the Government after Speyer & Company had taken over on March 10, 1899, the four earliest maturing notes..... 189

(21) The death on August 13, 1900, of C. P. Huntington, the last survivor of the four men who built the Southern Pacific-Central Pacific system; the acquisition by the Union Pacific of the Huntington stock and other stock in the Southern Pacific Company, giving the Union Pacific a dominating control of the Southern Pacific-Central Pacific system; and the operations of the latter by the former until the final decree in the Union Pacific unmerger suit, June 30, 1913... 190

(22) The case of United States v. Union Pacific Railroad Company, 226 U. S. 61, from its commencement February 1, 1908, to the entry of the final decree June 30, 1913..... 192

(23) How the question of the purchase of the Central Pacific by the Union Pacific arose and came to be spoken of in the Union Pacific case..... 200

(24) How the plan for the purchase of the Central Pacific by the Union Pacific from the Southern Pacific failed of accomplishment..... 206

(25) The competitive conditions existing between the Ogden Route and the Southern Pacific Sunset-Gulf Route before the Union Pacific Merger of 1901..... 219

Page

(26) The non-competitive conditions between the Ogden Route and the Southern Pacific Sunset-Gulf Route during the Union Pacific merger from 1901 to 1913..... 220

(27) The return to the conditions which existed prior to the merger of 1901, and the resumption of competition between the Ogden Route and the Southern Pacific Sunset-Gulf Route consequent upon the unmerger.. 220

(28) The treatment of the Union Pacific by the Central Pacific both before and since the Union Pacific merger..... 222

(29) The treatment accorded by the Southern Pacific to its connections generally..... 229

(30) The fair treatment accorded the Central Pacific by Stanford, Huntington, Hopkins and Crocker, notwithstanding their interest in the Southern Pacific Sunset-Gulf Route; and the continuation of that treatment down to the time of the commencement of this suit..... 234

(31) The radical changes in traffic conditions generally between 1901, when the Union Pacific merger occurred, and 1914, when this suit was commenced..... 241
(a) Through routing and joint rates under the Hepburn Act of June 29, 1906 (34 Stat. 584)..... 241
(b) The right of the shipper to route his own freight under Act of June 18, 1910 (36 Stat. 551).... 242
(c) The Panama Canal opened August 15, 1914..... 243
(d) The San Pedro, Los Angeles & Salt Lake Railroad Company operating since 1905..... 244
(e) Western Pacific Railway Company operating since July 20, 1910..... 245
(f) Electric lines in California constructed since 1901 245

(32) The Southern construction (Yuma-El Paso-New Orleans) as a normal and natural growth..... 250

(33) The absence of attempts at monopoly and monopolistic practices 252

(34) The active and vigorous competition between the Ogden and Sunset-Gulf Routes, and the absence of any attempt at monopoly, as shown by the report and order of the Interstate Commerce Commission granting the application of the Southern Pacific Company, under the Panama Canal Act Amendment of the Interstate Commerce Act, for permission to continue to operate the line of steamships which forms a part of the Sunset-Gulf route..... 253

Page

(35) The impossibility of dismemberment of the Southern Pacific-Central Pacific system without substantial deterioration in the public service..... 259

(36) Mileage of lines owned by Southern Pacific and proprietary companies, and detailed table of mileage of Central Pacific lines..... 268
(a) Mileage of lines owned by Southern Pacific and proprietary companies (June 30, 1915)..... 268

(37) Several subsidiary matters may be here noted to facilitate an understanding of the case..... 270
(a) United States v. Southern Pacific Company, United States Circuit Court, Southern District of California, commenced July 16, 1894, dismissed August 4, 1894..... 270
(b) A brief reference to the history of the more important corporations which figure in the case.. 271
(c) The construction by the Southern Pacific Company of the line through the west side of the San Joaquin Valley..... 273
(d) The construction by the Southern Pacific Company of the Coast Line from San Francisco to Los Angeles..... 275
(e) The gradual decline in the importance of the Sunset-Gulf route since 1897..... 277
(f) Fires which prevented the production by the defendants of several records in the case..... 279
(g) The witnesses for the Government..... 279

(38) Conclusion 281

ARGUMENT

Page

I. This case does not involve any combination of competitive units, or any combination at all, for the Southern Pacific and Central Pacific lines were projected and built and have been operated since their origin as one property..... 282

II. At the time of the passage of the Anti-trust Act (July 2, 1890) the Southern Pacific and Central Pacific lines were owned by a single proprietor, although the Central Pacific lines were held under a 99-year lease made February 17, 1885, instead of in fee; but "it is obvious that in principle the right of a lessee is the same as that of a purchaser in fee." (224 U. S. 565)..... 288

III. The Act of July 7, 1898 (30 Stat. 652, 659) creating the commission for the settlement of the Central Pacific debt, contemplated as natural if not inevitable, the agreement subsequently made, and it invested the commission with full authority to agree to the plan which was adopted for the payment of the indebtedness, including the provision by which the Southern Pacific Company acquired the stock of the Central Pacific Company..... 294

IV. In any event the Government is estopped by its conduct to question the legality of the unified control of the Central Pacific and the Southern Pacific lines 302

V. The present status of the Southern Pacific-Central Pacific lines was confirmed by the Acts of March 3, 1899 (30 Stat. 1245), and March 3, 1901 (31 Stat. 1023)..... 312

VI. It is established by the opinion and decree in United States v. Union Pacific Railroad Company, 226 U. S. 61 (1912), that up to the time of the Union Pacific merger in 1901, "sharp, well-defined and vigorous" competition existed between the Ogden and El Paso routes, notwithstanding the ownership of the Central Pacific by the Southern Pacific; and it is here in proof that the competitive conditions of 1901 and before were restored after the unmerger in 1913..... 318

Page

VII. It is thus apparent that we may draw upon the three departments of the Government of the United States for support in our position that the Southern Pacific may and does lawfully control and operate the Central Pacific and that no violation of the Anti-trust Act is involved in such control and operation..... 320

VIII. Irrespective of the considerations already dealt with, and considering the matter as an open question, traffic conditions between the El Paso and Ogden routes are such that the control of the Central Pacific line by the Southern Pacific Company, does not constitute an undue restraint of commerce 323

IX. The Government, by reason of the position taken and claims urged by it in the Union Pacific case, is estopped from questioning the validity of the ownership and control of the Central Pacific Railway Company by the Southern Pacific Company 337

X. The final decree in the case of the United States v. Union Pacific Railroad Company, Southern Pacific Company, and others, is a bar to all relief sought by the Government in this case..... 349

XI. No violation of the Pacific Railroad Laws is presented in this case..... 362

XII. The construction which the Government attempts to put upon the Pacific Railroad Laws is inconsistent with the position which has always been taken by the three departments of the Government concerning the control of the Central Pacific by the Southern Pacific..... 372

XIII. Even though a violation of the Pacific Railroad Laws were proved in the case, the remedy would not be dismemberment, but would be injunction of restraint or of command to comply with the provisions of the acts.....373

XIV. There is no evidence whatever of any attempts at monopoly or monopolistic practices..... 374

Page

XV. It is impossible to dismember the Southern Pacific-Central Pacific system without substantial deterioration in the public service..... 375

XVI. It is not necessary here to consider whether properties which had been operated together as one from their origin continuously down to July 2, 1890, under say, tenures at will, could or could not thereafter be legally unified by purchase, lease, etc., because at the time of the passage of the Anti-trust Act, as we have elsewhere shown, the properties here involved were owned by a single proprietor, although the tenure under which a part of the properties was owned was a 99-year term and not a fee..... 381

XVII. Considering that (a) these lines were operated as one from their origin, and that (b) on July 2, 1890, the Central Pacific lines were held under a 99-year term expiring April 1, 1984, it is clear that the lease of December 7, 1893, which cut down the term three months, viz: to January 1, 1984, is entirely lawful, leaving out of view the argument next to be made that, even if the lease were unlawful, the lessee, Southern Pacific Company, would be deemed to hold under the original term created February 17, 1885..... 383

XVIII. If the lease of December 7, 1893, were invalid as one executed after the passage of the Anti-trust Act, the Southern Pacific Company would nevertheless be treated at law and in equity as the holder of the 99-year term which it acquired under the lease of February 17, 1885 notwithstanding the provision of cancellation contained in the lease of December 7, 1893..... 384

XIX. We here argue but only briefly the point that the Anti-trust Act did not make unlawful the operation by a single proprietor of lines owned by him at the date of the passage of the act which were not then competitive but which could be made competitive if divorced..... 391

XX. The argument of counsel for the Government in this case overlooks the value and importance to the Government of the guaranty of the bonds by the Southern Pacific Company in 1899..... 394

Page

XXI. Both sides seem to be agreed, although for different reasons, that the Government cannot be said to have been an accomplice in the violation of its own laws: the appellees contending that no laws were violated, and counsel for the Government asserting either that (a) the Government did not know the facts; or (b) was unconscious of the law; or (c) in final analysis had no power through its own officers to violate its own laws.. 397

XXII. The argument of counsel that the 99-year lease of the Central Pacific lines to the Southern Pacific Company, dated February 17, 1885, was or is invalid, is without merit..... 402

XXIII. This case does not come within any rule or supposed rule dealing with the prevention of competition coming into existence..... 413

XXIV. The purely theoretical nature of the present suit is shown by the complete absence of complaint on the part of shippers or the public generally.... 417

XXV. In its last analysis the relief here sought is experimental and not judicial in its nature. The Government does not seek the destruction of a new and unlawfully created condition which took the place of an old and natural one; it seeks the destruction of an old and natural condition in order that it may create by a new and untried experiment a condition which has no prototype..... 418

XXVI. Matters of subsidiary importance..... 419

(a) The price paid in 1899 by the Southern Pacific Company for Central Pacific shares was not excessive 419

(b) Neither the Northern Division of the Southern Pacific Railroad nor its Coast Line opened in 1901 bears upon the issues here involved.. 420

(c) In considering the estoppels against the Government arising out of the settlement of 1899, it is of no consequence whether the provisions thereof which were designed to protect the Government were in the first instance suggested by Mr. Speyer or by the Government itself 422

Page

(d) The powers of the Commission under the Act of July 7, 1898, were limited in those particulars only which are expressed in the act. In respect of matters not so limited the Commission had what the act gave it, "full power" in the matter..... 423

(e) Because of the 30 years' de facto unification of the properties, this case is in a class apart.. 425

(f) Testimony contained in Report of Pacific Railroad Commission is not competent evidence of facts therein narrated..... 426

XXVII. Conclusion 427

TABLE OF CASES

Pages

Abbott v. N. Y. R. R. Co., 145 Mass. 450, 15 N. E. 91 (1888) 314
Atchison v. Peterson, 20 Wall. 507 (1874)..... 317
Aurora City v. West, 7 Wall. 82 (1869)..... 354
Austin's Jurisprudence..... 289

Bass v. Occidental Life Ins. Co., 19 N. M. 193, 142 Pac. 798 (1914) 307
Bear Lake Co. v. Garland, 164 U. S. 1 (1896)..... 383
Beloit v. Morgan, 7 Wall. 619 (1869)..... 354
Bigelow on Estoppel..... 341
Bradley v. Marshall, 54 Ill., 173 (1870)..... 307
Broder v. Water Co., 101 U. S. 274 (1879)..... 318
Buford v. Houtz, 133 U. S. 320 (1890)..... 317

Caldwell v. Smith, 77 Ala. 157 (1884)..... 343
California v. Central Pacific R. Co., 127 U. S. 1, (1888)....22, 36
Canton Roll & Machine Co. v. Rolling Mill Co., 155 Fed. 321 (1907)..... 341
Central Pacific R. R. Co. v. California, 162 U. S. 91 (1896).. 410
Chamberlain v. Dunlop, 126 N. Y. 45; 26 N. E. 966 (1891).. 389
Chicago R. R. v. R. R. Commission, 237 U. S. 220 (1915).... 365
Clearwater v. Meredith, 1 Wall 25 (1863)..... 203
Coe v. Hobby, 72 N. Y. 141 (1878)..... 389
Commonwealth v. Turnpike Co., 153 Pa. St. 47, 25 Atl. 1105 (1893) 311
Corporation of Canterbury v Cooper, 99 Law Times Rep. (N. S.) 612 (1908)..... 390
Cromwell v. County of Sac., 94 U. S. 351 (1877)..... 355
Curtis v. Trustees of Bardstown, 29 Ky. 538 (1831)..... 352

Dahl v. Montana Copper Co., 132 U. S. 264 (1889)..... 402
Daniels v. Tearney, 102 U. S. 415 (1880)..... 343
Davis v. Wakelee, 156 U. S. 680 (1895)..... 342
Del Bondio v. Insurance Co., 28 La. Ann. 139 (1876).... 344
Denton v. Erwin, 5 La. Ann. 18 (1850)..... 344
Deseret Salt Co. v. Tarpey, 142 U. S. 241 (1891)..... 314
Detroit Ry. v. Mich. Comm., 235 U S. 402, (1914)..... 358
Doe v. Courtenay, 11 Q. B. 702, 116 Eng. Rep. 636 (1848).. 389
Doe v. Poole, 11 Q. B. 714, 116 Eng. Rep. 641 (1848).....388, 389

Easton v. Penny, 67 Law Times Rep. (N. S.) 290, 41 W. R. 72 (1892)..... 390

Flagg v. Dow, 99 Mass. 18 (1868)..... 388

Galt v. Provan, 131 Iowa 277, 108 N. W. 760 (1906)..... 345
Gammon v. Freeman, 31 Maine 243 (1850)..... 305
Grogan v. San Francisco, 18 Cal. 590 (1861)..... 313

Pages

Halsbury's Laws of England, 24 p. 264..... 289
Harley v. State, 40 Ala. 689 (1867)..... 406
Henderson v. Henderson, 3 Hare 115..... 354
Herman, on Estoppel..... 341
Hodges v. Winston, 95 Ala. 514, 11 So. 200 (1892)..... 347
Houck v. Frisbee, 66 Mo. App. 16 (1896).....306, 307

Kerfoot v. Farmers & Merchants' Bank, 218 U. S. 281 (1910) 412

Lester Agricultural Chemical Works v. Selby, 68 N. J. Eq. 271, 59 Atl. 247 (1904)..... 388
Logan v. Tibbott, 4 Green (Ia.) 389 (1854)..... 307

MacDonald v. Wolff, 40 Mo. App. 302 (1890)..... 305
MacFadden v. United States, 213 U. S. 288 (1909)..... 202
McKee v. Chautauqua Assembly (C. C. A., 2nd Ct. 1904) 130 Fed. 536..... 405
Market Street Co. v. Hellman, 109 Cal. 571 (1895)..... 405
Mattingly's Executor v. Brents, 155 Ky. 570, 159 S. W. 1157 (1913) 292
Metropolitan Securities Co. v. Ladd (C. C. A., 2nd Ct. 1909) 173 Fed. 269..... 304
Michels v. Olmstead, 157 U. S. 198 (1895)..... 342
Michigan Land & Lumber Co. v. Rust (C. C. A., 6th Ct., 1895) 68 Fed. 155..... 315
Michigan v. Jackson R. Co. (C. C. A., 6th Ct., 1895) 69 Fed. 116..... 315
Milliken v Faulk, 111 Ala. 658; 20 So. 594 (1896)..... 292
Montgomery Traction Co. v. Montgomery Light & Water Power Co., (C. C. A., 5th Ct., 1916) 229 Fed. 672..... 407
Moser v. Phila. R. R. Co., 233 Pa. 259, 82 Atl. 362 (1912).. 346

Noble v. Ward, L. R. 2 Ex. 135 (1867)..... 390
Norfolk Railroad Co. v. Perdue, 40 W. Va. 442, 21 S. E. 755 (1895) 311
Nugent v. The Supervisors, 19 Wall. 241 (1873)..... 203

Ogden v. Rowley, 15 Ind. 56 (1860)..... 345
Oregon & C. R. Co. v. United States, 238 U. S. 393 (1915).. 27

Page, on Contracts..... 305
Park's Estate, 29 Utah 257; 81 Pac 83 (1905)..... 426

Railway Co. v. McCarthy, 96 U. S. 258 (1878)..... 342
Realty and Rebuilding Company v. Rea (Sup. Ct. Cal., 1920) 194 Pac. 1024..... 292
Roberts v. Vonnegut, 58 Ind. App. 142, 104 N. E. 321 (1914).. 307

Samuels v. Ottinger, 169 Cal. 209 (1915)..... 292
Schenectady & Saratoga Plank Road Co. v. Thatcher, 11 N. Y. 102 (1854)..... 405

Pages

Schieffelin v. Carpenter, 15 Wend. 400 (1836)..... 389
Shaw v. First Baptist Church, 44 Minn. 22; 46 N. W. 146 (1890) 307
Shaw v. Kellogg, 170 U. S. 312, (1898)..... 316
Sinking Fund Cases, 99 U. S. 700 (1879)..... 10
Siren, The, 7 Wall 152 (1869)..... 311
Smith v. Kerr, 108 N. Y. 31; 15 N. E. 70 (1888)..... 389
Southern Pacific Co. v. Interstate Commerce Commission, 200 U. S. 536 (1906)..... 241
Southern Pacific Company's Ownership of Atlantic Steamship Lines, 43 I. C. C. 168 (1917).....256, 328
Southern Pac. R. Co. v. Orton, 6 Sawy. 157; 32 Fed. 457 (1879) 32, 44
Southern Pac. R. Co. v. United States, 168 U. S. 1 (1897).. 34
Southern Pac. R. Co. v. United States, 189 U. S. 447, (1903) 40
State v. Flint Railroad Co., 89 Mich. 481, 51 N. W. 103 (1891) 316
State v. Illinois Central R. R. Co., 246 Ill. 188, 92 N. E. 814 (1910)..... 310
State of Iowa v. Carr (C. C. A., 8th Ct., 1911), 191 Fed. 257 .....309, 348
State v. Hallock, 20 Nev. 73, 15 Pac. 472 (1887)..... 315
State v. New Orleans, 104 La. 685, 29 So. 312 (1900)..... 316
Stearns v. Wood, 236 U. S. 75, (1915)..... 202
Stetson v. Stetson, 146 N. Y. S. 245 (1914)..... 426
Stockton v. Ford, 18 How. 418 (1855)..... 353
Stone v. United States, 64 Fed. 667 (1894)..... 358

Thomas v. Zumbalen, 43 Mo. 471 (1869)..... 388
Tiffany on Real Property..... 292
Town of Weston v. Ralston, 48, W. Va. 170, 36 S. E. 446 (1900) 342
Turner Construction Co. v. Union Terminal Co., (C. C. A. 5th Ct., 1916) 229 Fed. 702..... 408

Union National Bank v. Matthews, 98 U. S. 621 (1879).... 412
Union Pacific R. Co. v. Hall, 91 U. S. 343 (1876)..... 14
Union Pacific R. Co. v. United States (1877) 13 Ct. Claims, 401; s. c., (1878) 99 U. S. 402..... 19
United States v. California & Oregon Land Company, 192 U. S. 355 (1904)..... 356
United States v. Clark (C. C. A. 9th Ct., 1905) 138 Federal 294 310
United States v. Central Pacific R. Co., (1877) 4 Sawy. 341; 25 Fed. Cas. 354; s. c., (1878) 99 U. S. 449..... 19
United States v. Debs, 64 Fed. 724 (1894)..... 270
United States v. Detroit Timber & Lumber Co. (C. C. A. 8th Ct., 1904), 131 Fed. 668..... 309
United States v. Flint, Fed. Cas. No. 15, 121 (1876)..... 311

Pages

United States v. Great Lakes Towing Co., 208 Fed. 733, (1913) 373
United States v. New England Fish Exchange, 258 Fed. 732 (1919) 374
United States v. Northern Pacific Ry. Co., 177 U. S. 435 (1900) ..... 3[illegible]
United States v. Reading Co., 183 Fed. 427 (1910) ..... 4[illegible]
United States v. Southern Pac. R. Co., 146 U. S. 570 (1892)..34,[illegible]
United States v. S. P. Co., C. P. R. Co., et al. 239 Fed. 998 (1917) .....6, 282, 285, 296, 301, 312, 372, 380, 384, 386, 393, 395, 417, 421, 423.
United States v. Stinson (C. C. A. 7th Ct., 1903) 125 Fed. 907 347
U. S. v. Trans-Missouri, 166 U. S. 290 (1897)..... 382
United States v. Union Pacific R. Co., 188 Fed. 102 (1911)..... 244
United States v. Union Pacific R. Co., 226 U. S. 61, (1912)..... .....122, 192, 205, 206, 219, 220, 285, 318, 337, 349, 411
United States v. Union Pacific R. Co., 148 U. S. 562 (1893).. 16
United States v. United States Steel Corp. 251 U. S. 417 (1920) 286, 302, 308, 373, 376, 417, 419
United States v. White, 17 Fed. 561 (1883)..... 311
United States v. Willamette Co., 54 Fed. 807 (1892)..... 309
United States v. Yorba, 1 Wall. 412 (1864)..... 9

Van Rensselaer's Heirs v. Penniman, 6 Wend. 569 (1831).. 388
Venner v. New York Central & H. R. R. Co., 177 App. Div. 296, 164 N. Y. S. 626 (1917).....293, 382

Walker v. United States, 139 Fed. 409 (1905)..... 348
Walker v. Walker, 37 La. Ann. 107 (1885)..... 344
Waskey v. Chambers, 224 U. S. 564 (1912)..... 291
Waterpark v. Fennell, 7 H. C. L. 684, 11 Eng. Rep. 273... 397
Western Adv. Co. v. Star Publishing Co., 146 Mo. App. 90, 123 S. W. 969 (1910)..... 307
Wiggins Ferry Co. v. O. & M. Ry., 142 U. S. 396 (1892).. 355
Witmark v. New York Elevated Railroad Co., 76 Hun. 302 (1894) 389
Woodfall on Landlord and Tenant..... 389

Zick v. London United Tramways, Ltd., L. R. 2 K. B. 126 (1908) 390

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920

UNITED STATES OF AMERICA,
Petitioner and Appellant,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, WILLIAM SPROULE, JULIUS KRUTTSCHNITT, ROBERT GOELET, CORNELIUS N. BLISS, WALTER P. BLISS, HENRY W. DE FOREST, J. HORACE HARDING, CHARLES W. HARKNESS, HENRY E. HUNTINGTON, JAMES N. JARVIE, LEONOR F. LOREE, LEWIS J. SPENCE, ERIC P. SWENSON, JAMES N. WALLACE AND OGDEN MILLS.
Defendants and Appellees.

No. 21

Appeal from the District Court of the United States for the District of Utah (Sanborn, Hook and Carland, C. JJ.).

BRIEF FOR APPELLEES.

This is a suit brought February 11, 1914, heard December 1, 1915, and dismissed by decree filed March 9, 1917. The Government has appealed and herein seeks to dismember the Southern Pacific Company's

system of railroads by requiring the Southern Pacific Company to divest itself of its proprietary interest in that portion thereof known as the Central Pacific lines, upon the ground that this interest violates (a) the Anti-trust Act of July 2, 1890, and, (b) the Pacific railroad laws.*

The system thus sought to be destroyed has existed in its present form from the construction of the roads, which began as to the Central Pacific during the Civil War and as to the Southern Pacific as early as 1870-72, and ended, we may say for present purposes, on February 1, 1883, when the Sunset-Gulf line† of the Southern Pacific was opened to New Orleans; i. e., Central Pacific construction may be said to have occupied the period 1861 to 1870-72, and Southern Pacific the period 1870-72 to 1883.

*Act of July 1, 1862 (12 Stat. 489); Act of July 2, 1864 (13 Stat. 356); Act of March 3, 1865 (13 Stat. 504); Act of July 3, 1866 (14 Stat. 79); Act of June 25, 1868 (15 Stat. 79); Resolution of April 10, 1869 (16 Stat. 56); Act of June 20, 1874 (18 Stat. 111); Act of June 19, 1878 (20 Stat. 169).

The Acts of 1862 and 1864 provide that the roads which constitute the line from the Missouri River to the Pacific Ocean shall be operated and used "as one connected, continuous line," and that each of the constituents of the road from the Missouri River to the Pacific Coast shall afford and secure to each of the other constituents of that line equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of the road or business of any or either of the others. The Government contends that the unification of the Central Pacific and Southern Pacific violates these Pacific Railroad laws, not for a failure to afford advantages or facilities nor for discrimination, but upon the ground that no constituent of the Pacific roads can be interested in or united with any railroad property which is competitive with any other constituent of that line.

---

†The Sunset-Gulf line of the Southern Pacific Company is the name given by and used in that company to describe the rail line from San Francisco to Galveston and New Orleans and thence by water to New York.

The Sunset line of the Southern Pacific Company is the name given by and used in that company to describe the rail line from San Francisco to New Orleans and thence by rail connections to the Atlantic Coast. In the record, however, the line by rail to New Orleans and thence by water to New York is spoken of sometimes as the Sunset line and sometimes as the Sunset-Gulf line.

The present proprietary interest of the Southern Pacific in the Central Pacific line, so sought to be terminated, arises out of (*a*) a 99-year lease of those lines, made early in 1885, several times modified in particulars not important here, and (*b*) the ownership of all of the stock of the Central Pacific Railway Company acquired by the Southern Pacific Company in 1899 as an essential part of the settlement and payment of the Central Pacific debt to the Government, amounting to $58,812,715.48, made under the authority of and in conformity to the Act of July 7, 1898. (30 Stat. 652, 659.)

It appears from this that the proprietary interest of the Southern Pacific in the Central Pacific lines antedates the Anti-trust Act of July 2, 1890, by more than five years. It appears, too, that a second form of ownership was acquired in 1899, in a transaction with the Government, authorized by an act of Congress, and, as we shall see, executed and approved by President McKinley and three members of his cabinet: Secretary of the Treasury Lyman J. Gage, Secretary of the Interior Cornelius N. Bliss, and Attorney General John W. Griggs, and confirmed by two Acts of Congress.

Moreover, the history of the Southern Pacific-Central Pacific system from the time of its construction—indeed, from the time the lines were projected—shows that the system is the outcome of a *normal natural growth*, and that the constituent lines were built to constitute one system, that in point of fact they were constructed as one system, and that, since their construction, they have always been operated as one system.

The present proprietary relation of the Southern Pacific Company to the Central Pacific Company has been stated. It should be emphasized, however, that the unification of these companies, which takes its present form from the lease of 1885 and the subsequent modifications (not to mention the stock ownership), did not arise for the first time with the lease of 1885, nor is it the result of any artificial, latter-day joinder. The lease of 1885 was but a step in the adjustment of the relationship of the two companies, which have been so intimately and naturally connected from the outset in one form or another, in the ownership, construction and operation of the system, that *they have always been regarded as two companies with a single identity.*

One of the claims put forward in this suit is that the operation of these lines as one system of railroads constitutes a violation of the Pacific railroad laws. The Government has allowed this alleged violation of the Pacific railroad laws to go unchallenged since the system was first operated. It is now, therefore, under obligation to show that the operation it has permitted for nearly a third of a century (1883-1914) has been for all that time illegal and in violation of the laws of Congress.

It is also to be noted that, inasmuch as the system of railroads here involved was built to be and always has been one system, there never has been a time when the lines were operated except as one system; and hence, there never has been a time at which it may be said that a combination of these lines was effected with a

view to the suppression of competition, or, indeed, that a combination of the lines was effected at all.

Again, so far as the cause of action of the Government is based upon the Anti-trust Act of July 2, 1890, the suit is not brought to destroy a combination effected to suppress competition, but it is maintained by the Government to dismember a system of railroads constructed and operated as a unified whole. The suit is based upon the claim that one part of this system "is a *natural* competitor" (I. R. 12) of another part of the system, and that therefore the sum total of competitive traffic would be increased if these parts were no longer allowed to remain component parts of a system which, as we have said, is the outcome of a normal, natural growth, and which was projected and constructed, and has always been operated as a unit.

In its last analysis the relief sought by the appellant is experimental and not judicial in its nature. The Government does not seek the destruction of a new and unlawfully created condition which took the place of an old and natural one; it seeks the destruction of an old and natural condition in order that it may create by a new and untried experiment a condition which has no prototype.

Obviously, the claims of the Government here put forward constitute a new departure and a very marked advance in Government interpretation of the office and function of the Anti-trust Act of July 2, 1890. If these claims can be sustained in respect of the Southern Pacific-Central Pacific system of railroads, no one can

forecast the consequences of such a doctrine applied to all the systems of railroads in America.

The opinion of the District Court (per Hook, C. J.), shows that the case is as we have stated it in the foregoing summary. We reproduce a syllabus of the decision taken from 239 Fed. 998:

> "Where the relation of lessor [Southern Pacific] and lessee [Central Pacific] between two railroad corporations, whose lines had been originally constructed as part of the same general system and continuously operated under one management, was reversed in 1885 by the surrender of the leases and a [99-year] lease [made] of the lines belonging to the former lessee [Central] Pacific to the former lessor [Southern Pacific], and that lease was superseded by a new lease in 1893 for the balance of the term of the lease of 1885, the new lease making only immaterial changes in the former lease, neither of those transactions affected the exemption from the operation of Sherman Anti-Trust Act July 2, 1890, c. 647, 26 Stat. 209, of the proprietary relations existing prior to the passage of that act.
>
> That a lease of railroad lines was not authorized by state statutes does not render it subject to the Anti-Trust Act, since that act deals with actual conditions affecting interstate commerce, whether they are authorized by state statute or not.
>
> Where there had been since 1870 a continuous common control of the railroads owned by two corporations [Central Pacific and Southern Pacific], effected by leases and unquestioned by the state, so that there never had been from the time of their construction any existing competition between them, and the lessee [Southern Pacific] in 1899 purchased the stock of the lessor company [Central Pacific], the Anti-Trust Act does not apply, though two of the lines would be competing if the relationship were dissolved, since that act was not intended to create competition that had never before existed

by destroying a proprietary relationship existing at the time of its passage.

The settlement of the indebtedness of the Central Pacific Railroad Company to the United States, arranged by a commission consisting of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, appointed by Congress to arrange such a settlement after Congress had knowledge that the lines of the Central Pacific Company had been leased to the Southern Pacific Company, in which settlement the interest of the lessee had been recognized by requiring it to guarantee the bonds given to secure the settlement notes, and which settlement had been approved by the President, is entitled to more weight than the administrative construction of a statute by ordinary public officers, subject to legislative restraint, as a construction of the Anti-Trust Act as not applying to the relation between the roads.

The Pacific Railroad Acts (Act July 1, 1862, c. 120, 12 Stat. 489; Act July 2, 1864, c. 216, 13 Stat. 356; Act June 20, 1874, c. 331, 18 Stat. 111), requiring the Central Pacific Railroad to maintain physical connection with the Union Pacific, to make a through line and to furnish equal advantages and facilities as to rates, time, and transportation, were not violated by the lease of the lines of the Central Pacific to the Southern Pacific, and the subsequent purchase by the latter of the stock of the former, so long as the statutory requirements were observed."

The foregoing puts in broad outline the controversy here involved, and we need dwell only for a moment on the parties defendant in the case.

The defendants are three corporations and eleven individuals—the eleven individuals being directors of the Southern Pacific Company.

The three corporations are

(*a*) Southern Pacific Company, joined because (1) it is the lessee under the 99-year lease and its modifications, (2) it is the owner of the stock above mentioned, and (3) it operates the lines sought to be withdrawn from the system:

(*b*) Central Pacific Railway Company, joined because (1) it is the owner of the lines sought to be withdrawn from the system, (2) it is the lessor under the 99-year lease, as modified, and (3) it is the company whose stock is held by the Southern Pacific Company in alleged violation of law; and

(*c*) Union Trust Company of New York as trustee under a deed of trust for holders of an issue of bonds of the Southern Pacific amounting to $36,819,000, put out in 1899 as part of the plan for the payment of the debt due from the Central Pacific to the Government and used in acquiring the stock, preferred and common, of the new and reorganized Central Pacific Railway Company, which stock so acquired by the Southern Pacific Company is pledged to secure the payment of said issue of $36,819,000.

We may profitably begin the consideration of the case with a brief reference to the movement in the country at large and on the Pacific Coast for the building of a transcontinental railroad during the period commencing with the acquisition of the Pacific Coast by the United States and running down to the enactment of the Act of July 1, 1862, incorporating the Union Pacific Railroad

Company and providing for a transcontinental line from the Missouri River to the Pacific Ocean. From this latter date, events follow in obvious sequence.

(1) Events from the cession of upper California to the United States by Mexico under the treaty of Guadalupe Hidalgo, February 2, 1848, to the incorporation of the Central Pacific Railroad Company under the laws of California, June 28, 1861, followed by the Act of July 1, 1862 (12 Stat. 489).

On July 7, 1846, during the war with Mexico, California, then of undetermined boundaries, was occupied as American territory. (See *United States v. Yorba* (1864), 1 Wall. 412.) California was ceded to the United States by Mexico under the treaty of Guadalupe Hidalgo February 2, 1848, and in 1850, with its present limits between the parallels of 32° 40′ and 42° north latitude, it was admitted to the Union.

The United States became the undisputed sovereign owner of the territory between the forty-second and forty-ninth parallels by the settlement in 1846 of the Northwest boundary dispute with Great Britain. On August 14, 1848, Oregon Territory was formed, extending from the northern boundary line of California to the forty-ninth parallel, now the northern boundary line of the State of Washington and of the United States, and from the Rocky Mountains to the Pacific. (9 Stat. 323.) In 1848, therefore, the whole Pacific slope had become American territory.

From 1850 to 1862 there was constant agitation for the building of a railroad or railroads to the Pacific Ocean. This agitation was evidenced by the almost

annual resolutions and memorials of the California legislature urging the construction of a Pacific railroad,* and by the agitation of its senators and representatives in Congress, in season and out of season.

In the Sinking Fund Cases, 99 U. S. 700, 728 (1879), note is taken of this fact. Speaking of an act passed by the Legislature of California facilitating railroad construction, the court said:

> "In so doing, the State but carried out it original policy in reference to the same subject-matter, for as early as May 1, 1852, an act was passed reciting 'that the interests of this State, as well as those of the whole Union, require the immediate action of the government of the United States, for the construction of a national thoroughfare connecting the navigable waters of the Atlantic and Pacific Oceans, for the purposes of national safety, in the event of war and to promote the highest commercial interests of the Republic', and granting the right of way through the State to the United States for the purpose of constructing such a road. Hittell's Laws, sect. 4791; Acts of 1852, 150. In 1859 (Acts of 1859, 391), a resolution was passed calling a convention 'to consider the refusal of Congress to take efficient measures for the construction of a railroad from the Atlantic States to the Pacific, and to adopt measures whereby the building of said railroad can be accomplished'; and at the same session of the legislature a memorial was prepared asking Congress to pass a law authorizing the construction of such a road, and asking also a grant of lands to aid in the construction of railroads in the State. Acts of 1859, 395. Nothing was done, however, by Congress until the Rebellion, which at once called the attention of all who were interested in the preservation of the Union to the immense practical importance of such a road for military purposes, and then, as soon as

* See Statutes of California: 1850, p. 465; 1852, p. 276; 1853, p. 315; 1854, pp. 266, 276; 1857, pp. 370, 371; 1859, pp. 391, 393, 395.

a plan could be matured and the necessary forms of legislation gone through with, the act of July 1, 1862, was passed."

Although definitive action was not taken until 1862, the matter played a large part in the proceedings of Congress during the preceding years, but, owing to controversies over the location of the route and to opposition due to the effect the road might have upon the question of slavery, no legislation was enacted until after the Civil War had commenced.

The matter, however, had been so settled in the minds of Californians that, before the Act of July 1, 1862 was passed by Congress and within three months after Fort Sumter had been fired upon, the Central Pacific Railroad Company was organized under the laws of the State of California. The date of its organization was June 28, 1861. Its incorporation was due to Leland Stanford, C. P. Huntington, Mark Hopkins and Charles Crocker, whose names appear in the articles of incorporation. These four men, as we shall see, and as is repeatedly shown in the record, were the pioneers who conceived, built, owned and operated the Southern Pacific-Central Pacific system, and under whose unified control the system developed as a normal, natural growth from its inception.

The corporate purpose of the Central Pacific Railroad Company was to build a railroad between the places designated as follows:

"The places from and to which the proposed road is to be constructed are the City of Sacramento and the Eastern Boundary of the State of California.

The counties into and through which this road is intended to pass are: Sacramento, Placer, and Nevada." (P. Ex. 12, IV, R. 1277.)

(2) The Act of July 1, 1862 (12 Stat. 489) and the construction of the bond-aided lines from the Missouri River to the Pacific Ocean, including (a) the construction between Ogden and Sacramento by the Central Pacific, and (b) the construction between Sacramento and San Jose by the Western Pacific, which latter company was absorbed by the Central Pacific in consolidation proceedings June 23, 1870.

The Act of July 1, 1862 (12 Stat. 489), created a corporation to be called "The Union Pacific Railroad Company", and to be composed of one hundred and fifty-eight persons named in the act (of whom C. P. Huntington was one), "together with five commissioners to be appointed by the Secretary of the Interior, and all persons who shall or may be associated with them, and their successors."

The corporation so created was "authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph, with the appurtenances, from a point . . . on the one hundredth meridian of longitude west from Greenwich, between the south margin of the valley of the Republican River and the north margin of the valley of the Platte River, in the Territory of Nebraska, . . . a point to be fixed by the President of the United States . . . thence running westerly upon the most direct, central, and practicable route, through the Territories of the United States to the western boundary of the Territory of Nev-

ada, there to meet and connect with the line of the Central Pacific Railroad Company of California."

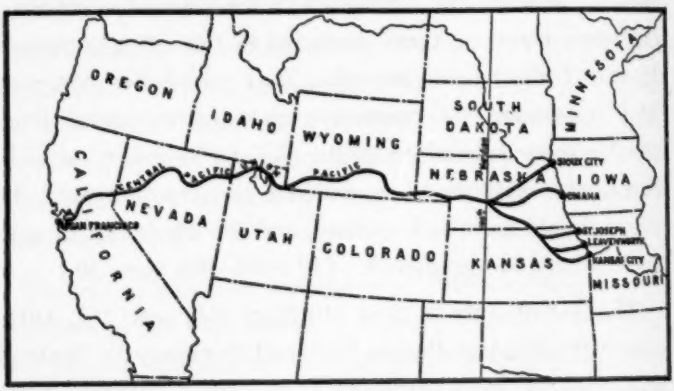
As already shown, the Central Pacific Railroad Company had been incorporated under the laws of California the year before (June 28, 1861) to construct a road between "the city of Sacramento and the eastern boundary of the State of California." In the Act of July 1, 1862, now under consideration, the Central Pacific was authorized to construct a line "from the Pacific coast, at or near San Francisco, or the navigable waters of the Sacramento river, to the eastern boundary of California" to meet and connect with the Union Pacific upon the same terms as those accorded to the latter company. It was furthermore provided that whichever company first completed its respective part of the road from the designated terminus to the eastern boundary of California was authorized to continue construction until the parts should meet and connect, and the whole line of railroad should be completed. (12 Stat. 489, sect. 10.)

The Act of July 2, 1864 (13 Stat. 356, sect. 16), authorized the Central Pacific Railroad Company to "extend their line of road eastward (from the California line) one hundred and fifty miles on the established route, so as to meet and connect with the line of the Union Pacific road", but the limitation of one hundred and fifty miles was repealed by the Act of July 3, 1866 (14 Stat. 79), so that the Central Pacific was, as originally provided, authorized to continue construction until it should meet the Union Pacific.

It appears from the Act of July 1, 1862, that Congress contemplated that three lines would start from points

on the Missouri River, viz., Sioux City, Omaha (Council Bluffs), and Kansas City, and that they would converge on the one hundredth meridian, forming the trunk line which was to be built westwardly, and that two other lines starting from points on the Missouri River, viz., St. Joseph and Leavenworth, would connect with the Kansas City line, thereby connecting five cities on the Missouri River with the main line.

The accompanying map shows what was intended in respect of the lines from Sioux City, Omaha and Kansas City to the one hundredth meridian.



Pacific Railroads as Contemplated by the Act of July 1, 1862

The plan is described in the opinion in *U. P. R. Co. v. Hall,* 91 U. S. 343 (1876), as follows:

> "By the first section of the act of 1862, the Union Pacific Railroad Company was authorized to construct, maintain and enjoy a continuous railroad and telegraph, with the appurtenances, from a point on the one hundredth meridian of longitude west from Greenwich to the western boundary of the Territory of Nevada. There it was intended to meet and connect with the line of the Central Pacific Railroad

Company of California (sect. 8), thus forming a continuous line to the Pacific Ocean. This was the main line. But the same act made provision also for several eastern connections. The ninth section authorized the Leavenworth, Pawnee and Western Railroad Company of Kansas (now the Kansas Pacific) to construct a railroad from the Missouri River, at the mouth of the Kansas River (on the south side thereof, so as to connect with the Pacific Railroad of Missouri), to the point of western departure of the Union Pacific on the one hundredth meridian. Thus provision was made for an eastern connection by an unbroken line of road to St. Louis on the Mississippi. This was not all. By the fourteenth section of the act the Union Pacific was authorized and required 'to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa, to be fixed by the President of the United States, . . . so as to form a connection with the lines of the said company at some point on the one hundredth meridian of longitude aforesaid, from the point of commencement on the western boundary of the State of Iowa'. Thus provisions were made for the Iowa eastern branch of the main line. It was doubtless intended to render possible a connection with any railroad that might thereafter be constructed from the western boundary of Iowa eastward. None was then completed; but a railroad was in progress of construction through the State, from its eastern border to the Missouri River.

The fourteenth section also made provision for another eastern connection. It enacted, that whenever there should be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific (Union Pacific) Railroad Company should be authorized and required to construct a railroad and telegraph from said Sioux City, so as to connect with the Iowa branch, or with the main line, at a point not farther west than the one hundredth meridian of longitude."

It remains briefly to note what modifications of this contemplated construction were later authorized by Congress and actually accomplished.

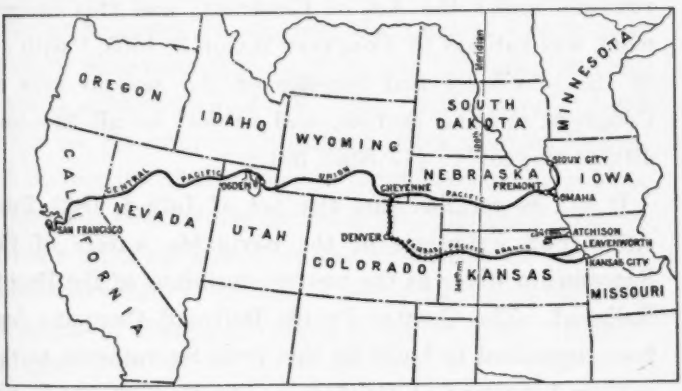
As already noted, the Act of July 1, 1862, authorized the Leavenworth, Pawnee and Western Railroad Company of Kansas to build from Kansas City to the point of junction on the one hundredth meridian. The name of this company was changed June 6, 1863, to the Union Pacific, Eastern Division (see *U. S. v. U. P. Ry. Co.*, (1893) 148 U. S. 562), and subsequently by the joint resolution of Congress of March 3, 1869 (15 Stat. 348) became the Kansas Pacific. The Act of July 2, 1864, having provided that any company authorized to build a line of railroad from the Missouri River to the junction on the one hundredth meridian might connect its line west of that point, the Union Pacific, Eastern Division (Kansas Pacific), determined to build to Denver. The Act of July 3, 1866 (14 Stat. p. 79) gave the company authority to connect with the Union Pacific at a point not more than fifty miles westward from the meridian of Denver. Under the Act of March 3, 1869 (15 Stat. 324), the company contracted with the Denver Pacific Railway & Telegraph Company to construct the road from Denver to a connection with the Union Pacific Railroad at Cheyenne. (See *U. S. v. Union Pacific Railway Co.*, (1893) 148 U. S. 562). The Kansas Pacific was completed from Kansas City to Denver on September 1, 1870, and the Denver Pacific (Denver to Cheyenne) connecting the Kansas Pacific with the Union Pacific, was completed and opened January 1, 1871.*

*The Union Pacific Railway Company was formed January 24, 1880, by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and the Denver Pacific Railway & Telegraph Company.

On account of the change of route just mentioned, the Central Branch of the Union Pacific—the name given to the line through Atchison, Kansas, to meet the Kansas City line as it proceeded in a northwesterly direction from Kansas City to the one hundredth meridian—was left without connection, its subsidy in Government bonds having been limited to one hundred miles by Section 13 of the Act of July 1, 1862.

In another particular the railroad construction contemplated by the Act of July 1, 1862, was modified, for, under authority of the President, the Sioux City line was also changed in its course so as to meet the Union Pacific line at Fremont, Nebraska, about forty-two miles west of Omaha, instead of at the one hundredth meridian.

A diagram map is inserted to show the system as constructed.



Pacific Railroads as Constructed

(Non-bond-aided road Kansas-Denver-Cheyenne shown by hatched line)

We have thus far dealt with the construction of the Union Pacific portion of the line, and shall now deal

with the Central Pacific construction, or, more strictly, the construction at the western end of the line, for it was accomplished by two companies organized under the laws of the State of California, (*a*) the Central Pacific Railroad Company already mentioned, and (*b*) the Western Pacific Railroad Company of California.

It has already appeared that the Central Pacific Railroad Company was organized June 28, 1861 (a year before the passage of the Act of Congress of July 1, 1862). The Western Pacific was organized December 13, 1862, under the general railroad law of California, with power to construct a road from a point on the San Francisco and San Jose Railroad, at or near San Jose, to Sacramento and there connect with the road of the Central Pacific Company. Afterwards, the Central Pacific Company assigned to this corporation its rights to construct the road between San Jose and Sacramento under the Act of Congress; and this assignment was ratified by Congress March 3, 1865, "with all of the privileges and benefits of the several acts of Congress relating thereto, and subject to all the conditions thereof". (13 Stat. 504.)

It will be recalled that the Act of July 1, 1862, fixed either San Francisco or the navigable waters of the Sacramento River as the western terminus of the Pacific Railroad. The Central Pacific Railroad Company had been organized to build its line from Sacramento to the eastern boundary of California. As Sacramento is situated on the navigable waters of the Sacramento River, the construction of the Central Pacific line from that city would meet the requirements of the Act. The West-

ern Pacific Railroad Company was organized with a view to the construction of a road which would reach the Pacific Ocean at San Francisco. As early as 1864 there was a railroad connecting San Francisco with San Jose and the aim of the Western Pacific Railroad Company was to connect Sacramento with San Jose, and, therefore, with the road to San Francisco.

Having sketched in a general way the construction contemplated or provided for at the western end of the through line, we may now briefly refer to the completion of the entire road.

It is established by judicial decision that the road was completed November 6, 1869 (*U. P. R. R. Co. v. U. S.*, (1877) 13 Ct. Claims, 401; s. c., (1878) 99 U. S. 402; *U. S. v. C. P. R. R. Co.*, (1877) 4 Sawy. 341; 25 Fed. Cas. 354; s. c., (1878) 99 U. S. 449). Early in 1869, the construction of the Union Pacific and the Central Pacific began to overlap, the Central Pacific preliminary construction being then east of Ogden and the westerly construction of the Union Pacific being at least as far as Promontory, fifty-four miles west of Ogden, and the matter of the junction point became the subject of an acute controversy between the companies. Later, whether upon agreement of the companies or not it is unnecessary here to inquire, it was provided in the joint resolution of Congress passed April 10, 1869 (16 Stat. 56) that:

> "the common terminus of the Union Pacific and the Central Pacific Railroads shall be at or near Ogden; and the Union Pacific Railroad Company shall build, and the Central Pacific Railroad Company pay for and own the railroad from the ter-

> minus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line."

This joint resolution was in anticipation of a meeting of the roads, which actually occurred one month later (May 10, 1869) at Promontory, and then, for the first time, there was a through rail connection between the Missouri River and Sacramento on the navigable waters of the Sacramento River.

Later, by the Act of May 6, 1870 (16 Stat. 121), Congress enacted that:

> "The common terminus and point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company shall be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned (here nine sections are described); and said companies are hereby authorized to enter upon, use, and possess said sections which are hereby granted to them in equal shares, with the same rights, privileges, and obligations now by law provided with reference to other lands granted to said railroads."

The point of junction established *de facto* under the Act of May 6, 1870, was five miles west of Ogden, and later (June 13, 1875), the Union Pacific leased this five-mile stretch to the Central Pacific for a term of nine hundred and ninety-nine years at an annual rental of $20,000, and later the Union depot at Ogden came to be owned by the Union Pacific and Central Pacific in equal shares and to be the junction point between the two roads.

Late in the year 1869, the line from Sacramento to San Jose was completed, so that in that year there was rail connection between the Missouri River and San Francisco, and as early as July, 1869, there was regular train and mail service between Sacramento and the Missouri River.

The construction of the line from Sacramento to Ogden, for purposes of operation, was as follows:

Sacramento (via Roseville) to Newcastle	November 1, 1864.
Newcastle to Auburn	May 14, 1865.
Auburn to Colfax	September 11, 1865.
Colfax to Dutch Flat	July 5, 1866.
Dutch Flat to Alta	July 11, 1866.
Alta to Cisco	December 3, 1866.
Cisco to Truckee	April 3, 1868.
Truckee to Reno	June 19, 1868.
Reno to Wadsworth	July 22, 1868.
Wadsworth to Winnemucca	October 1, 1868.
Winnemucca to Elko	January 25, 1869.
Elko to Promontory	May 29, 1869.
Promontory to near Ogden	May 29, 1869.

The construction from Sacramento to San Jose, completed in the operative sense of that term, occurred as follows:

Sacramento to Galt	May 15, 1869.
Galt to Stockton	August 14, 1869.
Stockton (via Lathrop and Niles) to San Jose	September 15, 1869.

It will presently appear that in the year 1870 the Central Pacific Railroad Company absorbed the Western Pacific Railroad Company through consolidation authorized by the laws of California, so that in that year the Central Pacific Railroad Company became the owner of the line from Ogden to San Jose.

'That said Central Pacific Railroad Company of California filed in the Department of the Interior its acceptance of the terms and conditions of said Act of Congress of July 1, 1862, within the time therein designated.

'That on or about the 31st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid Acts to a corporation then existing under the laws of the State of California, and known as the Western Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San Jose and Sacramento, in said State of California. Said assignment was ratified and confirmed by the United States by an Act of Congress passed on the 3d day of March, 1865, entitled "An Act to Amend an Act Entitled An Act to Aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to Secure to the Government the Use of the Same for Postal, Military and Other Purposes, Approved July 1, 1862, and to Amend an Act Amendatory Thereof, Approved July 2, 1864". See 13 U. S. Stat. at L. p. 504.

'That the said line of railroad from the Pacific Ocean to Ogden, in Utah Territory, was completed and put in operation in 1869, and has been in operation from that time until the present, and still is in operation, and the whole of the railroad mentioned in the said Acts of Congress has long since been completed, and is now, in accordance with the spirit and intent of said Acts of Congress, operated as one continuous line from the Missouri River to the Pacific Ocean, and is so operated and maintained for the uses and purposes mentioned in said Acts.

'That in August, 1870, acting under the said Acts of Congress, said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company formed themselves into one corporation under the name of the Central Pacific Railroad Com-

pany. Said Company is the defendant herein, and has, from the completion of said railroad as aforesaid until the present time, owned (except in the respect hereinafter stated) and operated said railroad under and by virtue of said Acts of Congress and for the uses and purposes therein mentioned.'

If we turn to the Acts of Congress referred to by the court, we shall find that franchises of the most important character were conferred on this Company. Originally, the Central Pacific Railroad Company of California had only power to construct a railroad from Sacramento to the eastern boundary of the State. Congress, by the Act of 1862, authorized the Company (in the words of the Act) 'to construct a railroad and telegraph line from the Pacific Coast, at or near San Francisco or the navigable waters of the Sacramento River, to the eastern boundary of California, upon the same terms and conditions, in all respects, as are contained in this Act for the construction of said railroad and telegraph line first mentioned (the Union Pacific), and to meet and connect with the first mentioned railroad and telegraph line on the eastern boundary of California'. Sec. 9. In the following section it was enacted, that, after the completion of its road to the eastern boundary of California, the Central Pacific might unite upon equal terms with the Union Pacific Railroad Company in constructing so much of said railroad and telegraph line and branch railroads and telegraph lines through the Territories, from the State of California to the Missouri River, as should then remain to be constructed, on the same terms and conditions as provided in relation to the Union Pacific Railroad Company. Thus, without referring to the other franchises and privileges conferred upon this company, the fundamental franchise was given, by the Acts of 1862 and the subsequent Acts, to construct a railroad from the Pacific Ocean across the State of California and the federal Territories until it should meet the Union Pacific; which it did meet at Ogden in the Territory

of Utah. This important grant, though in part collateral to, was independent of, that made to the Company by the State of California, and has ever since been possessed and enjoyed. The present Company has it by transfer from, and consolidation of, the original companies, by which its existence and capacities were constituted. Such consolidation was authorized by the 16th section of the Act of Congress of July 1, 1862, and the 16th section of the Act of July 2, 1864, taken in connection with the second section of the Act of March 3, 1865, referred to in the findings of the court. The last named Act ratified the transfer by the Central Pacific to the Western Pacific of a portion of its road extending from San Jose to Sacramento, and conferred upon the latter company all the privileges and benefits of the several Acts of Congress relating thereto, and subject to all the conditions thereof. If, therefore, the Central Pacific Railroad Company is not a federal corporation, its most important franchises, including that of constructing a railroad from the Pacific Ocean to Ogden city, were conferred upon it by Congress."

We come now to the construction of the non-bond-aided lines in California.

(3) The construction of the Central Pacific non-bond-aided lines in California.

It has appeared that the bond-aided lines within the State of California, completed in 1869, commenced with the eastern boundary of the state and extended thence through Roseville, Sacramento, Lathrop and Niles to San Jose. The Central Pacific construction from a point about five miles west of Ogden to Sacramento

was 737.50 miles in length; the line from Sacramento to San Jose was 123.16 miles in length.

We come now to consider three extensions to this bond-aided line: (*a*) from Roseville to the Oregon boundary, 296.50 miles in length; (*b*) from Niles to Oakland, 24.31 miles in length, and (*c*) from Lathrop to Goshen, 146.08 miles in length. These extensions have been generally known as the "non-bond-aided lines". A brief description of their origin and construction is necessary to a full understanding of the case.

(a) Roseville to the Oregon boundary.

The construction of the branch from Roseville to the Oregon boundary was begun by the California and Oregon Railroad Company under legislation described in *Oregon & C. R. Co. v. U. S.*, 238 U. S. 393, 399 (1915), as follows:

> "By the act of July 25, 1866, *supra* (14 Stat. at L. 239, chap. 242), Congress authorized and empowered the California & Oregon Railroad Company, which had been organized under a statute of the state of California, and such company, organized under the laws of Oregon, as the legislature of that state should designate, to construct and maintain a railroad and telegraph line between the city of Portland, in Oregon, and the Central Pacific Railroad in California, as follows: The California & Oregon Company to construct that part of the railroad and telegraph line within the state of California, beginning at a point to be selected by the company on the Central Pacific Railroad in Sacramento Valley, and running thence northerly through the Sacramento and Shasta valleys to the northern boundary of the state. The

Oregon company to construct the part in Oregon from Portland south through certain designated valleys to the southern boundary of Oregon, to connect with the part constructed by the first-named company. Whichever company first completed its respective part of the road from the designated terminus to the boundary line between the states was authorized to continue construction until the parts should meet and connect, and the whole line of railroad and telegraph should be completed."

The California and Oregon Railroad was absorbed by the Central Pacific Railroad August 22, 1870, in consolidation proceedings.

The construction of the line from Roseville north occurred as follows:

Roseville to Wheatland	October 28, 1867.
Wheatland to Yuba	September 19, 1868.
Yuba to Marysville	June 1, 1869.
Marysville to Chico	July 2, 1870.
Chico to Tehama	August 28, 1871.
Tehama to Red Bluff	December 6, 1871.
Red Bluff to Redding	September 1, 1872.
Redding to Delta	September 1, 1884.
Delta to Oregon State Line	October 5, 1887.

(b) Niles to Oakland.

The road from Niles to Oakland, thereby effecting communication with San Francisco, was finished in 1869 as follows:

Niles to Alameda Wharf	September 8, 1869.
Alameda Wharf to San Francisco (boat line)	December 1, 1869.

This construction was by the San Francisco, Oakland and Alameda Railroad Company, which was absorbed by the Central Pacific Railroad Company in the consolidation of August 22, 1870. (P. Ex. 12, IV R. 1281).

(c) Lathrop to Goshen.

This extension of 146.08 miles was built by the San Joaquin Valley Railroad Company (P. Ex. 12, IV R. 1282), a company which was absorbed by the Central Pacific in the consolidation of August 22, 1870, as follows:

Lathrop to Modesto	November 8, 1870.
Modesto to Merced	January 25, 1872.
Merced to Fresno	May 28, 1872.
Fresno to Goshen	August 1, 1872.

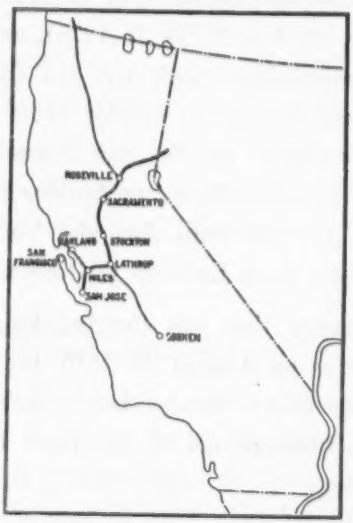
All this construction became the property of the Central Pacific Railroad Company, for on June 23, 1870, the Central Pacific Railroad Company of California consolidated with the Western Pacific Railroad Company under the corporate name of Central Pacific Railroad Company (P. Ex. 12, IV R. 1278), and on August 22, 1870, it consolidated with (*a*) the California and Oregon Railroad Company, builder from Roseville to the Oregon boundary; (*b*) the San Francisco, Oakland and Alameda Railroad Company, builder from Niles to Oakland, and (*c*) the San Joaquin Valley Railroad Company, builder from Lathrop to Goshen.

It thus appears that the Central Pacific Railroad Company became on August 22, 1870, the owner of all the above-described "bond-aided" and "non-bond-aided" lines, although all of the lines had not then been constructed.

The mileage, built and projected, thus vested in the Central Pacific Railroad Company in consequence of the consolidations of 1870 was as follows:

Original Company	Between	Miles of Road
	Bond-aided Roads	
Central Pacific Railroad...	Sacramento to 5 miles west of Ogden	737.50
Western Pacific Railroad..	San Jose to Sacramento.....	123.16
	Non-bond-aided Roads	
San Francisco, Oakland and Alameda Railroad	Niles to Oakland.....	24.31
California and Oregon Railroad	Roseville to Oregon line	296.50
San Joaquin Valley Railroad	Lathrop to Goshen.....	146.08
Total Central Pacific Railroad Company, consolidated	.....	1,327.55

The location of the road and the extensions dealt with appear in the following diagram:



Central Pacific Non-bond-aided Extensions
(shown in hatched lines)

Before passing from the connection of the Central Pacific with the construction of the bond-aided and non-bond-aided lines, it is well to note that the lines to the Oregon boundary, (II R. 651, 653) and from Lathrop to Goshen were built by the same persons who controlled the Central Pacific. It appears (P. Ex. 12, IV R. 1281, 1282) that the directors named in the articles of incorporation of the companies building both lines included Leland Stanford, Mark Hopkins, Charles Crocker, Edwin B. Crocker (brother of Charles) and C. P. Huntington.

It is also of prime importance to note at this point, the part which California topography has played in the natural development of its railroad system. From the relief map, printed elsewhere herein, it appears that the interior valley of California is entirely encircled by mountains—the Coast Range on the west, and the Sierra Nevada on the east. The problem of the pioneer builders was to find outlets from San Francisco, through these mountains to the boundaries of the state. Their concern was not the building of transcontinental lines *into* the state; their problem was to find and develop the natural avenues of egress *from* the state. The relief map shows very clearly the necessities of the situation and the way they were met in the normal development of the state's railroad system.

We have spoken thus far of the direct eastern route to Ogden, and of the line to the Oregon boundary through the northern half of the interior valley. But these two lines alone left the state system incomplete. The southern valley was unprovided for, and there was

no outlet at the southern border. Accordingly, the next step in the normal growth of the system was the completion of the valley line from Goshen south, and we pass now to the history of its construction by the Southern Pacific Railroad Company.

(4) The history of the Southern Pacific Railroad Company from its incorporation in 1865, including its acceptance on November 30, 1866, of the grant made to it by the Atlantic and Pacific Act of July 27, 1866, and its acceptance on April 3, 1871, of the grant made to it by the Texas Pacific Act of March 3, 1871, and thenceforward until its road reached Yuma, October 22, 1877.

The Southern Pacific Railroad Company was incorporated December 2, 1865, to build a line of railway in as direct a route as was feasible considering topography, etc., from San Francisco to the town of San Diego, "thence eastward through the county of San Diego to the eastern line of the State of California, there to connect with the contemplated road from the eastern line of the State of California to the Mississippi River." At this time

> "no authority had been given by Congress for the construction of any railroad from the Mississippi River to the eastern line of the state of California; although the thirty-third and thirty-fifth parallels of latitude had been publicly discussed as probable lines of future railroads, and it was, therefore, uncertain at what point of the line any road to be projected and constructed would intersect the eastern line of the state."
>
> *Southern Pac. R. Co. v. Orton*, 6 Sawy. 157, 32 Fed. 457, 460 (1879), per Sawyer, C. J.

The road which the Southern Pacific contemplated building was to run through the Santa Clara and Pajaro Valleys, thence by way of a pass through the Coast Range along the west side of the San Joaquin Valley, by as direct a route as the circumstances would allow, to the town of San Diego, which lies 32° 40′ north. The contemplated route is shown on the map. An easterly line from San Diego takes the route to a point in California on the Colorado River opposite Yuma, which also lies 32° 40′ north.

Approximate Route of Southern Pacific Line Contemplated in Articles of Association, December 2, 1865

The route designated shows that the Southern Pacific planned from the outset to include as a part of its road the line from San Francisco to San Jose (a distance of fifty miles), which was in operation as early as 1864.

Next came the Atlantic and Pacific Act of July 27, 1866, providing for a railroad from Springfield, Missouri, to the Pacific Coast (14 Stat. 293). This line was to be built "along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railroad route, to the Colorado River, at such point as may be selected by said company for crossing (into the State of California); thence by the most practicable and eligible route to the Pacific". The line of definite location filed by the company laid out a route which crossed the Colorado River at Needles (34° 50′ north); thence across California to San Buenaventura (now Ventura) which lies 34° 17′ north. (See *United States v. Southern Pac. R. Co.* (1892) 146 U. S. 570; *Southern Pac. R. Co. v. United States* (1897) 168 U. S. 1.)

The Act authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific "at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco" (Sec. 18). The authority conferred by this Act and the land grant therein contained caused the Southern Pacific Railroad Company to alter the line of its railroad so that instead of building south to the town of San Diego (as provided in its articles of incorporation) it deflected its route so as to reach the Colorado River near the thirty-fifth parallel at Needles, which lies 34° 50′ north.

In accepting the grant, the Southern Pacific Railroad Company filed a map in the Department of the Interior on January 3, 1867, changing its route as above stated. By an act of the California Legislature passed April 4,

1870 (Stats. Cal. 1869-70, p. 883), it was provided that notwithstanding the line named in its articles of incorporation of December 2, 1865, the Southern Pacific Railroad Company was "authorized and empowered to change the line of its railroad so as to reach the eastern boundary of the State of California by such route as the company shall determine to be the most practicable and to file new and amendatory articles of association".

On June 28, 1870, Congress passed a joint resolution (16 Stat. 382), which provided "that the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven".

Under the terms of the Atlantic and Pacific Act, the Southern Pacific was required to build fifty miles of road before July 27, 1868, and fifty miles additional each year thereafter. By the act of July 25, 1868 (15 Stat. 187), Congress extended the time for the construction of the Southern Pacific line, requiring the completion of the first thirty miles by July 1, 1870, and subsequent construction of at least twenty miles annually.

The first thirty miles were constructed by the Southern Pacific Railroad Company under the name of the Santa Clara and Pajaro Valley Railroad, by July 1, 1870, the construction being from San Jose to Gilroy, a distance of thirty miles; and the second item of construction was finished by June 30, 1871, by the building

of the road from Gilroy to Tres Pinos, a distance of twenty miles. The remainder of the construction of the Southern Pacific was from Goshen south,* and the first section of twenty miles, mentioned in the testimony of Strobridge (II R. 402), was completed by July 1, 1872. The construction periods of the line from Goshen to Mojave were as follows:

Goshen to Tipton	July 25, 1872.
Tipton to Delano	July 14, 1873.
Delano to Sumner	October 26, 1874.
Sumner to Caliente	April 26, 1875.
Caliente (over Tehachapi) to Mojave	August 9, 1876.

The construction from Mojave to Needles, a distance of two hundred and forty miles, was finished June 22, 1883 (II R. 421), but, as that stretch of the road became the property of the Atchison, Topeka and Santa Fe long before the commencement of this action, the details of the construction were not offered in evidence.

Speaking of the Atchison, Topeka and Santa Fe, Mr. Kruttschnitt said (II R. 761):

> "Their advent to Southern California was marked by a lease from the Southern Pacific Railroad of the line from Needles to Mojave. . . . It was prior to the early part of 1883, because their line was opened at that time. That line was leased to them up to, I think, 1911, when it was sold to them."

*The line of the Southern Pacific Railroad as originally projected was to Tres Pinos, thence through the Coast Range to Goshen, and thence southerly. The line was built to Tres Pinos as above shown. A branch line was also built westwardly from Goshen via Huron to Alcalde, a distance of sixty-one miles. The line was surveyed between Tres Pinos and Alcalde but never built because the country was too forbidding. (Hood II R. 456; Kruttschnitt, II R. 799-800; see also *California v. Central Pac. R. Co.* (1888), 127 U. S. 1, 42, which mentions the unfinished section between Tres Pinos and Huron.) Furthermore, other routes to San Francisco, both built and projected, more than answered the requirements of the situation.

We shall now pass from the construction under the Atlantic and Pacific grant to the Texas Pacific Act of March 3, 1871, and the action taken thereunder.

In the meantime, however, it is important to note that although there is no proof in terms of the interest of Leland Stanford, C. P. Huntington, Mark Hopkins and Charles Crocker in the Southern Pacific Railroad Company until 1870, nevertheless it is clear that they were interested in this company before that year, for the record contains the following self-explanatory letter written by Mr. Huntington to the Secretary of the Interior September 25, 1868 (D. Ex. 23, V R. 1704):

"Office
CENTRAL PACIFIC R. R.
of California.
No. 54 William Street

C. P. Huntington, V. P.
NEW YORK, Sept 25 1868.

Hon. O. H. BROWNING
Secretary of the Interior
Washington, D. C.

DR SIR

Herewith I have the Honor to hand you the Annual Report of the Southern Pacific Railroad Company as required by the Acts of Congress in relation thereto & of which please acknowledge the receipt.

Resply Yours
C. P. HUNTINGTON"

This letter was received by the Department of the Interior on September 26, 1868, and is endorsed as having been received that day from C. P. Huntington, New York City (D. Ex. 23, V R. 1706). The report en-

closed in the letter was required by the Act of June 25, 1868, 15 Stat. 79 (P. Ex. 7, IV R. 1262).

On October 12, 1870, the Southern Pacific Railroad Company was consolidated under the laws of California with three other companies; (*a*) San Francisco and San Joaquin Railroad Company, the owner of the railroad in operation in 1864 from San Francisco to San Jose, fifty miles; (*b*) Santa Clara and Pajaro Valley Railroad Company, the owner of the constructed road from San Jose to Gilroy, thirty miles, and (*c*) California Southern Railroad Company, organized to construct a railroad from Gilroy to Salinas, Monterey County, California. As already stated, this consolidation became effective and a matter of public record in California October 12, 1870. By that public record it was shown that the directors of the Southern Pacific Railroad Company were Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue.

It is important to note at this point the relation which Stanford, Huntington, Hopkins and Crocker bore as early as 1870 to the railroad situation in California. They were the presumptive owners, being then in control, of the three roads in California authorized to run to the boundaries of the State; (*a*) the Central Pacific, crossing to Ogden; (*b*) the Roseville road to the Oregon line, and (*c*) the Southern Pacific Railroad Company, authorized to meet the Atlantic and Pacific at Needles so that it might connect the Atlantic and Pacific with the Southern Pacific line to San Francisco (Act of July 27, 1866; 14 Stat. 292, Sect. 18).

It is in the light of these facts that we are next to consider the Texas Pacific Act of March 3, 1871.

On March 3, 1871, Congress passed an act (16 Stat. 573) to incorporate the Texas Railroad Company with authority and power to construct a railroad

> "from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to ship's channel in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude."

In *United States v. Southern Pacific R. Co.*, 146 U. S. 570, 572, 574 (1892), it is said:

> "On March 3, 1871, Congress passed an Act (16 Stat. at L. 573) to incorporate the Texas-Pacific Railroad Company, and to aid in the construction of its road, the 23d section of which Act reads:
>
> 'That for the purpose of connecting the Texas Pacific railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California

by the Act of July 27, 1866; *Provided, however,* That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company'.

. . . . . .

On April 3, 1871, just a month after the passage of the Act of March 3, the defendant, the Southern Pacific Company, filed a map of its route from Tehachapa Pass by way of Los Angeles to the Texas Pacific railroad, and proceeded to construct its road, and finished the entire construction some time during the year 1878."

The Texas Pacific filed its map of general route in August, 1871. (*Southern Pacific R. Co. v. U. S.*, (1903) 189 U. S. 447, 449.)

The acceptance on behalf of the Southern Pacific was made by Charles Crocker, its president, as follows (P. Ex. 76, IV R. 1673-4):

"To Hon. C. Delano, Secretary of the Interior, and Hon. Willis Drummond, Commissioner of General Land Office.

Please to take notice that this Map is filed by the Southern Pacific Railroad Company of California in the office of the Commissioner of the General Land Office in the Department of the Interior for the purpose of designating by the heavy red line traced thereon, the general route of the line of Railroad as near as may be 'from a point at or near Tehatchapa Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River', adopted by the said Southern Pacific Railroad Company in pursuance of the power and authority granted to said company by the 23d Section of the Act of Congress of the United States entitled 'An act to incorporate the Texas Pacific Railroad Company and to aid in the construction

of its road and for other purposes', approved March 3d, 1871, and in pursuance of the provisions of the Act of July 27th, 1866, referred to in said 23d Section, and for the purpose of obtaining the benefit of the provisions of said acts of Congress.

CHAS. CROCKER,
President Southern Pacific Railroad Company."

"DEPARTMENT OF THE INTERIOR
WASHINGTON, D. C.
April 3d, 1871.

SIR:

The 23d section of the Act to incorporate the Texas Pacific Railroad, and for other purposes, approved March 3d, 1871, authorizes 'the Southern Pacific Railroad Company to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado River', with the same rights and privileges, and subject to the same limitations and restrictions, as were granted to said Southern Pacific Railroad Company of California, by the Act of July 27, 1866.

The accompanying map designating the route of said road from Tehachapa Pass, by way of Los Angeles to the Colorado river, has been filed by Charles Crocker Esq. President of the Company, with a request, that the lands may be withdrawn, as provided in the 12th Section of said Act, 'from preemption, private entry and sale'.

You will issue the necessary order for a withdrawal of the lands, within twenty miles, and along the route designated on said map.

Very respectfully,
Your Obt. Servant
WALTER H. SMITH,
Acting Secretary.

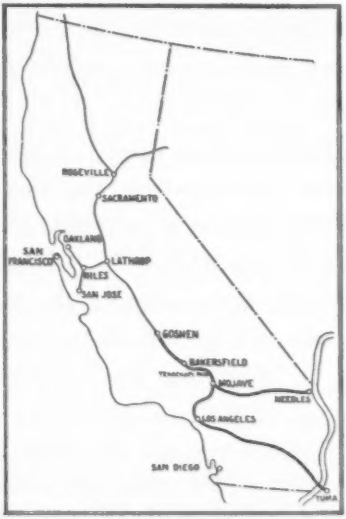
Hon. WILLIS DRUMMOND
Commissioner of the
General Land Office."

It is to be noted that the Texas Pacific was to cross the Colorado River into California in the southeastern portion thereof as near as might be to the thirty-second parallel. The point answering this requirement was agreed to be Yuma, which lies 32° 40′ north, on the Colorado River in Arizona opposite the southeast corner of California. The construction of the Southern Pacific Railroad Company from Goshen to Mojave passed through Tehachapi Pass, as will be observed by reference to the table at page 36, *supra*. The Act of March 3, 1871, authorized the Southern Pacific Railroad Company to construct "from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river". The construction referable, therefore, to the Texas Pacific Act may be said to be from Mojave to Yuma, via Los Angeles. This construction occurred at the times mentioned in the following table, arranged geographically and not chronologically, as follows:

Mojave to Tunnel	September 6, 1876.
Tunnel to San Fernando	January 1, 1876.
San Fernando to Los Angeles	April 15, 1874.
Los Angeles to Spadra	April 15, 1874.
Spadra to Colton	July 16, 1875.
Colton to Indio	March 29, 1876.
Indio to Colorado River (near Yuma)	May 23, 1877.
Yuma	October 22, 1877.

The construction by the Southern Pacific Railroad Company under (*a*) The Atlantic and Pacific Act, and

(*b*) the Texas Pacific Act is shown in the accompanying map.



Central Pacific-Southern Pacific Arterial System

Showing the four lines to the boundaries of California authorized by Congress:

(1) Sacramento-Ogden: Act of July 1, 1862 (12 Stat. 489).
(2) Roseville-Oregon Line: Act of July 25, 1866 (14 Stat. 239).
(3) Goshen-Mojave-Needles: Act of July 27, 1866 (14 Stat. 292).
(4) Mojave-Los Angeles-Yuma: Act of Mar. 3, 1871 (16 Stat. 573).

——— Central Pacific.
——— Southern Pacific.

In reading the map, it will be remembered that the construction from Goshen via Tehachapi Pass to Mojave, thence to Needles, was under the Atlantic and Pacific grant, and that the construction from Mojave via Los Angeles to Yuma was under the Texas Pacific grant.

This map, considered in connection with the topographic map elsewhere reproduced, is of marked importance. It depicts the Southern Pacific-Central Pacific system as projected and as constructed under state and

Congressional authorization; and it gives a graphic illustration of the natural continuity of the lines, and the normal development of the project to provide northern, eastern and southern outlets for California traffic.

We have aimed to give a brief but adequate history of the legislation under which the Southern Pacific Railroad Company became a corporation and built the road with which we are dealing in this action. It may be helpful, however, here to quote the history of that legislation set down in an exhaustive way by Circuit Judge Sawyer in *Southern Pacific Railroad Co. v. Orton*, 6 Sawy. 157, 32 Fed. 457 (1879):

> "The Southern Pacific Railroad Company became duly incorporated under the general statute of the state of California of 1861, providing for the incorporation of railroad companies, (St. 1861, 607) by filing its articles of association in the office of the secretary of state on December 2, 1865. The act requires, among other things, the articles of association to state 'the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass, and its length as near as may be'. *Id.* 608, Sect. 2" (p. 459).
>
> "The said articles of association, filed December 2, 1865, set forth that the corporation was formed 'for the purpose of constructing, owning, and maintaining a railroad from some point on the bay of San Francisco, in the state of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said state; thence eastward, through the said county of San Diego, to the eastern line of the state of California, there to connect with a contemplated railroad from the eastern line of the state of Cali-

fornia to the Mississippi river'. . . . At this time, also, no authority had been given by congress for the construction of any railroad from the Mississippi river to the eastern line of the state of California; although the thirty-third and thirty-fifth parallels of latitude had been publicly discussed as probable lines of future railroads, and it was, therefore, uncertain at what point of the line any road to be projected and constructed would intersect the eastern line of the state.

This being the condition of things, congress, on July 27, 1866, passed 'An act granting lands to aid in the construction of a railroad and telegraph line from the state of Missouri to the Pacific coast'. 14 Stat. 294. By the first section, the Atlantic & Pacific Railroad Company was incorporated and authorized to construct a railroad from the town of Springfield, in the state of Missouri, to the western boundary line of the state; thence 'to the head-waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific.' Section 3 provides as follows: 'And be it further enacted that there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, . . . every alternate section of public land . . . not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land-office. . . . . And section 18 is as follows: 'And be it further enacted that the Southern Pacific Railroad, a company incorporated under the laws of the state of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the

boundary line of the state of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad, herein provided for.'

In pursuance of the third section of the said act of congress, the Southern Pacific Railroad Company filed a plat of the line of railroad adopted by it in the office of the commissioner of the general land-office on the third day of January, 1867. The line as laid down on the plat filed, commences at a point near the southern end of the bay of San Francisco, and passes through the counties of Santa Clara, Monterey, Fresno, Tulare, Los Angeles (as the counties of Tulare and Los Angeles were constituted when the company was incorporated), and San Bernardino to the Colorado river, to a point on the river near where the thirty-fifth parallel of latitude crosses said river; thus passing through all the counties named in the certificate of incorporation except San Luis Obispo, which was avoided by a deflection to the eastward, and San Diego, which the line did not go far enough south to reach. The deflection carried the line through Fresno and San Bernardino, instead of San Luis Obispo and San Diego counties, but it passes through all the other counties named in the articles of incorporation. The northern portion of Los Angeles county through which the line passed, as the county was constituted at the date of filing the articles of association, is now the southern part of Kern county. Before the filing of said plat the road had not been finally located, and no map or profile thereof had been filed in the office of the secretary of state of the state of California, as provided by section 43 of the act under which it was incorporated, (St. 1861,

623); the only designation at the time being that indicated in the articles of incorporation hereinbefore set out" (pp. 460-462).

"On July 25, 1868, Congress passed an act extending the time within which the Southern Pacific Railroad Company should be required to complete the first 30 miles of its road, and requiring it thereafter to complete 20 miles each year till the completion of the road within the time required. 15 St. 187. On June 28, 1870, congress passed a joint resolution, as follows, to-wit: 'That the Southern Pacific Railroad Company of California may construct its road and telegraph lines, as near as may be, on the route indicated by the map filed by said company, in the department of the interior, on the third day of January, 1867; . . .' 16 St. 382" (p. 462).

"On March 3, 1871, congress passed the act to incorporate the Texas Pacific Railroad Company, in which it authorized the plaintiff, the Southern Pacific Railroad Company, to construct a line of railroad from a point at or near Tehachapa pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, etc., as given to it by the act organizing the Atlantic & Pacific Railroad Company, 16 St. 573.

On March 1, 1870, the legislature of California passed a general act authorizing any corporation organized or to be organized under the laws of the state to amend its articles of association, by making and filing amended articles in the same office where the originals are to be filed. St. 1869-70, 107.

On April 4, 1870, the legislature of California passed an act as follows: 'Whereas, by the provisions of a certain act of congress of the United States of America, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the state of California," approved July 27, 1866, certain grants were made to, and certain rights, privileges, powers, and authority were vested in

Microcard Editions

An Indian Head Company

A Division of Information Handling Services

CARD 30

COPY BOUND CLOSE IN CENTER

and conferred upon, the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the state of California; therefore, to enable the said company to more fully and completely comply with and perform the requirements, provisions, and conditions of the said act of congress, and all other acts of congress now in force or which may hereafter be enacted, the state of California hereby consents to said act; and the said company, its successors and assigns are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the state of California by such route as the company shall determine to be the most practicable, and to file new and amendatory articles of association; and the right, power, and privilege is hereby granted to, conferred upon, and vested in them, to construct, maintain, and operate, by steam or other power, the said railroad and telegraph line mentioned in said acts of congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges and franchises, power and authority conferred upon, granted to, or vested in said company by the said acts of congress, and any act of congress which may be hereafter enacted.'

Subsequent to the filing of said plat, on January 3, 1867, and prior to the issue of the patent to the land in question, the legislature of California passed various other acts recognizing and granting rights to the Southern Pacific Railroad Company. Under section 40 of the act under which plaintiff was incorporated, it was authorized to consolidate with any other railroad corporation. St. 1861, 622.

On October 12, 1870, in pursuance of the general statute, the San Francisco & San Jose Railroad Company, then owning and operating a road from San Francisco through San Mateo county to San Jose, in Santa Clara county, together with other companies, consolidated with the said Southern Pacific Railroad Company, taking the name of the

main and principal company, the Southern Pacific Railroad Company, by which consolidation the Southern Pacific Railroad Company acquired the railroad extending from San Jose to San Francisco; thereby connecting its line as laid down on the plat filed with the commissioner of the general land-office with the city of San Francisco.

On April 15, 1871, in pursuance of the said general act of the legislature of California, approved March 1, 1870, the said Southern Pacific Railroad Company filed amended articles of association, which articles, among others, contained the following recitals: 'Whereas, by an act of the legislature of the state of California, entitled "An act relating to certificates of incorporation," approved March 1, 1870, any corporation then organized or thereafter to be organized, under the laws of the state of California, is authorized and empowered to amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors or trustees, and by a vote or written assent of the stockholders representing, at least, two-thirds of the capital stock of such corporation; and, whereas, by a certain other act of the legislature of the state of California, entitled "An act to aid in giving effect to an act of congress, relating to the Southern Pacific Railroad Company," approved April 4, 1870, to enable the said company to more fully and completely comply with and perform the provisions, requirements, and conditions of an act of congress of the United States of America, entitled "An act granting land to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the state of California," approved July 27, 1866, and of all other acts of congress then in force, or which might thereafter be enacted, the said Southern Pacific Railroad Company, its successors and assigns, were authorized and empowered to change the line of its railroad, so as to reach the eastern boundary line of the state of California, by such route as said

> Company might determine to be most practicable, and to file new and amendatory articles of association: . . . now, therefore, the board of directors of said Southern Pacific Railroad Company do order and direct that the articles of association of said company be amended so as to read as follows,' etc. The object of the corporation as expressed in its amended articles is as follows: 'Art. 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate a continuous line of railroad from the city of San Francisco, in the state of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado river, in the southeastern part of the state of California, a distance of seven hundred and twenty miles, as near as may be; also, a line of railroad from a point at or near Taheechaypah pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also, a line of railroad from the town of Gilroy, in the county of Santa Clara, in said state, passing through said county, and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last-named county, a distance of forty-five miles, as near as may be; also, such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation, and direct to be established' " (pp. 462-464).

Before considering the construction by the Southern Pacific of its line from Yuma to New Orleans, covering the period from 1877 to 1883, we ask to have it particularly noted that the Texas Pacific Act was passed by Congress presumably with full knowledge of the fact that the grant to the Southern Pacific, authorizing the connection with the Texas Pacific, gave to Leland Stan-

ford, C. P. Huntington, Mark Hopkins and Charles Crocker, who were then publicly known to be in control of both the Central Pacific and the Southern Pacific, all lines (four in number) leading to San Francisco and crossing the boundaries of the State of California. These lines were (1) the line crossing to Nevada and Utah for connection with the Union Pacific; (2) the line from Roseville to the Oregon boundary there to connect with roads leading to Portland and the north; (3) the connection from Mojave and Needles over the thirty-fifth parallel to Springfield, Missouri, and (4) the connection on the thirty-second parallel, at Yuma, leading to Marshall, Texas.

Before passing on we also invite the attention of the court to the fact that these associates were in open control of the companies. They appeared in control of the boards of directors in the consolidations which took place in the year 1870—those of the Central Pacific June 23, 1870, and August 22, 1870, and that of the Southern Pacific October 22, 1870.*

In view of these facts, great significance attaches to the circumstance that by the terms of the act the Texas Pacific Railroad Company was forbidden to effect any consolidation with a competing through line, *while no*

*In Defendants' Exhibit No. 23 (V. R. 1706), containing the annual report of the Southern Pacific Railroad Company (of California) to the Secretary of the Interior, *for the year ending June 30, 1871*, the directors of the Southern Pacific Railroad Company are named as: Charles Crocker, Leland Stanford, C. P. Huntington, Mark Hopkins, Peter Donahue, Lloyd Tevis, Charles Mayne. The exhibit also contains the statement of C. P. Huntington, on oath, taken September 30, 1871, that he was elected to the office of President of the Southern Pacific Railroad Company of California on the 14th day of August, 1871, in the place of Charles Crocker whose term of office expired on that day. The significance of this should be borne in mind. See also p. 40 for Charles Crocker's letter in which as President of the Southern Pacific Railroad Company, he makes acceptance of the terms of the Texas Pacific Act.

such limitation was imposed upon the Southern Pacific Railroad Company.

Section 4 of the Act of March 3, 1871, reads in part:

> ". . . the said Texas Pacific Railroad Company shall have power and lawful authority to purchase the stock, land grants, franchises, and appurtenances of, and consolidate on such terms as may be agreed upon between the parties, with any railroad company or companies, heretofore chartered by congressional, State, or territorial authority, on the route prescribed in the first section of this act; *but no such consolidation shall be with any competing through line of railroads to the Pacific Ocean.*"

Section 23 of the Act of March 3, 1871, authorizing the Southern Pacific to construct a connecting line by way of Tehachapi Pass, contains no similar limitation upon the Southern Pacific Railroad Company. By this section the Southern Pacific is given the same rights, grants and privileges, and is subject to the same limitations, restrictions and conditions as were granted to it by the Act of July 27, 1866, authorizing the Atlantic and Pacific construction. In the Act of 1866 there is no limitation imposed upon the right of the Southern Pacific to consolidate.

(5) The history of the Southern Pacific Sunset-Gulf line from the completion of the road to Yuma, October 22, 1877, under the Texas Pacific Act, to the opening of the line to New Orleans February 1, 1883.

We come now to the construction of the line from Yuma to New Orleans.

The Southern Pacific Railroad Company of Arizona was incorporated September 20, 1878, to build a rail-

road connecting with the Southern Pacific Railroad Company of California at Yuma and running "thence eastwardly following as near as practicable the thirty-second parallel of north latitude to the eastern boundary of said Territory." In the same year it commenced building eastward from Yuma and continued its construction work, with the exception of a few months' interruption in the vicinity of Casa Grande in 1879, until the line reached the eastern boundary of Arizona. From there the work was carried on by the Southern Pacific Railroad Company of New Mexico, incorporated April 14, 1879, to construct a railroad across that portion of "the Territory of New Mexico between its western boundary and the Rio Grande," following as near as practicable the thirty-second parallel. The line built by this company extended to the Texas boundary at El Paso.

The road in Texas was built by two companies, the Galveston, Harrisburg and San Antonio Railroad Company, which built the line from El Paso to Houston, and the Texas and New Orleans Railroad Company, which built the section between Houston and the Louisiana boundary. The construction as far as San Antonio, under the name of the Galveston, Harrisburg and San Antonio Railroad Company, was a continuation of the construction under Southern Pacific control. The work was done by two construction parties, one working eastward from El Paso and one westward from San Antonio, both of which were under the supervision of William Hood, the Engineer of the Southern Pacific Company. Connection with made at the Pecos

River in Texas on Christmas Day, 1882. (Strobridge, II, R. 404-5; Martin, II, R. 418-19; Hood, II, R. 435.) The construction of the Galveston, Harrisburg and San Antonio line from San Antonio east to Houston was accomplished under the management and control of T. W. Pierce (Hopkins, II, R. 674).

The remainder of the present Sunset line was constructed and owned by the Louisiana Western Railroad Company and by the Morgan, Louisiana and Texas Railroad Company prior to the completion of the construction work in Texas. These lines having been leased and the junction between east and west having been effected at the Pecos River in the winter of 1882, the line from Yuma to the Gulf was ready for operation and was opened February 1, 1883.

It appears from this that the route from California to New Orleans was made up of the lines of eight companies: the Central Pacific; three named Southern Pacific Railroad Company, viz., of California, Arizona and New Mexico; two Texas railroad corporations and two Louisiana railroad corporations.

The companies and the sections owned by them appear in the following table, taken in part from the testimony of Mr. Kruttschnitt (II, R. 724):

S. P. R. R. of Cal. via Oakland and Martinez. C. P. R. Co. via Oakland and Niles	San Francisco to Tracy.
C. P. R. Co.	Tracy to Goshen.
S. P. R. Co.	Goshen to Yuma.
S. P. R. Co. of Ariz.	Yuma to New Mexico line.
S. P. R. Co. of N. M.	New Mexico line to El Paso.
G. H. & S. A.	El Paso to Houston.
T. & N. O.	Houston to Orange.
La. W.	Orange to Lafayette.
Morgan Line (L. & T. R. & S. Co.)	Lafayette to New Orleans.

The following table shows the construction in periods of the Sunset route from Yuma to New Orleans:

Yuma to Casa Grande	May 15, 1879,	S. P. R. R. Co. of Ariz.
Casa Grande to Tucson	March 17, 1880,	" "
Tucson to New Mexico line	Sept. 15, 1880,	" "
New Mexico line to Rio Grande Bridge	Oct. 18, 1880,	" of N. M.
Rio Grande Bridge to El Paso	April, 1881,	G. H. & S. A. R. R. Co.
El Paso to Pecos to San Antonio	Jan'y. 15, 1883,	"
San Antonio to Luling	March 1, 1877,	"
Luling to Columbus	1874,	"
Columbus to Harrisburg (via Houston)	(Before 1870),	"
Houston to Orange	(Built before Civil War but damaged and subsequently constructed as follows:)	
Houston to West Liberty	Before Jan'y, 1870,	T. & N. O. R. R. Co.
West Liberty to Orange	Aug. 1, 1876,	"
Orange to Vermillionville (Lafayette)	August, 1880,	L. W. R. R. Co.
Vermillionville (Lafayette) to Berwick Bay (Morgan City)	1880,	M. L. & T. R. R. Co.
Berwick Bay (Morgan City) to Bayou Boeuf	Apr. 12, 1857,	N. O. Ope. & G. W. R. R. Co.
Bayou Boeuf to Lafourche	March 1, 1856,	"
Lafourche to Algiers (New Orleans)	Nov. 6, 1854,	"

(6) The operation of all the Southern Pacific lines by the Central Pacific, commencing with the construction south of Goshen in 1872 and ending April 1, 1885.

It will be remembered that in the 1870 consolidation of the Southern Pacific Railroad Company and other roads already mentioned (p. 38, *supra*) the Southern Pacific became the owner of the line from San Francisco to San Jose, and that this line was extended from San Jose to Gilroy and from Gilroy to Tres Pinos (p. 35, *supra*). All of this construction was west of the Coast Range, whereas the other construction with which we have to deal, commencing with Goshen and south thereof, was east of the Coast Range. We propose now to show that as fast as the Southern Pacific built south of Goshen and the road was in order for operation, it was taken over by the Central Pacific

Railroad Company and operated, so that at no moment of time until 1885 was any part of this construction of the Southern Pacific operated except by the Central Pacific Railroad Company.

Frequent mention has been made of the junction at Goshen. Nothing in the entire record shows more clearly the *unified construction and natural continuity* of the Southern Pacific-Central Pacific system than the character of this junction-point. Goshen was not "any place at all (Strobridge, II, R. 413); it was "not a place of any size," and not "a natural ending place for a railroad" (Pratt, II, R. 504); "at the time we built, [it] had no name of Goshen but was simply a point" (Hood, II, R. 434).

William Hood, Chief Engineer of the Southern Pacific Company since 1885 (II R. 395), entered the employ of the Central Pacific May 3, 1867 (II R. 431), and, with the exception of about a year, 1873-1874 (II R. 434), continued in its employ until 1885, when the Southern Pacific Company became the operating company of the system, and he thenceforward, down to the present has maintained the same relation to the Southern Pacific Company that he had maintained before that time to the Central Pacific.

In his testimony (II R. 431-440) it is shown that the Southern Pacific construction was directed by Messrs. Stanford, Huntington, Hopkins and Crocker, notably by the latter, and that as fast as the construction south from Goshen took place the road was taken over for

operation and thenceforward operated by the Central Pacific Railroad Company as a leased line.

Mr. Hood's testimony is as follows (II R. 434-435):

"The construction south from Goshen—which at the time we built there had no name of Goshen, but was simply a point selected for the Southern Pacific Railroad from the west to turn south—continued consecutively, without cessation, and without any special line of demarcation, other than I have mentioned, to Tipton, which, I think, is about twenty miles south of Goshen, and there the construction ceased for that year; and in the early summer of 1873 I went east on private business, until July, 1874, and when I arrived back again, to go to work again, the track had just reached Bakersfield. I then took active charge of the location of the road from Bakersfield over Tehachapi Pass and south, including charge of construction as well, in the sense of going over it constantly in an advisory capacity, as I was appointed, during the progress of that work, assistant chief engineer of the Southern Pacific Railroad, and essentially acted for the chief engineer in most particulars.

This continued until some time in September, 1876, at which time the road was completed through to San Fernando station, now known, I think, as Fernando station. There was then a stretch of road already completed by a separate organization under the orders of the chief engineer, which extended from Fernando to Indio, and with which I had no personal connection, excepting that occasionally I had gone over it on trips with Mr. Charles Crocker, who was, of course, in charge of that, as of other similar matters on the Southern Pacific Railroad.

At Indio I commenced with the location of the line and carried it through to Yuma; and, without going into too many details as to other pieces of work here and there—which I can describe at length

if desired—the track reached Yuma in the late summer of 1877 or thereabouts.

Construction was recommenced at Yuma in the late fall of 1878, and was carried on continuously eastward, with the exception of a few months lay-off in the summer of 1879, in the vicinity of Casa Grande; and the construction from the west was carried eastward to join the construction being carried westward from San Antonio at a point about ten miles west of the crossing of Pecos River, the tracks having joined there in the fall of 1882. In the meantime construction had been pushed westward from San Antonio, and I had made the preliminary surveys for it.

Q. For that road west of San Antonio?

A. West of San Antonio; by going to San Antonio at a certain period and working west.

Q. Yes.

A. To join the construction from the west, as above indicated, at a point between Langtry and the Pecos River crossing, to make it specific enough; that construction was done principally under the direct orders of Mr. C. P. Huntington and Mr. James Converse, chief engineer of the Galveston, Harrisburg & San Antonio Railroad, whose efforts of construction, however, were entirely confined to the distance between San Antonio, Texas, and a point perhaps midway between Langtry and Pecos River crossing, it being under my supervision, however, to the extent that, under the direct orders of Mr. Charles Crocker, I would go down there occasionally and revise their line and direct line changes, and approve or veto proposed contracts.

This completed what is known as the Sunset Route as far as San Antonio, Texas. East of San Antonio, Texas, I have no knowledge of it whatever."

Upon the point of its operation, Mr. Hood testified (II R. 436):

"Q. Was this road south of Goshen to Pecos River, or near there, turned over for operation to any company as you completed sections of it?

A. At occasional intervals, as the track laying progressed and the road became ready for operation, say a stretch of 100 miles was completed, the operating organization of the Central Pacific Railroad commenced to operate it, and it continued so consecutively as the construction continued east, as far as I knew anything about it, which was at San Antonio, Texas."

ROBERT A. DONALDSON, age seventy-five years, began his employment with the Central Pacific Railroad Company in November, 1870 (II R. 623); became Assistant General Passenger and Ticket Agent of Central Pacific in December, 1877, and later General Passenger and Ticket Agent of the Central Pacific, which position he continued to hold until April 1, 1885, when the Southern Pacific Company took control of and operated the Central Pacific Railroad Company and its branches, on which date he became an employee of the Southern Pacific Company until his retirement April 30, 1912 (II R. 624).

Mr. Donaldson's testimony is as follows (II R. 624):

"Q. Do you remember the time when the Southern Pacific Railroad line from Goshen south to Los Angeles and Yuma and beyond, was being constructed?

A. I do.

Q. Do you know what company took over that road for operation when sections of it were completed from time to time?

A. From a point at or near the Goshen station, the Central Pacific Railroad Company operated the lines as they were ready for operation.

Q. The Central Pacific Railroad Company was operating its own lines from the beginning?

A. The Central Pacific Railroad Company operated its own lines during all that time, up to the opening of the line south of Goshen.

Q. How far south, if you know, did the operation of the Central Pacific Railroad Company extend over this line south of Goshen?

A. It extended over its own line to Goshen, and over the lines of the Southern Pacific Railroad of California, the Southern Pacific Railroad of Arizona, the Southern Pacific Railroad of New Mexico to the Rio Grande, at El Paso, and also over a portion of the line from El Paso, when it was completed—the line from El Paso to San Antonio, say."

He again testified (II R. 625):

"Q. From that time (1882) did the Central Pacific Railroad Company, or its officials, have jurisdiction of the entire line between San Francisco and New Orleans?

A. They did, for a period.

Q. For how long?

A. I think possibly six months or a year's time.

Q. When was that jurisdiction terminated? What was the occasion of it?

A. After the completion of the line to San Antonio and the opening of the line to service to and from New Orleans and from and to El Paso, the road between El Paso and New Orleans was handled by officials of the G. H. & S. A., the Louisiana Western, and the Morgan line. I will not undertake to say just what date that took effect, but my remembrance is that it was either late in 1883 or early in 1884.

Q. I am asking you when the Central Pacific officials exercised jurisdiction over that entire line.

A. They exercised jurisdiction over that entire line from the time it was completed.

Q. When it was opened?

A. When it was opened.

Q. And how long thereafter did they continue to do that?

A. My remembrance is that it was not much over a year, if it was that.

Q. Did they not continue until the Southern Pacific Company took charge of these lines in 1885?

A. The operating officers may have done that, but the general passenger agent did not.

Q. Did not Mr. Towne exercise jurisdiction all the way through to New Orleans until 1885, when the Southern Pacific Company took possession?

A. My recollection is that he did.

Q. You remember when the Southern Pacific Company took possession of these lines?

A. I do.

Q. And thereafter, after the Southern Pacific Company took possession, what was the southern limit of your jurisdiction on the Sunset Line?

A. It ended at the Rio Grande River."

James Horsburgh, Jr., General Passenger Agent of the Southern Pacific Company, Pacific System (II R. 629), entered the service of the Central Pacific as a clerk in the General Passenger Department in May, 1873, and continued in the Passenger Department of the system, first with the Central Pacific Railroad Company, and afterwards with the Southern Pacific Company.

He testified (II R. 629-630):

"Q. You remember the construction of the line from Goshen south to Los Angeles, Yuma, El Paso and eastward to New Orleans?

A. I do.

Q. What company first operated that line?

A. The Central Pacific Railroad.

Q. Did it take over sections of the line as they were turned over for operation?

A. As turned over by the construction department.

Q. You had jurisdiction as an official, then, over that line from the time it was operated?

A. From the time it was operated, yes.

Q. Do you remember about when this line to New Orleans was opened for operation?

A. I think about February, 1883.

Q. After it was opened for operation, how far did your jurisdiction extend toward New Orleans?

A. To New Orleans.

Q. How long did that jurisdiction continue?

A. I believe until the formation of the Southern Pacific Company and the division of the line into the Pacific system and the Atlantic system in 1885.

Q. Do you remember when you first went over the line, after its opening, to New Orleans?

A. Shortly after its opening I went to Houston and New Orleans to install our system of handling passenger business."

He further testified that all instructions came from Stanford, Huntington, Hopkins and Crocker (II R. 630).

TIMOTHY HOPKINS, adopted son of Mark Hopkins who died March 29, 1878 (II R. 649), entered the service of the Central Pacific Railroad Company as a clerk in 1881. He was elected treasurer of the Central Pacific in 1882, and continued as treasurer and as a director of that company until 1892. He was also a director of the Southern Pacific Railroad Company during that period (II R. 649).

He testified (II R. 672):

"Q. Was there ever any distinction made between the lines of the Central Pacific Railroad Com-

pany and the Southern Pacific Railroad Company on account of their ownership? What I mean by that is, were they operated separately or were they operated together, as if they were in one ownership?

The WITNESS. They were operated as one company; no distinction made as to which line was which."

R. H. PRATT, of San Francisco, was foreman of construction and superintendent in charge of camps for the Central Pacific Railroad Company and was connected in various ways with the construction work from March, 1865, until 1871. From then until 1895, when he retired from service, his duties concerned the operation of trains and traffic management, first as division superintendent at Ogden, later at Wells, and finally as assistant general superintendent at San Francisco.

He testified (II R. 480-482):

"Q. What company built the road south of Goshen?

. . . . . .

A. The Southern Pacific.

. . . . . .

Q. When any section of that road was open for operation south of Goshen, do you know what company operated the road?

A. Well, the Central Pacific Company operated it until the Southern Pacific was formed.

Q. That is all right. I want to continue along as it was brought in, as these sections were brought in to be operated by the company operating them.

A. The Central Pacific Company.

. . . . . .

Q. From the time it was opened, that was about 1885

A. Down to 1885?

Q. Yes.

A. The Central Pacific Company.

Q. The Central Pacific Railroad Company?

A. Yes, sir.

Q. Do you remember when that line reached El Paso in its progress eastward, about when?

A. I can not remember.

Q. Did the Central Pacific Railroad operate the line to El Paso at any time?

A. It did.

Q. Did it operate the road east of El Paso to New Orleans at any time?

A. It did.

Q. Do you remember when the line was opened between New Orleans and San Francisco, or about when?

A. I am unable to give the date.

Q. Was it prior to 1885?

A. I am unable to state the date, but I know the road was completed and connected with San Antonio.

Q. Did the Central Pacific Railroad Company operated trains at any time between New Orleans and San Francisco?

A. It did.

Q. Was it doing that at the time that line was taken over by the Southern Pacific Company; that was in 1885?

A. Yes, sir, 1885; early in 1885.

Q. How long before that had it been operating that through road between New Orleans and San Francisco?

A. About two years, I think; it was about two years it was open.

Q. So it was probably about 1883 or 1882?

A. Yes, sir, about 1883.

Q. That the New Orleans line was opened?

A. Yes, sir."

He again testified (II R. 482):

"Q. Was it not a fact that as fast as the road was built and opened for operation south of Goshen to Los Angeles, El Paso, San Antonio and on to New Orleans, as soon as that through line was opened for operation that the Central Pacific Company operated it?

A. It was.

Q. It was the first company that operated that line?

A. The first company.

Q. And your jurisdiction then extended all the way to New Orleans?

A. All the way to New Orleans."

William Henry Norton, Assistant Superintendent of the Southern Pacific Company's electric lines in Oakland, began in the employ of the Central Pacific Railroad Company in 1876 as a telegraph operator in Oakland. From 1879 to 1901 he was a train despatcher in Oakland.

He testified (II R. 550):

"Q. After it reached Goshen, and as sections of the road south of Goshen were opened for operation, what company took possession?

A. The Central Pacific.

Q. The Central Pacific Railroad Company?

A. Yes."

W. W. Slater began employment with the Central Pacific Railroad Company in 1869 as receiver of material for building. He was moved to various places on the Central Pacific line up to 1871, and in 1875 was employed as train despatcher in Oakland. Since 1885 he has been master of the signal system there.

He testified (II R. 527):

"Q. Do you know what company operated the road prior to 1885, prior to the advent of the Southern Pacific Company—what company operated those lines you have mentioned?

A. The officers were under the Central Pacific Railroad.

Q. The Central Pacific Railroad Company?

A. Yes.

Q. It operated the line to Mojave, as well as the line to Sacramento?

A. Well, it was under one set of officials, under one division superintendent, the men that I reported to.

Q. Do you know what company operated the line south of Mojave to Los Angeles?

A. It was under the same company, under the same general management.

Q. Were you ever over the line to Los Angeles?

A. Yes, sir.

Q. Did you ever go over the line south of Los Angeles to El Paso?

A. After 1885 I did.

Q. Did you know, prior to 1885, how far the jurisdiction of the Central Pacific Railroad Company extended down south?

A. Under the general management of one set of officers, who were located at Fourth and Townsend Streets—I don't know whether they were Central Pacific or Southern Pacific at that time.

Q. So far as you know, there was only one set of officials?

A. One set of officials.

Q. They were the officials of what company?

A. Of the Central Pacific prior to 1885, and of the Southern Pacific Company after that time."

In addition to the foregoing excerpts, evidence of a similar nature may be found in the testimony of the witnesses Martin (II R. 420), Englebright (II R. 467),

Luckett (II R. 541), Railton (II R. 571), Sheedy (II R. 597), Klink (II R. 599), Lister (II R. 531) and Richardson (II R. 635).

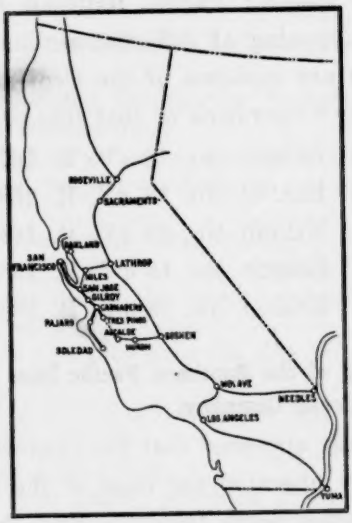
The following exhibits (circulars issued from the office of the Central Pacific Railroad Company, announcing the opening of different sections of the Sunset-Gulf line) are evidence of the Central Pacific Railroad Company's operation of that line prior to 1885:

Defendants' Exhibit No. 12 (V. R. 1679).
Defendants' Exhibit No. 13 (V. R. 1680).
Defendants' Exhibit No. 15 (V. R. 1681).
Defendants' Exhibit No. 16 (V. R. 1682).
Defendants' Exhibit No. 19 (V. R. 1683).

(7) The leasing of the Southern Pacific lines to the Central Pacific Railroad Company.

It has already appeared that the Central Pacific Railroad Company operated the lines of the Southern Pacific from Goshen south from the time that they were constructed and ready for operation. The leases under which these Southern Pacific lines were held and operated by the Central Pacific Railroad Company have not been introduced in evidence because they were destroyed in the San Francisco fire of 1906. There is ample evidence in the record, however, of the existence of the Central Pacific Railroad Company's leases. The first line of evidence has already been detailed in showing the operation and possession of the Southern Pacific lines by the Central Pacific, and we shall now refer to the testimony in which specific mention is made of the Central Pacific Railroad Company's leased lines.

We have already spoken of the line from San Francisco south to Gilroy. It will be recalled that, in its early history, it was simply a local line tapping valleys south of San Francisco, and was separated from the



Northern Division of Southern Pacific.

Northern Division ▬▬▬
S. P. - C. P. Arterial System ———

Southern Pacific construction south by the intervening Coast Range. This line, depicted in the accompanying map, was called the Northern Division of the Southern Pacific Railroad Company's lines, and it was not embraced within the system operated under the name of "Central Pacific and Leased Lines." (See testimony of Hood, II R. 456; Redington, II R. 564; Railton, II R. 569; Klink, II R. 600; Richardson, II R. 635; and Hopkins, II R. 650.) According to the testi-

mony of William Hood, the officers of the Northern Division of the Southern Pacific reported directly to the executive officers of the company and not to A. N. Towne, General Superintendent of the Central Pacific and its leased lines. In last analysis, therefore, the Northern Division of the Southern Pacific reported directly to Stanford, Huntington, Hopkins and Crocker. Whether the operation was *de jure* by the Central Pacific or the Southern Pacific is not made clearly to appear, and is "unimportant" (239 Fed. 1000, foot; VI R. 2330, top).

With the exception of the Northern Division of the Southern Pacific, all the Southern Pacific lines were controlled by the Central Pacific Railroad Company from the time of their construction up to 1885.

H. B. Breckenfeld, a member of the Efficiency Committee of the Southern Pacific Company, was in the service of the Central Pacific Railroad Company in 1870 in the capacity of telegraph operator. From 1875 to 1906, his duties included the compilation of the working time tables for the Sacramento Division.

He testified (II R. 459):

"Q. . . . Who were operating the lines before the Southern Pacific Company took possession; what company?

A. The Central Pacific Railroad.

Q. It was operating its own lines?

A. It was operating its own lines, and also the lines which it had leased.

Q. Did that include the lines of the Southern Pacific Railroad Company?

A. Yes."

C. H. REDINGTON was Assistant Treasurer at the general offices of the Southern Pacific Company in San Francisco at the time of the fire in 1906, and, in that position, was familiar with the Treasurer's records.

He testified (II R. 564):

"Q. The lines of the Southern Pacific of California, or of Arizona or of New Mexico, so far as they were operated by the Central Pacific Railroad Company, up to April 1, 1885, were operated by that company as a lessee?

A. Yes, sir.

Q. And on the stationery that has been put in, the significance of the words 'Central Pacific Railroad and leased lines' was the lines which I have described, which were owned by the Central Pacific Railroad Company and the lines of the Southern Pacific Railroad Company which had been leased to the Central Pacific Railroad Company?

A. Yes, sir."

TIMOTHY HOPKINS testified (II R. 649-650):

"Q. Your jurisdiction as treasurer of the Central Pacific Railroad Company extended from 1882 to 1885, over what lines of railroad?

A. Over the Central Pacific main lines and its leased lines; all of the property of the Central Pacific Railroad.

Q. Generally, what lines did the Central Pacific Railroad Company lease?

A. Various subsidiary lines; a line from Goshen down the San Joaquin Valley to the south.

Q. How far did the line extend from Goshen south?

A. To Yuma; likewise, the Northern Railway of California, from Oakland to Lathrop, and quite a number of other subsidiary lines. The reports will show.

Q. The Central Pacific Railroad Company, during that time, until the Southern Pacific Company

took possession in 1885, was also operating all these lines as lessee?

A. It was the operating company for all the lines.

Q. Was it lessee of the lines south of Yuma, or east of Yuma?

A. Yes.

Q. How far did its jurisdiction extend as lessee?

A. Its jurisdiction extended as lessee through the Southern Pacific Railroad Company of Arizona, the S. P. of New Mexico, running through to El Paso. During the first years of my connection with the company the line was finished through to New Orleans, and I think the Central Pacific operated the line as far south as the Pecos River, and perhaps a little beyond. I do not now recall whether we went through to San Antonio on that operation or not."

He again testified (II R. 685):

"Q. In the operation of the Southern Pacific Railroad and of the Central Pacific Railroad up to the spring of 1885, the Central Pacific Railroad Company acted as the operating company, did it not?

A. Yes.

Q. It operated the Central Pacific Railroad as its own, and the Southern Pacific Railroad as a lessee?

A. Yes; it was the Central Pacific Railroad and Leased Lines.

Q. And the Central Pacific Railroad Company, in operating those lines, operated them as one railroad would naturally operate any several railroads over which it held a lease or leases?

A. It operated it as one system, if that is what you mean."

HENRY CLAY MARTIN, who had started work in the Central Pacific shops at Sacramento during the con-

struction of the line to Ogden and who continued as engineer and conductor during most of the southern construction work and up to 1890, testified as follows (II R. 425-426):

"Q. Mr. Towne was general manager of the Southern Pacific Railroad and of the Central Pacific Railroad, was he not?

A. Yes, sir. Well, the passes and letterheads were headed 'Central Pacific Railroad Company and leased lines'."

. . . . . .

Q. How late did the Central Pacific Railroad continue to operate both those lines?

A. I could not tell you. I could not tell you that; but while I was working on the road, I know that their letterheads and passes that were issued were headed 'Central Pacific Railroad Company and leased lines.' "

R. H. PRATT testified (II R. 523):

"Q. The Central Pacific operated the part of the line from San Francisco to Goshen as the Central Pacific property, did it not?

A. It did.

. . . . . .

Q. And the line from Goshen to New Orleans as the Southern Pacific Railroad Company's property under lease to the Central Pacific, is that correct, as far as the Southern Pacific's rails extended? Is that correct, Mr. Pratt?

A. That is correct.

Q. From the ultimate extension of the Southern Pacific's rails to the eastern boundary line of New Mexico to tidewater at New Orleans. To put the matter simply—from El Paso to New Orleans, did the Central Pacific Railroad Company operate that property as well?

A. They did."

He also testified (II R. 489-490):

"Q. That letterhead, as we call it, was the letterhead you officials were using for the Central Pacific Railroad Company, was it?

A. It was.

Q. And the only change was stamping across it in red ink 'Southern Pacific Company'?

A. That is all the change."

. . . . . .

The letterhead which the witness so described, was dated San Francisco, April 6, 1885. The printed form of the heading was as follows:

"CENTRAL PACIFIC RAILROAD CO.
and
LEASED LINES
Office General Passenger and
Ticket Agent.
T. H. GOODMAN, Gen. Pass. & Tkt. Agent.
R. A. DONALDSON, Asst. Gen. Pass. & Tkt. Agent."

The words "Southern Pacific Company" were stamped over the words "Central Pacific Railroad Company," the Southern Pacific having become the operating company six days before the date of the letter.

JULIUS KRUTTSCHNITT, Chairman of the Executive Committee of the Board of Directors of the Southern Pacific Company, entered the railroad service in 1878 as engineer on construction of the Morgan, Louisiana and Texas Railroad and Steamship Company. In 1883 he became superintendent of that road, and in 1885 he was assistant general manager of the Atlantic System of the Southern Pacific Company. In 1895 he was made general manager of the entire Southern Pacific

Company, and in 1913 he assumed his present office (II R. 705).

He testified (II R. 709):

> "Q. Do you remember seeing, during this period (1883-1885), any bulletins posted at La Fayette?
> A. Yes; the bulletins of the west end were always posted on the bulletin boards at La Fayette.
> Q. How were they headed?
> A. They were headed generally 'Central Pacific Railroad Company and Leased Lines'."

The following exhibits (circulars issued from the office of the Central Pacific Railroad Company prior to 1885) are headed "Central Pacific Railroad Company and Leased Lines":

Defendants' Exhibit No. 9 (V, R. 1678).
Defendants' Exhibit No. 10 (V, R. 1679).
Defendants' Exhibit No. 15 (V, R. 1681).
Defendants' Exhibit No. 16 (V, R. 1682).
Defendants' Exhibit No. 18 (V, R. 1682).
Defendants' Exhibit No. 19 (V, R. 1683).

Defendants' Exhibit No. 14 (V, R. 1681) contains a reference to the Central Pacific Railroad Company and Leased Lines.

(8) Identity of management and equipment in the construction and operation of the Central Pacific-Southern Pacific system and its control by Stanford, Huntington, Hopkins and Crocker.

Frequent mention has been made of the fact that the Southern Pacific lines were operated by the Central Pacific Railroad Company as soon as they were constructed. In addition to this evidence of unified man-

agement, the record contains abundant testimony to the effect that the Southern Pacific and Central Pacific lines were built by the same people and managed by the same interests.

JAMES HARVEY STROBRIDGE, eighty-eight years of age, who started work for the Central Pacific Railroad Company in 1864 and was superintendent of construction for that company during the time when most of the Central Pacific and Southern Pacific lines were built (II R. 398), testified as follows:

"Q. Was it the same on the Southern Pacific Railroad Company as it was on the Central Pacific Railroad Company? That is the question I would ask.

A. It was the same.

Q. Did you use the same outfit, the same implements on the one line that you did on the other?

A. Yes.

Q. In doing all this work, didn't you move substantially that same outfit around on the different sections of line that you have described?

A. Always.

Q. In other words, you did not have one outfit for the Southern Pacific and another outfit for the Central Pacific?

A. No, sir. Lots of the tools and horses that we used on the Central went on to the Southern.

Q. And back again when you did work for the Central at last?

A. They came right back, moved back." (II R. 409) . . .

"Q. In giving orders to you and instructions concerning this work, what individuals controlled it?

A. Well, Mr. Crocker more particularly; sometimes C. P. Huntington and sometimes Leland

Stanford and sometimes Mark Hopkins did. (II R. 399) . . .

Q. Did you make any reports of the progress of that work [Texas construction] to anyone, and if so, to whom?

A. Yes; I reported to C. P. Huntington . . . about the time we commenced work at Casa Grande I got instructions from Mr. Huntington to report the track laying to him at New York every night, which I did. (II R. 405) . . .

Q. You had worked on the Central Pacific line, main line; . . . also on the Southern Pacific, main line from Goshen to Pecos River. Was there any difference in the people you were working for in one line as contradistinguished from the other?

A. No, sir; I took my orders from Charles Crocker, Leland Stanford, Mark Hopkins, and C. P. Huntington, and no one else. Their order, from any of them, was always good to me. (II R. 408-9) . . .

Q. From time to time you used to get working directions from Mr. Crocker?

A. Yes, sir.

Q. And sometimes you would get working directions from Mr. Huntington?

A. Yes, sir.

Q. And in the same way from Mr. Stanford or Mr. Hopkins?

A. Yes, sir. As I say, not from Mr. Hopkins, because Mr. Hopkins had died prior to the organization of that company.

Q. When any one of those gentlemen gave you directions, you did not care particularly whether he was doing it as president of the Southern Pacific Railroad Company or the Central Pacific Railroad Company or the Contract & Finance Company or the Pacific Improvement Company?

A. They were authoritative.

Q. Then you did not know at any particular time in which capacity they might be talking with you?

A. They talked to me as owners" (II R. 411-412).

HENRY CLAY MARTIN, a locomotive engineer in the early period of the Central Pacific Railroad Company's history, testified (II R. 420-422):

"Q. Did you see him [Mr. Charles Crocker] during the time of this work from Yuma to Pecos River?

A. Yes. He used to come down very often.

Q. Did he have anything to do with the work?

A. Yes, sir; we thought that he was the whole head of the outfit.

Q. Did you know Mr. Leland Stanford?

A. Yes.

Q. Did he have anything to do with this?

A. Yes. He was not down there as often as Mr. Crocker was.

Q. Did you know Mr. C. P. Huntington?

A. Yes. . . .

Q. Did you have anything to do with building any part of the Southern Pacific Railroad Company's line from near Soledad?

A. Yes.

Q. What part of it?

A. From Soledad to San Margarita.

Q. What year was that, if you remember?

A. I think that was in 1886, if I recollect correctly, or 1887.

Q. Who were you working for down there?

A. The same outfit. No change.

Q. The same men?

A. Yes, sir; the same officials.

Q. The same men you were working for in Arizona, New Mexico and Texas?

A. Yes.

Q. The same men you were working for from Redding to Ashland?

A. Yes.

Q. And you had the same outfit?

A. Yes.

Q. It was just a continuation of the same outfit of engines, and so forth?

A. Yes; all Central Pacific equipment.

Q. It was all Central Pacific Railroad?

A. Yes.

Q. Who was your paymaster during all of this work?

A. The same paymaster. Part of the time he was Mr. Hanford, and sometimes it was C. H. Redington.

Q. What company were they acting for?

A. We did not know any other but the Central Pacific Railroad Company.

WILLIAM HOOD, in describing the construction done in Texas under the name of the Galveston, Harrisburg and San Antonio Railroad Company, said (II R. 435-436) that the work was

"under my supervision, however, to the extent that, under the direct orders of Mr. Charles Crocker, I would go down there occasionally and revise their line and direct line changes, and approve or veto proposed contracts.

This completed what is known as the Sunset Route as far as San Antonio, Texas. East of San Antonio, Texas, I have no knowledge of it whatever.

Q. You spoke of Mr. Crocker having to do with the construction of that line to San Antonio?

A. Yes.

Q. What did he have to do with it?

A. Well, you understand I mean between San Antonio and a point midway between Langtry and the Pecos River crossing.

Q. You have spoken of him as having to do with this line—I mean the line all the way from Goshen to San Antonio.

A. He had to do with it in this way—just to illustrate: I received a telegram from him by messenger from the military telegraph station to go quickly to the vicinity of the mouth of Devil's River, at the Rio Grande River, and see what was doing, whether the contract should be let, whether

the route was right, and in general, to tell them what to do; and I went and did it, of course.

Q. He gave instructions as to that also, just as he had done on the Central Pacific?

A. Exactly the same.

The WITNESS. That is, my relations with Mr. Charles Crocker were, on the entire construction that I had to do with between Lathrop, California, and San Antonio, Texas, of the same character as my relations with Mr. Charles Crocker on the construction of the Central Pacific Railroad and its branches."

He also testified (II R. 436-437):

"Q. What arrangements were used to pay these forces while you were doing the work, from time to time?

A. In general, they were paid from the same pay car that paid the operating force, train men, shopmen and section men.

Q. The pay car of what company was that?

A. The Central Pacific Railroad.

Q. The pay car that came down over the part of the line that was being operated by the Central Pacific Railroad Company would continue on to the front and pay the construction forces?

A. Yes, sir.

Q. Who, if you remember, were in charge of that pay car?

A. Major Hanford was in charge a great deal of the time. . . .

. . . . . .

Q. What position did Major Hanford hold?

A. He was known to us as paymaster.

Q. Of what company?

A. Of the Central Pacific Railroad Company."

Again (II R. 438):

"Q. But the final authority in these matters was held by what men?

The WITNESS. I would take orders, during their lifetimes, without question, on any matter, from either Mr. Mark Hopkins, Mr. Charles Crocker, Mr. Leland Stanford, Mr. C. P. Huntington, and after Mr. Charles Crocker's death, from Charles F. Crocker."

H. ENGLEBRIGHT has been employed by the Central Pacific Railroad Company since 1871, as blacksmith, round-house foreman and master car repairer. He testified (II R. 466-467):

"Q. Do you know about the use of engines and equipment of these different companies, the Central Pacific, the Southern Pacific of California, the Southern Pacific of Arizona, the Southern Pacific of New Mexico, and the G. H. & S. A.? Were those engines, those locomotives, used indiscriminately over the different lines?

A. Yes, they were used indiscriminately over the different lines, with reference to the classes of the different types that were needed.

Q. State whether or not you have seen engines and rolling stock labeled 'S. P. of Mexico', for example, or 'S. P. of Arizona', in use on the California lines?

A. Yes.

Q. Also Central Pacific rolling stock in use on the lines of the Southern Pacific Railroad in California?

A. Yes, we had them C. P., S. P., S. P. Cal., Northern Railway, S. P. of Arizona, New Mexico, and so forth. They were used indiscriminately on the western division at that time.

Q. Do you remember the two large locomotives, supposed to be large at that time, No. 229 Central Pacific and No. 237 Central Pacific?

A. Yes.

Q. What do you know about them?

A. I know that they were being built at the Sacramento shops, and I made a number of visits

up there to look at them while they were under construction; and they were taken south and used on the Southern Pacific, on the Tehachapi hill."

Again (II R. 468):

"Q. What do you know about the company that was operating the Southern Pacific Railroad line south of Goshen to Los Angeles prior to the time the Southern Pacific Company took it in 1885 or 1886, as you have stated?

A. It was all operated under one head, the same managers.

Q. What head was that?

A. The Central Pacific Railroad."

R. H. PRATT testified (II R. 483):

"Q. Now, from the beginning, Mr. Pratt, who were the controlling officials and stockholders, as you saw them in everyday life and in your business, of the Central Pacific Railroad Company?

A. Leland Stanford, C. P. Huntington, Charles Crocker and Mark Hopkins.

Q. Did you know each of those gentlemen yourself?

A. I knew them personally.

Q. Did you ever have to do with them, or any of them, in your official business while operating the Central Pacific Railroad?

A. Quite often; more especially with Mr. Hopkins and Mr. Crocker, in my history of the road.

Q. Did you receive instructions from them?

A. I did receive instructions.

Q. And obeyed them?

A. Always, if I could.

Q. How long did that status continue of their control, or, as you observed it, from the time you began with the company?

A. As long as I was connected with the company, except two who died previous.

Q. Who were they?

A. Charles Crocker and Mark Hopkins.

Q. During the lifetime of Mr. Hopkins and during the lifetime of Mr. Crocker they each continued actively in the management of the Central Pacific Railroad?

A. They did.

Q. Who were the gentlemen that determined finally the questions that had to be decided for the Central Pacific Railroad in its financial and executive department?

A. Leland Stanford, Charles Crocker, C. P. Huntington and Mark Hopkins.

Q. How do you know that? I want to get at what facts you base that statement on.

A. I know it from taking their orders from them and working for them and with them; that is, they were on the work frequently, one of them, almost one or the other of them was always at the work and the other in the office."

Again (II R. 510):

"Q. You did not understand that those gentlemen (Huntington, Hopkins, Stanford and Crocker) were owners in any sense except as they were stockholders in the corporation?

A. I did. I understand that they were owners.

. . . . . .

Q. Owners of what?

A. Owners of the road they were building."

Again (II R. 524):

"Q. Speaking now from your intimate and direct connection with the properties as assistant general superintendent, is it not the fact that the Central Pacific Railroad Company and the Southern Pacific Railroad Company at all times within your related experience when the two properties were in concurrent existence, is it not the fact that at all times they were operated as a unified property?

The WITNESS. It is a fact."

EDGAR MELVILLE LUCKETT started work for the Central Pacific Railroad Company in 1873 in the Sacramento shops, where he was employed as a journeyman up to 1875 (II R. 532). He built engine No. 237 which was used on the Tehachapi mountain (II R. 533). He was made general foreman of the Sacramento shops and held that position up to 1893.

The witness testified (II R. 533-535):

"Q. During the time you were in the Sacramento shops, for what roads did you do work, building locomotives, and the like?

A. We did work for all the roads, that is, several of the S. P.'s and the C. P.'s, and did some work for the Oregon road, and we did a lot of work for the S. P. of Cal., S. P. of A.—S. P. of Arizona—the G. H. & S. A.—all the roads.

Q. When you say 'C. P.' you mean Central Pacific?

A. Yes.

Q. And 'S. P.' is Southern Pacific?

A. Yes.

Q. And G. H. & S. A. means Galveston, Harrisburg & San Antonio?

A. Yes.

Q. Where is the road of that company located?

A. Down in Texas.

Q. Do you remember the Southern Pacific Railroad of New Mexico, having anything to do with that?

A. Yes, we built locomotives for them. They were commonly called S. P. of N. M.

Q. Did you have anything to do with the building of pumping stations along those lines?

A. Yes, down on the desert of Arizona we built several new pumping stations. They had to haul water there for years, and we built several quite extensive pumping stations there.

Q. Did you have anything to do with furnishing track supplies and materials to those lines?

A. Yes, we furnished, I guess, all the spikes and bolts and fish plates that were used on the Southern Pacific, that is, most all of them; we could furnish them cheaper than we could buy them at that time.

Q. Do you remember at any time running overtime or extra time in doing this work?

A. Yes; there was a portion of the time, in doing a portion of the work on the Southern Pacific, that we had to work night and day to keep up with our orders for bolts, spikes and nuts.

Q. What roads?

A. Down in Arizona, the S. P. of A., when they were building that.

Q. Did you have anything to do with, or ever set up any locomotives for the G. H. & S. A.?

A. Yes, all of the engines that came out for those different roads came to Sacramento, towed out in a train and put together there and set up and shipped to the different places, or consigned to wherever they needed them the worst.

. . . . . .

Q. That was the only general shop?

A. That was the only general shop that the company had.

Q. And that supplied all these roads you have mentioned?

A. Yes, with material of all kinds, and locomotives.

Q. The general repairs were made to those locomotives at what point, at Sacramento?

A. All divisions shipped their engines in there for general repairs; that is, what we called heavy general repairs. There was nothing but small division shops on the different divisions, both south and east.

Q. What sort of repairs did you make at those division shops?

A. Light repairs, running repairs; but never did any heavy work.

Q. Did you know anything about furnishing enginemen and journeymen mechanics, and employees of that sort to the different divisions of those roads, both the Central Pacific and the Southern Pacific Railroad Company?

A. Yes, sir.

Q. What about that?

A. Well, if we had a surplus of men on any division on the C. P., and the S. P. had a rush of business and they wanted more men, we would send them down there, transfer them, and when they got through we would bring them back; and the same way with mechanics, if we had a surplus of mechanics; these different divisions when they wanted mechanics or engineers, always called on Sacramento, called on the general master mechanic; that is, if they could not pick them up themselves.

Q. From what you say, these shops at Sacramento seemed to be practically as much a shop for the Southern Pacific Railroad Company as for the Central Pacific Railroad Company?

A. Yes.

Q. Was there any distinction made with respect to the ownership of those lines?

A. No, sir."

Again (II R. 539):

"Q. After 1885 what company operated the Pacific system?

A. The Central Pacific. Well, I guess it was the S. P. then, but it was the same men.

Q. I wanted to find out what company it was; which one was it?

A. Well, after that the S. P.; our stationery and everything came out more with 'S. P.'

Q. Don't you know, after 1885, which company was operating the lines west of El Paso?

A. I did not know any difference between S. P. and C. P. It was all managed by the same men, and there wasn't any more men or any less men; all that we knew was that we were working for the same men, and getting our pay from the same pay car."

And again (II R. 543):

"Q. As a matter of fact, through all this time you did not particularly know which of these various railroad companies or other companies were employing you, or operating these various railroads, did you?

A. When I first came to work for the company, of course, there was no S. P. to speak of, but it was C. P. Everything was C. P., C. P., and as long as I worked for them, if anybody asked me where I was working, I would say I was working for the C. P., and I might have been working for the S. P. It was all one company, one set of officers, bosses."

C. H. Redington testified (II. R. 553-5):

"Q. What was the business, as far as you know, of the Contract & Finance Company, the Western Development Company and the Pacific Improvement Company?

A. Constructing railroads.

Q. In a general way I will ask you to state the roads that you know they constructed, or that were constructed through the instrumentalities of those companies.

A. The Central Pacific Railroad to Goshen; railroads, I think, south of Goshen; and I know they did south of Spadre. Also they built the branch line from Saugus to Santa Barbara. They built the line through Arizona and New Mexico and through Texas to Pecos River. They built the lines to Needles from Mojave.

Q. While you were paymaster did you see that construction work, or any part of it?

A Yes, sir

Q What was the occasion of your being out to the front, as we call it?

A. I was assistant paymaster of the Central Pacific Company, but I also paid off the construction men for these construction companies. I would go to the end of the track with the pay car, and then take teams and pay the construction men at sometimes thirty or forty miles from the end of the track.

Q. How often did you go out to the front?

A. Sometimes once a month, and sometimes only once in two months.

Q. Did you, at the same time this line was being built from Goshen south, go over the main Central Pacific line in the same way and pay off the men?

A. Yes, sir.

Q. During the construction of the road south of Goshen all the way to El Paso, as I understand it, you were paymaster of the Central Pacific Railroad Company?

A. I surely was, since they built south of Bakersfield."

. . . . . .

"Q. Did you go as far as El Paso?

A. Yes, sir.

Q. Did you go beyond El Paso?

A. Yes, sir; I went as far as Pecos River."

Again (II R. 565):

"Q. And prior to April 1, 1885, did the Central Pacific Railroad Company occupy the same position as bankers for all the companies?

A. So I understood, yes.

Q. As the payments were made, they were made more or less after a clearing house method, and charged to the various companies to which the particular payments were chargeable?

A. Well, I don't know; I am more familiar with the Pacific Improvement Company. I do not think

they had any bank account themselves. At times they borrowed a large amount of money, and would turn it over to the Central Pacific and later the Southern Pacific; that is, if they wanted money, they would draw on the Central Pacific or the Southern Pacific Company, and if they had any amount of money, they would turn it in to the treasurer of the Central Pacific, until after 1885, and then to the Southern Pacific."

EDWARD M. RAILTON was in the employ of the Central Pacific Railroad Company from 1869 to 1885, first as telegraph operator and later as master of transportation. He testified (II R. 573-574):

"Q. Did you personally know C. P. Huntington, Leland Stanford, Charles Crocker and Mark Hopkins?

A. Yes, I knew each and every one of them.

Q. Did they have anything to do with these roads we have been talking about?

A. Yes; we recognized them as being the practical owners.

. . . . . .

Q. What did they have to do, these gentlemen or either of them, with these roads, the Central Pacific Railroad Company and the Southern Pacific Railroad, that you know of your own knowledge?

A. Well, I know that their instructions, as regards operations of any kind, were followed.

Q. What did Charles Crocker have to do, especially, if anything?

A. Mr. Charles Crocker, more particularly than any of the others, took charge of construction and operation."

Again (II R. 575-576):

"Q. What was the practice of routing trains? Did you consider the ownership of the lines, or

did you take the most practicable and best route for trains, without reference to ownership?

The WITNESS. There was no regard paid to the ownership of the various companies. We routed trains by whichever was the best and most direct route.

Q. Can you give instances where that was done?

A. Yes; trains were diverted, directed to go, if you please, via Port Costa and Benicia to Sacramento, or via Antioch and Tracy, or, if you please, by way of Livermore and Tracy. Train service was maintained without any regard to the actual mileage made, in order to meet the exigencies of the occasion."

And again (II R. 576-577):

"Q. Do you know where the general repairs were made to cars and locomotives on all these lines under your jurisdiction from 1880 to 1885?

A. Sacramento principally, construction and general repairs, overhauls; also at Oakland.

Q. That is, the Sacramento shops of the Central Pacific Railroad Company?

A. Yes.

Q. The Southern Pacific Railroad Company had no shops there?

A. No, sir.

Q. And those shops made repairs for the Southern Pacific Railroad line all the way to El Paso, just as it did for the Central Pacific line to Ogden?

A. Those were our general repair shops, for both cars and locomotives.

Q. Now, as to the equipment purchased for use on those lines, were they allotted to the ownership of different companies?

A. As far as the marking of the cars was concerned, some were marked 'Southern Pacific' and some of them marked 'Central Pacific'.

Q. Did you ever see any G. H. & S. A.?

A. Freight cars, yes; and occasionally passenger cars. So far as freight cars were concerned, there were innumerable markings.

Q. Did you ever mark any cars 'S. P. of A.'?

A. S. P. of A., and S. P. of N. M.

Q. Were those cars and locomotives marked in this way used on the particular line for which they were marked, or were they used indiscriminately?

A. Indiscriminately; locomotives marked 'S. P. of New Mexico' would haul trains between Sacramento and Oakland, and engines marked 'Central Pacific' would be hauling trains out of Los Angeles, in both passenger and freight service.

Q. So the equipment was used wherever it was suitable?

A. Indiscriminately.

Q. Without reference to its marking?

A. Without any reference to it whatever.

Q. And all these lines were operated as one system?

The WITNESS. Yes."

JOHN E. FOULDS, who entered the service of the Central Pacific Railroad Company in August, 1871, and after January, 1876, acted as attorney for that company and its allied and subordinate corporations (II R. 578-579), testified (II R. 579-582):

"Q. Did you know Leland Stanford, C. P. Huntington, Charles Crocker, and Mark Hopkins?

A. Very well.

Q. In your work that you have mentioned, did you meet those gentlemen?

A. I met them frequently.

Q. Did you meet the gentlemen you have mentioned at any time for purposes of conference or in your work as attorney for the Central Pacific Railroad Company, and afterwards the Southern Pacific Company?

A. Quite a number of times; sometimes there were two or three of them present, at other times I conferred, perhaps, with but one of them.

Q. Do you know whether or not they gave instructions or directions concerning the corporate action of any of those companies?

A. I very frequently got instructions from them as to business that they desired to execute, and in proper cases, where it required some action by the board of directors of those companies, I would draw the necessary resolutions and advise their adoption.

Q. But ordinarily was the practice to put those matters before the board of directors, or were they disposed of by these gentlemen or some of them?

A. Well, practically they were disposed of by these gentlemen personally, or some of them."

. . . . . .

"Q. Before that time (1885) what company operated all of these lines; all of the companies mentioned, except the northern division?

A. The Central Pacific Railroad Company.

Q. And what you have said concerning the control or authority exercised by the four gentlemen you have mentioned, or their successors, refers to the Southern Pacific Company as well as the Central Pacific Railroad Company?

The WITNESS. Yes.

Q. And does it also refer to the construction companies, the Contract & Finance Company, the Western Development Company and the Pacific Improvement Company?

A. All of those companies.

Q. And the Southern Pacific Railroad Company?

The WITNESS. Yes.

Q. Under whose instructions were you acting when you organized the Pacific Improvement Company?

A. I think under the instructions of Governor Stanford.

Q. Did you attend to business arising on all these lines and any of them, the Southern Pacific Railroad, the Central Pacific, or any of these corporations in California, or the Pacific Improvement Company?

A. Oh, yes; we treated them as all belonging to our regular law department business.

Q. The law department covered all of the lines?

A. All of those lines.

Q. And you were just as much attorney for the Southern Pacific in Arizona as you were for the Central Pacific Railroad in Nevada?

A. Practically."

Again (II R. 587-588):

"Q. I will ask you whether the actions of those men had any reference to whether they were an officer or director of any particular corporation.

The WITNESS. I cannot say that they had; but it was always assumed that they had the necessary authority to order the operations directed by them.

Q. For instance, I remember that neither one of those gentlemen was an officer at all of the Pacific Improvement Company, and yet, within your knowledge, did not those gentlemen control and direct that corporation, just as much as any other of those corporations mentioned?

The WITNESS, Yes."

And again (II R. 589):

"Q. And yet was there any distinction in the supervising control or authority of these men exercised as to the corporations they were directors or officers in, as compared with those in which they were not?

A. They controlled them all in the same way.

Q. During the lifetime of Mr. Huntington, Mr. Crocker and Mr. Stanford, did you notice any lessening of the control or influence they had over the Central Pacific or the Southern Pacific?

The WITNESS. No, I cannot say that I did."

PATRICK SHEEDY has been in the employ of the Central Pacific and Southern Pacific Companies as machinist, foreman, and Superintendent of Motive Power since 1868. He testified (II R. 593-595):

"Q. Did you or did you not repair engines that were used on that line in Arizona, New Mexico and even in Texas?

A. I do not recall any coming from Texas; but I repaired engines from west of El Paso. We sent engines into Texas.

. . . . . .

Q. Did you or did you not furnish any material that was used in the construction of the Sunset Line, we will call it, from Goshen to El Paso?

A. I had nothing to do with the furnishing of material. I did not furnish any.

Q. Do you remember whether any engine men were detailed from the shops to go to that line?

A. I remember; engine men were detailed to go with the engines and take them down there.

Q. Do you remember the engines labeled '229 C. P.' and '237 C. P.'?

A. I do.

Q. Where were those engines built?

A. They were built in Sacramento.

Q. At the shops in Sacramento?

A. At the Central Pacific shops in Sacramento.

Q. And where were those engines used?

A. They were used on the Tehachapi Mountain.

Q. On the Southern Pacific line?

A. Yes, on the Southern Pacific line.

Q. To what company did those engines belong?

A. They were marked 'Central Pacific'.

Q. Did you notice any engines marked 'S. P. R. R. of Cal.' at any time?

A. I did; yes, sir.

Q. Do you know to what company those engines belonged.

A. I presumed they belonged to the same company that owned all the engines, and were simply marked that way to designate them from others that were assigned to other districts.

Q. Your knowledge consisted merely of the marking of the engines? Did you have occasion to go further, and to know exactly where the ownership of those engines resided, whether in one company or another?

A. No, sir; I never did.

Q. Do you remember any engines marked 'S. P. of A.'?

A. I do.

Q. What did that label mean?

A. Southern Pacific of Arizona.

Q. Do you remember any engines marked 'S. P. of N. M.'?

A. I do.

Q. What did that label import?

A. Southern Pacific of New Mexico.

Q. Were those two last mentioned engines used on the California lines in California?

A. They were, when required.

Q. Do you know about the distribution of this rolling stock, as to how it was distributed; whether or not there was any regard paid to the ownership of the lines?

The WITNESS. I never knew that there was any distinction made in distributing the engines."

GEORGE T. KLINK became a clerk in the accounting department of the Central Pacific Railroad Company in 1883. He was appointed Auditor of disbursements for the Southern Pacific Company in 1895, and held that position until 1904. He testified (II R. 609):

"Q. Was there any interchange of rolling stock between the Central Pacific Railroad Company and the northern division of the Southern Pacific Railroad Company in those days prior to April 1, 1885?

A. I believe that there was, to a limited extent, anyway.

Q. Was that charged and credited on some per diem or mileage basis?

A. No, sir; I think not."

Again (II R. 612):

"Q. The lessee company was practically, in all fiscal matters, the banker for all the different companies?

A. Yes.

. . . . . .

Q. There were material differences in the personnel of the officers and directors of the Central Pacific Railroad Company, the Southern Pacific Railroad Company and the Southern Pacific Company?

A. A great many of them were the same individuals. There were exceptions. For the most part, the directors or the owners of the property, the Central Pacific Railroad Company, were also directors of the Southern Pacific Company."

JAMES HORSBURGH, JR., said (II R. 629) that at that time the jurisdiction of the General Passenger Department of the Southern Pacific Railroad Company extended to New Orleans.

He further testified (II R. 630-631):

"Q. Did you know Leland Stanford?

A. Yes.

Q. Did you know C. P. Huntington?

A. Yes.

Q. Charles Crocker?

A. Yes.

Q. Mark Hopkins?

A. Yes.

Q. Did they have anything to do with these lines?

A. We considered them the owners; all instructions came from them.

Q. Did you receive instructions from those men, or any of them?

A. Yes, from each of them."

TIMOTHY HOPKINS (II R. 649):

"Q. Your jurisdiction as treasurer of the Central Pacific Railroad Company extended from 1882 to 1885, over what lines of railroad?

A. Over the Central Pacific main lines and its leased lines; all of the property of the Central Pacific Railroad."

He further testified (II R. 651):

"Q. Did you, as treasurer of the Central Pacific, have anything to do with the Pacific Improvement Company?

A. Yes.

. . . . . .

Q. Did you have anything to do with obtaining moneys for the Pacific Improvement Company to pay its expenditures?

A. Yes. Do you want the process, Mr. Herrin?

Q. Yes.

A. The Pacific Improvement Company was the constructing company and had large expenditures to make. Money was deposited with me as treasurer of the Central Pacific Railroad Company up to 1885, and as treasurer of the Southern Pacific Company thereafter. They drew drafts against these amounts deposited with me, and they generally had a large balance on hand, running into heavy amounts. Occasionally they might run short, but the drafts were paid just the same; and in these rare instances when the money would not be on hand to meet the drafts, I personally would go out and borrow the money of somebody in San Francisco to make good.

Q. You would borrow the money for what company?

A. For the Pacific Improvement Company. I had no official connection with that company, nor was I an officer of it, but it was a part of my duty to keep alive the notes that were outstanding."

Again (II R. 654):

"Q. Was there, at any time, in any of these meetings, any adverse vote or votes in opposition to the wishes of the Huntington, Stanford and Crocker interests?

The WITNESS. During the time that I was a director there was never a meeting of the stockholders or directors in which there were adverse interests. Everything was unanimous and directed by the four parties in interest."

Again (II R. 669):

"Q. Did the fact that Messrs. Stanford, Huntington, Crocker and yourself were not directors in any of these subordinate companies, affect in any way your control or management of the property owned by those companies?

A. Not at all. The companies were managed as a unity. The directions given by the four parties in interest were irrespective as to whether they were directors in that corporation or not. I know that was my action. I never stopped to consider whether I was a director of any company. When there were things to be decided and done, I gave my instructions and they were followed accordingly."

Again (II R. 672):

"Q. Was there ever any distinction made between the lines of the Central Pacific Railroad Company and the Southern Pacific Railroad Company on account of their ownership? What I mean by that is, were they operated separately or

were they operated together, as if they were in one ownership?

The WITNESS. They were operated as one company; no distinction made as to which line was which.

Q. Do you know who were the owners of the capital stock of the Southern Pacific Company at the time it began its operations in 1885?

A. Stanford, Huntington, Hopkins and Crocker owned most, if not all, of the stock. I, for the moment, do not recollect whether Mr. Pierce, through the Galveston, Harrisburg & San Antonio Company and eastern lines there, received some of that stock or not.

Q. I think these minutes show that he did.

A. That is my impression, that he did, and that it was owned by S. H. H. C. and Pierce, and I think some of the Morgan people took a little of the stock also, but I will not be certain as to that feature of it.

Q. State whether or not at all times that you have mentioned the H. H. S. & C. interests were the owners of a clear majority of the Southern Pacific Company's stock.

A. Yes, undoubtedly, a great majority."

Again (II R. 678):

"Q. So far as the exact ownership of the stock of the Central Pacific Railroad Company at that particular date (1884) is concerned, you really know nothing except the fact that it is in Mr. Brown's handwriting?

A. Yes. I do know this, that the control of the Central Pacific was in the hands of the 'big four' interests, Stanford, Huntington, Hopkins and Crocker. The exact number of shares that each held in their own name, or in the names of others, I cannot recall; but that there was a control of the company by those four interests, there was never any question as to that.

Q. You mean a voting control?

A. A voting control, absolute control, and a managing control."

And again (II R. 689):

"Q. Is not that about the situation?

A. The control of the Central Pacific was likewise in the hands of the four interests at the time. The Central Pacific had been the leasing company, and in the changing of those relations, which were of course satisfactory to the stockholders at the time—or it would not have been done—I think that it was considered to be a proper thing to put that company beyond any peradventure of criticism upon a change that might have appeared sudden to some of the outside stockholders. To that extent your question is pertinent and right.

Q. That is, the southern lines, using that to describe the line through El Paso which I have mentioned, was not only controlled as a corporate voting matter, but was very nearly entirely owned by these same interests that were coming into the Southern Pacific Company?

A. Yes.

Q. So that they were, so to speak, the whole thing on both sides of the trade, so far as the lease was concerned?

A. All of those companies were controlled by the same parties, including the Central Pacific."

Julius Kruttschnitt testified (II R. 706-707):

"Q. At or about the opening of this through line, in 1883, had you any reason for believing that Mr. Huntington and his associates owned or controlled the Morgan Company? And if so, state what those reasons were. By 'Mr. Huntington and his associates' I mean Mr. Huntington, Leland Stanford, Charles Crocker and the Hopkins estate.

A. The first time I had any reason to suspect ownership or control by Mr. Huntington and asso-

ciates was a visit of Mr. William Mahl, who was one of his confidential men, in the spring of 1882. Mr. Mahl came and looked over the property, which he did in great detail, and I was detailed to go over the property with Mr. Mahl and show him everything he wanted to see. From that I inferred that something was going to happen, or possibly had happened. Shortly after that I met Mr. Charles F. Crocker and went over part of the road with him, and also met Governor Stanford; I think it was probably the only time, or the second time, that I had ever seen him. I was also detailed to go over the line with him. The first time I ever saw Mr. Huntington himself was in 1884.

Q. How did Mr. Huntington act with reference to the road; as an outsider or as one interested in it?

A. Of course I never came in direct contact with him, except on this one occasion, but I was in continual conference with Mr. Hutchinson, and I knew by instructions that he gave me and letters that he showed me that he was receiving instructions from Mr. Huntington.

Q. The letters he showed you were from Mr. Huntington?

A. Yes.

Q. And Mr. Huntington was not at that time an officer of the Morgan Company?

A. No.

Q. Did Mr. Hutchinson obey the instructions of Mr. Huntington?

A. Yes, he did.

Q. That was in 1883 and 1884?

A. And 1884."

He further testified (II R. 710-711):

"Q. Was there anything in those early times in the construction of the G. H. & S. A. which you observed, the materials used or otherwise, to

show a connection with the Central Pacific Railroad Company? If so, what were those evidences of connection with the Central Pacific?

Q. How about the rails?

A. A great many of the rails were rolled by the same makers. There was one maker in particular that I heard Mr. Huntington speak of, Cammel of Sheffield, who, he said, had made him the best rails for the Central Pacific he had ever gotten, and that he had ordered rails from him for the G. H. & S. A. They were the same weight, the same cross section and the same length as the Central Pacific rails. The switches and frogs were actually Central Pacific, because they were made in Sacramento and were shipped down to the line of the G. H. & S. A.

Q. How about the train rules?

A. The train rules for the lines west of La Fayette were the Central Pacific rules. In all of my correspondence with the officers of the lines west of La Fayette I never remember their using any letterheads except 'Central Pacific and Leased Lines'."

H. B. BRECKENFELD testified (II R. 458):

"Q. In arranging these time tables and routing trains, was any attention paid to the ownership of these particular lines, or were they regarded as one property?

The WITNESS. The time tables were compiled with the idea of performing the best service; there was no attention paid to the corporate boundaries."

ARCHIE LISTER, a train dispatcher in Oakland from 1872 to 1900, testified as follows (II R. 531):

"Q. You handled the trains during certain hours as far as Mojave?

A. Yes, sir.

Q. And the Needles as well?

A. Yes; when they opened that line.

Q. And you were working for what company when you did that?

A. The Central Pacific, western division. That was called the Western Pacific when I started in, when I first started in.

Q. You were working on what was called the Western Pacific then?

A. Yes.

Q. How long did you continue to work for the Central Pacific Railroad Company?

A. Well, until they retired me, as far as I know 1910.

Q. You never heard of the Southern Pacific Company?

A. Only just about 1885, or somewhere in that neighborhood, the cars and locomotives and so on were initialed S. P., and some C. P.

Q. Did you ever work for the Southern Pacific Company?

A. Well, it was all the one thing to me. I did not know the difference, in fact."

Reference may also be made to testimony to similar effect given by the witnesses Johnson (II R. 548), Richardson (II R. 637) and Jackson (II R. 642).

(9) Steps taken between March 17, 1884, and April 1, 1885, for the organization of the Southern Pacific Company, for the termination of the leases to the Central Pacific Railroad Company, and for the leasing of the Central Pacific and Southern Pacific Lines to the Southern Pacific Company.

March 17, 1884, an act to incorporate the Southern Pacific Company became a law of Kentucky (Acts Ky. 1883-4, Vol. I, p. 725).

The history of the organization of the Southern Pacific Company in 1885 under this law is detailed in

the testimony of Timothy Hopkins, who was summoned from San Francisco in the summer of 1884 to attend a meeting in New York with Messrs. Huntington, Stanford and Crocker. The minutes of this meeting, written by W. E. Brown, who was appointed secretary, have been introduced as Defendants' Exhibit No. 21 (V R. 1688). The organization plan and the conferences of Stanford, Huntington, Hopkins and Crocker, at their meetings in New York in the autumn of 1884, may be found in these minutes and in the testimony of Mr. Hopkins.

Mr. Hopkins testified (II R. 655):

> "Q. Please state how you came to attend those meetings?
>
> A. I received a telegram from Senator Stanford, then in New York, asking me to go on, in the summer of 1884. I think it was in the latter part of July when I proceeded to New York. I found there Senator Stanford, Mr. Huntington and Mr. Crocker, and it was explained to me that the meeting was desired in order to go over our affairs generally, and likewise to take up the question of the organization of a new company for the purpose of holding and operating the railroad companies that were owned by the interests and controlled by them, both those under the management of the Central Pacific and those east of El Paso in Texas and Louisiana."

The first business of the meeting was to formulate a basis of settlement with Thomas W. Pierce of Boston (II R. 657), who was largely interested in the Galveston, Harrisburg and San Antonio Railroad, and the Louisiana Western Railroad, as a stockholder. He was likewise a stockholder in the Southern Develop-

ment Company, which had constructed the line in Texas between El Paso and San Antonio. Mr. Pierce held one-fifth of its capital stock, the other four-fifths being held by Huntington, Stanford, Hopkins and Crocker. As part of the agreement Mr. Pierce was to sell certain of his shares of the capital stock of the Galveston, Harrisburg and San Antonio Railroad Company and of the Texas and New Orleans Railroad Company, and he was to be credited for the same on the books of the Southern Development Company. In addition, Mr. Pierce agreed to put in 28,059 shares of stock of the Galveston, Harrisburg and San Antonio Railroad Company, receiving 150 shares of the Southern Pacific Company for each 100 shares of the Galveston, Harrisburg and San Antonio stock (II R. 658).

After the adjustment of interests between Mr. Pierce and Mr. Stanford and his associates, the organization of the Southern Pacific Company was planned.

We quote the following from the testimony of Mr. Hopkins (II R. 660-665):

> "Q. . . . I will call attention to the minutes of September 10th, which read:
>
> 'I, E. Gates and W. E. Brown were appointed a committee to examine all securities on hand in New York and all that are used as collaterals for the payment of the liabilities of S. H. H. & C.
>
> 'To ascertain what securities are available, and generally to make such an examination of the properties of S. H. H. & C. in New York, as they would make if examining for an executor of one of the parties, and to make out a schedule of all securities belonging to S. H. H. & C. in New York, so that the several parties in interest can sign

the schedule as of date as being correct on that date.'

Do you recall that transaction?

A. I recall that action.

Q. Will you state what it was? What was the purpose of it?

A. Well, this meeting was primarily for the purpose of organizing the Southern Pacific Company. There were a lot of preliminary matters which were first taken up, and an inventory of securities in New York was one of those preliminary matters, in order to ascertain what our resources were and where they were. The four interests—by that I mean Stanford, Huntington, Hopkins and Crocker—were large borrowers of money, and as the money market was in New York, they always maintained there a large number of securities in order to take care of the collaterals upon these loans. These matters were all in Mr. Huntington's hands, and he operated them, and at this meeting, and while we were all together, it was one of the times when we checked up to see where we stood.

. . . . . .

Q. I call attention to the minutes of September 11th:

'It is agreed that the order of consideration of affairs shall be as follows:

1st. Consolidation of all the lines of Southern Pacific System in one company.

2d. Separation of Central Pacific business from the Southern Pacific business.

3rd. Leasing of Central Pacific System to Southern Pacific System. (New organization.)

4th. General consolidation of lines from San Francisco to Newport News.'

Do you remember that meeting?

A. Yes.

Q. You said a while ago that the main object was to consider that?

A. The organization of a new holding company to take over and operate the through line from New Orleans to California.

Q. What was the reason for doing that? Was not the Central Pacific Railroad Company and leased lines a satisfactory organization, or what reason was there, as you recall it?

A. The Central Pacific leased lines system had become very much smaller than the Southern Pacific Company interests had become; in fact, the Southern Pacific lines, when completed through to New Orleans, were at least twice as long as that of the Central Pacific main lines, and we considered it advisable that as long as the larger interests were concentrated in the Southern Pacific Company, it should be the operating line, and accordingly we discussed and arranged what was considered a fair and equal manner of doing it, and we put it into effect.

. . . . . .

Q. . . . you did decide to locate the general offices of the Southern Pacific Company at San Francisco?

A. Yes, sir.

Q. And that was afterwards done?

A. That was afterwards done.

Q. And you did decide to have S. H. H. & C., those four interests, convey to the Central Pacific and Southern Pacific Companies the property in San Francisco owned by them which was used for terminal facilities?

A. Yes; and that was done.

Q. I call your attention to the minutes of October 1st, which state:

'Assembled at 11 A. M.

'Leland Stanford was appointed a committee of one to formulate his proposed method of leasing the several roads forming the through line of Southern Pacific Company.

'It was decided to take immediate action towards raising the capital stock of the Southern Pacific Company to 100 millions, and to have temporary

certificates of stock printed, to be exchanged hereafter when steel plate certificates can be prepared.'

Did you increase the capital stock of the Southern Pacific Company to one hundred millions?

A. Yes; the Southern Pacific Company had been organized the previous spring in Kentucky. At that meeting it was agreed upon that it should be raised, and it was afterwards so done, and the temporary stock certificates issued.

. . . . . .

Mr. HERRIN (reading). 'It is agreed that the directors of the Southern Pacific Company when permanently organized, shall consist of seven, viz.: C. P. Huntington of New York, T. W. Pierce of Boston, and five others to be selected, from San Francisco, and that the general offices be located in San Francisco.'

By Mr. HERRIN:

Q. You recall that meeting, do you?

A. Yes; that was done.

. . . . . .

Q. It is unnecessary to go through these minutes in detail, because they speak for themselves, I think. I will ask you, however, as to the minutes of November 5, which read:

'The question of leasing the Central Pacific system of roads to the Southern Pacific Company came up.

'It was agreed to lease the properties and temporarily to fix the lease at Fixed Charges, and a guarantee of 2% interest on capital stock, and all the earnings of the Central Pacific system over and above that percentage, until the amount reached 6% on its capital stock per annum. After 6% all profits to go to the Southern Pacific Company.'

Was that the basis upon which you finally made the lease of the Central Pacific to the Southern Pacific Company?

A. Yes. That was afterwards carried out by proper corporate action."

Pursuant to this arrangement, the Southern Pacific Company was fully organized, and on February 10, 1885, entered into an agreement (D. Ex. 20, V R. 1683), whereby it became the lessee, for a term of ninety-nine years *from the date last named,* of all the railroad properties of the seven companies whose roads, with the Central Pacific from Tracy via Lathrop to Goshen, make up the Sunset-Gulf route of the Southern Pacific Company.

February 17, 1885, the Central Pacific Railroad Company leased all of its properties to the Southern Pacific Company for a term of ninety-nine years *from April 1, 1885.* (See Exhibit "A" to Petition. I R. 13.)

This lease contains the following clauses:

> "And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the Town of Goshen, in the County of Tulare, with the right to take, hold, operate, maintain, and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.
>
> And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of

New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues and profits thereof free from all claims of the said Central Pacific Railroad Company to the same or any part thereof."

By these leases, the Central Pacific-Southern Pacific system passed into the control and ownership of the Southern Pacific Company and was thenceforward the Southern Pacific-Central Pacific system.

At or about the same time in 1885 the Southern Pacific Company acquired the whole or substantially all of the capital stock of the said seven companies whose lines with those of the Central Pacific, make up the Sunset-Gulf Route, namely, the Southern Pacific Railroad Companies of California, Arizona, New Mexico, the two Louisiana railroad corporations, and the two Texas railroad corporations named in the Petition (I R. 3). (Klink, II R. 666-668.)

The manner in which this change of legal ownership of the Central Pacific properties through lease, and the Southern Pacific Railroad properties through lease and stock ownership, was carried into effect, is now to be shown.

(10) The change from Central Pacific operation to Southern Pacific operation March 1, 1885, to April 1, 1885.

On February 27, 1885, a circular notice was issued from the office of the President of the Southern Pacific Company, announcing that the lease had been arranged. This circular [Defendants' (Pratt) Exhibit No. 2, II R. 491-492] is as follows:

"CIRCULAR NOTICE.
SOUTHERN PACIFIC COMPANY,
Office of the President.
SAN FRANCISCO, Feb. 27th, 1885.

Arrangements having been effected by the various railway companies interested between San Francisco and New Orleans, comprising the following roads, namely: The Southern Pacific, of California, Southern Pacific, of Arizona, Southern Pacific, of New Mexico, Galveston, Harrisburg and San Antonio, Louisiana Western, Texas and New Orleans and Morgan's Louisiana and Texas Railway and Steamship lines, and roads controlled by the said companies, for a unification of their joint administration, and with a view to a more economical working of the properties, it has been decided that on and after March 1st, 1885, these properties will be operated under one general organization, known as the Southern Pacific Company, with headquarters at San Francisco, Cal., divided into two sections; all west of El Paso will be known as the Pacific System and all east thereof as the Atlantic System.

The organization for the administration of the general conduct of the business of the Company will be briefly as follows:

Under the direction of the President the General Managers will attend generally to the business of the Company, having the supervision and direction of all the departments of the service of the Company within their respective jurisdictions,

the financial and accounting departments excepted, and their orders will be obeyed and respected accordingly.

The Secretary and Controller will have charge of all books and accounts, and will, subject to confirmation by the President, nominate and fix the compensation of suitable persons for the heads of the various offices of the accounting department.

The Treasurer will have charge of all revenues of the Company, and will appoint, subject to confirmation by the President, such assistants as may be necessary for the conduct of the business.

The General Traffic Manager, under the direction of the General Manager of the Pacific System, will be charged with the handling of all through business of the Company, and that interchanged by, or which may be competitive as between, the Pacific and Atlantic Systems.

OFFICIALS OF THE LINE.

A. N. TOWNE, General Manager Pacific System, San Francisco, Cal.

A. C. HUTCHINSON, General Manager Atlantic System, New Orleans, La.

J. C. STUBBS, General Traffic Manager, San Francisco, Cal.

All other officers and agents will be continued on the various roads and divisions as under the previous organization until further notice by the General Managers.

LELAND STANFORD, President."

A second circular notice [Defendants' (Pratt) Exhibit No. 3], issued from the General Manager's office of the Pacific System of the Southern Pacific Company, dated April 1, 1885, announces the lease of the Central Pacific lines to the Southern Pacific Company. This

circular was read into the record at page 493, and is as follows:

"SOUTHERN PACIFIC COMPANY,
Pacific System.
General Manager's Office.
SAN FRANCISCO, April 1, 1885.

TO ALL OFFICERS AND EMPLOYEES:—

Announcing the lease, by the Southern Pacific Company, of the Central Pacific Railroad and lines heretofore under lease to the last-named Company, taking effect this day, it is the purpose of this Circular to advise all officers, agents and employees of the various roads and lines comprising the system that they will, until further notice, continue in the performance of their various duties as heretofore, sending reports and correspondence regarding the affairs of the Company to the heads of the various offices as formerly.

Respectfully,
A. N. TOWNE,
General Manager."

There is frequent reference in the record to the change from Central Pacific to Southern Pacific operation in 1885.

H. B. BRECKENFELD testified (II R. 462-463):

"Q. On the 28th of February, 1885, we have the only operating organization, the organization of the Central Pacific Railroad Company, do we not?

A. Yes.

Q. There was not any new organization put into the field in that spring, was there?

A. Any new operating organization?

Q. Yes.

A. Why, in the spring of 1885 the Southern Pacific Company was organized, and its functions were announced in this general circular to all the employees.

Q. And it took over the entire operating organization of the Central Pacific Railroad Company?

A. Yes, sir.

Q. And it did it at one time?

A. Well, it did it at one time, except that it was my recollection that there was a slight interval—whether that is of any moment or not—my recollection is that there was a slight interval in the dates of the announcements of the two transactions, something like a month.

Q. You, on the 28th of February, 1885, were doing some work connected with operations over the Central Pacific Railroad, and some work connected with operations over the Southern Pacific Railroad, were you not?

A. Yes, sir. If these branch lines at that time had been taken over by the Southern Pacific—of which I am not sure now. Those ran along, and they were acquired by the Southern Pacific Railroad at various times, with which I am not entirely clear.

Q. Did you enter the employ of the Southern Pacific Company as to some lines, yourself, at a different date from that at which you entered it as to the lines of the Central Pacific Railroad Company?

A. There was no ceremony. I did not enter the employ of the Southern Pacific Company in that sense. I simply received this information, that the Southern Pacific Company had taken over these various lines, and that all employees would continue the same as they were doing at that time; so that I just kept on working.

Q. Did you receive two different circulars yourself, one as to one lot of lines and one as to another lot of lines?

A. My impression is that there were two circulars; but as to that I am not entirely clear. I think there were two."

He also testified (II R. 459):

"Q. Do you remember when the Southern Pacific Company took possession of the Central Pacific lines?

A. April 1, 1885. How I remember it is that there was a circular issued by the officials of the Central Pacific indicating that such would be the case.

Q. Do you remember when the Southern Pacific took possession of the Southern Pacific lines?

A. It was about the same time; I think perhaps a little sooner."

Again (II R. 460-461):

"Q. The Central Pacific Railroad Company continued to operate the Central Pacific Railroad up to April 1, 1885?

A. Yes.

Q. Did the Central Pacific Railroad cease to operate the Southern Pacific Railroad before it ceased to operate the Central Pacific?

A. Such is my recollection."

Edgar Melville Luckett testified (II R. 536):

"Q. Do you remember when the Southern Pacific Company, the present company that is operating these lines, took possession of them?

A. Not exactly, I do not. I think it was around 1885 or 1886, somewheres around in there. I remember the time, but I can not recall dates."

William Henry Norton testified (II R. 550):

"Q. Do you remember when the Southern Pacific Company was substituted in place of the Central Pacific Railroad Company as an operating company?

A. Yes; I believe that was April 1, 1885.

Q. You remember that time, do you?

A. Yes."

He further testified (II R. 551):

"Q. Was this change of operation, when the Southern Pacific Company began to operate on April 1, 1885, applied over all the different lines?

A. That is my understanding, yes.

Q. That is, up to April 1, 1885, the Central Pacific Railroad Company had been operating all these various lines that you have described, both the Central Pacific Railroad and the Southern Pacific Railroad, and on that date the operation was changed over to the Southern Pacific Company; is that correct?

A. The best way I can answer that is this: I am only on one division, and I do not know what is doing on the others; but my understanding was that on that date the line was turned over, in a matter of form only."

C. H. REDINGTON testified (II R. 565):

"Q. And on the stationery that has been put in, the significance of the words 'Central Pacific Railroad and leased lines' was the lines which I have described, which were owned by the Central Pacific Railroad Company and the lines of the Southern Pacific Railroad Company which had been leased to the Central Pacific Railroad Company?

A. Yes, sir.

Q. Then, as of date of April 1, 1885, all those leases were cancelled and the Southern Pacific Company took up the operation of the various lines, as a lessee company?

A. Yes, sir; I am not familiar with the leases, but that was the operation."

EDWARD M. RAILTON testified (II R. 575):

"Q. I would like to ask about the creation of what they call the Atlantic system and the Pacific system. Would you know about that?

A. Well, at the time of the formation of the Southern Pacific Company, when the Southern Pacific Company took possession, the line was divided at El Paso. The Rio Grande River, as a matter of fact, was always regarded as El Paso, and the operating officials from the New Orleans end took charge of that, while the officials from San Francisco retained charge as far as the Rio Grande River.

Q. But the Southern Pacific Company extended itself over the whole line from New Orleans to San Francisco?

A. Yes."

He further testified (II R. 577):

"Q. The Southern Pacific Company took possession in 1885. Can you tell me whether the date was April 1st?

A. It was during April. Whether it was the 1st of April or not, I do not know."

PATRICK SHEDDY testified (II R. 593):

"Q. Do you remember when the Southern Pacific Company, the company at present operating these lines, took possession and succeeded the Central Pacific Railroad Company?

A. I do.

Q. What year was that?

A. In 1885."

GEORGE T. KLINK testified (II R. 598):

"Q. Do you remember when the Southern Pacific Company, the present company operating these lines, took possession of them?

A. Yes, sir; it was in 1885."

The witness, after enumerating all the lines which comprised the southern division of the Central Pacific Railroad Company, the Southern Pacific Railroad Com-

pany of California, the Southern Pacific Railroad Company of Arizona, the Southern Pacific Railroad Company of New Mexico, and numerous branch lines, summarizes (II R. 601):

> "Those corporate properties, in the lines which I have mentioned, constituted the Pacific system of the Southern Pacific Company in 1885."

He further testified (II R. 604):

> "Q. Do you remember, at the time of the lease of the Southern Pacific Company, a copy of which is marked 'Exhibit 20', and also of the lease of the Central Pacific lines to the Southern Pacific Company, a copy of which is annexed to the bill or petition, and which took effect April 1, 1885, if there was any inventory or schedule prepared of property, rolling stock or other physical property, which was taken over by the Southern Pacific Company?
>
> A. Yes; there was a very complete inventory taken at that time."

Robert A. Donaldson testified (II R. 625):

> "Q. Did not Mr. Towne exercise jurisdiction all the way through to New Orleans until 1885, when the Southern Pacific Company took possession?
>
> A. My recollection is that he did.
>
> Q. You remember when the Southern Pacific Company took possession of these lines?
>
> A. I do."

He further testified (II R. 627-628):

> "Q. Do you remember the operating officials of the Central Pacific Railroad Company at the time the Southern Pacific Company took possession?
>
> A. I do.
>
> Q. Will you name them?

A. Mr. Towne, Mr. Fillmore——

Q. What was Mr. Towne?

A. Mr. Towne, at the time the Southern Pacific took possession, was general manager.

Q. General manager of what?

A. General manager of the Central Pacific Railroad.

Q. The Central Pacific Railroad Company and leased lines?

A. And leased lines, or branches.

Q. Who were the other officials?

A. Mr. Fillmore.

Q. J. A. Fillmore?

A. J. A. Fillmore was, as I remember, general superintendent of the Central Pacific Railroad Company and its branches and leased lines. They were the two chief operating officials.

Q. Who was the general passenger agent?

A. T. H. Goodman.

Q. Were they the same officials for the Southern Pacific Company, when it took possession?

A. When the Southern Pacific Company took possession on the 1st of March, 1885, of the lines south of Goshen, the persons I have named continued in the same capacity with reference to the Southern Pacific Company.

Q. They became officials for the Southern Pacific Company?

A. Yes.

Q. That was what date?

A. March 1, 1885.

Q. Then, as to the lines north of Goshen, those gentlemen were officials of the Central Pacific Railroad Company?

A. They were.

Q. And south of Goshen they were officials of the Southern Pacific Company?

A. They were practically officials of the Southern Pacific Company, because they were operating the properties, with the single exception of what is now known as the Coast Division and was

then known to us as the Northern Division of the Southern Pacific road, the local line leading from San Francisco southward toward Gilroy, Tres Pinos and Monterey.

Q. That has no significance here; we are talking about these two lines. Now, on what date did the Southern Pacific Company take possession of the lines of the Central Pacific Railroad Company?

A. April 1, 1885.

Q. What individuals became the operating officials and general officials of the Southern Pacific Company for that line?

A. Under a circular issued by Mr. Towne, as general manager, the officials of the Central Pacific Railroad Company were continued as officials of the Southern Pacific Company."

G. F. RICHARDSON testified (II R. 635):

"Q. How long did the Central Pacific Railroad continue to operate those lines?

A. Until the organization of the Southern Pacific Company in the early part of 1885.

Q. When the Southern Pacific Company took all the lines, and has since continued to operate them?

A. Yes."

R. H. PRATT testified (II R. 481):

"Q. Did the Central Pacific Railroad Company operate trains at any time between New Orleans and San Francisco?

A. It did.

Q. Was it doing that at the time that line was taken over by the Southern Pacific Company; that was in 1885?

A. Yes, sir; 1885; early in 1885."

Again (II R. 493):

"Q. What is the first date at which you had anything to do with the Southern Pacific Railroad?

A. It must have been about 1885, under the Southern Pacific lease.

Mr. HERRIN. It was after the lease?

The WITNESS. After the lease was made, of course."

Petitioner's Exhibit No. 28 (an excerpt from page 223 of the "Travelers' Official Guide" for *June, 1885*) enumerates the lines controlled and operated by the Southern Pacific Company, as follows (P. Ex. 28, IV R. 1522):

"Central Pacific R. R.	1254.24	miles
Northern Ry.	153.63	"
San Pablo & Tulare R. R.	46.51	"
Berkeley Branch R. R.	3.84	"
California Pacific R. R.	115.44	"
Stockton & Copperopolis R. R.	49.00	"
Amador Branch R. R.	27.20	"
Southern Pacific R. R. of California	552.85	"
Southern Pacific R. R. of Arizona	384.25	"
Southern Pacific R. R. of New Mexico	167.30	"
Galves'n, Harrisburg & San Antonio Ry.	936.74	"
Mexican International R. R.	171.00	"
Texas & New Orleans R. R.	105.10	"
Louisiana Western R. R.	112.00	"
Morgan's Louisiana & Texas R. R.	281.00	"
Sabine & East Texas R. R.	104.00	"
Los Angeles & San Diego R. R.	27.60	"
Los Angeles & Independence R. R.	16.83	"
Southern Pacific R. R. of Cal. (No. Div.)	202.50	"
Total Rail Lines	4711.03	miles"

Coincident with the evidence which has just been cited to show the change to Southern Pacific operation in 1885, the witnesses testify, as part of their description of the change, that it produced no alteration whatever in the operating organization or in the managing officials.

The testimony of Mr. Pratt (II R. 489) is typical:

"Q. So one day you were an official of one company and the next day you became the same official of the Southern Pacific Company?

A. I did.

Q. In making that change, was there any change in the organization or change in salary or change in duties of any official, so far as you know?

The WITNESS. No changes whatever."

Evidence of a similar nature may be found in the testimony of witnesses Breckenfeld (II R. 460), Englebright (II R. 469), Pratt (II R. 482, 487, 524), Slater (II R. 528), Lister (II R. 531), Luckett (II R. 541), Sheedy (II R. 597), Klink (II R. 601), Horsburgh (II R. 632), Richardson (II R. 635), and Kruttschnitt (II R. 712).

---

(11) The operation of the lines and the intercorporate relations of the corporations comprising the Southern Pacific-Central Pacific System, from April 1, 1885, to the filing of the petition herein February 11, 1914.

A few facts in relation to the operation of the lines of the Southern Pacific-Central Pacific system, and of the intercorporate relations between the corporations whose lines make up that system, tell everything of importance during the period of nearly twenty-nine years prior to the filing of this suit.

The operation during the entire time was by the Southern Pacific Company.

May 14, 1888, the Southern Pacific Railroad Company (of California) absorbed by consolidation proceedings seventeen local lines within the State of California. (See consolidation No. 4, in Petitioner's Exhibit No. 13, IV R. 1288.)

April 14, 1898, the Southern Pacific Railroad Company (of California) absorbed by consolidation proceedings three other lines within the State of California. (See consolidation No. 5, in Petitioner's Exhibit No. 13, IV R. 1301.)

March 10, 1902, the Southern Pacific Railroad Company (of California) absorbed by consolidation proceedings the Southern Pacific Railroad Company of Arizona and the Southern Pacific Railroad Company of New Mexico, whereupon the Southern Pacific Railroad Company of California became the owner of the line extending through California, Arizona and New Mexico.

We reserve for later consideration the acquisition in 1901 of forty-six per cent. of the outstanding stock of the Southern Pacific Company by the Union Pacific Railroad Company, dealt with in *United States v. Union Pacific R. R. Co.* (1912), 226 U. S. 61, as that had nothing to do with the operation of the Southern Pacific-Central Pacific system as such, nor with the intercorporate relations of the companies whose lines made up the system.

During the period with which we are now dealing (1885-1914), by acquisition of roads, construction, etc., the Southern Pacific Company became able to send its trains from San Francisco to Los Angeles over its own rails. This first occurred in 1891 with the opening of the west side line in the San Joaquin Valley (Kruttschnitt, II R. 723), and next with the completion of the Coast line in 1901.

The fact that the Southern Pacific was unable to reach Los Angeles over its own rails until eight years

(1883-1891) after the Sunset-Gulf route was opened, is of outstanding importance in the case. It is also significant that it became able to do so, not by the construction of a through line, but by the completion of a strip in the San Joaquin Valley which was built to relieve local congestion. We later deal more fully with the opening by the Southern Pacific of the west-side line in the San Joaquin Valley and the coast line to Los Angeles.

Only one other matter requires notice here. In the settlement of the Government debt of the Central Pacific Railroad Company, with which we shall deal hereafter, it became necessary (*a*) for the Southern Pacific Company to subordinate its lease to the lien of a bond issue on the properties of the Central Pacific Railroad Company, made necessary by the settlement of the Government debt, and (*b*) for a new corporation to be created, Central Pacific Railway Company, defendant here, to which the properties of the old Central Pacific Railroad Company were conveyed.

As the result of these changes, the lease to the Southern Pacific Company became subordinated to the bond issue, and the new Central Pacific Company which is defendant here became the proprietor of the leased line.

In no other respect was the operation of the Southern Pacific-Central Pacific system affected in any important particular during the twenty-nine years which preceded the commencement of this suif; nor was there any change in the intercorporate relations of the corporations whose lines make up that system.

(12) Governmental action—congressional and executive—between April 1, 1885, and the passage of the act of July 7, 1898 (30 Stat. 652, 659), creating the commission for the settlement of the Central Pacific debt.

The Pacific Railroad laws, the Thurman Act of May 7, 1878 (20 Stat. 56), and the Act of June 19, 1878 (20 Stat. 169), which created a bureau of the Interior Department in charge of an Auditor of Railroads (whose title was changed by the Act of March 3, 1881 (21 Stat. 409), to "Commissioner of Railroads"), all required, in terms or by necessary implication, that the Central Pacific Railroad Company make periodical accounting of its earnings to the Government. From April 1, 1885, the earnings of the Central Pacific lines were derived under the lease to the Southern Pacific Company of February 17, 1885, and it was necessary, of course, that a copy of this lease should be transmitted as a part of the accounting to the Commissioner of Railroads, and, therefore, that it should be among the files of the Interior Department.

Without proof in terms, therefore, it must be taken as a fact that some time in the year 1885 the Interior Department came into possession of a copy of the lease from the Central Pacific to the Southern Pacific, bearing date February 17, 1885.*

On March 4th of that year (1885) President Cleveland began his first term, and the Senate was in session from March 4, 1885, to April 2, 1885. Congress,

*The Report of the Pacific Railway Commission, October 27, 1885, p. 17, describes the entire transaction of 1885 including the Central Pacific lease to the Southern Pacific.

however, was not in session until December 7, 1885, when the long session of the 49th Congress commenced.

On January 27, 1886, the following resolution was adopted in the House of Representatives (Congressional Record 1885-6, Vol. 17, Part I, p. 926):

> "*Resolved*, That the Secretary of the Interior be, and is hereby requested to furnish this House with copies of any and all contracts or leases which are to be found on file in said Department between the Southern Pacific Company and any and every railroad or railroads to which land grants were made or which received any subsidies from the United States; also a copy of the charter of incorporation of the Southern Pacific Company; also, all and every contract or contracts on file between the Pacific Steamship Company and any and every land grant or subsidized railroad company or companies."

February 5, 1886, the following appears in the proceedings of the House of Representatives (Congressional Record, 49th Congress, First Session, 1885-6, Vol. 17, Part 2, p. 1172):

> "PACIFIC RAILROADS.
>
> The Speaker laid before the House the following message from the President of the United States; which was referred to the Committee on Pacific Railroads and ordered to be printed:
>
> 'The Speaker of the House of Representatives:
>
> Sir: In response to House resolution of January 27, 1886, "that the Secretary of the Interior be, and is hereby, requested to furnish this House with the copies of any and all contracts or leases which are to be found on file in said Department between the Southern Pacific Company and any and every railroad or railroads to which land grants were

made, or which received any subsidies from the United States, also a copy of the charter of incorporation of the Southern Pacific Company, also all and every contract or contracts on file between the Pacific Steamship Company and any and every land-grant or subsidized railroad company or companies", I transmit herewith a communication from the Secretary of the Interior, dated the 2nd instant, inclosing the copies required.

GROVER CLEVELAND.

Executive Mansion,
February 4, 1886."

As printed, this communication from the Secretary of the Interior with its enclosures became Executive Document No. 60 (House Executive Documents 1885-6, 49th Congress, First Session, Vol. 30), comprising the following papers:*

(1) Communication above, President Cleveland to the Speaker of the House, February 4, 1886.

(2) Communication L. Q. C. Lamar, Secretary of the Interior, to the President, February 2, 1886.

(3) Lease Southern Pacific Railroad Company of California to Central Pacific Railroad Company January 1, 1880, for five years from date.

(4) Lease Central Pacific Railroad Company to Southern Pacific Company February 17, 1885, for ninety-nine years from April 1, 1885.

(5) Act of Legislature of Kentucky March 17, 1884, incorporating Southern Pacific Company.

(6) Lease Southern Pacific Railroad Company of New Mexico to Central Pacific Railroad Company, November 17, 1880, for five years from November 1, 1880.

(7) Lease Southern Pacific Railroad Company of Arizona to Central Pacific Railroad Company November 10, 1880, for five years from November 1, 1880.

*Executive Document No. 60 above has not been offered in evidence but we draw upon it as available for our use notwithstanding its absence from the record.

(8) Agreement between Union Pacific Railroad Company, Central Pacific Railroad Comany, and Pacific Mail Steamship Company January 17, 1879.

(9) Agreement between same parties August 6, 1877.

(10) Agreement between Transcontinental Association and Pacific Mail Steamship Company June 1, 1885.

It appears from the foregoing that a copy of the lease of the Central Pacific Railroad Company to the Southern Pacific Company of date February 17, 1885, was laid before Congress twenty-eight years, less six days, before the commencement of this suit. We proceed to show that this lease was frequently referred to in congressional proceedings thenceforward until the passage of the Act of July 7, 1898 (30 Stat. 652, 659), creating a commission to settle the Central Pacific indebtedness to the Government.

On March 3, 1887, an act was passed authorizing the appointment of three Commissioners to investigate the affairs of such railroads as had received aid from the Government. The Commissioners made their report to the President on December 1, 1887, E. Ellery Anderson and David T. Littler returning the report of the Commission, and Robert E. Pattison, a minority report. These reports were laid before Congress by the President, January 17, 1888, and constitute Executive Document No. 51, 50th Congress, First Session. The report, including evidence (in ten volumes), was introduced in this case by the petitioner and is a part of its Exhibit 22. The report itself (in one volume) was also offered

in evidence as Defendants' Exhibit 31. Pages 22 and 23 of the report are devoted to the Central Pacific Railroad Company *and to the leasing of the lines of that company to the Southern Pacific Company in 1885.*

In the report consideration is given to the question whether the properties of the bond-aided lines of the Central Pacific were sufficient to pay the bonds thereon and also the lien of the United States. Upon this subject it was said (p. 23):

> "Taken as a whole, the evidence does not disclose in the subsidized line a capacity for net earnings (meaning thereby the earnings remaining after deducting from gross earnings only operating expenses, taxes, betterments and improvements) which will exceed $3,000,000 per annum. The interest on the first mortgage bonds applicable to the aided road, with a reasonable allowance for new construction and betterments, will amount to $2,000,000 per annum. The report of Colonel Morgan, based on an examination of the physical condition of the road, and after a careful scrutiny of its earning capacity, has led him to the conclusion that a fair valuation of this property (meaning thereby the entire Central Pacific Railroad as at present consolidated, its equipment, terminals, and shops), is $110,000,000. This estimate, in the judgment of the Commission, is excessive and out of proportion with the cost of reproduction as fixed by Colonel Morgan, which is $50,863,540.
>
> The statutory lien given to the United States, under the case cited above (*United States against the Kansas Pacific Railway Company,* 99 U. S., p. 455), is limited to that portion of the railroad in consideration of which the bonds were issued—that is to say, it applies only to the road between Ogden and San Jose, and has no application to any of the branches or leased lines. All that has

been said in regard to the unsatisfactory nature of the statutory lien in the case of the Union Pacific Railway Company applies with equal force to the Central Pacific Railroad Company."

Again, at page 25, it was said:

> *"In the judgment of the Commission the value of the property subjected to the statutory lien, taken by itself and without the auxiliary aid to be derived from the connecting lines, would not be sufficient to more than pay the indebtedness which is prior to the claim of the United States."*

The report just mentioned, known as the Report of the U. S. Pacific Railway Commission, was referred to a special committee of the Senate, which submitted a report, February 17, 1890, consisting of 78 pages—pages 1 to 24, presented by Mr. Frye, and pages 25 to 78, presented by Mr. Davis. For convenience we shall hereafter refer to this report as the Frye-Davis Report (D. Ex. 32; Sen. Doc. 293, 51st Cong. 1st Sess., Feb. 17, 1890).

The portion of the Frye-Davis Report dealing with the Southern Pacific Railroad Company commences at page 25; *a copy of the lease from the Central Pacific to the Southern Pacific, dated February 17, 1885, appears at page 52; and a copy of the modification of that lease, dated January 1, 1888, appears at page 55.*

At page 48, mention is made of the Railway Commission report that the bond-aided lines of the Central Pacific Railroad Company were not equal in value to the outstanding bonds and the lien of the Government thereon. At page 51 reference is made to "vari-

ous plans and suggestions for the adjustment of the financial relations of the United States" with the Central Pacific Railroad Company, *among others that "all the associated lines forming the Southern Pacific Company (and those include the Central Pacific as consolidated) become parties to obligations" for the refunding of the debt.*

At page 52, the Committee says:

> "The committee is of the opinion that the present security of the United States upon the property of the Central Pacific Railroad Company is inadequate; *that such property in case of the foreclosure of the first mortgage thereon will be substantially exhausted in satisfaction thereof,* and that it is inexpedient for the United States to redeem the property from said first mortgage or to become the owner of such property through process of redemption and foreclosure.
>
> That it is expedient, necessary, and practicable to adjust and secure the indebtedness to the United States by a security upon extended time and at a reduced rate of interest within the ability of the company to pay the debt upon such terms 'as to advance the development of the country through which said roads pass, and afford the inhabitants thereof reasonable rates of transportation for passengers and freight'."

And at page 61, speaking of the suggestion that the Southern Pacific Company should guarantee the refunded debt of the Central Pacific, the Committee says that:

> *"In view of possible guaranties being made by the associated lines, it is of importance to know the earning power and prior obligations of these lines, with a view of estimating the value of the security for any guaranties made by them."*

The Report thereupon deals with the accumulated surplus, etc., of the Southern Pacific Company, with a view to showing that with the guaranty of the Southern Pacific Company the indebtedness to the Government would be fully safeguarded.

On October 13, 1893, receivers for the Union Pacific were appointed, and on that day a resolution was passed by the Senate, evidently without knowledge of the fact that receivers had that day been appointed, authorizing its Committee on Pacific Railroads to investigate the question as to whether receivers had been appointed for the Union Pacific and related matters, under which the so-called Brice Report, hereinafter mentioned, was made.

The next matter is the report of Mr. Reilly from the House Committee on Pacific Railroads, dated July 21, 1894, known as H. R. 1290, 53rd Congress, Second Session, which is Defendants' Exhibit 34. This report recommended the passage of a pending bill to refund the Union Pacific and Central Pacific debts, and it dwells upon the impracticability of foreclosure and the inadequacy of the property to pay the bonds and lien of the Government thereon.

Next came the Brice Report, which is Defendants' Exhibit 33, Senate Report 830, 53rd Congress, Third Session, submitted January 28, 1895, by Mr. Brice on behalf of the Committee on Pacific Railroads under the Resolution of October 13, 1893. It was intended to lay before Congress all matters respecting the Union Pacific and Central Pacific Railroads, in advance of con-

crete recommendations. *This report* (pp. 95-7) *refers to all of the leases between the Central Pacific and Southern Pacific which are attached to the petition herein except that of April 15, 1897, which had not then been executed.*

The report says (p. 101):

> "The security possessed by the United States for the indebtedness of the Central Pacific Railroad Company is, as shown by the table above, a second mortgage on the line of road from a point 5 miles west of Ogden to Sacramento, together with the rolling stock, fixtures, etc., and a like mortgage upon the old line of the Western Pacific Railroad Company from Sacramento down to San Jose, the connection between these lines of road being made over an unsubsidized piece of road about 5 miles long on which the Government has no lien at all. Just what this lien is worth, under the circumstances and in view of the depressed condition of business, it is difficult to state. As in the case of the Union Pacific, the Government lien is not on any of the valuable terminal properties of the company. It does not reach San Francisco at all. In fact, the traffic of the Central Pacific to and from the east at San Francisco, including the United States mail, does not go over the old line of the Western Pacific at all, but is taken by the Southern Pacific Company, over its leased line of the California Pacific, from Sacramento to Vallejo, and thence by steamers to San Francisco, or *vice versa;* or, the traffic if it goes at all over the old Western Pacific line, leaves that line at Niles and goes thence over the unsubsidized lines of the Central Pacific to Oakland and San Francisco, or *vice versa.* So that, without the necessary terminal facilities at San Francisco, the value of the road upon which the Government lien exists is hard to estimate."

On April 17, 1896, 54th Congress, First Session, Mr. Gear introduced Senate Bill 2894 (D. Ex. 36) to refund the debts of the Pacific Railroads (both Union Pacific and Central Pacific).

Section 19 of this bill reads as follows (D. Ex. 36, V R. 1935-1936):

> "*That the said Central Pacific Railroad Company shall arrange for having the lease now existing between it and the Southern Pacific Company modified so that the Southern Pacific Company shall guarantee the payment by the Central Pacific Railroad Company during the continuation of such lease of the interest on, and the installments on account of principal of, the bonds issued under the tenth section of this Act,* as prescribed in the tenth and eleventh sections hereof, and so that in case the Southern Pacific Company should consent to the termination of such lease before the maturity of all such installments payable on account of principal of said bonds, it shall, in that event, guarantee the payment by the Central Pacific Railroad Company of such interest and installments on account of principal while any bonds issued under the tenth section of this Act shall remain outstanding, and so that said Southern Pacific Company shall consent that the sums amounting in the aggregate to about two million four hundred and thirty-nine thousand dollars, standing credited on the books of the Treasury of the United States to the Central Pacific Railroad Company as compensation for services upon non-aided lines (a portion of which is now in judgment in favor of the Southern Pacific Company), shall be forthwith applied to the payment and cancellation of the highest numbered bonds of the Central Pacific Railroad Company issued under the provisions of said tenth section of this Act, and the filing with the Secretary of the Treasury of a duplicate origi-

nal of such modified lease, duly executed by the officers of both said companies by authority of their boards of directors, shall constitute an essential part of the acceptance by the Central Pacific Railroad Company of this Act. In the event of the termination of such lease by act of the parties thereto, or any abrogation or cancellation of such lease, the principal of the bonds issued under the tenth section of this Act shall, at the option of the President of the United States, immediately mature."

April 25, 1896, 54th Congress, Second Session, Mr. Powers introduced H. R. 8189 (D. Ex. 38, V R. 1939), a bill with similar object, *i. e.*, to refund the Union Pacific and Central Pacific debts. This bill contained a section similar to the section of the Gear bill, just quoted.

On April 25, 1896, Mr. Powers, on behalf of the Committee on Pacific Railroads, submitted a report, H. R. 1497, 54th Congress, First Session (D. Ex. 37), in which it was recommended that H. R. bill 8189, above mentioned (D. Ex. 38), do pass. This last mentioned report, which we shall call the Powers Report, reviews the whole situation in respect of the indebtedness of the Pacific Railroads to the United States and, as an argument for the refunding of the indebtedness with supplementary security, it is pointed out, among other things, that the properties of the Central Pacific are not sufficient to pay the bonds and lien of the Government thereon.

In respect of the provision of the recommended bill relating to the Central Pacific, the Powers Report says (p. 9):

"In the case of the Central Pacific the Government's lien is extended so as to include within the properties mortgaged as security for the new bonds the non-aided line extending from Niles to Oakland (on the Bay of San Francisco), together with the local lines, terminal properties, and real estate in San Francisco, Oakland, and Alameda, steamers, ferryboats, and equipment of ferries, which constitute the great terminals of the Central Pacific Railroad Company in and near San Francisco, and so as to include the great feeders and distributers for the main line of road—that is to say, the line extending northerly from the main line at Roseville to the Oregon boundary, about 296 miles in length, and the line extending southerly from Lathrop to Goshen, about 146 miles in length, and also the interest of the Central Pacific Railroad Company in its land grant under the acts of 1862 and 1864. The provisions of the bill will thus substitute a lien upon the complete and finished road with all its terminal facilities and its great feeders and distributors north and south of the main line for the existing lien, which rests only upon a headless and armless trunk extending from a point near Ogden to San Jose.

OBLIGATIONS TO BE ASSUMED BY SOUTHERN PACIFIC COMPANY.

As the average of the net earnings of the Central Pacific property is less than the amount imposed by this bill, the committee has required, as one of the terms of the settlement, that the lease of the Central Pacific Railroad to the Southern Pacific Company should be so modified as to require, first, that the Southern Pacific Company should guarantee the full payment of the requirements imposed upon the Central Pacific under this act so long as it should remain lessee of the property; and, second, that if the Southern Pacific Company should consent to the termination of the lease

before the maturity of all installments payable under the act, it should in that event guarantee the payment by the Central Pacific Railroad Company of all requirements imposed upon it by the act, and has provided that in case of any abrogation or termination of the lease the principal of all the bonds issued under the act should, at the option of the President of the United States, immediately mature."

On May 1, 1896, Mr. Gear, on behalf of the Committee on Pacific Railroads, submitted to the Senate a report known as S. R. 778, 54th Congress, First Session, in which the Committee recommended the passage of the above-mentioned Senate Bill 2894 (D. Ex. 36). This report by Mr. Gear, which we shall hereafter call "Gear's 1896 Report", is Defendants' Exhibit 35.

In the course of this report (Gear's 1896 Report), it is said (p. 3):

> "Some time after the Government commenced its payments of the interest upon the subsidy bonds the question arose whether the companies were not bound to reimburse the Government currently for this payment. The Supreme Court decided the question in the case of *The Union Pacific Railroad Company v. United States* (91 U. S. 72), holding that nothing beyond the one-half of the compensation for transportation service and the 5 per cent. of net earnings was payable to the United States on account of interest until the maturity of the respective bonds.
>
> Soon after this the Thurman Act, of May 7, 1878 (20 Stat. L. 56), was passed. In substance, this provided that the whole compensation for Government services should be retained; one-half to be applied to the bond and interest account, the other

half to go into a sinking fund, to which sinking fund should also be paid certain prescribed sums or so much thereof as should make the whole Government requirement at least equal to 25 per cent. of the net earnings of the road.

The provisions of this act have been fully complied with by both the Union and Central Pacific railroad companies.

The sinking fund, however, has not met public expectation. It was principally invested in Government bonds, bought at an excessive premium, some as high as 135; in fact, up to about 1887 the sinking fund lost money, and the amount thereof was less than the absolute amount which the companies had paid in; but since then, as the fund has been invested partly in the first-mortgage bonds of the companies, there has been a small increase in the fund above the amount of cash paid into it by the respective companies."

The Committee then recommends that there be an extension of time for the payment of the debt due by the companies to the Government, and says (p. 7):

> "In prescribing the amounts to be paid by the companies the committee has fixed amounts as large as could, in its judgment, be expected to be paid out of the reasonably anticipated earnings of the companies. We have not desired to fix amounts in excess of the earning capacity of the properties, as we have considered it desirable and in the highest degree important that the arrangement made now should be a final one, but the amounts have been determined according to the best estimates which could be made of the earning capacity of the properties, and, while we believe that the amounts required by this bill can be met and borne, we are satisfied that these amounts could not be materially increased without exceeding the limits of reasonable safety.

The committee has, however, made in the case of the Central Pacific Railroad Company the special requirement that the lease of its properties to the Southern Pacific Company should be so modified as to provide as follows:

First. That the Southern Pacific Company shall guarantee the payment, during the continuance of the lease, of the amounts payable under the bill.

Second. That in case the Southern Pacific Company should consent to the termination of the lease before the maturity of all amounts payable under the bill it shall guarantee the payment of all such amounts thereafter to mature.

Third. That the Southern Pacific Company should consent that sums amounting in the aggregate to upward of $2,400,000, standing credited on the books of the United States Treasury to the Central Pacific Railroad Company as compensation for services upon non-aided lines, should be applied to the payment and cancellation of the bonds issued under the act.

Under the latter requirement the amounts applied to the cancellation of Central Pacific bonds the first year will be about $4,000,000, and the Southern Pacific guaranty will, in the judgment of the committee, fully insure the payment of the whole Central Pacific debt according to the provisions of the bill reported by the committee."

On January 8, 1897, C. P. Huntington wrote a letter reading as follows:

"Hotel Normandie, WASHINGTON, D. C.
January 8, 1897.

Dear Sir: As heretofore requested by you, I send herewith a copy of the lease of the Central Pacific Railroad to the Southern Pacific Company and amendments thereto, to date, viz.:

Original lease, February 17, 1885.

Modification of lease, January 1, 1888.

Modification of lease, December 7, 1893.
Modification of lease, March 22, 1894.

I remain, yours truly,
C. P. HUNTINGTON.

Honorable J. H. Gear,
Chairman Railroad Committee,
United States Senate, Washington, D. C."

(The lease and amendments are those which are set forth as an exhibit to the petition in this case.)

This letter from Mr. Huntington to Senator Gear is Defendants' Exhibit 41 and constitutes Senate Document 61, 54th Congress, Second Session, submitted to the Senate by Mr. Gear on January 13, 1897, and introduced in evidence in that form (III R. 922).

On January 11, 1897, in the closing days of the 54th Congress, Mr. Powers H. R. Bill 8189 (D. Ex. 38), mentioned *supra*, page 134, came to vote on final passage, and was defeated by a vote of yeas 103, nays 168, not voting 84 (Congressional Record, 54th Congress, Second Session, Vol. 29, Part I, pp. 689-90).

It had become apparent at this time that the opposition to extending the debts of the Union Pacific and Central Pacific for a long period of time and the details of such an adjustment presented a problem so complicated that it would be impossible for Congress to take direct or immediate action upon the subject.

Therefore, on January 13, 1897, Mr. Gear presented a bill for the appointment of a commission to settle the debts of all the bond-aided Pacific railroads, the commission to be composed of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney

General. This is Senate Bill 3522, 54th Congress, Second Session (D. Ex. 44); it died with the ending of the session.

On March 4, 1897, the 54th Congress and the second administration of President Cleveland came to an end, and the administration of President McKinley began. Immediately after his inauguration, the President ordered a special session of Congress, which convened March 15, 1897.

On March 16, 1897, Mr. Gear introduced Senate Bill 119 for the appointment of the Commission consisting of the Secretary of the Treasury, Secretary of the Interior, and the Attorney General, to settle the debt of the bond-aided Central Pacific railroads.*

On April 1, 1897, Mr. Gear presented the report of the Committee on Pacific Railroads in support of his Senate Bill No. 119. This report, which we call the Gear 1897 Report, is the first part of Senate Report 20, 55th Congress, First Session, and constitutes Defendants' Exhibit 39. The second part of this same report, which is a minority report of Senator Morgan against

*It is to be noted at this point that the first measure introduced in Congress which separated the adjustment of the Union Pacific debt from the adjustment of the Central Pacific debt was Senate Bill 119, introduced March 16, 1897. By that time it had become apparent that the two roads were to be dealt with separately. Indeed, later in the same year, November 1, 1897, the Union Pacific Railroad was struck off in foreclosure for the sum of $58,448,223.75, being the total amount due to the Government (Attorney-General's Report 1897, pp. vi-vii; *id.* 1898, p. xv). The Kansas Pacific (Kansas City-Denver-Cheyenne line) was struck off February 16, 1898, for a sum which realized to the Government the whole amount of the principal of its debt, viz., $6,303,000, leaving the Government other means of reimbursement for the interest it had paid on the bonds and which was not recovered in the foreclosure (Attorney-General's Report 1898, pp. xvi, xvii; *id.* 1899, p. xxxii).

Senate Bill 119 and in favor of a measure introduced by himself March 16, 1897, is Petitioner's Exhibit 23 A.

The Gear 1897 Report, recommending the passage of Senate Bill 119, the first measure providing for the separate adjustment of the Central Pacific debt, gives the reasons for making the adjustment of the Central Pacific debt the subject of independent legislation.

The following extracts are taken from the report:

> The bill referred to the committee and reported to the Senate by it deals only with matters affecting the claims growing out of the issue of the so-called subsidy bonds of the United States to aid in the construction of the Central Pacific Railroad from Sacramento to a point 5 miles west of Ogden and the Western Pacific Railroad from San Jose to Sacramento. All matters affecting the claims arising out of the issue of subsidy bonds in aid of the construction of the Union Pacific and Kansas Pacific railroads are now pending before the courts for judicial adjustment thereof (pp. 1 and 2).
>
> . . . . . .
>
> The time has passed during which it seemed practicable to deal in a single act with the liens of the United States upon the respective railroads included within the Central Pacific system and the liens upon the respective railroads included within the Union Pacific system.
>
> The Union Pacific Company, as early as 1894, made default in the payment of interest upon the coupons appertaining to its first mortgage bonds, and ever since that date has been in default in respect of payments due on account of interest or principal of its first mortgage bonds.
>
> As early as 1895 foreclosure suits were instituted by the trustees of the first mortgages, superior to the Government lien, and such foreclosure

suits are being pressed to decree and sale. The United States, acting by its Attorney General, under directions of the President, has commenced proceedings to enforce the liens reserved to the United States to secure the repayment of the subsidy bonds issued in aid of the construction of the Union Pacific and Kansas Pacific railroads, and has filed answers in the foreclosure suits instituted by the trustees of the paramount first mortgages thereon, and it is claimed that decrees of sale under the first mortgages and the Government liens will probably be entered in the course of the coming summer.

In the case of the Central Pacific Railroad a different course has been pursued. The coupons appertaining to its first-mortgage bonds have been regularly paid at maturity, and as each installment of first-mortgage bonds has matured, arrangements have been made with the bondholders to extend the maturity of the principal of each installment of bonds until January 1, 1898, at which last mentioned date, under existing arrangements, first-mortgage bonds of the Central Pacific Railroad Company to the amount of $25,883,000 will mature. The first-mortgage bonds of the Western Pacific Railroad Company, secured by a first mortgage upon its bond-aided line, and aggregating $1,970,000, will mature on the 1st day of July, 1899.

While the earnings of the Central Pacific Railroad Company have been such as to enable it to meet its operating expenses and the interest upon the first-mortgage bonds upon its aided line and the liens upon its non-aided lines (upon which the lien of the mortgage in favor of the United States does not attach), they have been and are of course, wholly insufficient to enable it to provide for the vast debt to the Government, secured by a second lien upon the aided line. The institution of proceedings for foreclosure of the lien of the United States would undoubtedly be followed, from the necessities of the case, by the institution of suits to

foreclose the first mortgages upon the Central Pacific and Western Pacific aided lines, amounting in the aggregate, as already stated, to $27,853,000.

It is believed, however, that a result much more advantageous to the United States can be reached by agreement with the railroad company than would be reached by a foreclosure of the second lien held by the Government, subject to this large first-mortgage lien or by the foreclosure of the first mortgage and the Government liens concurrently.

The inability of the Pacific railroad companies to provide for the repayment to the United States of the principal and interest of its subsidy bonds has been long fully anticipated and foreseen, and for many years Congress has had under consideration, at each session, measures designed to provide for a readjustment or extension of the indebtedness upon terms which it was supposed would be within the earning capacity of the various companies to meet. The subject has been carefully considered from time to time by various Congressional committees, which, on several occasions, have reported bills for this purpose, which received the cordial support of the committees which had given consideration to the subject, and investigated the existing situation, and ascertained the earnings and resources of the companies, upon which the character of the provisions to be made in respect to the matter were necessarily dependent.

In each instance, however, the proposed bills have failed, either on account of failure of the Houses of Congress to reach them for consideration, or on account of adverse action, which it is believed was predicated, to a controlling extent, upon the conviction that Congress, with the vast multiplicity of matters constantly demanding its attention, could not devote the requisite time to the careful consideration of the many diverse elements affecting this question and necessarily affecting any specific plan devised for its adjustment.

So far as Congress may be considered to have spoken at all in reference to this question, it has only been to the extent of indicating that, in its judgment, the conditions affecting the determination of the question involved were so complicated that it had been unable to reach a conclusion satisfactory to itself in respect thereto.

The committee, therefore, considering the history of previous measures affecting this subject, has concluded that it would probably best express the wishes of Congress in respect to the matter if a plan were reported which would permit three executive officers of the Government, subject to the approval of the President, to reach an adjustment with the owners of the property in respect to the settlement of this indebtedness. This conclusion has been reached with no disposition to forestall or prevent determinate action by Congress itself in respect to specific plans, but only after Congress had itself, as it seemed to the committee, practically indicated its determination that the conditions affecting the subject were of such a character as to lead to the conclusion that the whole subject should be considered and dealt with by officers of the United States having opportunity and facility to investigate all facts bearing upon the matter, and who would be able to deal with it more directly and satisfactorily than it could be expected that the subject could be dealt with by legislative procedure; and this view of the matter commends itself to the judgment of the committee as being a suitable, wise and appropriate method for reaching, through the responsible officers of the Government, an adjustment of a matter surrounded with not inconsiderable difficulties and embarrassments (pp. 4 and 5).

. . . . . .

The officers designated in the bill reported by the committee to act on behalf of the United States in respect to this matter are the Secretary of the Treasury, the Secretary of the Interior (within whose

Department is included the Commissionership of Railroads), and the Attorney-General, and the act proposes that these officers, subject to the approval of the President, should have power to settle, upon such terms as may be satisfactory to them, or a majority of them, the indebtedness to the Government growing out of the issue of subsidy bonds in aid of the construction of the Central Pacific and Western Pacific railroads (p. 6).

. . . . . .

The committee is confident that the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General of the United States, sitting together as a commission, can be relied upon to reach a satisfactory conclusion in the light of events as they may from time to time develop as to the result which may be reasonably anticipated from instituting proceedings for the foreclosure of the Government's lien upon the properties involved, and they may be confidently relied upon to make a settlement with the owners of the properties under the authority conferred upon them by the bill now reported only if they believe that a settlement so reached would be more advantageous to the interests of the Government than the result which may be reasonably anticipated from the institution of foreclosure proceedings. And for this reason we deem it most important that these officers should be invested with authority to make such a settlement if they should reach the conclusion that such a settlement was more advantageous to the United States than the anticipated result of judicial proceedings for the enforcement of the lien of the United States upon the properties involved, and the Government should not be forced to reluctantly commence proceedings to foreclose the Government's lien upon the properties for want of authority to make a settlement with the owners which might be obviously more advantageous to the United States than any reasonably anticipated result of foreclosure proceedings." (p. 10.)

On July 12, 1897, Mr. Hepburn introduced H. R. 3750, 55th Congress, First Session, which is Defendants' Exhibit 45. This bill also provides for the settlement of the debt by a Commission composed of the same three officers.

On July 24, 1897, the First Session of the 55th Congress (special session) adjourned without the adoption of Senate Bill 119.

On November 1, 1897, in the Union Pacific foreclosure that road was struck off for the sum of $58,448,223.75, being the total amount due to the Government (Attorney General's Report 1897, pp. vi.-vii., Attorney General's Report 1898, p. xv.), so that when the 55th Congress convened in first regular session the debt of the Union Pacific to the Government had been discharged, leaving open the debt of the Kansas Pacific (Kansas City-Denver-Cheyenne line) and the debt of the Central Pacific.

On December 7, 1897, the second session of the 55th Congress, being the first regular session, was convened, and in the course of that session, March 22, 1898*, an amendment to Senate Bill 119, making it more nearly conform to the later enactment of July 7, 1898, was introduced by Mr. Gear (D. Ex. 40, V R. 1959).

Senate Bill 119, however, was not voted on as such, for its provisions were incorporated in the Deficiency Appropriation Bill of 1898.

*The Kansas-Pacific line had already been struck off on February 16, 1898, as appears from the preceding note (p. 140).

On June 29, 1898, the Senate had the Deficiency Appropriation Bill under consideration (Congressional Record, 55th Congress, Second Session, Vol. 31, Part 7, pp. 6448, 6451, 6458). Mr. Morgan, on behalf of the Committee on Pacific Railroads, offered an amendment thereto substantially the same as the law of July 7, 1898, except (a) that it contained a provision that the funds derived from the Union Pacific settlement and to be derived from the Central Pacific settlement should constitute a fund for the building of the Nicaragua Canal (pp. 6458, 6459), (b) that it did not put a limit upon the time within which the debt of the Central Pacific should be paid, and (c) there was no provision for foreclosure if the settlement was not perfected within one year.

In the course of his remarks in support of his own proposed amendment, Mr. Morgan said (referring to the question of the time within which the payment should be made):

> "I am entirely satisfied on my own behalf to let the matter stand just as it is, and to let the President of the United States and the commission fix the time. But a time has been agreed upon on the suggestion of a Senator who is not a member of the committee, which is that in ten annual payments, as I understand it, this $59,000,000 is to be paid. Well, that is a pretty drastic movement, I know; we all know that even the greatest railroad company in the United States would find much difficulty, out of its earnings, or even out of its credit, in raising the sum of $59,000,000 in ten payments—very great difficulty. But that is neither here nor there."

Mr. Morgan's proposed amendment did not prevail, and thereupon another amendment was proposed by Mr. Gear, in the form in which the Act was approved on July 7, 1898, except in two particulars: (a) it did not limit the time within which the indebtedness should be paid to ten years; and (b) it did not provide that if the settlement were not perfected within one year after the passage of the act there should be foreclosure. At the suggestion of Mr. White of California, the provision respecting the ten-year limit was accepted by Mr. Gear and became a part of his amendment. Thereupon the amendment became a part of the Deficiency Appropriation Bill and was passed in the Senate, June 29, 1898. The amendment respecting foreclosure in the event settlement was not perfected within one year was introduced in the House (Congressional Record, 55th Congress, Second Session (first regular session), July 6, 1898, Vol. 31, Part 7, p. 6731). The amendment providing for foreclosure if the settlement was not perfected in one year was moved by Mr. Barham of California. The discussion upon the subject was closed by Mr. Cannon, and the amendment adopted by the House.

Mr. Cannon said (p. 6731):

> "Mr. CANNON. Now, Mr. Speaker, in the remaining two minutes that I have I want to say that the right to foreclose remains when this provision is adopted, if it shall be adopted, and it leaves the three cabinet officers, with the approval of the President, to agree with the Central Pacific Railroad on the payment of the full amount in twenty semi-annual payments, giving them discretion as to the best security they can get. They can make

that arrangement with the Southern Pacific, or with the Union Pacific, or with the Rock Island, or with the Northwestern, or with anybody under God's green canopy that they choose. (Laughter.) Well, it is a question of eyesight whether the canopy is green or blue.

Now, Mr. Speaker, the hour of 4 o'clock has come, and I trust that this amendment will be adopted, and this additional means taken to secure $60,000,000 to the Treasury of the United States without one danger of loss."

The amendment was adopted and the Senate concurred. On the following day, the President signed the bill; and thus the Act of July 7, 1898, became a law.

---

(13) The act of July 7, 1898 (30 Stat. 652, 659), and the preliminary negotiations which led to the settlement of February 1, 1899 (executed February 16, 1899), together with plans for the readjustment of the Central Pacific Railroad Company, all of which immediately became matter of general and public knowledge.

The Act of July 7, 1898, was a general deficiency appropriation bill. The provision contained therein which dealt with the settlement of the Central Pacific indebtedness read as follows:

"SETTLEMENT WITH THE CENTRAL PACIFIC AND WESTERN PACIFIC RAILROADS: That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western

Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.

That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: And also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semi-annually, and with such security as to said commission may seem expedient; Provided, however, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years and the whole amount, principal and interest, shall be paid in equal semi-annual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest or any part thereof then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one year after the passage of this Act the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this Act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated,

> the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement." (30 Stat. 652, 649)

Attorney General Griggs testified to negotiations which resulted in the agreement dated February 1, 1899, conducted chiefly with James Speyer, of Speyer & Company of New York; "and I recall now one occasion when the matter was discussed by Mr. Huntington, who, I think, was then president of the Southern Pacific Railroad", at the Cabinet Room in the presence of President McKinley (III R. 992-993). He testified further that President McKinley had spoken to him of "having conferred with Mr. Huntington and having seen him about the matter" (III R. 997).

Attorney General Griggs also testified that President McKinley took an active part in the settlement and kept in touch with the progress of the negotiations, as he regarded it a very important subject, and had expressed great interest therein (III R. 1009).

Secretary of the Treasury Gage testified that although he had very little to do with the negotiations, he was familiar with what was going on; that he had several conferences with President McKinley concerning the matter; that the President was active in the settlement, and that the first that Mr. Gage knew of the negotiations was the statement from the President of a visit paid to him by Mr. Huntington. Mr. Gage had frequent conferences with the Attorney General about the matter (III R. 1010).

Henry Ruhlander, a member of Speyer & Company, testified that the leading spirit in the negotiations for this settlement was C. P. Huntington (III R. 930):

James Speyer testified that he conferred with Attorney General Griggs, and that the "principal negotiations were with President McKinley personally. . . . I should say that I saw President McKinley probably half a dozen times" (III R. 1187). Mr. Speyer also testified regarding his dealings with Mr. Huntington, that:

> "My dealings with Mr. Huntington were, as I say, as to the Southern Pacific Company. I do not remember dealing with him at all as a Central Pacific stockholder" (III R. 1195).

Mr. Speyer further testified that the entire plan for the reorganization of the affairs of the Central Pacific had been all agreed upon and arranged and was ready to be put out as a public document under date of February 20, 1899, and that shortly before that time he became nervous lest the agreement should not be actually executed before February 20, 1899, and that he therefore went to Washington to see to its execution. The agreement was executed in Washington by President McKinley and Secretary Bliss and Attorney General Griggs on February 15, 1899, and in Boston by Secretary Gage on February 16, 1899 (III R. 1186, 1213-1215).

Immediately after the execution of the agreement with the Government, which is Exhibit "A" to Defendants' Answer, the Commission, consisting of Secretary of the Treasury, Secretary of the Interior, and the

Attorney General, transmitted to Congress their report dated February 15, 1899, setting forth in full a copy of the agreement of February 1, 1899. *This report was received by the Senate and House of Representatives and ordered to be printed on February 20, 1899* (D. Ex. No. 53).

On February 18, 1899, *The Commercial & Financial Chronicle* published an announcement of the readjustment plan of the Central Pacific Railroad Company (D. Ex. 95, VI R. 2258).

On February 20, 1899, Speyer & Company issued the entire plan for the readjustment of the Central Pacific for the payment of the Government debt, and gave it wide publicity (III R. 1187).

On February 25, 1899, *The Commercial & Financial Chronicle* published an exhaustive account of all of the details of the readjustment as they were actually accomplished.

The Commercial & Financial Chronicle just mentioned is a weekly newspaper devoted to commercial and financial affairs, published weekly on Saturday in the City of New York, and has been in existence for 25 years. This paper had throughout the year 1899, and for many years before that time, a large circulation among commercial and financial people and banks in the United States of America. It is one of the leading commercial and financial papers of the country (III R. 1211).

Having narrated the circumstances of the consummation of the settlement with the Government, and the

immediate publicity given to it, it is next in order to consider the settlement itself.

---

(14) The settlement with the Government dated February 1, 1899, but actually executed February 16, 1899.

The settlement with the Government constitutes Exhibit "A" to the Answer of Defendants, and the plan of readjustment of which the agreement was an integral part, is Exhibit "B" to the Answer.

With a view to a full understanding of the transaction it is necessary first to consider the condition of the Central Pacific Railroad Company as of February 1, 1899.

The Financial Condition of the Central Pacific Railroad Company (the old Company) as of February 1, 1899.

The condition may be briefly put as follows:

(a)	Bonded debt, made up of seven issues (for details of which see Answer, I R. 61-62)	$ 57,471,000.00
(b)	Indebtedness to the Government (Answer, I R. 51)	58,812,715.48
(c)	Par of its outstanding stock (Answer, I R. 66)	67,275,500.00
	Total	$183,559,215.48

In order that the indebtedness of the Government should be met it was, of course, necessary to reorganize the company, and a reorganization could only be accomplished by an adjustment with all interests concerned. To do this it was necessary to form a new company and for that new company to issue and, in large part, to market new securities.

It is, therefore, necessary to know what the securities of the new company were and how the reorganization was effected.

The Security Issues of the Central Pacific Railway Company (the new Company).

(a)	4% First Refunding Mortgage Gold Bonds, guaranteed unconditionally as to principal and interest by the Southern Pacific Company	$100,000,000
(b)	3½% Mortgage Gold Bonds, guaranteed unconditionally as to principal and interest by the Southern Pacific Company	25,000,000
(c)	4% Cumulative Preferred Stock	20,000,000
(d)	Common Stock	67,275,500
	Total	$212,275,500

We have thus set down the obligations of the old company and the securities to be issued by the new company. The question now arises, How could the new company with the securities just mentioned meet and discharge the obligations of the old company? This was accomplished by the intervention of the Southern Pacific Company and through its engagements made with Speyer & Co.

As already noted, the Southern Pacific Company agreed that it would guarantee unconditionally the payment of the principal and interest of the two issues of bonds of the new company; but the Southern Pacific Company did more than this. It agreed to buy the

$20,000,000 issue of preferred stock and the $67,275,-500 issue of common stock.

The stock of the new company, $20,000,000 preferred and $67,275,500 common, was to be purchased by the Southern Pacific Company with 4% Gold Bonds to be issued by that Company to the amount of $36,819,000 (secured by a pledge of the preferred and common stock of the new Central Pacific, as and when acquired) and an issue of its own (the Southern Pacific) common stock to the amount of $67,275,500. The $20,000,000 issue of preferred stock was to be paid for by $20,000,-000 of the Southern Pacific 4% Gold Bonds just mentioned. The $67,275,500 issue of common stock was to be paid for by $67,275,500 of the common stock of the Southern Pacific (par for par) plus $16,819,000 of its 4% Gold Bonds. In other words, the Southern Pacific paid $125 per share for the stock of the new Central Pacific—$100 in common stock of the Southern Pacific Company at par and $25 in bonds of the last mentioned issue to be taken at par.

It is to be noted that the $20,000,000 in bonds of the Southern Pacific to be paid for the preferred stock and the $16,819,000 in bonds of that company to be paid on account of the purchase of the common stock cover the entire issue of Southern Pacific 4% Gold Bonds aggregating $36,819,000 face value.

It is also to be noted that the Southern Pacific was presently to acquire only $12,000,000 of the $20,000,000 of preferred stock and that the remaining $8,000,000 was to be acquired by the Southern Pacific from the

Central Pacific Railroad Company as and when the needs of the latter company should require their sale to the former company for the 4% Gold Bonds of that company.

The plan just outlined provided a purchaser for the stock of the Central Pacific Railway Company (the new company), but it did not provide cash for the stockholders in the old company if they demanded cash in place of new securities; it did not provide cash for the holders of the bonds of the old company if they demanded cash, and it did not provide cash for the Government, which did demand cash while consenting that the payments might be deferred. It, therefore, became important to procure a syndicate ready to buy and pay cash for the bonds of the old Central Pacific and for its outstanding stock, unless the holders of those bonds and stocks were minded to accept new and other securities in lieu thereof; and also ready to purchase and pay for the new securities in amounts and at times necessary to meet the requirements of the settlement with the Government. In other words, a syndicate was necessary (a) to make a market for a sufficient amount of the new securities to meet the requirements of the Government; (b) to purchase for cash the outstanding stocks and bonds of the old company, and (c) to take in lieu of the stocks and bonds of the old company so to be acquired such payment in cash and new securities as might be arranged in the readjustment plan. This was all arranged by Speyer & Co., actuated by the engagements and liabilities of the Southern Pacific Company represented in the matter by C. P. Huntington.

How the matter was worked out is easily shown.

We deal first with the settlement with the Government.

Settlement with United States Government.

The indebtedness to the Government as of February 1, 1899, amounted to $58,812,715.48. This was to be covered by twenty notes of the Railroad Company, one falling due every six months, beginning August 1, 1899, and ending February 1, 1909. The notes were to carry interest at 3% per annum, payable semi-annually, and each note was to be secured by First Refunding 4% Gold Bonds of the above issue equal in amount to the face of the note. Speyer & Co. agreed with the Government to purchase the four notes earliest in point of maturity and to pay the face thereof as soon as received by the Government, leaving in the hands of the Government notes aggregating $47,050,172.36, to secure which the Government had in hand the 4% bonds to the amount of $47,056,000.

Thus was the debt of the Government arranged and settled in 1899, leaving, of course, the payment of the notes to come about as and when they matured, of which we shall speak later.

We come now to the settlement with the bondholders of the Central Pacific.

Settlement with Bondholders of Central Pacific.

As already stated, the outstanding bond issue of the Central Pacific, composed of seven issues, aggregated

$57,471,000. It was a part of the plan that Speyer & Co. should purchase these bonds for cash if the bondholders desired cash in exchange therefor—four of the issues at par, two of the issues at 105, and one at 109, as follows (Answer, I R. 61, 62):

$25,881,000	Central Pacific Railroad Company, of California, First Mortgage Bonds, Series A, B, C, D, E, F, G, H and I	At the price of par and accrued interest in New York.
2,735,000	Western Pacific Railroad Company First Mortgage Bonds, Series A and B	
6,080,000	Central Pacific Railroad Company (San Joaquin Valley Branch) First Mortgage Bonds	
2,134,000	Central Pacific Railroad Company Land Bonds	
56,000	Central Pacific Railroad Company Fifty-Year Six Per Cent. Bonds	At the price of 105 and accrued interest in New York.
10,245,000	Central Pacific Railroad Company Fifty-Year Five Per Cent. Bonds	
10,340,000	California and Oregon Railroad Company and Central Pacific Railroad Company, successor, First Mortgage Bonds, Series A and B	At the price of 109 and accrued interest in New York.

It was provided, however, that if the bondholders desired to accept the new securities in lieu of the bonds of the Central Pacific then held by them, they should have the privilege of so doing upon the following terms (Answer, I R. 69):

Amount of Cash and New Securities which Existing Bonds were Entitled to Receive on Readjustment.

Existing Bonds.	Cash.	Each $1,000 New 4% First Refunding Mortgage Gold Bonds.	Receives New 3½% Mortgage Gold Bonds.
Central Pacific Railroad Company of California First Mortgage Bonds, Series A	$33.33	$1,000	$50
Series B to I, inclusive	29.17	1,000	50
Western Pacific Railroad Company First Mortgage Bonds, Series A and B	35.00	1,000	50
Central Pacific Railroad Company (San Joaquin Valley Branch) First Mortgage Bonds	50.00	1,000	75
Central Pacific Railroad Company Land Bonds	41.67	500	700
Central Pacific Railroad Company Fifty-Year 6% Bonds	50.00	500	900
Central Pacific Railroad Company Fifty-Year 5% Bonds	41.67	500	800
California and Oregon Railroad Company and Central Pacific Railroad Company, successor, First Mortgage Bonds, Series A and B	29.17	1,000	200

The foregoing terms, applied to all the outstanding issues, would have resulted in the payment of cash and the issuance of new securities as follows:

Table Showing Amount of Cash and New Securities which Deposited Securities were Entitled to Receive on Completion of Readjustment.

	Cash.	New 4% First Refunding Mortgage Gold Bonds.	New 3½% Mortgage Gold Bonds.
C. P. R. R. Co. of Cal. 1st Mtge. Bonds,			
*Series A	$ 99,823.35	.....*	.....
*Series B to I	667,584.62	$25,881,000	$ 1,294,050
W. P. R. R. Co. 1st Mtge. Bonds, Series A and B	95,725	2,735,000	136,750
C. P. R. R. Co. (San Joaquin Valley Branch) 1st Mtge. Bonds	304,000	6,080,000	456,000
C. P. R. R. Co. Land Bonds	88,923.78	1,067,000	1,493,800
C. P. R. R. Co. 50-yr. 6% Bonds	2,800	28,000	50,400
C. P. R. R. Co. 50-yr. 5% Bonds	426,909.15	5,122,500	8,196,000
C. & O. R. R. Co. and C. P. R. R. Co., successor, 1st Mtge. Bonds, Series A and B	301,617.80	10,340,000	2,068,000
	$1,987,383.70	$51,253,500	$13,695,000

* Series A amounted to $2,995,000 and Series B to I inclusive, amounted to $22,886,000, making Series A to I inclusive $25,881,000.

In other words, the bonds of the Central Pacific, aggregating $57,741,000, were to be taken up and paid for by

(a)	Cash to the amount of	$ 1,987,383.70
(b)	New 4% Bonds to the amount of	51,253,500.00
(c)	New 3½ Bonds to the amount of	13,695,000.00
	Total	$66,935,883.70

If any bondholder wished cash, Speyer & Co. undertook to buy and pay for the bonds at par or better, as stated in the Answer, I R. 61-62. On the other hand, if a bondholder wished to take part in cash and part in each of the two new issues, he could do so on the terms stated above (Answer, I R. 69). Of course, as to those bondholders who elected to take in cash, Speyer & Co. stepped into their shoes and were to accept in lieu of the bonds of the old company so purchased by them the amount of cash and new securities provided for as above (Answer, I R. 69).

Thus were the holders of bonds in the old company to be taken care of. The plan by which they were to be taken care of involved cash to the amount of $1,987,383.70, provided for as hereinafter shown.

The arrangements with (*a*) the Government; (*b*) the bondholders of the old company, and (*c*) the new company in respect of the sale of its preferred and common stock, involved the disposition of the three bond issues already mentioned and one stock issue, as follows:

The $100,000,000 C. P. Issue.

Retained by the United States Government as collateral to sixteen notes aggregating $47,050,172.36	$ 47,056,000
Set apart to be exchanged for outstanding bonds of the Central Pacific as per the above table	51,253,500
Balance of issue to be purchased by Speyer syndicate to provide cash requirements of reorganization	1,690,500
TOTAL	$100,000,000

The $25,000,000 C. P. Issue.

Set apart to be exchanged for outstanding bonds of the Central Pacific as per the above table	$13,695,000
Balance of issue to be purchased by Speyer syndicate to provide cash requirements of reorganization	11,305,000
TOTAL	$25,000,000

The $36,819,000 S. P. Issue.

The C. P. stock, aggregating $67,275,500, par value, was to be acquired by the same amount of Southern Pacific stock plus 25% in bonds of the issue being here dealt with. This 25% is	$16,819,000
$12,000,000 of the preferred stock of the new C. P. was to be purchased by an equal amount of the par value of the bonds of the issue here dealt with, thereby requiring	12,000,000
The balance of the $20,000,000 issue of preferred stock was to be purchased as and when corporate needs so required by an equal amount at par value of the issue being here dealt with	8,000,000
TOTAL	$36,819,000

We come now to the stock transaction.

The Stock Transaction.

The Southern Pacific was forthwith to acquire $12,000,000 and, as and when occasion required, the other $8,000,000 of preferred stock, paying therefor its 4% bonds, par for par	$20,000,000
The Southern Pacific was to acquire $67,275,500 common stock of the Central Pacific, paying therefor its own stock, par for par, aggregating	67,275,500
And, in addition thereto, was to pay 25% of the par of the common stock of the Central Pacific in its own 4% Gold Bonds, amounting, as already stated to	16,819,000
TOTAL	$104,094,500

The Southern Pacific, therefore, to acquire the stock of the Central Pacific, was to issue ultimately $36,819,000 in bonds and $67,275,500 in stock.

Cash Requirements.

We have already shown that the syndicate was to purchase bonds of the $100,000,000 issue to the amount of	$ 1,690,500
And of the $25,000,000 issue to the amount of	11,305,000
Making a total of bonds at par	$12,995,500

The purchase of these bonds, however, would not yield sufficient cash to take care of the requirements of the reorganization because the sum estimated as needed for that purpose was $21,420,100 made up of (*a*) $11,762,543.12 to be paid by Speyer & Co. to the Government for the four notes of earliest maturity, and (*b*) $9,657,556.88 for new equipment, improvements and other purposes of the new Company, including expenses, commissions, compensation, etc., incident to the reorganization of the company, making

as already stated, a total of $21,420,100 (Answer, I R. 70).

The cash requirements, therefore, of $21,420,100 could have been met by (*a*) $1,690,500 of the $100,000,000 issue; (*b*) $11,305,000 of the $25,000,000 issue; (*c*) $12,000,000 of the $36,819,000 issue, which $12,000,000 would be in the treasury of the Central Pacific Railway Company; and (*d*) such additional sum in bonds of the latter issue which would be found in the treasury of the Central Pacific Railway Company in exchange for preferred stock issues in excess of the $12,000,000.

We may now sum the matter up by showing what the Southern Pacific Company did in this transaction.

What the Southern Pacific Did.

(*a*) It became guarantor in respect of a bond issue of	$100,000,000
(*b*) It became guarantor in respect of a bond issue of	25,000,000
(*c*) It issued its own bonds for the purchase of $12,000,000 of the preferred stock of the new company, in the amount of	12,000,000
(*d*) It agreed as and when required to purchase the remaining $8,000,000 of the preferred stock of the new company with bonds in the amount of	8,000,000
(*e*) It agreed to issue its bonds as a part payment on the purchase price of $67,275,500 of the common stock of the new company, in the amount of	16,819,000
(*f*) It issued its own stock in partial payment of $67,275,500 of the common stock of the new company, in the amount of	67,275,500
Making a total of	$229,094,500

In other words, in the transaction the Southern Pacific Company (*a*) guaranteed $125,000,000 bonds of the new company; (*b*) issued, or agreed to issue, its own bonds to the amount of $36,819,000, and (*c*) issued its own stock to the amount of $67,275,500.

It did all of this in the plan for the payment by the reorganized Central Pacific Railway Company of its debt to the Government. Without the intervention of the Southern Pacific Company and the purchase by it of the stock of the Central Pacific and the guaranty of its bonds, it would have been impossible to make the arrangements which were made with the syndicate, and impossible to market the bonds of the Central Pacific Railway Company.

In every real and substantial sense, therefore, the Government of the United States agreed with the Southern Pacific Company that it might acquire the Central Pacific Railway Company's stock in consideration of the guaranty by the Southern Pacific of the bonds of the Central Pacific Railway Company, the marketing of which provided the funds whereby the Government was paid, as we shall show.

---

(15) The part which the Southern Pacific was obliged to and did take in the readjustment of the Central Pacific Railroad Company's affairs, including the subordination of its 99-year lease, without which the reorganization could not have been accompished.

In dealing with the settlement with the Government we have had occasion to review the financial obligations

assumed by the Southern Pacific. We have not, however, spoken of the subordination of the Southern Pacific lease to the securities which the new Central Pacific was to issue. This we proceed to do, and to show, in addition, why the Southern Pacific was obliged to assume the obligations which it did in the readjustment of the Central Pacific affairs.

The first requirement of the agreement with the Government concerned the lease of 99 years from the Central Pacific to the Southern Pacific, of February 17, 1885, and its modifications. The agreement required that the indebtedness to the Government should be secured by the refunding bonds provided for in the readjustment plan, to the par value of the unpaid notes, and the agreement in terms required (Answer, I R. 56) that the "mortgage securing such Refunding Bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof".

The President and the members of the Cabinet, by whom this agreement was executed, were, as we have already shown, fully aware of the lease of the Central Pacific properties to the Southern Pacific Company. It is, therefore, clear that, by the above quoted provision, they required the Southern Pacific Company to agree to subordinate its lease to the lien by which the refunding bonds were secured. In conformity with this requirement of the settlement, the Southern Pacific executed an agreement whereby it subordinated its lease to the mortgage by which the refunding bonds were secured. (See Defendants' Exhibit 48, indenture

of August 1, 1899, whereby the Southern Pacific subordinated its lease to the lien of the Central Pacific Railway Company's first refunding mortgage.)

Secondly, the Southern Pacific was required to guarantee the first refunding bonds. The Government notes were to be secured by these bonds, par for par, and Speyer & Company's readjustment plan required them to be guaranteed by the Southern Pacific, in order that the bonds might be salable.

Attorney-General Griggs said (III R. 996):

> "the agreement that we made provided that the bonds deposited as security should be such bonds as were described in the plan of readjustment or settlement put out by Speyer & Company, and that plan described those bonds as guaranteed by the Southern Pacific Railroad, as I recollect."

Attorney-General Griggs also testified (III R. 999):

> "My recollection is that the guaranty of the Southern Pacific on those bonds was one of the agreed parts of the negotiation, the government relying upon that as an additional security or guaranty to see that their debt would be paid, either by the new corporation that was to be formed and to issue these bonds, or by the guarantor, the Southern Pacific Company.
>
> Q. If your recollection were not at fault in that respect, how is it possible that you should have passed, as the final agreement, one which did not, by reference or otherwise, call for any such guaranty, but merely called for first mortgage bonds?
>
> A. I do not think we did. The agreement, as I recall, of February 1, 1899, provided that we were to receive as collateral security such bonds as were described in the Speyer prospectus and in

that prospectus, as I understand the agreement, whatever it was, the Southern Pacific had agreed to guarantee those refunding fours."

Thereupon counsel for the Government interrogated Attorney-General Griggs in an attempt to show that the arrangement with the Government did not require the bonds to be guaranteed by the Southern Pacific. The Attorney-General replied (III R. 1000-1002):

"My understanding of that was, Speyer & Company being a party to this agreement, the deposit of the various underlying bonds and stocks and so forth being recited, the agreement of reorganization or scheme or prospectus being in our possession, showing that these bonds were to be guaranteed by the Southern Pacific, those were the bonds that we meant when we described the four per cent. refunding bonds.

I should say our assumption was that the description there related to the bonds that were described in that agreement, and it was all part of the one scheme, which we knew at the time, from negotiations with Mr. Huntington and from familiarity with that document, were actually being put through by the efforts and on the responsibility of the Southern Pacific.

. . . . . .

Speaking of the matter as it appears in the contract, I am not prepared to argue whether we would have been entitled to reject bonds that were offered as security without the guaranty of the Southern Pacific; but, as a matter of fact, that was in the contemplation of the parties when the agreement was signed, I should say that nothing short of that would be acceptable.

. . . . . .

That might be argued from the face of the papers, but as against that I have the very clear recollection that the bonds were to be guaranteed by

the Southern Pacific, and that we thought the agreement was efficient to secure that. Whether it would have turned out, on a law suit, to be efficient or not is another matter; but that we thought it was efficient, there is no doubt.

. . . . . .

If your question is intended to ask me whether I infer that the guaranty of the Southern Pacific might have been taken out of the arrangement, I should say decidedly not. My recollection is that that was an essential part of the agreement. The arrangement was put through, it was enabled to be put through by reason of the intervention of Mr. Huntington for the Southern Pacific Company. We all recognized that at the time, and we all understood that we were getting the endorsement of his company on these bonds.

Now, whether we put it in the agreement or not may be a matter of difference of legal opinion just now; but that we were to have it, and that we did get it, is a matter of positive recollection on my part."

Mr. Speyer testified to the same effect (III R. 1182-1183, 1184-85):

"Q. Mr. Speyer, when you started to work upon that plan of readjustment did you expect and count upon the intervention and aid of the Southern Pacific Company?

A. I knew I could not carry it through without the help of the Southern Pacific; or some other railroad company, in case the Southern Pacific had not come to assist.

Q. Did you ever contemplate or work upon any plan which did not involve the intervention and aid of the Southern Pacific Company?

A. I did not.

. . . . . .

Q. Mr. Speyer, considering the terms required by the act of Congress, namely, the requirement

that the entire debt of fifty-eight million eight hundred thousand dollars, in round numbers, would have to be paid in ten years, in twenty semi-annual installments, would any one at all familiar with the Central Pacific affairs know that the Central Pacific, with its own resources and credit, could not comply with these conditions?

A. He would.

Q. It would be obvious to any one at all familiar with the affairs of the Central Pacific that it could not, with its own resources and credit, comply with the terms of that act?

A. Yes, sir.

Q. In making the agreement which you participated in with the United States, what did you count upon to enable you to carry out the agreement with the United States?

A. The co-operation of the security holders of the Central Pacific and of the Southern Pacific Company.

Q. As outlined in your plan of readjustment?

A. Yes.

Q. Had you formulated your plan of readjustment before you executed the agreement with the United States?

A. Yes, sir.

Q. Would you have signed that agreement if you had not had your plan of readjustment formulated?

A. No, sir.

Q. Would you have signed the agreement if you had not been reasonably assured of the operation of the plan?

A. No; I would not.

. . . . . .

Q. What effect upon the value of the bonds as security did the Southern Pacific guaranty have?

A. It increased their value.

Q. Greatly?

A. I should say so.

Q. How did the resources and credit of the Southern Pacific Company compare with those of the Central Pacific?

A. They were superior to those of the Central Pacific.

Q. Was the superiority very great?

A. I suppose the quotations of those days, which I have not before me—the quotations of the bonds and stocks, which I do not remember, would show how great the difference was, in public opinion.

Q. What is your recollection about it?

A. That it was very considerable."

Again (III R. 1205-1206):

"Q. Did either Mr. Griggs, Mr. Bliss, Mr. Gage, Mr. Root or President McKinley receive a copy of this reorganization plan that was promulgated by your circular of February 20, 1899?

A. I have no doubt they did.

. . . . . .

These whole negotiations were carried on absolutely on the table. Everything that was done was known to everybody interested, and I am perfectly satisfied that they had this plan and the provisos of it, and knew exactly what we were doing all the time. I am satisfied that they knew about the Southern Pacific guaranty, and thought it a valuable thing. I could not tell you when I gave them this plan, or how many copies they got, or who got it. I cannot remember. I do remember, however, distinctly, that everything we did, and everything I did was done just in that way; that they got everything; they knew everything we were doing; because I remember that President McKinley particularly thanked me, when it was all over—I do not want to repeat his words, but he was very flattering about the way I had conducted this negotiation. He knew everything I was doing, and he showed me the greatest confidence, and let me do it in my own way.

. . . . . .

Q. Did you ever suggest to any of these five gentlemen their taking these bonds, or any bonds, without a guaranty?

A. Never."

Mr. Speyer also testified that the Government understood that the bonds were to be guaranteed (III R. 1185), and that if the Central Pacific bonds offered to the Government did not carry the guaranty of the Southern Pacific Company, they would not have been in accordance with the understanding (III R. 1185-6).

During Mr. Speyer's examination, counsel for the Government suggested that the Union Pacific might have underwritten the refunding obligations of the Central Pacific, but Mr. Speyer testified (III R. 1200):

> "The Union Pacific was just emerging from reorganization itself. Nobody could tell how it was to work out, and it was our judgment that we could get more assistance from the Southern Pacific Company in settling that debt, than from anybody else. . . . I was thinking: where could we get the best financial and the strongest financial backing; and the Southern Pacific backing at that time would be a great deal more valuable than that of the Union Pacific. I do not want to compare Mr. Huntington and Mr. Harriman at all; but the Union Pacific was just then emerging from the receivership."

Secretary of the Treasury Gage testified (III R. 1011-1012):

> "Q. What securities were actually taken in executing the agreement?
>
> A. They were part of an issue of one hundred millions of dollars of bonds by the reorganized Central Pacific Railroad, running during a certain

time in the future—I forget the time—guaranteed by the Southern Pacific Company.

. . . . . .

The securities, as delivered; that is to say, the bonds that served as collateral to the series of notes given in settlement of the claims of the government, were in conformity to what I understood was to be the nature of the security.

Q. It was your duty, as Secretary of the Treasury, to receive and hold those notes and the collateral security?

A. That was my main duty and the main thought I had in mind.

Q. Would you have accepted the bonds without the guaranty of the Southern Pacific Railroad Company?

. . . . . .

The WITNESS. I am unable to answer that yes or no, because that proposition never came before me.

Q. But you do say that the bonds, with the guaranty endorsed, were in accordance with your understanding?

. . . . . .

The WITNESS. Yes, that is correct."

We have thus far dealt with the necessity for the participation of the Southern Pacific in the reorganization of the Central Pacific insofar (a) as it was required to subordinate its lease to the lien of the new bond issue; and (b) as it was required to guarantee the issue of refunding bonds, part of which were to go into the hands of the Government.

The third and fourth particulars in which the Southern Pacific was required to assume the burden of the readjustment plan were (a) the guaranty of the $25,000,000 issue of 3½% bonds of the Central Pacific, and

(b) the purchase of the preferred and common stock of the new Central Pacific Railway Company.

It was necessary for the Southern Pacific to guarantee the 3½% issue in order that that issue might be taken by the old security holders of the Central Pacific, or if not taken by the old security holders, in order that those bonds might be sold on the market to provide funds to take up the bonds held by them. It is clear, therefore, that the guaranty by the Southern Pacific of the 3½% issue was necessary to induce Speyer & Company to make the agreement by which the general readjustment was brought about.

This leaves for consideration the fourth particular in which it was necessary for the Southern Pacific to participate. The plan provided that the new Central Pacific Railway Company should have $20,000,000 in preferred shares and that these preferred shares, as and when sold, should be taken by the Southern Pacific at par, payable in the bonds of its issue of $36,819,000 put out in 1899. These bonds would find their way into the treasury of the Central Pacific Railway Company and be available as new funds for its corporate purposes.

This left the stockholders of the old Central Pacific to be dealt with, for their stock had to be taken over if a reorganization were to be accomplished in accordance with the requirements of the situation. The outstanding shares of the old Central Pacific were taken in by the Southern Pacific, share for share, at par, plus 25% in bonds of the $36,819,000 issue. In other words, of

this issue of $36,819,000, $20,000,000 was to be used for the issue of the preferred stock of the Central Pacific, and the remaining $16,819,000 was just enough to provide the 25% in bonds which the Southern Pacific was required to add in the share for share exchange of the outstanding Central Pacific stock in the hands of private owners and amounting to $67,275,500.

It is, therefore, readily apparent that the Southern Pacific assumed the burden of the plan for the readjustment of the Central Pacific and the settlement of the Government debt.

---

(16) The approval by Congress of the settlement of February 1, 1899, by the passage of the Act of March 3, 1899 (30 Stat. 1245), conferring authority upon the Secretary of the Treasury to carry the settlement into effect.

It will be recalled that the settlement agreement bears date February 1, 1899. In point of fact, it was executed in Washington February 15, 1899, by President McKinley, Secretary Bliss and Attorney-General Griggs and by Secretary Gage at Boston February 16, 1899.

A copy of the agreement was laid before both houses of Congress February 20, 1899, and referred by each of them to its Committee on Pacific Railroads.

The report to the House, which is identical with the Senate report, reads as follows (H. R. Document No. 238, 55th Congress, Third Session):

Indebtedness of Central Pacific and Western Pacific Railroads.

Report of the Commissioners appointed to settle the Indebtedness to the Government growing out of the issue of bonds in aid of the Construction of the Central Pacific and Western Pacific Railroads.

February 20, 1899—Referred to the Committee on Pacific Railroads and ordered to be printed.

Washington, D. C., February 15, 1899.

To the House of Representatives:

The undersigned commissioners, appointed by the deficiency appropriation act approved July 7, 1898, to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific railroads, would respectfully report that they have concluded a settlement of the said indebtedness with the Central Pacific Railroad Company, the owner of the said railroads. A copy of the agreement of settlement is herewith transmitted.

The settlement is made as of the 1st day of February, 1899, at which date the amount due to the United States for principal and interest upon its subsidy liens upon the Central Pacific and Western Pacific railroads amounted to the sum of $58,812,715.48, that being the full amount necessary to reimburse the United States for the moneys paid for interest or otherwise in aid of the construction of said railroads.

Said indebtedness is, by the agreement of settlement, funded at the amount aforesaid into twenty promissory notes, dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of $2,940,635.78, which is

one-twentieth of the total amount due. Said notes bear interest at the rate of 3 per cent. per annum, payable semi-annually, and have a condition attached thereto to the effect that if default be made in any payment of either principal or interest of any of said notes, or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of the agreement of settlement.

It is further provided that the payment of the principal and interest of said notes shall be secured by $58,820,000 of face value first refunding mortgage 4 per cent gold bonds to be hereafter issued by the Central Pacific Railroad Company, or its successor having title to the railroads now owned by said company and specified in said agreement, such bonds to be part of an issue of not exceeding $100,000,000 in all.

Said bonds are to be secured by a mortgage upon all railroads, equipment and terminals now owned by said Central Pacific Railroad Company, which mortgage shall be the first lien upon such property, or shall be secured by the deposit as collateral security therefor of certain percentages of the now outstanding bonds upon said property, or the different divisional parts thereof. The form of such mortgage is subject to the agreement of the parties to said agreement of settlement, and has been approved by the Attorney-General.

The agreement further provides that Speyer & Co., who are a party thereto, shall, within one month after the delivery to the United States of the settlement notes, accept from the Secretary of the Treasury the four earliest maturing notes, and pay to the United States the face value thereof, with accrued interest thereon to the date of payment, without recourse further than that Speyer & Co. shall, until the delivery of the refunding

bonds as collateral, be entitled to share *pro rata* with the United States in the lien and all proceeds of the lien in favor of the United States to secure said indebtedness.

The said agreement was submitted in writing to the President and approved by him on the 15th day of February, and the said promissory notes, have been duly delivered to the Treasurer of the United States.

Other provisions and particulars of said agreement will appear by a perusal thereof, to which reference is respectfully made.

The execution of the agreement was duly authorized by resolution of the board of directors of the Central Pacific Railroad Company, and approved by the formal action and consent of a large majority of the stockholders.

The commissioners have not found it necessary to expend any part of the sum of $20,000 appropriated for the expenses of the commission.

LYMAN J. GAGE,
Secretary of the Treasury.
CORNELIUS N. BLISS,
Secretary of the Interior.
JOHN W. GRIGGS,
Attorney-General.

A copy of the agreement was appended.

Speyer's plan for the readjustment of the affairs of the Central Pacific bore date February 8, 1899, and was published February 20, 1899, in a circular bearing that date, addressed to bankers, financiers and others, in Europe and America. Thus the entire plan for the reorganization of the Central Pacific became a public document as early as February 20, 1899. In addition, *The Commercial & Financial Chronicle* for February 18th and February 25th, 1899, contained all of the par-

ticulars of the readjustment plan of Speyer & Company.

It is also to be noted that although the plan of readjustment, which is Exhibit "B" to the Answer here, was dated February 8, 1899, Mr. Speyer testified (III R. 1187):

> "There were no doubt numerous proofs before that, but this was the first complete, final print.
>
> . . . . . .
>
> There were probably twenty or thirty proofs or revises."

It will also be remembered that the agreement of February 1, 1899, contained the following clauses:

> "Within thirty days after this settlement shall become binding, by the submission thereof in writing to the President, and his approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six months for ten years, counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of $58,812,715.48, and bearing interest at the rate of three per cent. per annum, payable semi-annually.
>
> Messrs. Speyer and Company, within one month after the delivery to the United States of the notes referred to in Article Second hereof, will, against delivery to them of the four earliest maturing notes, endorsed to their order by the Secretary of the Treasury on behalf of the United States without recourse to it, pay to the United States the face value of such notes, viz.: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents ($11,762,543.12), with accrued interest thereon to date of payment."

Another provision of the agreement called for the purchase by Speyer & Company of the four earliest maturing notes, and it was necessary that the Secretary of the Treasury be authorized by Congress to make the sale. Accordingly, with full knowledge of all of the facts before it, and in order that the authority of the Secretary of the Treasury to sell these notes to Speyer & Company, in accordance with the above agreement, might be confirmed, Congress included the following provision in the general appropriation Act of March 3, 1899 (30 Stat. 1214, 1245):

> "And authority is hereby granted to the Secretary of the Treasury, in his discretion, to dispose of, without commission, at not less than par and accrued interest, any notes or other evidence in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States."

By this act, Congress put its seal of approval upon the plan of readjustment.

---

(17) The payment of $11,798,314.14 to the Government by Speyer & Company March 27, 1899, as a part of the Central Pacific settlement.

In the report of the Commission on the settlement of the Central Pacific debt, filed with both houses of Congress February 20, 1899 (both dated February 15, 1899), it is recited that "the said promissory notes have been duly delivered to the Treasurer of the United States", so that as early as February 20,

1899, these notes were in the hands of the Government.

What next took place is told in the Attorney General's Report 1899 (D. Ex. 53, VI R. 2240), page 31:

> "The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement, the four earliest maturing notes were purchased by Speyer & Co., March 10, 1899 [*the sale having been expressly authorized by Congress*], and the proceeds, amounting to $11,762,543.12, and accrued interest to the date of payment $35,771.02, in all $11,798,314.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad companies."

---

(18) The incorporation of the Central Pacific Railway Company in August, 1899, the transfer to that company of the assets of the old company, the issuance of the securities of the new company, the purchase from the new company of its preferred stock by the Southern Pacific Company, and the purchase by the Southern Pacific Company of the stock of the old company from the holders thereof.

All of the terms of the readjustment plan were carried out in accordance with its provisions (III R. 924).

Central Pacific Railway Company, a Utah corporation, was organized under articles dated July 26, 1899, which were filed July 29, 1899 (D. Ex. 46, V, R. 1967).

On July 29, 1899, the Central Pacific Railroad Company (incorporated in California June 28, 1861) executed a deed to the Central Pacific Railway Company (incorporated in Utah July 29, 1899) whereby it conveyed all of its property to the latter company (D. Ex. 47, V, R. 1978).

Among the provisions of the deed is the following (D. Ex. 47, V, R. 1982-1983):

> "And in further consideration hereof, and in order to provide for the readjustment of the present funded indebtedness of the party of the first part (subject to which the properties of said party of the first part are hereby conveyed), and for the purpose of securing the payment of the amounts becoming due on the Notes given by said party of the first part to the United States under said Settlement Agreement, dated February 1, 1899, as in said Settlement Agreement prescribed, the party of the second part [the new company] has assumed and hereby assumes the payment of all the indebtedness and guaranties of the said party of the first part, and has undertaken, covenanted and agreed, and hereby undertakes, covenants and agrees, to and with the party of the first part, that it will issue stocks and securities and execute mortgages as prescribed in the Central Pacific Readjustment Plan and Agreement, dated February 8, 1899, issued by Speyer & Co., Speyer Brothers, Laz Speyer Ellissen, Teixeira de Mattos Brothers and the Deutsche Bank of Berlin, as Readjustment Managers, or as the same may be modified under the terms thereof and with the assent of the party of the second part, and in a certain Agreement bearing date the 20th day of February, one thousand eight hundred and ninety-nine, by and between F. G. Banbury, Esq., M. P., John B. Akroyd, Esq., Lord Alwyne Compton, M. P., Daniel Marks, Esq., and Joseph Price, Esq., as the London Committee of

Central Pacific Shareholders, Messrs. Speyer & Company of New York, Messrs. Speyer Brothers of London, Mr. Laz Speyer Ellissen of Frankfort-on-the-Main, Messrs. Teixeira de Mattos Brothers of Amsterdam, and the Deutsche Bank of Berlin, as Readjustment Managers as therein stated, and the Southern Pacific Company, and in a certain other Agreement bearing date the 1st day of March, one thousand eight hundred and ninety-nine, by and between August Belmont, Esq., Hon. John G. Carlisle and George Coppell, Esq., as the American Committee of Central Pacific Shareholders, the said Readjustment Managers and the Southern Pacific Company, and, under arrangements made or to be made with said Readjustment Managers will carry out such Readjustment Plan and said Agreements."

August 1, 1899, the Central Pacific Railway Company executed (a) its first refunding 4% mortgage, securing an issue of $100,000,000 to the Central Trust Company of New York, as trustee; and (b) its 3½% mortgage, securing an issue of $25,000,000 to the United States Trust Company of New York, as trustee (D. Exs. 27, V, R. 1788; 28, 1829).

On the same day (August 1, 1899) the Southern Pacific Company executed (a) to Central Trust Company of New York an indenture subordinating its lease of the Central Pacific lines to the $100,000,000 mortgage, and (b) to United States Trust Company of New York an indenture subordinating its lease of the Central Pacific lines to the lien of the $25,000,000 issue (D. Exs. 48, V, R. 1983; 49, 1987).

Henry Ruhlander, of the firm of Speyer & Company, testified that the plan of readjustment, which is Ex-

hibit "B" to the Answer, was actually carried out in accordance with its terms, resulting in the organization of the Central Pacific Railway Company and the issuance of its 4% refunding bonds and its 3½% mortgage bonds, and the acquisition of the common stock of the old Central Pacific Railroad Company by the Southern Pacific in exchange for its stock and 25% in bonds; and that the other conditions of the plan were carried out (III R. 924).

In the Attorney General's Report 1899, it is said (p. 31):

> "On October 7, 1899, bonds were delivered to the Treasury Department by the (Central) Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement."

---

(19) The Act of March 3, 1901 (31 Stat. 1023), as a further recognition and confirmation of the readjustment plan.

We have seen that with full knowledge of the facts and of all the terms of the plan, Congress passed a law on March 3, 1899, authorizing the Secretary of the Treasury to sell to Speyer & Company the four earliest maturing Central Pacific notes, and thereby ratified the agreement of February 1, 1899.

We come now to another act of Congress, passed March 3, 1901, whereby the agreement was a second time approved. Before taking up this act, however, we desire again to call attention to the report of Attorney-General Griggs for 1899, pages 30 to 33 (D. Ex. 53, VI R. 2239).

"Pacific Railroad Matters.

The deficiency appropriation act of July 7, 1898, appointed the Secretary of the Treasury, the Secretary of the Interior, and the Attorney-General a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds to aid in the construction of the Central Pacific and Western Pacific bond-aided railroads upon such terms and in such manner as might be agreed upon by them or by a majority of them and the owners of said railroads, subject to the approval of the President.

An agreement for the settlement of this indebtedness was entered into between the said commissioners with the railroad companies on February 1, 1899. At that date the amount due the United States for principal and interest upon its subsidy liens upon the Central Pacific and the Western Pacific railroads was $58,812,715.48, more than one-half of which was accrued interest upon the principal debt. The agreement of settlement provided for the funding of this amount into 20 promissory notes bearing date February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each note being for the sum of $2,940,635.78, or one-twentieth of the total amount due. The notes bear interest at the rate of 3 per cent. per annum, payable semi-annually, and have a condition attached to the effect that if default be made either in the payment of principal or interest or either of said notes or in any part thereof, then all of the said notes outstanding, principal and interest, shall immediately become due and payable notwithstanding any other stipulation of the agreement of settlement.

It was further agreed that the payment of the principal and interest of the notes shall be secured by the deposit with the United States Treasury of $58,820,000 of face value of first refunding

mortgage 4 per cent. gold bonds, to be thereafter issued by the Central Pacific or its successor having charge of the railroads then owned by said company, such bonds to be part of an issue of not exceeding $100,000,000 in all, and to be secured by mortgage upon all railroads, equipments, and terminals owned by said Central Pacific Railroad Company, such mortgage to be a first lien upon such property, or to be secured by the deposit as collateral of certain percentages of the outstanding bonds upon such property or on the different divisional parts thereof.

The notes provided for by this agreement were duly executed and delivered to the Treasurer of the United States in conformity with the terms of the agreement. In pursuance of another provision of the agreement, the four earliest maturing notes were purchased by Speyer & Co., March 10, 1899, and the proceeds, amounting to $11,762,543.12, and accrued interest to the date of payment $35,771.02, in all $11,798,314.14, were received and covered into the Treasury March 27, 1899, as part payment of the indebtedness of the Central Pacific and Western Pacific Railroad Companies. The properties of the various companies comprising the Central Pacific system were subsequently conveyed to a new corporation called the Central Pacific Railway Company, which latter company executed the mortgage and bonds provided for by the agreement of settlement. On October 7, 1899, bonds were delivered to the Treasury Department by the Central Pacific Railway Company, to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. The United States therefore holds the notes of the Central Pacific Railroad Company guaranteed* by the Southern Pacific Railroad Company to

*The notes themselves were not guaranteed but the entire issue of bonds was guaranteed and there were in the hands of the Government bonds equal in amount to the face of the notes and bearing, of course, the guaranty of the Southern Pacific Company.

the amount of $47,050,172.36, bearing interest payable semi-annually at the rate of 3 per cent. per annum and secured by the deposit of an equal amount of first-mortgage bonds of the Pacific Railway Company, thus providing, beyond doubt or peradventure, for the sure and gradual payment of the whole of this subsidy debt, and providing in the meantime for the payment of interest at the rate of 3 per cent. upon the unpaid balances.

. . . . . .

Taking into account the enormous material benefits that have accrued to the country from the construction of these transcontinental lines of communication, and the advantage which the Government has had by way of reduced rates of transportation and service over them, the participation of the Government in the construction and maintenance of these enterprises has been fully justified, and the faith of the original promoters and projectors of these great lines has been proven to have had a substantial basis."

It is clear, therefore, that all the details of the settlement between the Central Pacific and the Government had become public matters of common knowledge in the country, and cumulative evidence to this point may be found in the frequent reviews of the readjustment, with all its incidents, published in *The Commercial & Financial Chronicle* throughout the year 1899 (D. Ex. 95, VI, R. 2258).

In 1900 questions relating to interest upon claims for transportation service rendered the Government over the non-bond-aided lines of the Central Pacific Railroad Company and Southern Pacific Company were before the Senate Committee on Appropriations. By a settlement agreement made on February 1, 1899, the claims themselves had been allowed, but in the ab-

sence of express authority, no allowance had been made for accrued interest thereon, amounting to $1,496,090.41. In response to a request from the Senate Committee the details of these claims for interest were laid before the Committee by Secretary of the Treasury Gage in a letter dated May 12, 1900, which is Exhibit "C" to the Answer (I R. 73). This letter was ordered to be printed by the Senate March 2, 1901, and on the following day the Act of March 3, 1901 (31 Stat. 1010, 1023), became a law. It was a general appropriation bill and contained the following provision:

> "That the Secretary of the Treasury is hereby authorized and directed to make settlement of the claims growing out of Government transportation over non-bond-aided lines of the Southern Pacific Company and Central Pacific Company *by crediting against the notes of the Central Pacific Railroad Company held in the Treasury of the United States* interest on all of said judgment and allowed claims at four per centum per annum, as set forth in his letter to the chairman of the Committee on Appropriations of the Senate, dated May twelfth, nineteen hundred." (p. 1023)

In this act, we have the second instance of Congressional recognition of the Central Pacific notes, and ratification of the plan of readjustment of February 1, 1899.

---

(20) The payment to the Government of the $47,050,172.48, with interest, in discharge of the sixteen notes remaining in the hands of the Government after Speyer and Company had taken over on March 10, 1899, the four earliest maturing notes.

It appears by the testimony of Andrew K. Van Deventer, Treasurer of the Southern Pacific Company,

that all the notes held by the Government were paid as and when they matured, except the four earliest ones, which were sold to Speyer and Company, March 10, 1899. The last of the twenty notes matured February 1, 1909, and the last payment was made upon that date.

It is established by the testimony of Mr. Van Deventer that these payments to the Government were made by the Southern Pacific Company (III R. 904). It appears, too, that these notes were charged by the Southern Pacific to the Central Pacific, and that they were paid by the Central Pacific. Inasmuch, however, as the Southern Pacific was the only stockholder of the Central Pacific, this was a mere matter of bookkeeping. The point, after all, is, that the Southern Pacific was the company that made the payment possible.

---

(21) The death on August 13, 1900, of C. P. Huntington the last survivor of the four men who built the Southern Pacific-Central Pacific system; the acquisition by the Union Pacific of the Huntington stock and other stock in the Southern Pacific Company, giving the Union Pacific a dominating control of the Southern Pacific-Central Pacific system; and the operation of the latter by the former until the final decree in the Union Pacific unmerger suit, June 30, 1913.

C. P. Huntington survived the three men with whom he had been associated in the construction of the Southern Pacific-Central Pacific lines. Mark Hopkins died March 29, 1878, six months after the Southern Pacific construction had reached Yuma on October 22, 1877; Charles Crocker died August 14, 1888, three years

after the Southern Pacific had become lessor of the Central Pacific under the ninety-nine year lease executed in 1885; and Leland Stanford died June 20, 1893, a few months before receivers for the Union Pacific were appointed, October 13, 1893, and when Congress was attempting to devise a plan for the collection by the Government of the indebtedness due from the Union Pacific and the Central Pacific. Mr. Huntington died August 13, 1900.

The agreement with the Government was executed February 16, 1899. The notes for the full amount of the Government indebtedness were delivered to the Treasurer of the United States February 20, 1899; four of them were purchased by Speyer & Company March 10, 1899; the new securities of the Central Pacific were put out August 1, 1899, and the bonds by which the notes of the Government were required to be secured were delivered to the Treasury Department October 7, 1899. Within twelve months thereafter, C. P. Huntington died.

A few months later, in February, 1901, Mr. E. H. Harriman representing the Union Pacific Company, acquired for that company and its subsidiaries the Southern Pacific stock owned by the estate of C. P. Huntington. It amounted to slightly less than twenty-five per cent of the outstanding issue. At about the same time the Union Pacific also made purchases in the open market of thirteen per cent of the outstanding Southern Pacific stock, bringing its holding up to 750,000 shares, representing approximately a three-eighths interest in the company. In 1902 the Union Pacific bought 150,000

additional shares, increasing its holding to about forty-six per cent, which interest it maintained, with comparatively slight variations in amount until 1913, when the Union Pacific control of the Southern Pacific was terminated.

At the death of C. P. Huntington and thenceforward until the Union Pacific merger, there was active, vigorous competition between the El Paso and Ogden routes. The acquisition of control of the Southern Pacific-Central Pacific system by the Union Pacific resulted in the suppression of that competition while the dominance of the Union Pacific continued.

We pass now to consider in detail the Government's suit against the Union Pacific to terminate its control of the Southern Pacific.

---

(22) The case of United States v. Union Pacific R. Co., 226 U. S. 61, from its commencement February 1, 1908, to the entry of the final decree June 30, 1913.

As we shall have occasion later to deal with this case, we refer here only to that phase of it which concerns the questions with which we have been dealing and are now about to deal.

The suit was filed in the Circuit Court for the District of Utah February 1, 1908, to terminate the Union Pacific control of the Southern Pacific Company, which company was joined as a defendant. It was there decided June 24, 1911 (188 Fed. 102). The decision of this court was rendered December 2, 1912. Upon the going down of the mandate, the Government moved

that the Southern Pacific Railroad Company and the Central Pacific Railway Company should be brought in as additional parties defendant, which was accordingly done February 12, 1913. The final decree was entered June 30, 1913.

The petition filed February 1, 1908, alleged (pp. 4-7):

> "That the Central Pacific Railroad Company was organized under the laws of California, and constructed a line of railroad from Sacramento, Cal., to Ogden, Utah;
>
> That the Western Pacific Railroad Company was organized also under the laws of California, and constructed a line of railroad from San Francisco to Sacramento, Cal., and that these two latter corporations were afterwards consolidated into and became the Central Pacific Railroad Company, which was for many years engaged in the operation of said line of railroad from San Francisco to Ogden, at which point it connected with the main line of said Union Pacific Railroad Company;
>
> That by the act of Congress approved July 2, 1864, the said lines of railway (the roads named in the Act of July 1, 1862) receiving said aid (land grants and Government bond aid) . . . were required to operate their lines as one continuous line, without discrimination against or in favor of any or either of said companies;
>
> That in and by section 15 of said act of Congress approved July 2, 1864, it was, among other things, provided 'That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any dis-

crimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.'

That by the act of Congress approved June 20, 1874 (18 Stat. 111), this provision was in substance re-enacted, and any officer or agent of the companies refusing to operate and use the said railroads for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, without discrimination as aforesaid, was declared to be guilty of a misdemeanor, punishable by fine and imprisonment; and any party injured was authorized to sue for damages or to procure an injunction to enforce its provisions.

. . . . . .

That the Southern Pacific Company was on said January 1, 1901 (the year in which the alleged combination occurred), and still is the owner and in control by and through its ownership of the stock of various connecting lines of a line of railway extending from New Orleans, in the State of Louisiana, through said State and the State of Texas, the Territories of New Mexico and Arizona, and the States of California and Oregon, to said Portland;

That said Southern Pacific Company also owned and still owns a line connecting with said through lines ending at Galveston, Tex., upon the Gulf of Mexico, and in connection with its lines of railroad so reaching New Orleans and Galveston it owned and operated and still owns and operates a line of steamships running from said ports to Habana, Cuba, and to the city of New York;

That then and now the said Southern Pacific Company was and is also the owner of all the capital stock of the Central Pacific Railroad Company,* a corporation organized and existing under the laws of California,* which succeeded to the

ownership of the line of railway from Ogden to San Francisco theretofore owned by the corporation of the same name, to wit, Central Pacific Railroad Company, hereinbefore particularly described; and by virtue of such ownership of all said capital stock said Southern Pacific Company then and now in all respects controls the operation and management of the affairs and business of said Central Pacific Railroad Company."*

. . . . . .

That the said rail lines of the said Southern Pacific Company from the Mississippi River to Portland, Oreg., by way of San Francisco and Los Angeles, were in active competition with said lines of railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi Valley and in the Eastern States, both to and from the Pacific coast and points in Colorado and other interior States; and said steamship line of said Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the lines of said Union Pacific Railroad Company for a large amount of traffic originating in the Atlantic coast and Central states;

That the rail line of said Southern Pacific Company from San Francisco to Portland was in active competition with the ships plying between San Francisco and Portland and owned by said Oregon Railroad & Navigation Company, as hereinbefore alleged;

That the said ships of the Portland and Asiatic Steamship Company, in connection with the rail lines of said Union Pacific Railroad Company and its subsidiary companies, as hereinbefore alleged, running from Portland, Oreg., to the East, were in active competition with the ships of said Pacific

*This description of the corporation was inaccurate because the new company was the Central Pacific *Railway* Company, a *Utah* corporation.

Mail Steamship Company and the rails of said Southern Pacific Company running to the East from San Francisco;

That the line of railroad composed of the tracks of said Oregon Short Line Railroad Company and said Oregon Railroad & Navigation Company between Ogden, Utah, and Portland, Oreg., were in active competition with the lines of said Southern Pacific Company between said points;

That the rail lines of the said Southern Pacific Company were in active competition with the ships and rail lines of the said Oregon Railroad & Navigation Company for a large amount of traffic between San Francisco and points in Montana, Idaho, and other States.

That the competition hereinbefore alleged between the system of railroads and steamships owned and controlled by said Union Pacific Railroad Company and the system of railroads and steamships owned and controlled by said Southern Pacific Company was substantial and included a large volume of traffic, both freight and passenger.

That the Atchison, Topeka & Santa Fe Railway Company has been for a period of more than eight years last past the owner and in control, by direct ownership and by the ownership of the stock of railway companies owning a portion of said lines and by lease, of a line of railway reaching from Chicago, in the State of Illinois, through the States of Illinois, Missouri, Kansas, Colorado, the Territories of New Mexico, Arizona, and the State of California to the city of San Francisco and to tide water at San Diego, Cal.; that said line of railway touches the Union Pacific at Kansas City, Mo., and is and during all said times has been competitive with said Union Pacific Railroad Company and said Southern Pacific Company for a large traffic to and from the Pacific coast and the Orient, to and from various points in the east and the Mississippi valley and in the State of Colorado and other interier States;"

In the taking of testimony the Government undertook to show, and succeeded in proving, that prior to the Union Pacific's acquisition of control of the Southern Pacific, there was active and vigorous competition between the Ogden and El Paso routes.

In deciding the case, Judge Adams said (188 Fed. 102, 113):

> "The voluminous evidence of officers, agents, and shippers to the effect that active competition existed between the Union Pacific and Southern Pacific roads prior to 1901 must be considered in the light of the legal and physical relations of the roads to each other and of other related facts. Whether there was competition or not, in view of all these things, is a mixed question of law and fact, and not susceptible of determination by the preponderance of proof as an issue of fact only."

In his dissenting opinion, Judge Hook said (p. 121):

> "The other question in the case is decided by the court against the government. It is whether the two great transportation systems, the Union Pacific and the Southern Pacific, were in a substantial sense competitors in interstate and foreign commerce. This question involves the relative location of their lines on land and sea, and not only the parts they actually performed, but also those they were naturally capable of performing, in the movement of traffic. Albeit in part within the domain of judicial knowledge, this seems to me to be a pure question of fact. Some hundreds of witnesses, practical railroad men and shippers of wide experience, testified upon it, and a great mass of evidence was taken, showing almost without dispute, that, using the term 'competition' as business men understand and use it, there was active, vigorous, and substantial competition between the

> Union Pacific and the Southern Pacific before the former obtained control of the latter. But the court holds the question of competition to be one of mixed law and fact, not determinable by the evidence alone, and as such it is answered against the government."

Again, Judge Hook said, in reply to the argument that the competitive traffic was small when compared with the total traffic (p. 124):

> "The magnitude of the traffic shown by the proofs was too great, and *the competition for it too earnest and active*, to dismiss it as merely incidental to the principal business of the companies, and as not furnishing a motive for the merger or combination."

In this court, it was said (226 U. S. 86-87):

> "It is said, however, and this was the view of the majority of the circuit judges, that these railroads were not competing, but were engaged in a partnership in interstate carriage as connecting railroads; and it was further said that the Southern Pacific, because of its control of the line from Ogden to San Francisco and other California points, was the dominating partner. A large amount of the testimony in this voluminous record was given by railroad men of wide experience, business men and shippers, who, with practical unanimity, expressed the view that, prior to the stock purchase in question, Union Pacific and Southern Pacific systems were in competition, sharp, well-defined, and vigorous, for interstate trade. To compete is to strive for something which another is actively seeking and wishes to gain. The Southern Pacific, through its agents, advertisements, and literature, had undertaken to obtain transportation for its 'Sunset' or southerly route across the continent, while the Union Pacific

had endeavored in the same territory to have freight shipped by way of its own and connecting lines, thus securing for itself about 1,000 miles of the haul to the coast."

Again (226 U. S. 89):

"The fact that the Southern Pacific had a road of its own from the Gulf to the Pacific coast did not prevent competition for this traffic. The Union Pacific and its connections were engaged in the same carrying trade, and as a matter of fact were competing for that trade by all the usual means of competition resorted to by rival railroad systems."

Again (226 U. S. 89-90):

"It is going too far to say that the Union Pacific was entirely at the mercy of the Southern Pacific in making rates for freight by way of the Ogden connection, because the latter company controlled the old Central Pacific line to San Francisco. It certainly would have been very detrimental to the Southern Pacific to have declined an arrangement for the carriage of freight received from the Union Pacific and its connections for transportation to California by way of the Ogden route. The traffic manager of the Southern Pacific testified that the division of the through rate from Omaha to San Francisco has been the same since 1870; that he thought it unfair to the Southern Pacific, but that it was the best that could be obtained at the time."

How keen this competition was is described in the following extract from the Government's brief of facts in the Union Pacific case (p. 39):

"There was the same incentive to active, energetic competition between these lines (Ogden and El Paso routes) that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco."

An adequate reason for this keen competition is stated in the opinion of the Railroad Commission of California in Decision No. 477, dated February 24, 1913 (D. Ex. 25, V, R. 1769, 1775), presently to be discussed in detail. The Commission says:

> ". . . freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and the Western Pacific Railway Company."

It is to be seen from the foregoing that the decision of this court in the Union Pacific case shows (*a*) that prior to the acquisition of control of the Southern Pacific by the Union Pacific in 1901 there was active, vigorous, earnest and substantial competition between the Ogden and El Paso routes; (*b*) that the ownership of the Central Pacific by the Southern Pacific did not prevent such competition, and (*c*) that the competition which existed in 1901 was suppressed as a result of the acquisition of control of the Southern Pacific by the Union Pacific.

---

(23) How the question of the purchase of the Central Pacific by the Union Pacific arose and came to be spoken of in the Union Pacific case.

In attempting to justify its acquisition of control over the Southern Pacific, the Union Pacific contended that its only motive for acquiring the Southern Pacific was to get control of the Central Pacific to California and the north and south lines in California. It argued that

it had not acquired control of the Southern Pacific to dominate the Sunset-Gulf route of the Southern Pacific, but that, on the contrary, the Sunset-Gulf route was something of a hindrance and that the Union Pacific desired only to own and retain the Central Pacific line to California and the north and south lines within the State.

In reply to this argument, the Government contended that no matter what the motive of the Union Pacific might have been it did acquire a competitor, and did, in fact, suppress competition as a result. It was not contended in the argument that it would have been unlawful for the Union Pacific to have acquired the Central Pacific. Indeed it seemed to be assumed, or to be taken for granted, that because the Act of July 1, 1862, authorized the constituent lines *provided for therein* to become consolidated as one company such authority to consolidate continued (even after the Anti-trust Act of July 2, 1890) no matter how changed or altered the Union Pacific and Central Pacific lines might have become by extensions, amalgamations, consolidations, etc. It was at no time suggested, however, that the ownership of the Central Pacific by the Southern Pacific was a violation of the Anti-trust Act of July 2, 1890. The Government did not contest the argument that if the Union Pacific had bought the Central Pacific alone no case could be made out under the Anti-trust Law of July 2, 1890.

But the Union Pacific had not bought the Central Pacific, so that when the case was argued in this court it was, of course, clear that the legality of such a pur-

chase was not before the court for determination. This court, therefore, was not called upon to render any decision upon that point.

However, in view of the course of the argument, and having in mind *the possibility* of such a purchase *in the future,* it was not unnatural for this court to say that, although the acquisition of the Southern Pacific by the Union Pacific violated the Anti-trust Act, nevertheless its decision should not be interpreted as forbidding the acquisition of the Central Pacific by the Union Pacific [*provided, of course, the owner of the Central Pacific was minded to sell.*]

In *McFadden v. United States,* 213 U. S. 288 (1909), it is said:

> "The language of the opinion should be interpreted in the light of the facts of the case."

Stearns v. Wood, 236 U. S. 75 (1915):

> "The province of courts is to decide real controversies, not to discuss abstract propositions."

The foregoing makes very clear what this court meant when it said (226 U. S. p. 97):

> "As to the suggestion made at the oral argument by the Attorney General, in response to a query from the court as to the nature of the decree, that one might be entered which, while destroying the unlawful combination in so far as the Union Pacific secured control of the competing line of road extending from New Orleans and Galveston to San Francisco and Portland, would permit the Union Pacific to retain the Central Pacific connection from Ogden to San Francisco, and thereby to control that line to the coast, thus effecting such a con-

> tinuity of the Union Pacific and Central Pacific from the Missouri river to San Francisco, as was contemplated* by the acts of Congress under which they were constructed, it should be said that nothing herein shall be considered as preventing the government or any party in interest, if so desiring, from presenting to the district court a plan for accomplishing this result, or as preventing it from adopting and giving effect to any such plan so presented."

The Government seems to entertain the idea that there is something in the paragraph quoted, or that something occurred in this court during the argument which is, in practical effect, a decision that the Southern Pacific was unlawfully in possession of the Central Pacific.

In the examination of Mr. Kruttschnitt, counsel for the Government questioned him as follows (II R. 784-785):

> "Q. Did Attorney Gentral Wickersham inform you that the Supreme Court, or some members of it, in the course of the argument had inquired as to whether or not the holding of the Central Pacific

*In using the word "contemplated" this court did not interpret the Act of July 1, 1862, as commanding a consolidation of the roads operating the continuous line from the Missouri River to the Pacific Ocean. The provision respecting consolidation was to give statutory authority for consolidation, without which the right to consolidate would not have existed. In *Clearwater v. Meredith*, 68 U. S. (1 Wall.) 25, 40 (1863), the court, in dealing with an act authorizing the consolidation of railroad corporations, said that "the act of the legislature of Indiana allowing railroad corporations to merge and consolidate their stock, *was an enabling act—was permissive, not mandatory*". In *Nugent v. The Supervisors*, 86 U. S. (19 Wall.) 241, 249 (1873), speaking of another statute authorizing the consolidation of railroad companies, the court said, "It was therefore contemplated by the legislature, as it must have been by all the subscribers to the stock of the company, that precisely what has occurred *might* occur." In other words, the consolidation of the Pacific Railroads was within the contemplation of Congress in the sense that Congress gave them authority to consolidate if they desired to do so

by the Southern Pacific was not in violation of the Sherman Act?

A. You ask if he informed me of that?

Q. Yes.

A. No, he did not, because I knew, and our attorneys were present at the time the Supreme Court judge, on the argument of the case, made that remark; but he did not make it in just the way that you do. It may have been at some other time, but this whole thing seemed to have started in the argument of the case before the Supreme Court, when one Justice said: 'If the Union Pacific bought this Southern Pacific simply to get the Central, why not let them have the Central part alone and prohibit them from having the rest?' And one of his associates very pertinently remarked: 'That is all right, but what would the Southern Pacific stockholders say to that proposition?'

Now, it occurred that way, and it occurred in the presence of our counsel and was so reported to me after it occurred."

It would have been indeed remarkable if this court had decided that the ownership of the Central Pacific by the Southern Pacific suppressed competition, when the testimony and the argument of the Government were the other way; in fact, we may say that it would have been remarkable if the court had so held or intimated concerning a matter not in issue, and concerning which the only argument was the contention of the Government that, notwithstanding the ownership of the Central Pacific by the Southern Pacific, the lines via Ogden and El Paso were in active and vigorous competition.

It is true that the opinion assumes, for purposes of argument merely (but nothing more), that there would

be nothing illegal in the ownership of the Central Pacific by the Union Pacific, but the opinion does not decide that such an acquisition would be lawful. This court said (226 U. S. 93):

> "Conceding for this purpose that it might have been *legitimate*, had it been *practicable*, to acquire the California connection at Ogden over the old Central Pacific line, we must consider what was in fact done," etc.

Again (226 U. S. 93):

> "*Because it would have been lawful* to gain, by purchase or otherwise, an entrance into California over the old Central Pacific, does not render it legal to acquire the entire system, largely engaged in interstate commerce in competition with the purchasing road."

These extracts clearly show, as already stated, that what this court was considering was the legality of a possible acquisition of the Central Pacific line by the Union Pacific, and not whether the Southern Pacific ownership of the line was illegal.

We have elsewhere shown that the court did not decide that the Union Pacific could lawfully acquire the Central Pacific. It simply declared that its opinion should not be construed to adjudge that it would be unlawful for the Union Pacific to do so; and the only effect of the extracts from the opinion above quoted is to leave the question of the power of the Union Pacific to buy the Central Pacific an open and undecided question.

(24) How the plan for the purchase of the Central Pacific by the Union Pacific from the Southern Pacific failed of accomplishment.

The decision in *United States v. Union Pacific R. R. Co.*, 226 U. S. 61, December 2, 1912, provided that a plan to carry into effect the dissolution ordered should be presented to the District Court within three months after it had received the mandate of this court. In negotiations between the Union Pacific and the Government respecting such a plan the Attorney-General advanced the opinion that the ownership of the Central Pacific by the Southern Pacific was a violation of the Anti-trust Act of July 2, 1890, and insisted that if the Southern Pacific did not immediately divest itself of ownership in the Central Pacific, proceedings for dissolution would be commenced. Under these circumstances the Union Pacific and Southern Pacific (*the latter not yet released from the control of the former*) negotiated for the purchase of the Central Pacific by the Union Pacific from the Southern Pacific. This purchase, however, involved difficulties which could only be met by collateral agreements, and these agreements required the approval of the Railroad Commission of California. The application for such approval was made February 17, 1913, whereupon the Western Pacific Railway Company (incorporated in 1905 to build from San Francisco to Salt Lake) intervened, and the proceedings took such a course that the Railroad Commission of California (in two opinions rendered February 24, 1913, Nos. 477 and 478; D. Exs. 25, 26; V, R. 1769, 1782) refused in effect to approve the agreement between the Southern

Pacific and Union Pacific. As a result, the agreement was abandoned, and another plan for the disposition of the stock of the Southern Pacific owned by the Union Pacific was decreed and carried into effect.

It is important to describe the transaction sought to be carried into effect by the Union Pacific and Southern Pacific, noting the particulars to which the Railroad Commission offered no objection and those which the Commission refused to approve.

The several features of the plan and the views of the Commission regarding them were as follows:

(1) The stock of the Southern Pacific held by the Union Pacific was to be transferred to the stockholders of the Union Pacific and Southern Pacific in the proportion of one share of Southern Pacific stock in the Union Pacific treasury to each four shares of Union Pacific stock held by its stockholders generally, and one share of said Southern Pacific stock in the treasury of the Union Pacific to each three shares of Southern Pacific stock owned by stockholders other than the Union Pacific.

With this method of distributing the stock of the Southern Pacific in the treasury of the Union Pacific, the Railroad Commission said it had "no direct official concern," but it invited attention to the suggestion that such a method would still render possible the control of the Southern Pacific by the Union Pacific (Decision No. 478; V, R. 1784).

Before proceeding to consider the other details of the agreement, we quote what the Railroad Commission

of California said in this connection (Decision No. 477; V, R. 1771):

> "The only thing provided in the agreement which was in accordance with the positive admonition of the Supreme Court is the sale by the Union Pacific of the stock of the Southern Pacific. Everything else provided in the agreement is, in our judgment, in excess of the requirements of the Supreme Court; but it is presupposed* in the agreement that the design of the Attorney General of the United States was to bring about at the same time the dissolution of the Southern Pacific and Union Pacific and the Southern Pacific and the Central Pacific."

(2) By the agreement the Union Pacific was to assume approximately $200,000,000 of bonded indebtedness of the Central Pacific and to pay to the Southern Pacific about $104,000,000 (Decision No. 477; V, R. 1772). In consideration of this price, the stock of the Central Pacific was to be transferred by the Southern Pacific to the Union Pacific, and all the leases of Central Pacific properties held by the Southern Pacific were to be cancelled.

The Commission held that it had no power to interfere with this feature of the plan. In order, however, to make clear its order and determination concerning those features (hereafter to be considered) with which it did have power to deal, the Commission prefaced its opinion with its views respecting the effect of the plan on both interstate and intrastate traffic, as follows (Decision No. 477; V, R. 1773-1776):

* As we have seen, pp. 201-5, *supra*, there was nothing whatever in the decision of this court which in any way required the Central Pacific line to be sold.

"The plan presented to us in this agreement contemplates the control by the Union Pacific not only of a line to the coast, but also of many important feeders owned by the Central Pacific in northern and central California. As a matter of fact, the acquisition of the entire Central Pacific holdings by the Union Pacific will give it an entry into all of the important centers of population in California north of the Tehachapi Mountains, while its control by stock ownership of the San Pedro, Los Angeles and Salt Lake Railroad Company from Salt Lake to Los Angeles, with the connections of the Oregon Short Line from Salt Lake to Ogden, gives it an entry into the region south of the Tehachapi Mountains, and its ownership of the Oregon Short Line and the Oregon Railway and Navigation Company gives it access to Portland and other Oregon points. The Southern Pacific, on the other hand, while it is left with its Coast line from San Francisco to Los Angeles, will, in our opinion, if this agreement is consummated, compete at a disadvantage at all points north of the Tehachapi Mountains with the Union Pacific-Central Pacific line. In fact, it is in evidence in this case from the testimony of the representatives of the Southern Pacific itself, that that line will be excluded from practically all of the deciduous fruit business in California, as well as a major portion of the dried fruit business and a large portion of the citrus fruit business originating at points north of the Tehachapi Mountains.

We do not believe it necessary to the determination of the questions that are now presented to us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated. Mr. Sproule, president of the Southern Pacific, testified that 47 per cent. of the traffic carried by the Southern Pacific as it now exists, controlling as it does the Central Pacific

to Ogden, passes through the El Paso gateway. This, of course, includes practically all the Southern Pacific's traffic originating south of the Tehachapi Mountains and all of the traffic moving by water from Galveston over the Southern Pacific and Gulf line, and necessarily includes but a small percentage of the business produced north of the Tehachapi Mountains. Under present conditions, the Southern Pacific, having regard solely to traffic convenience, carries by way of its Sunset route only a comparatively small amount of freight which originates at points north of the Tehachapi Mountains. It would appear that under the circumstances of this case, the traffic will largely move over the most convenient and expeditious route. Such being the case, we are justified in concluding that for most of the traffic originating north of the Tehachapi Mountains, the Sunset route is a less convenient route than the route by way of Ogden gateway, and if this conclusion is correct, the Southern Pacific will compete at a disadvantage for most of this traffic when the ownership of the lines through the Ogden gateway and the El Paso gateway is in the hands of competing owners. Thus, if the Union Pacific secures control of the Central Pacific with its feeders as far south as Goshen and into practically all of the important commercial centers in northern and central California, the Southern Pacific will be placed in the position of the inferior road at all of these points, while if the Union Pacific were to secure merely the control of the main line of the Central Pacific from Ogden to San Francisco, the condition would be reversed and the Union Pacific-Central Pacific line would compete at a disadvantage or be compelled to build additional feeders.

We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by

the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road cannot be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line.

The desire of the Supreme Court and the Attorney General to produce active competition between these two transcontinental lines, of course, is founded in the belief that such competition will produce advantageous results to the shippers. We do not believe, however, that any appreciable reduction of transcontinental rates will be brought about by the unmerging of these lines, particularly under the terms of the agreement here under consideration. If, however, active and *bona fide* competition is produced between these lines there will be more striving after business and, consequently, probably some improvement in service, how great it is impossible to determine. We do not believe that the improvement in service will be very marked, because of the fact that the freight east and west through both the Ogden and El Paso gateways is at the present time carried in active competition with two other transcontinental lines, namely, the Atchison, Topeka and Santa Fe Railway Company and Western Pacific Railway Company.

Believing as we do that the plan here under consideration will not substantially benefit the shippers of transcontinental freight, either in rates or in service, it is well to consider what, if any, effect will be the natural result of this arrangement upon local traffic. At the present time, the local lines of the Southern Pacific and the Central Pacific form one system within this State, reach-

ing from Oregon to the Mexican line, and from Yuma and a point near Reno on the east. All local lines of these two systems are now under the control of one agency and operated as a unit. The result of the reorganization plan as set forth in this agreement will be the substitution as to a great part of this territory of two agencies to perform the work now performed by one.

While the representatives of both the Union Pacific and the Southern Pacific state positively that it is contrary to their policy to permit the reorganization scheme to increase the rates or to interfere with the service locally within the State, yet we cannot refrain from observing that this result usually follows upon a substitution of two agencies in the performance of a service theretofore performed by one. We invariably have it urged upon us in rate controversies before the Commission, where rates are to be made over two connecting lines that the joint movement over two connecting lines is more expensive to the carriers in the aggregate than a single movement over one line between the same points. Therefore, regardless of the present disposition of the parties hereto, we feel that serious consideration must be given by the Commission to the possibility or probability of applications which may hereafter be made by carriers to increase rates in this State in cases where, as the result of the consummation of this agreement, points now upon one line may, by reason of the dismemberment of the Southern Pacific lines in this State be found located one solely on the Southern Pacific and the other solely on the Central Pacific.

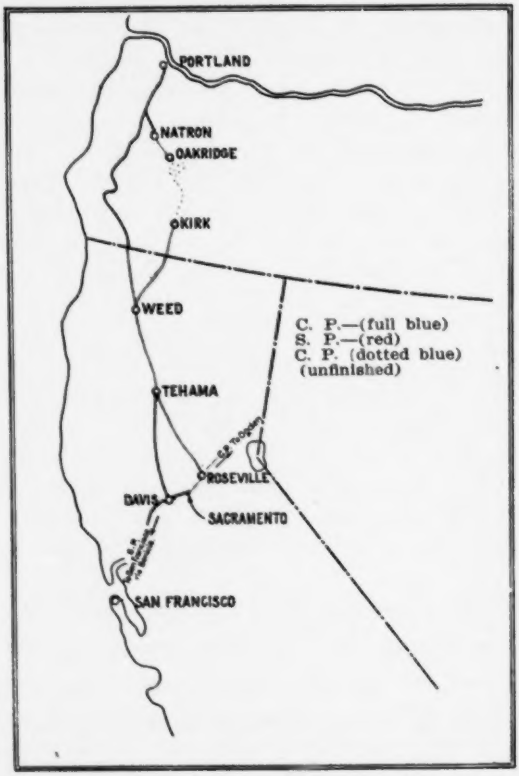
It is our disposition to believe that it would be better for the local business within this State if the local lines now controlled by the Southern Pacific could remain under the control of one

agency and not be separated and given over to the control of two. This conclusion, in conjunction with the opinion we have already expressed that the advantage to shippers as to transcontinental freight will be negligible if the provisions of this contract are carried out, leads us to suggest that it would be better to adopt the other method already suggested of bringing about the design of Congress in providing that the Central Pacific and the Union Pacific should be one continuous transcontinental line, namely, by the sale or long term lease of the line of the Central Pacific from Ogden to Sacramento to the Union Pacific and the provision for a trackage right from Sacramento to bay points for the Union Pacific and the retention by the Southern Pacific of the remainder of the Central Pacific system. Having given our views upon that portion of the contract, which while involved in the entire plan does not specifically require our approval, we shall now consider those matters for which our approval is required."

It is thus to be seen that the Railroad Commission was of the opinion that the plan presented would (*a*) probably not be advantageous to interstate shippers, and (*b*) that it would certainly be disadvantageous to intrastate shippers. Repeatedly through its opinions the Railroad Commission vigorously argues against a sale of any of the properties of the Central Pacific except the line from Sacramento to Ogden.

(3) The plan also provided that the Central Pacific should lease to the Southern Pacific its line of railroad from Tehama, California, to the Oregon line for 999 years, and sell its line from Weed, in Siskiyou County, California, to Natron, Oregon, to the same company.

The Commission consented to this part of the plan. The necessity for it is shown by the following map:



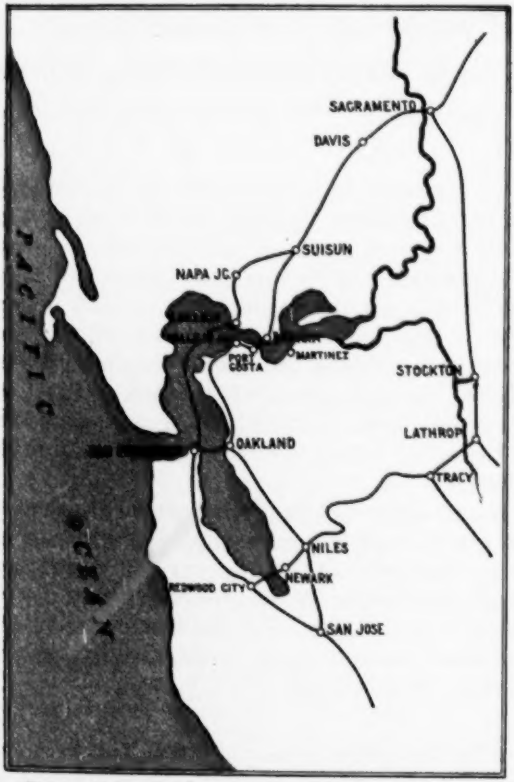
Rail Connection Between Tehama and Portland

N. B. Tehama is the most northerly point in California reached by the Southern Pacific over its own rails; all points in California north of Tehama are reached by Central Pacific rails only.

San Francisco to:	*Miles*
Tehama—S. P. via Benicia and Davis	186
Tehama—S. P. to Sacramento, C. P. via Roseville	212

Tehama to:	*Miles*
Red Bluff	12
Redding	46
Delta	112
Weed	163
Oregon State Line	217

(4) The next item in the plan was a lease for 999 years by the Southern Pacific to the Central Pacific of trackage and running rights for through freight trains only, between Redwood and San Francisco. (In 1910 the Central Pacific had extended its line from Niles to Redwood, over the waters of San Francisco Bay, thereby creating the "Dumbarton Cut-Off".)



Routes Between Sacramento and San Francisco

1. Sacramento-Lathrop-Niles-Oakland-San Francisco.
2. Sacramento-Napa Junction-South Vallejo-San Francisco.
3. Sacramento, *via Benicia cut-off*-Suisun-Benicia-Oakland-San Francisco.
4. Sacramento-Lathrop-Niles-San Jose-San Francisco.
5. Sacramento-Lathrop-Niles, *via Dumbarton cut-off*-Newark-Redwood-San Francisco.

This part of the agreement between the Southern Pacific and Union Pacific gave the Central Pacific trackage rights for through freight trains only, from Redwood to San Francisco, so that it might route its through freight trains to San Francisco by its own line to Redwood and thence by virtue of this trackage privilege, over the Southern Pacific tracks from Redwood to San Francisco.

Speaking of this feature of the agreement, the Commission said that it would approve (Decision No. 477, V, R. 1777)

> "the Redwood-San Francisco lease, except as to the term thereof. Except in those cases where we would approve a sale of the property and a sale is only prevented by the outstanding obligations which are liens upon the property, we think a perpetual lease is not warranted. In other words, except in those cases where we would approve a sale we will not approve a perpetual lease. This is equally applicable to the term of 999 years provided in all of the other leases which are hereafter to be considered.
>
> The Commission is, however, willing to permit the leases in this case to run for a period of fifty years and for the further period until the Commission or other competent state authority, after notice and hearing, directs their cancellation or modification, whereupon such cancellation or modification shall be made."

(5) The last item was the lease for 999 years by the Southern Pacific to the Central Pacific of its line of railroad from Sacramento by way of Benicia to Oakland (sometimes called the Benicia Short Line or Benicia Cut-off) for joint and equal use with the South-

ern Pacific to the exclusion of any other line except with the permission of both companies; and to this there was added a provision for a lease for 999 years by the Southern Pacific and Central Pacific to one another of the joint use of their respective terminals, including industry tracks, at all junctions of their respective lines within said limits, to which no other company would be admitted except by the consent of both the Southern Pacific and Central Pacific.

Respecting these provisions, the Commission said (Decision No. 477; V, R. 1778):

> "The provision for the lease of the Benicia short line and the joint use of terminals, including industry tracks, are the ones to which we find the most serious objection. The agreement contemplates that the Southern Pacific shall grant to the Central Pacific for the Union Pacific the equal joint use and possession of the short line from Sacramento to Oakland via Benicia, at an annual rental, and that no additional company may use the tracks so leased unless it has first secured the written consent of both the Southern Pacific and the Central Pacific. In other words, these two companies are to have the use of these very desirable tracks to the exclusion of any other railway company, unless both the Southern Pacific and the Central Pacific concur in letting in the stranger. We recognize fully that this property now belongs solely to the Southern Pacific Railroad Company and is operated solely by the Southern Pacific. Nevertheless, the grant by the Southern Pacific of the use of its tracks to one independent competitor (the Central Pacific) while refusing to grant the same rights to another independent competitor (the Western Pacific) would work a discrimination which the welfare of this State does not permit and which this Commission will not sanction. If the

Southern Pacific is going to throw its property open to one of its several independent competitors, it must play fair with the others and permit its use by them also, on terms which shall provide for a just compensation to the extent to which the capacity of the property reasonably permits. If the present plan of a sale by the Southern Pacific of the Central Pacific stock to the Union Pacific be abandoned and in lieu thereof the Union Pacific shall buy the line of the Central Pacific between Ogden and Sacramento or secures long term lease thereof, with lease or trackage rights thence into San Francisco, other considerations might arise. It might then be held that the Union Pacific would be acting in accordance with the plan of Congress to secure a connected line of railway via the Union Pacific and the Central Pacific to the coast and that the Central Pacific was not acting voluntarily in granting the trackage rights to enable the Union Pacific to reach the coast from Sacramento. This effect of the Federal statutes heretofore referred to would confine the right to an outlet for the Union Pacific to the Stockton-Niles route."

In its order, the Commission directed (*a*) that no lease should exceed a term of fifty years except the lease of the line between Tehama and the California-Oregon line; (*b*) that in the event the Southern Pacific granted trackage rights in respect of the Benicia Short Line to one company it should grant it to other companies on the same terms, and (*c*) that in the event any of the companies party to the agreement granted the use of terminals, including industry tracks, to one company the same privileges should be granted to other companies upon like terms.

In other words, the Commission held (*a*) that if the Union Pacific acquired *all* the Central Pacific lines it would not be permitted to obtain from the Southern Pacific exclusive trackage privileges over any of the Southern Pacific lines, and (*b*) that if, however, the Southern Pacific retained all the Central Pacific lines except the line from Sacramento to Ogden the Commission would recognize the right of the Union Pacific to secure exclusive trackage rights over the Central Pacific from Sacramento via Niles to Oakland and thence by boat to San Francisco as legitimately appertaining to the through line from the Missouri River to the Pacific Ocean, provided for in the Act of July 1, 1862.

With these conditions imposed by the California Railroad Commission, the Union Pacific and Southern Pacific (the latter still under the former's domination, and with a threatened suit in sight) found it impossible to arrange a workable separation of the Central Pacific from the Southern Pacific, and the negotiations came to an end.

---

(25) The competitive conditions existing between the Ogden Route and the Southern Pacific Sunset Gulf Route before the Union Pacific Merger of 1901.

In point twenty-two, *supra* pp. 192-200, we have quoted fully from the petition and brief of the Government, and from the decision of this court in *United States v. Union Pacific Railroad Co.*, 226 U. S. 61 (1912), respecting the competitive conditions which existed

between the Ogden route and the Southern Pacific Sunset--Gulf route before the Union Pacific merger of 1901, and we do not think it necessary to make further comment.

---

(26) The non-competitive conditions between the Ogden Route and the Southern Pacific Sunset-Gulf Route during the Union Pacific merger from 1901 to 1913.

This court has held in *United States v. Union Pacific Railroad Co.*, 226 U. S. 61 (1912), that the acquisition of control of the Southern Pacific by the Union Pacific had the effect of restraining trade and commerce during the merger.

---

(27) The return to the conditions which existed prior to the merger of 1901, and the resumption of competition between the Ogden Route and the Southern Pacific Sunset-Gulf Route consequent upon the unmerger.

William Sproule, President of the Southern Pacific Company, testified that the policy of the Southern Pacific with respect to the conduct of its business is now the same "as it was prior to the time we became dominated by the Union Pacific, 1901" (I R. 201):

Speaking of traffic conditions in seaboard territory, John B. De Friest, the General Eastern Agent of the Union Pacific, said (I R. 305):

> "I think the situation now is about the same as it was before the merger."

Julius Kruttschnitt, Chairman of the Executive Committee of the Board of Directors of the Southern Pacific Company, testified (II R. 739-740):

"Q. Since the unmerger in 1913 of the Union Pacific and Southern Pacific, has this competition between the Ogden route and the Sunset-Gulf route continued?

A. It has.

Q. What is its condition now?

A. It is active.

Q. Carried on in the same way in which you have indicated?

A. Yes.

Q. I believe you have already answered it, but I will ask you again: Have you ever considered it to the interest of the Southern Pacific to influence this competition by impairing in any way the service over the Ogden route?

A. We have not; and I could not conceive of any officer being stupid enough or short-sighted enough to try to do it; because, as I have said before, it would be suicidal for Southern Pacific interests to try to get freight to move away from the Southern Pacific and then lose it, and not get it for the Sunset, but lose it to the Atchison.

Q. Would it be possible, in your opinion, to impair the service on the Ogden routes west of Ogden and confine the effects of that impairment of service to business competitive with the Sunset-Gulf route?

A. No, it would be impossible.

Q. Please explain that.

A. It would be impossible, for the reason that, if the service were not good on the Central Pacific, people would decline to ship there, and then we would have only a small chance of getting for the Sunset route the freight that had been lost to the Central Pacific. The shipper would probably exercise his option to ship via Santa Fe or Western Pacific, and we do not want to risk that.

Q. Would any lessening of the efficiency of the service over the Ogden route be felt in its influence on traffic which was not competitive with the Sunset-Gulf route?

A. Will you please repeat that?

Q. That is, would it affect the traffic which would seek to get over the Ogden route, which is not competitive with the Sunset-Gulf route?

A. It would affect it to this extent: if we lowered the efficiency of the service, or the excellence of the service, we would lose it from the Central Pacific, without any certainty of getting it by the Sunset."

---

(28) The treatment of the Union Pacific by the Central Pacific both before and since the Union Pacific Merger.

In Mr. Kruttschnitt's testimony just quoted, we have shown how the self-interest of the Southern Pacific requires it to give to the Union Pacific the highest order of co-operation in its operation of the Central Pacific. Moreover, there is not the slightest suggestion in the case that the relation between these two companies in the operation of the properties is not most friendly and intimate.

Mr. Kruttschnitt testified (II R. 729-730) as follows:

"Q. After the unmerger in 1913, have there been any material changes in the arrangements for handling through business via the Ogden route?

A. None in policy. Of course schedules are rarely kept in effect any great length of time. In other words, there are questions of competition with other lines that may determine the times of leaving or the times of arriving; but those changes were always reached by agreement between the officers of the two roads.

Q. In your opinion, is the arrangement for operation of the through line via Ogden from San Francisco east over the Union Pacific as good now as it was during the merger period?

A. It is as good. I think it is better, because we have been making improvements all the time, and my judgment about the matter is borne out by the judgment of the public, by the way they use the line, by the amount of traffic both passenger and freight that we get over it.

Q. During the whole of the period above referred to, what have been the relations between the officials of the Southern Pacific Company and the officials of the Union Pacific Railroad Company with respect to the arrangements for the handling of through traffic via Ogden?

A. They were always perfectly cordial and co-operative.

Q. And that continues so to the present time?

A. Yes; I do not recall any complaints made since the unmerger.

Q. What kind of through service has been produced by the arrangements for the handling of through business via Ogden?

A. Well, we have, as I said, I think the best trans-continental service that way of any road in the United States, and my judgment is borne out by the verdict of the public in using the line, and from expressions we get from people who travel over the line and who make shipments over it. And then we have the still better evidence, of the traffic that we control that way."

Upon his cross-examination Mr Kruttschnitt testified (II R. 824):

"Q. You have spoken of the Central Pacific Railroad and the Union Pacific Railroad as operated as one line. By that you meant, did you not, that they have had joint rates and have operated through cars and through trains, both freight and passenger?

A. No; I meant much more than that. We have arrangements with a good many lines for through rates, through cars and passengers, but I stated

that with no line was our co-operation as close as with the Union Pacific, ever since I have known anything about it; and I understand that our treatment of them, after I went to California, was in no wise different from what it was before.

Q. Well, in what other ways than in arranging for through rates, through cars and through trains and through billings have you co-operated?

A. Well, in this way: your connection may suggest a new train or a through car; you may say that you see no necessity for a new train or no necessity for a through car, and you do not care about hauling it. Indeed, that you have balanced expected increased revenues with expected increased expenses, and that you think it will not pay and you don't propose to do it. When propositions from the Union Pacific have come, we have never taken that position.

Q. Now, is there any other respect in which the line has been operated as a through line?

A. Well, after making through rates, hauling of the through trains that they want you to haul, hauling all the through cars that they ask you to haul, co-operating with them in getting business as we have done, I don't see how much more you can do, unless you turn over the management of the road to them.

Q. I think you misunderstood the question. I did not ask you what more you could do, but is there any more that you do do?

A. Then I will say no; I do not see how we could do any more."

Judge Robert S. Lovett, Chairman of the Executive Committee of the Union Pacific Railroad Company, called as a witness for the Government, testified (I R. 290):

"We work preferentially with the Southern Pacific."

Also (I R. 296):

"The Central Pacific is far and away the best connection for the Union Pacific to Central California. It is the shortest line and the best railroad in every sense of the word."

Again (I R. 297):

"Q. Well, could that (service) be increased or in any manner changed by the separation of the Central from the Southern Pacific control?

A. I would not like to say that, because I think the Southern Pacific Company is working now and has been ever since the merger, as it certainly was during the merger, the Ogden gateway very effectively. How long it will continue to do that I do not know. . . . I want to make my position clear on that. I cannot say that the situation would be improved beyond what it is now by the Southern Pacific, because up to this time, whatever it may do in the future, the Southern Pacific is working the Central Pacific very efficiently."

Lewis J. Spence, Director of Traffic for the Southern Pacific Company, testified (III R. 1045-1047):

"Q. . . . what are the relations between the Union Pacific and the Southern Pacific in respect to the through route via Ogden?

A. There are but few connecting lines whose relations are as close and co-operative. There are no connecting lines whose relations are closer and more co-operative than the relations between the Union Pacific and the Southern Pacific. The lines are operated as one connected, continuous, line.

Q. What about the personal relations between the officers of those lines in respect to mutual satisfaction as to the nature and extent of the co-operation?

A. They are exceedingly cordial and co-operative. I do not know of a complaint on either side, and I know of no cause for complaint on either side.

Q. What arrangements have you, for instance, with them in regard to advertising the Ogden through route?

A. We joined the Union Pacific in advertising the through train service between Chicago and San Francisco by the annual creation of a joint advertising fund, to which the lines contribute on a *pro rata* basis. Very much the largest share of that fund is spent in westbound advertising, and is placed in the hands of the Union Pacific for that purpose.

Q. They spend the fund to which you contribute as they see fit?

A. Yes.

Q. Can you give us the approximate amount annually which is expended for this westbound advertising?

A. The amount spent, between Chicago and San Francisco, during the current year will be about $140,000.

Q. What have been the results of this co-operative effort to afford the public a through line via Ogden? What kind of a line is that through line thus created?

A. Briefly stated, the results of this co-operation have been to establish the best through transcontinental line, taking passenger and freight service together, across the country.

Q. Of all the all-rail lines that you have mentioned, in your opinion, the Ogden route is the best?

A. Yes.

Q. Mr. Spence, state whether or not the Union Pacific is more or less at the mercy of the Southern Pacific now than it was just before the merger in 1901, in respect to securing good service, reasonable terms and facilities, and so forth, for engaging in transcontinental business via the Ogden route; and give the facts upon which your answer is based.

A. Prior to 1901 the Union Pacific had, beside the Southern Pacific west of Ogden as a connecting line, its rail route to Portland and its steamship line thence to San Francisco as its only alternative

route. Since that time the Western Pacific and the San Pedro, Los Angeles & Salt Lake railways have been constructed, affording the Union Pacific various routes; the Interstate Commerce Law was amended in 1906, delegating authority to the Interstate Commerce Commission to establish through routes and joint rates, which gives the Union Pacific an absolute guaranty of the continuation of through routes and joint rates; in 1910 the Commission was given authority to suspend advanced rates, and by the same amendment to the law the shipper was given authority to route his freight, and the carriers were required to respect his routing.

Q. What kind of service is maintained by the Southern Pacific over its end of the Ogden route; that is between Ogden and San Francisco? I mean in respect of the maintenance of the road as well as in respect of the equipment and all the elements that go into service?

A. The service on the line west of Ogden is not excelled anywhere, under like conditions.

Q. What do you mean by 'under like conditions'?

A. The character of the country, the density of the traffic, and the population.

Q. State any facts that you may know, tending to show whether the Southern Pacific Company has any interest or motive to impair this service over the Ogden route.

A. In the first place, the Southern Pacific Company has a very large investment in the Central Pacific, upon which it is anxious to earn a return. In the second place——

Q. Just give the general character of that investment, without going much into detail.

A. It owns the stock, and is the guarantor of the bonds.

In the second place, the Southern Pacific is dependent upon the Central Pacific, west of Ogden,

as the only route by which it can successfully compete for the traffic to and from the middle west territory, and also dependent upon that route to successfully compete for a large share of the traffic to and from the Atlantic seaboard territory for which the Sunset-Gulf route is physically unable to compete. These conditions not only afford no motive for impairing the service, but they afford every incentive for keeping the service up to its maximum efficiency.

Q. Could you impair the service on your part of the Ogden route, with a view to benefiting the Sunset-Gulf route in respect to the limited traffic for which those two routes offer alternative routes, without at the same time impairing the service and injuring the Ogden route in respect to this traffic as to which the two lines do not offer alternative routes?

A. No."

Again (III R. 1151):

"Q. Is the Sante Fe today the strongest all-rail line in the field?

A. No. The Union Pacific-Ogden route is the strongest line."

See also Defendants' Exhibit (Spence) No. 81, showing commercial freight interchanged between the Southern Pacific and Union Pacific at Ogden, Utah, for the fiscal years ending June 30, 1913, and 1914 (introduced III R. 1063) from which it appears that the tonnage was as follows:

	1913 Tons.	1914 Tons.
Eastbound	606,122	598,035
Westbound	547,861	469,406

Mr. Sproule testified (I R. 190):

> "Q. The strongest competitor of the Sunset route is the Atchison, Topeka & Santa Fe for California business; is that correct?
>
> A. I should say the strongest competitor is the Central Pacific-Union Pacific line."

He also testified that co-operation between the Union Pacific and the Central Pacific over Ogden "prevailed before the merger period and prevails since the merger period" (I R. 240).

---

(29) The treatment accorded by the Southern Pacific to its connections generally.

We have shown the treatment accorded by the Southern Pacific to the Union Pacific at Ogden. It is established by the testimony of Mr. Sproule that the Southern Pacific aims to co-operate and reciprocate with all other lines at Ogden with a view to the promotion of business; that is to say, the eastern lines shipping through Ogden give the Southern Pacific business and the Southern Pacific aims to reciprocate.

On this point Mr. Sproule said (I R. 197):

> "We aim to reciprocate with all those lines and interchange business with them and give them business to an extent that will justify them in working all they know how over our lines; that is, the through line via Ogden."

Mr. Kruttschnitt testified upon his cross-examination by the Government (II R. 770):

> "I have tried to indicate to you what the Southern Pacific construction is, how we have treated

our connections whenever they have built in to us, but it does not follow at all that that same construction of those words ("business interests") would be given by some one else. I think we have given the right construction to them, because we have maintained very pleasant relations with all our connections, and from the mere fact that as strong a company as the Atchison, financially and in other respects, has never built short branches into this local territory, leads me to believe that our policy has been broad and has been satisfactory not only to us but to them. It does not follow that any other company might do the same. I have known companies that did not do it at all that way; they try to build up tariff walls at junction points that could not be pierced by their competitors and connections."

And again (II R. 818):

"Q. The Western Pacific and the Southern Pacific have some agreement as to division on freight delivered by the Southern Pacific to the Western Pacific and vice versa?

A. That is a traffic matter, which I am not familiar with; but I do know that with the Western Pacific, as with the Atchison, we have thrown open our local points freely to them on divisions. I do not know what the divisions are, but on divisions that they have accepted as satisfactory, and it has put them, as it has the Atchison, into all local points of the Southern Pacific. It is in pursuance of our policy of having our lines used to the maximum extent."

The point of junction between the Rock Island and the Southern Pacific is El Paso. In speaking of the relations of his company with that road, Mr. Spence testified (III R. 1151-1152):

"Q. Does the Southern Pacific operate, with the Rock Island, as one continuous line from California to Chicago?

A. We operate very closely with the Rock Island. We co-operate with them very closely. We join in the operation of a through passenger train—two through passenger trains. We do not join in the operation of any through mail train or any through mail car. We do not join in the operation of through merchandise cars to points north of the Tehachapi Mountains, because the volume of the traffic does not justify it.

Q. What is there lacking to your describing the Southern Pacific-Rock Island operation from California to Chicago as one continuous through line?

A. I was seeking to show the differences, whatever they might be, between that route, in answer to your question, and the route through Ogden. The differences are that by the Ogden route we operate a through mail train from Omaha to San Francisco on a schedule of two days, two hours and ten minutes, and a through mail car on the Overland Limited in two days, four hours and ten minutes. We do not operate either by El Paso in connection with the Rock Island. We do not operate through merchandise cars to central California via the Rock Island.

Q. When you use the term 'one continuous through route' to describe a route portions of which are operated by separate companies, what do you mean by that term?

A. I mean the joining in through passenger rates, in joint freight rates, in through billing and in through bills of lading. Those I should regard as the essential features to the operation of a connected continuous line. We do more. We operate the main trains as I have described, and a through mail car upon the fastest schedule made; because you know the government awards the mail to the

schedule, and we carry the mail. We join in joint advertising, as I explained a day or two ago. We also do that for the Rock Island."

Mr. Spence further testified (III R. 1025):

"Q. Mr. Spence, what has been the policy of the Southern Pacific Company in respect of each transcontinental line which has made a junction with it from time to time?

A. The Southern Pacific has consistently opened each gateway as it has been reached by a transcontinental connection, and joined in the establishment of through rates and divisions.

Q. And have the through rates and divisions which it established been effective to enable the new transcontinental lines thus formed to engage actively in transcontinental business?

A. They have permitted them to engage in all business to and from points reached by the Southern Pacific.

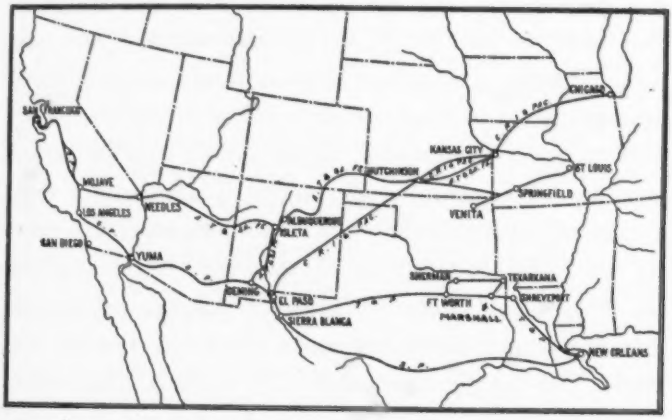
Q. Was this policy adopted and enforced prior to the time when, by amendment to the Interstate Commerce Act, the Interstate Commerce Commission acquired authority to enforce the making of joint rates and fair divisions?

A. The policy was consistently pursued many years prior to the Interstate Commission having been empowered to establish through routes and joint rates."

In the construction of the Southern Pacific road from Mojave* to New Orleans, the Southern Pacific made connections with (a) the Atchison, Topeka and

*It will be remembered that the Mojave-New Orleans line (via Los Angeles and Yuma) is the line built under the Texas Pacific Act of March 3, 1871, and that the Mojave-Needles line was constructed under the Atlantic Pacific Act of July 27, 1866 (supra p. 43).

Santa Fe at Deming, (b) the Rock Island at El Paso, and (c) the Texas Pacific at Sierra Blanca. To each



Eastern Rail Connections of the Southern Pacific

of these connections it gave full co-operation. Indeed, from the time of its entrance into California about 1883 the Atchison, Topeka and Santa Fe had a lease of the line from Needles to Mojave* and subsequently bought the line from the Southern Pacific. In addition it has had trackage arrangements with the Southern Pacific, giving it entrance into all the towns of California. (See Mr. Chamber's testimony, III R. 954-955, 984).

These facts are proved by affirmative testimony, but equally significant is the absence of any testimony to the contrary in the record. In other words, there is no complaint made by any witness that there has been a use of unfair methods by the Southern Pacific in the treatment of any of its connections.

(30) The fair treatment accorded the Central Pacific by Stanford, Huntington, Hopkins and Crocker, notwithstanding their interest in the Southern Pacific Sunset-Gulf Route; and the continuation of that treatment down to the time of the commencement of this suit.

In financing themselves in their burdensome railroad construction it is clear, of course, that it was necessary for Stanford, Huntington, Hopkins and Crocker to put out and sell Central Pacific stock. There came a time, therefore, when it would have been natural to expect the suggestion (if not more) that they were operating the Sunset-Gulf route in discrimination against the Ogden route and diverting traffic from the Central Pacific. This suggestion might have come from stockholders interested in the Central Pacific, but not interested in the Southern Pacific, or from the Government itself.

There is, however, no evidence that there was ever any discrimination in favor of the Southern Pacific line, or that any consideration other than traffic convenience and public advantage governed the transit of freight.

This very question is dealt with in the report of the United States Pacific Railway Commission (p. 115) which states one of the questions before the Commission and the reply thereto as follows:

> "(9) *Whether any traffic or business which could or should be done on the aided lines of said companies, has been diverted to the lines of any other company or to non-aided lines.*
>
> The evidence discloses that traffic has been diverted in a great variety of instances from the

Union Pacific and Central Pacific railroads to other lines. As illustrations of such diversions the Commission refer to the following: The Southern Pacific, the California Pacific, and the Oregon Short Line. It would have been possible to have carried the traffic which was forwarded over the roads named by the Union Pacific and Central Pacific route. In the judgment of the Commission the controlling motive which has led to this alteration in the transit of freight has been the question of convenience and public advantage. It has not arisen from an intention to reduce the net earnings applicable to the percentage due to the United States. In the report of the Postmaster-General it is stated that this same diversion is practiced by his Department, and that he selects the best and the quickest routes because he thereby promotes public convenience."

Mr. Kruttschnitt testified on this point (II R. 806):

"Q. In respect to transcontinental business, has the Central Pacific Railroad Company ever, through its officials, competed against the Southern Pacific Railroad Company, in practice?

A. It could not. They were one and the same thing. The officers of the Central Pacific were the officers of the Southern Pacific. Money from the same pockets built both."

It is plain from this answer of Mr. Kruttschnitt that the very preservation of their own interests prompted Stanford, Huntington, Hopkins and Crocker to deal fairly with all the properties in which they were interested; and it appears from the further testimony of Mr. Kruttschnitt that the self-preservation argument still obtains (II R. 732-734):

"Q. During all this period, from the time you came to California to the present time, to what

degree of efficiency have the lines standing in the name of the Central Pacific been maintained?

A. I think and know that the lines of the Central Pacific are maintained in as good order as those of any railroad in the United States.

Q. How does this standard of maintenance compare with the standard of maintenance of the lines composing the Sunset-Gulf route?

A. As a rule, the maintenance of the Central Pacific, because of the great amount of money spent on it on account of the heavier, denser traffic and on account of the country it runs through, is generally better than the Sunset lines, part of which, east of San Antonio and Texas, runs over low and wet countries where it is very difficult to keep the track up in as good condition as the tracks upon the deserts of Utah and Nevada. Up to a year ago it was our custom to carry out an annual inspection, and to mark each section on the entire line, graded as you would grade examination papers at college. Each feature of maintenance was marked as a maximum of ten, and the average cast up, and we gave prizes to the man who kept his section best. In looking over the last record we have, for 1913, as we abandoned this practice on account of forced economies, and on account of bad earnings in the last year, I find that the Central Pacific lines from San Francisco to Ogden averaged up 93.3 per cent.

A part of the Sunset line from San Francisco to El Paso was a point under that; it was about 92.3.

Q. Who made those markings?

A. They were made by a jury of operating officers, a jury of about twelve men, division superintendents and division engineers, the general superintendent and the general manager.

. . . . . .

Q. What reasons exist for maintaining the Central Pacific line in question up to this high state of efficiency with respect to equipment, service and so on?

A. The reasons are that if we do not maintain the line in the highest state of efficiency and give the best service, we will lose the business.

The Atchison is competing strongly for California business; the Western Pacific has, and we have always had, competition in southern California with the San Pedro road.

Q. Is there any part of the traffic which you secure in competition with those lines which could not be induced to go over the Sunset route?

A. Yes, quite a good deal. There is a great deal of traffic that is competitive with the Santa Fe that we could not get to go over the Sunset at all.

Q. What, in your opinion, would be the result if you allowed the service to be impaired on the western end of the Ogden route?

A. It would be loss of traffic and necessarily loss of earnings; and there is only one word that could characterize such a policy, and that is that it would be suicidal, because the Southern Pacific has such an interest in the Central, through ownership of stock and through guarantee of bond issue that it cannot afford to lose any traffic for the Central Pacific that it can possibly retain, and self-interest alone makes us keep it up to the highest standard of excellence.

Q. In your opinion would the loss of traffic which you say would result from impairment of service on the line west of Ogden inure to the benefit of the Sunset-Gulf route?

A. I do not think so; I doubt if any of it would go that way. It would be taken by the Santa Fe, which is our most vigorous and active competitor."

Testimony to similar effect was given by Mr. Kruttschnitt, II R. 740-741, 805,806, 808 and 824.

EDWARD CHAMBERS, Vice-President of the Atchison, Topeka and Santa Fe Railway Company, testified (III R. 973):

> "The Southern Pacific always gave very good service over their Central Pacific line. Their passenger service I judge them by more than anything else."

Again (III R. 978-979):

> "I know the Central Pacific-Union Pacific route has been improving right along up to today."

Again (III R. 979):

> "Q. Prior to 1901, or prior to 1899 anyway, the great energies of the Southern Pacific Company had been directed towards the development of the Sunset line, had they not?
>
> A. I would not say that their roadbed east of Los Angeles via El Paso was ever in better condition than around by Ogden and Sacramento. My observation and recollection is that it was just about the same. If anything, I should say the Central Pacific was a little better. It had, perhaps, more need of a better roadbed than any other line, on account of the large passenger business it did."

Again (III R. 983):

> "Q. You said the Ogden route had always given good service. By that you included the Central Pacific as a part of the Ogden route?
>
> A. Yes, sir.
>
> Q. As a matter of fact, as far as you know, has not the Central Pacific been maintained *pari passu* with the Union Pacific, and substantially in the same condition, as to efficiency, from the beginning?

A. That is my understanding, and that is my experience. I never heard of any difference between them.

Q. Has not generally the traffic over the Central Pacific and Union Pacific been of greater volume than the traffic over the Sunset line?

A. Yes, sir.

Q. Always, has it not?

A. Yes, sir.

Q. And has not the Central Pacific and Union Pacific track been maintained at a higher standard, as a rule, than the tracks of the Sunset route—heavier rail and otherwise better adapted for good service?

A. I would say yes; that is my general understanding, although I have never heard much objection to either one.

Q. But, other things being equal, the care of maintenance is in proportion to the amount of traffic you have to handle over a line?

A. Yes, sir. . . .

Q. That is, your main lines are always maintained, or usually maintained, at a higher standard than the branch lines?

A. Yes, sir. The needs of a passenger service largely control in the building up of the roadbed and tracks; that is the business that is sensitive to the condition of the road-bed and the tracks. That is what I judge the Central and Union Pacific route by. That has always been the principal passenger route of the Southern Pacific Company.

Q. And it always has been the principal passenger route transcontinentally, really, leaving out, of course, the Atchison as a very formidable competitor?

A. Not very effective yet, as to northern California.

Q. There is no doubt of the position and prestige of the Central-Union Pacific line as a passenger line—transcontinental?

A. No."

See testimony of Mr. Spence (III R. 1045-1047) under point twenty-eight, *supra.*

All this testimony is quite consistent with, indeed, it is in part explained by, the fact that there is a natural division of traffic between the Ogden and Sunset-Gulf routes. For instance, Mr. Kruttschnitt testifies (II R. 808):

> "There is certain freight which the Southern Pacific Company cannot get to go by the Sunset route. There is some which it cannot get to go by the Central Pacific. There is some which may go either way."

Again (II R. 825):

> "A. Where we have seen an opportunity of making the service of the Sunset line appear more attractive to the shipper than the other, we have done it; but there is a large amount of freight that we cannot by any possibility get to go over the Sunset line. I have always known it, the public knows it, and that we help the Union Pacific to get for their line."

As an example of one of the numerous instances where the character of the traffic and not the choice of the Company governs the routing, R. P. Schwerin, Vice-President and General Manager of the Pacific Mail Steamship Company, testified that the eastbound traffic of the Pacific Mail Steamship Company travelled by the central route, via the Western Pacific, Santa Fe or Central Pacific because it was all fast freight, and only unusual shipments, *i. e.*, local shipments, to some point in Texas or beyond, could go via El Paso (II R. 699-700).

These considerations are all re-enforced by the testimony of Mr. Spence, who shows that it is no longer possible, even without the Hepburn Act (approved June 29, 1906) for a carrier to route freight as it is minded to do, because an arbitrary routing without full regard to the service for which the shipment calls would swiftly end in disaster (see III R. 1032-1033, 1050, 1058, 1059, 1175).

(31) The radical changes in traffic conditions generally between 1901 when the Union Pacific merger occurred, and 1914, when this suit was commenced.

In the consideration of this case it is important to note the radical changes in traffic conditions generally between 1901, when the Union Pacific acquired control of the Southern Pacific, and 1914, when this suit was commenced.

Some of these changes are the following:

(a) Through routing and joint rates under the Hepburn Act of June 29, 1906 (34 Stat. 584).

The rule reviewed in *Southern Pacific Co. v. Interstate Commerce Commission,* (1906) 200 U. S. 536, that carriers might but need not agree upon through routing and joint rates has, of course, been superseded by the amendment to the act creating the Interstate Commerce Commission approved June 29, 1906, and called the Hepburn Act (34 Stat. 584). Under the terms of this act, the Commission is empowered to establish the through routes and joint rates which now prevail.

(b) The right of the shipper to route his own freight under Act of June 18, 1910 (36 Stat. 551).

By further amendment, Act of June 18, 1910 (36 Stat. 551), it was provided that the shipper, subject to regulation by the Commission, "shall have the right to designate" the routing of his freight.

Mr. Spence testified (III R. 1064):

> "Q. Mr. Spence, is there much unrouted traffic nowadays? I mean, is there any considerable quantity of traffic which a carrier receives without routing directions from the shipper?
>
> A. There is no appreciable amount of such traffic now. The shipper nearly always exercises his prerogative to designate the routing."

The effect of all this is well expressed by Mr. Sproule (I R. 207):

> "You understand that we have nothing to offer the shipper except his interest in his own shipments—no concession of any kind whatever that we can offer him; and the controlling factor in the routing of all business is not the wishes of the initial carrier, or of any other carrier, but it is the shipper's interest in his own business. That is a point which it is advisable we should not lose sight of in the technical question of the carriers controlling the routing. The carrier has no control over the routing except the service."

Judge Lovett testified (I R. 301) that the shipper is quite alive to his right to route his freight and that with him the question is largely one of service; that the location of the man who controls the routing, whether consignor or consignee, has a good deal to do with his choice of routes, and that where a choice is practically immaterial to him his selection is a matter

of personal idiosyncrasy arising perhaps out of a dislike for some officer of some particular line, or through personal like or friendships—presuming, of course, that the rates and service are equal.

(c) The Panama Canal opened August 15, 1914.

The Panama Canal opened for business August 15, 1914 (Spence, III R. 1025). The effect of the Canal on transcontinental business is considered in the testimony of several witnesses.

Mr. Spence testified (III R. 1065) that the steamship facilities available through the Panama Canal amount to considerably more than one million tons per annum in each direction.

Also (III R. 1066):

> "The steamship lines through the Panama Canal have already established very low rates; rates so low that the all-rail lines are finding it impossible to meet them."

Also (III R. 1066-1067):

> "The Sunset route, the Southern Pacific Company, has made application to the Interstate Commerce Commission for authority to make eastbound rates, which application was granted this week, between the California ports and New York, to approximately meet the competition through the Canal.
>
> . . . . . .
>
> The all-rail lines have not participated in the application, and are unable to do so for the reasons stated."

Mr. Spence also testified (III R. 1067) that "as to all the traffic of the Sunset-Gulf route which it is

physically able to carry between California and the Atlantic seaboard territory it is in competition with the Pacific Mail steamships through the Panama Canal"; and that as to traffic which mixed rail and water lines cannot engage in, "competition for that traffic will be between the several all-rail lines, the Ogden route and the Santa Fe and others."

Again (III R. 1067):

"Q. And the competition for this transcontinental traffic which the Sunset-Gulf route is capable of carrying, that competition will be between the Sunset-Gulf route, the Santa Fe-Mallory Line and the water carriers through the Panama Canal?

A. That is right.

Q. What effect in respect to the rate upon that traffic has the coming into existence of the water carriers through the Panama Canal had?

A. It has radically reduced it.

Q. Which lines are the dominant rate making factors in respect to all that traffic which the Sunset-Gulf route is capable of carrying?

A. The steamship lines through the Panama Canal.

Q. And those carriers now dominate the rate situation in respect to such traffic between California and the Atlantic seaboard territory?

A. Yes.

(d) The San Pedro, Los Angeles and Salt Lake Railroad Company operating since 1905.

The Union Pacific acquired one-half of the stock of this company before it began operation, which it did in the year 1905 (*United States v. Union Pacific R. Co.*, (1911) 188 Fed. 102, 108).

JOHN A. MUNROE, Vice-president and Traffic Manager of the Union Pacific Railroad Company, testified (I R. 386):

> "Q. Since the establishment of the San Pedro line in 1905 that has been the Union Pacific's preferential route on southern California business, has it not?
>
> A. It has."

(e) Western Pacific Railway Company operating since July 20, 1910.

The Western Pacific Railway Company (commonly called a Gould company at the time this suit was commenced, and after) opened its line on July 20, 1910, from Salt Lake City, where it connected with the Denver and Rio Grande, to San Francisco Bay (Sproule, I R. 225).

(f) Electric lines in California constructed since 1901.

Speaking of the Atchison, Topeka and Santa Fe, Mr. Chambers testified (III R. 974):

> "We have connections independent of the Southern Pacific in northern California. We have the Central California Traction Company, running from Stockton to Sacramento; we have the Oakland & Antioch Electric line running from Oakland to Sacramento, crossing the river near Bay Point; we have the Northern Electric Railroad running north from Sacramento, that connects with the Central California Traction Company at Sacramento."

Again Mr. Chambers said (III R. 984):

> "Q. You spoke of using the Northern Electric and the California Transportation Company and the Oakland, Antioch & Eastern as connections. I suppose you mean you have traffic arrangements with those lines for the interchange of freight?
>
> A. Yes; we have joint rates in effect.

Q. You have joint rates in effect, which gives you those lines for purposes of securing freight from the points reached by them?

A. From the points reached by them, and in competition with the Southern Pacific.

Q. In competition with the Southern Pacific?

A. Yes; as to points reached by the Southern Pacific and the electric lines."

Mr. Spence testified (III R. 1024-1025) that the following "electric lines were opened in California, the Central California Traction Company between Stockton and Sacramento, the Northern Electric between Sacramento and Marysville and Chico, and the Oakland, Antioch & Eastern between Sacramento and Oakland."

We have now dealt with the principal radical changes in traffic conditions between 1901 and 1914. It will be appropriate to sum up with the testimony of Judge Lovett and Mr. Spence, which deals with these changes in a connected way.

Judge Lovett testified (I R. 295-296):

"Q. (By Mr. Orr.) You may state what in your opinion, from your knowledge of the situation, would be the effect upon the competitive power of the Union Pacific Railroad Company in competing for transcontinental business or other business reaching in the territory served if there was a separation, if the Central Pacific Railway Company were separated from the control of the Southern Pacific Company?

A. The Union Pacific now is merely a connection of the Southern Pacific Company at Ogden, and is not as dependent on the Southern Pacific Company as it formerly was for the business it gets; but the Southern Pacific Company is in the position, by reason of its ownership of the Central Pacific,

to divert a great deal of business from there to the Union Pacific. If the Union Pacific had its own line into Central California it would not be dependent on any other line but would have its own line to come directly in contact with the shippers. I am not prepared to say, however, that we would get any more business then than we get now.

Q. You say the Union Pacific is not as dependent now as it formerly was; why not?

A. Well, perhaps I could do better by contrasting the situation now with what it was when the Union Pacific acquired control of the Southern Pacific. At that time the shipper had no right to route his traffic. That was in the hands of the carrier. There was only one railroad between Ogden or Utah and California. That was in 1901. The Union Pacific was absolutely dependent on the Southern Pacific for its California business. It had no line of its own, and there was no other line. Since 1901 what is commonly referred to as the Clark road has been constructed between Salt Lake City and Los Angeles and San Pedro. The Union Pacific has a half interest and equal voice in the management of that line. That was open for business in 1905. That affords the Union Pacific an entrance into the State of California where it is a competitor with the Southern Pacific Company. The Western Pacific Line has been opened from Salt Lake City to central California; that is, to Sacramento, Stockton, Oakland and San Francisco and some other points, and the Union Pacific, or the Short Line, connects with it at Salt Lake City, and, while I do not want to throw stones at it, it is not as good a railroad as the Central Pacific in any respect.

Mr. HERRIN. Which road is that?

The WITNESS. The Western Pacific. That has been opened, it is a railroad and it is there, but it was not there in 1901. So, with those considerations, the building of the line from Salt Lake City to Los Angeles, opened for business in 1905, the

passage of the Hepburn Act in 1906, which gave the shipper the right to route his freight, and the opening of the Western Pacific, the Union Pacific is not dependent to the same extent now as it was formerly on the Central Pacific; but the Central Pacific is far and away the best connection for the Union Pacific to Central California. It is the shortest line and the best railroad in every sense of the word."

Mr. Spence testified (III R. 1046-1047):

"Q. Mr. Spence, state whether or not the Union Pacific is more or less at the mercy of the Southern Pacific now than it was just before the merger in 1901, in respect to securing good service, reasonable terms and facilities, and so forth, for engaging in transcontinental business via the Ogden route; and give the facts upon which your answer is based.

A. Prior to 1901 the Union Pacific had, beside the Southern Pacific west of Ogden as a connecting line, its rail route to Portland and its steamship line to San Francisco as its only alternative route. Since that time the Western Pacific and the San Pedro, Los Angeles & Salt Lake railways have been constructed, affording the Union Pacific various routes; the Interstate Commerce Law was amended in 1906, delegating authority to the Interstate Commerce Commission to establish through routes and joint rates, which gives the Union Pacific an absolute guaranty of the continuation of through routes and joint rates; in 1910 the Commission was given authority to suspend advanced rates; and by the same amendment to the law the shipper was given authority to route his freight, and the carriers were required to respect his routing.

Q. What kind of service is maintained by the Southern Pacific over its end of the Ogden route; that is, between Ogden and San Francisco? I mean in respect of the maintenance of the road as well as in respect of the equipment and all the elements that go into service?

A. The service on the line west of Ogden is not excelled anywhere, under like conditions.

Q. What do you mean by 'under like conditions'?

A. The character of the country, the density of the traffic, and the population.

Q. State any facts that you may know tending to show whether the Southern Pacific Company has any interest or motive to impair this service over the Ogden route.

A. In the first place, the Southern Pacific Company has a very large investment in the Central Pacific, upon which it is anxious to earn a return. In the second place——

Q. Just give the general character of that investment, without going much into detail.

A. It owns the stock, and is the guarantor of the bonds.

In the second place, the Southern Pacific is dependent upon the Central Pacific, west of Ogden, as the only route by which it can successfully compete for the traffic to and from the middle west territory, and also dependent upon that route to successfully compete for a large share of the traffic to and from the Atlantic seaboard territory for which the Sunset-Gulf route is physically unable to compete. These conditions not only afford no motive for impairing the service, but they afford every incentive for keeping the service up to its maximum efficiency.

Q. Could you impair the service on your part of the Ogden route, with a view to benefiting the Sunset-Gulf route in respect to the limited traffic for which those two routes offer alternative routes, without at the same time impairing the service and injuring the Ogden route in respect to this traffic as to which the two lines do not offer alternative routes?

A. No."

(32) The southern construction (Yuma-El Paso-New Orleans) as a normal and natural growth.

After the building of the Central Pacific, the natural development of railroad building in and from California called for feeders in California and thereafter for a line through El Paso to New Orleans.

We have already shown (pp. 30-31, *supra*), that the topography of California and the necessity for a southern outlet from the state required the construction of the southern line as a part of the normal development of the system. We now refer to the testimony of the witnesses concerning the construction of feeders, and of the southern line.

Mr. Chambers testified (III R. 939-941):

"Q. After the building of the Central Pacific main line connecting from San Francisco to Ogden, what would naturally be the next step in railroad development or construction to be taken, concerning that line?

A. Building feeders for that line through the valleys of northern California.

Q. What, if any, lines southerly from the Central Pacific main line would you regard as feeders?

A. The line south through the San Joaquin Valley, through to Los Angeles, connecting northern and southern California.

Q. How far north would you go for these lines as feeders?

A. The line that is south into the Salinas Valley, and north of Sacramento into the Sacramento Valley.

Q. How far north would the line be constructed as a feeder, naturally, from Sacramento?

A. As a feeder, up to the Oregon line.

Q. You will remember, as a matter of railroad history, if you do not know personally, that when the Central Pacific main line was opened in 1869

there was no other transcontinental rail line, and that the first transcontinental line other than the Central Pacific was formed by the junction of the Santa Fe at Deming, New Mexico, with the Southern Pacific, in 1881.

What would you say as to the construction of the line southerly from Los Angeles to Deming, which was constructed, as to whether that would be a natural, congruous, development of railroad building, as a part of this system, of which the Central Pacific main line was a nucleus in the beginning?

A. I think that would be the natural and business-like move to make, to extend the line from southern California eastward through Arizona.

Q. The Texas Pacific line—you know the location of that, do you?

A. Yes.

Q. Extending from Sierra Blanca on the Southern Pacific line eastward to what point?

A. To Texarkana, Arkansas.

Q. Now, I will remind you, as a historical fact, that the junction of the Central Pacific was made with the Southern Pacific line at Sierra Blanca in 1882. What would you say as to the extension of the Southern Pacific line eastwardly from Sierra Blanca upon the route it was built upon, to Houston, forming connection with the lines built between Houston and New Orleans?

A. I would say that at that time the natural thing to do and the business thing for the Southern Pacific to do, was to get a through line between California and New York, and the extension of their line eastward was the desirable thing to do.

Q. Eastward to what point?

A. Well, to New Orleans. New Orleans is where they first extended it to.

Q. To some point on the Gulf of Mexico?

A. Yes.

Q. Did the business needs of that country which is served by that line—which, of course, includes California, the local territory, and whatever traffic might be gained on that line—did those business

needs justify the construction of that line at that time?

A. They did. At that time and for some years afterwards the Atlantic seaboard territory supplied the manufactured merchandise for the entire Pacific Coast, and took all the Pacific Coast products—the great bulk of them; perhaps seventy-five to eighty per cent of them.

Q. Was there any other line that could have been built at that time, first, after the construction of the Central Pacific, which would have been more practicable or a better line for railroad purposes, or for the service of the public, than the Southern Pacific line from Goshen to New Orleans?

A. I think that was the best line that the Southern Pacific could build to serve all their purposes; of course any through line would have been beneficial.

Q. You spoke of the purposes of the Southern Pacific. My question called for your consideration of the service to the public also. Do you include that?

A. That would include the service to the public."

Mr. Kruttschnitt testified (II R. 727-728):

"Q. Mr. Kruttschnitt, from your general knowledge and experience as a railroad expert, and from your particular knowledge of the lines composing the Southern Pacific system, how would you characterize the growth and development of the Southern Pacific system?

A. I think I have already characterized it as being a normal and gradual growth, to meet the necessities of the territories served by these lines.

Q. Has it the characteristic of system growth?

A. Absolutely."

---

(33) The absence of attempts at monopoly and monopolistic practices.

In the petition it is alleged that the defendants are "attempting to monopolize and are monopolizing trade

and commerce." No evidence whatever was offered to support this allegation, and it might therefore be disregarded.

We desire, however, to call attention to the testimony of Mr. Spence (III R. 1039) where mention is made of forty-six soliciting agencies in California, representing all the transcontinental lines, and fifty-nine soliciting agencies on the Atlantic seaboard, representing the same lines—a situation which precludes any thought of monopoly.

The testimony of Mr. Spence concerning the effect of the opening of the Panama Canal on August 15, 1914, may also be noted (III R. 1025-1031). It appears that as early as October 1, 1914, there were six steamship lines operating between the Atlantic and Pacific coasts, with an aggregate of forty-nine steamers. These lines were all actively engaged in competing for transcontinental business between all points in Atlantic seaboard territory and California.

In view of the foregoing facts, any suggestion of monopoly or monopolistic practices is unthinkable.

---

(34) The active and vigorous competition between the Ogden and Sunset-Gulf routes, and the absence of any attempt at monopoly, as shown by the report and order of the Interstate Commerce Commission granting the application of the Southern Pacific Company, under the Panama Canal Act Amendment of the Interstate Commerce Act, for permission to continue to operate the line of steamships which forms a part of the Sunset-Gulf route.

Section 11 of the Act of Congress, known as the Panama Canal Act, approved August 24, 1912 (37

Stat. L. 560, 566) amends section 5 of the Interstate Commerce Act. The pertinent provisions of Section 11 read as follows:

"Sec. 11. That section five of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

'From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the Act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.'

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The Commission may on its own motion or the application of any shipper institute proceedings to in-

quire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commission, and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided,* Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter."

In due course the Southern Pacific Company filed an application with the Interstate Commerce Commission for permission to continue to operate its line of steamships between the ports of Galveston and New Orleans and the port of New York. The main report of the Commission upon this application bears

date January 24, 1917, and will be found in the official volumes of the Commission's Reports, 43 I. C. C. 168, entitled Southern Pacific Company's Ownership of Atlantic Steamship Lines. A supplemental report, of date May 12, 1917, is set forth in 45 I. C. C. 505. The final order is printed as an appendix of our supplemental brief. The reports and order of the Commission were made after the close of the testimony and the submission of this case in the Court below. The effect thereof on the Government's case will be more fully discussed in the supplemental brief. We include, however, a short summary in this brief.

1. The first question involved in the application of the Southern Pacific Company was whether the competition which the Commission had to consider was merely port-to-port competition, *i. e.*, competition between the water line considered by itself, on the one hand, and, on the other, a rail line under common control carrying traffic between the ports; or whether such competition included also competition between the water line and its connections, on the one hand, and, on the other, any line of transportation formed in whole or in part by railroads which the railroad-owner of the water line controlled or was interested in. An examination of the report of the Commission will show that it decided this question in favor of the broader and more comprehensive meaning of competition. The Southern Pacific Company did not control and was not interested in any line of railroad between Galveston or New Orleans and New York. The competition, the existence of which the Commission considered,

was competition between the Sunset-Gulf route (the through line formed by the Southern Pacific steamships and the Southern Pacific rail lines from the Gulf ports to Pacific coast), on the one hand, and, on the other, the through all-rail lines across the continent, the main one being the Ogden route (the through line formed by the Southern Pacific Company's Central Pacific line to Ogden and its eastern connections).

2. The next question which arose was whether competition, actual or potential, of the character above explained existed between the Southern Pacific rail lines and water lines. If no such competition existed the permissive order applied for was not necessary. Application to the Commission for permission to continue to operate a water line was required by the terms of the statute only when there existed competition, actual or potential, of the character indicated. The Commission found the existence of "most active and vigorous competition" between the all-rail routes via Ogden and via El Paso, on the one hand, and the Sunset-Gulf route, on the other hand, formed in part by the water line in question.

3. Then came the crucial questions in the case, whether the Southern Pacific steamship lines, forming part, as they did, of the Sunset-Gulf route, a route competitive with the Ogden route, was being operated in the interest of the public and to the advantage and convenience of commerce, and whether permission to continue to so operate the steamships would either exclude, prevent or reduce competition on the route by water under consideration. The Commission answered

the first question in the affirmative and the second in the negative.

In the light of what has already been said these answers mean that, in the opinion of the Commission, the continued ownership and operation by the Southern Pacific Company of the water line in question, which resulted in the Company's ownership and operation of the Sunset-Gulf route from beginning to end, was not contrary to the public interest or to the disadvantage of commerce, and would neither exclude, prevent nor reduce competition, and this conclusion was reached with full knowledge and after consideration of the Southern Pacific Company's ownership and operation of the Central Pacific part of the Ogden route and of the competitive relations between the two routes. In other words the Commission found that the common control by the Southern Pacific Company of the whole of the Sunset-Gulf route and of that part of the Ogden route between Ogden and San Francisco was not against the public interest or to the disadvantage of commerce, and did not prevent or diminish competition between the two routes.

The opposition between the findings and opinion of the Commission and the contentions of the Government in the present suit is manifest. The Government contends that the common control by the Southern Pacific Company of the Central Pacific line between Ogden and San Francisco and of the Sunset-Gulf route has prevented competition between the two routes and amounts to an unreasonable restraint of trade. The Commission is of the exactly contrary opinion. There is

moreover a fundamental variance between the theory of the Panama Canal Act and the theory underlying the Government's present suit. The theory of the statute is there may be a common control, in whole or in part, of two competitive lines of transportation the continuance of which may be in the public interest and may neither exclude, prevent nor reduce competition. The theory of the Government in this suit is that proof of common control of the whole of one through route and of part of another through line offering an alternative route for traffic, is of itself, without more, sufficient to establish such prevention or reduction of competition between the two routes as to constitute an unreasonable restraint of trade, and that such prevention or reduction of competition is so inevitable that no attention will be paid to any evidence to the contrary. If this contention of the Government be correct it would be an idle ceremony to submit to the Commission whether the continued control by a railroad company of a water line which does or may compete with that company's rail lines will be in the public interest and to the advantage and convenience of commerce, and will neither exclude, prevent nor reduce competition.

---

(35) The impossibility of dismemberment of the Southern Pacific-Central Pacific system without substantial deterioration in the public service.

If the question of *undue* restraint of trade should ever become vital to a decision of the case it would be all-important to consider the consequences of dismem-

berment of the system, for by focussing attention upon such consequences we would be better able to know what service is achieved by the unified operation of this system, conceived and constructed and always managed as a single property.

Reference may here be made to the large map of the present Southern Pacific-Central Pacific system which appears as the last map in the appendix of this brief. This map serves two purposes: (a) it shows the unity of the system and the absolute interdependence of its parts; and (b) it gives a graphic illustration of the practical difficulties and disastrous consequences which would attend any attempted dismemberment.

The impossibility of a dismemberment that would preserve the present efficient public service furnished by the system has been shown by our review of the California Railroad Commission's decisions in 1913. The attempted dismemberment failed because it fell foul of public interests. The Union Pacific, of course, desired to acquire the Central Pacific *upon terms*, and the Southern Pacific, under compulsion, agreed to sell, fearing later it might be forced to sell without having at hand a buyer whom the Attorney-General would be in a position to coerce into approximately acceptable terms. The case presented, therefore, was that of two contracting corporations who were very eager to reach an agreement, although under coercion. There was no captious bargaining, and there was every desire and genuine effort on the part of the contracting corporations to work out an agreement. It is true that each one of them insisted upon terms collateral to the agreed

purchase and sale of the Central Pacific, because these collateral terms were necessary to the very life of their bargain.

The Union Pacific refused to buy unless it could have (*a*) joint and exclusive use, practically part proprietorship, of the Southern Pacific lines from Sacramento via Benicia to Oakland and San Francisco, and (*b*) the trackage rights from Redwood to San Francisco for its through freight trains. These were essential to any plan which contemplated the taking over of the Central Pacific at an adequate price.

The Southern Pacific on the other hand, would have been denied all access to Oregon if it did not acquire all Central Pacific trackage north of Tehama. It, therefore, could not afford to sell upon any terms which did not involve collateral agreements.

The case broke down because the Railroad Commission of California would not permit the Union Pacific to buy a preferential interest in Southern Pacific properties except upon terms which would open these properties to all other competitors in like position, a condition which would have been intolerable to the Southern Pacific and entirely distasteful and disadvantageous to the Union Pacific.

The Railroad Commission of California said (Decision No 477, rendered February 24, 1913, D. Ex. 25, V, R. 1779):

> "We are not unmindful of the fact that, as testified by both Judge Lovett and Mr. Sproule, these companies are more or less under duress to contract. On the one hand the stock of the Southern Pacific

owned by the Union Pacific is in the hands of the court for sale, and if an arrangement is not consummated before ninety days shall have elapsed after the decision of the court, this stock is to be placed in the hands of a receiver to be sold as the court directs. It is testified that the Attorney General is threatening proceedings against the Southern Pacific if it does not divest itself of control of its alleged competing line, the Central Pacific, and we appreciate the desire of the parties to bring about a solution of their troubles which will result in as little financial loss to them as possible, yet we believe it is our duty to have in mind the effect of any arrangement which may be designed upon not only the contracting parties here, but the public. As we have already indicated, we do not believe the sale of the stock of the Central Pacific is necessary to bring about the result desired by the Supreme Court, or even by the Attorney General, but if Federal authorities acting within their jurisdiction in this matter, which is wholly without our jurisdiction, shall decide that the sale of this stock must be made, then we do not feel that it will be possible for us to protect the public beyond that protection which may be accorded by the imposition of conditions specified in the order herein."

It appears from this that the difficulties of dismemberment, consistent with public interests, are well-nigh insurmountable. This is abundantly shown by the uncontradicted testimony of the witnesses.

JOHN M. ESHLEMAN (died January 29, 1916, when Lieutenant-Governor of California), for four years President of the Railroad Commission of California, and the author of the decisions in the matter of the attempts of the Union Pacific to buy the Central Pacific from the Southern Pacific (D. Exs. 25, V, R. 1769, 26 V,

R. 1782), testified that separation would create a system in California less convenient and more expensive than the present system (III R. 877); that by destroying the present unity California would be broken up into two-line and three-line operation, and that he knew no other method by which service as good as at present could be obtained (III R. 882-883); that if dismemberment occurred each road would have to provide terminals and duplicate investments (III R. 885). In fact, his testimony is to the same effect as his opinion (Decision No. 477, D. Ex. 25, V, R. 1775):

> "We do not pretend to say, nor do we consider it necessary to decide, how serious an impairment of the Southern Pacific will be brought about by the securing of the Central Pacific main line and feeders by the Union Pacific, but we are of the opinion that the present commanding position of that road cannot be maintained under the contract which is presented to us for approval, and that there is room for grave fear that if the agreement is carried out this State will, instead of securing two strong competing lines, secure one dominant line and one much impaired line."

R. N. Lynch, Vice-President of the San Francisco Chamber of Commerce, testified that great disadvantage would be suffered by shippers if separation were accomplished (II R. 834); that most of the members of the Chamber of Commerce were large shippers and that their attitude in this regard was unanimous; that they heeded the warning of the Railroad Commission of California that double cost of operation would inevitably cause a raising of the rates (II R. 835), and that although the sentiment of the Chamber of Commerce

had favored the Union Pacific unmerger it was decidedly antagonistic to the present proposed dismemberment (II R. 863-864). Defendants' Exhibit No. 22, the resolution of the Chamber of Commerce endorsing the decision of the Railroad Commission of California against unmerging, was introduced with Mr. Lynch's testimony, and strongly expresses the opinion that the preservation of the *status quo* in California is of great importance to shippers, and to the State.

Edward Chambers, Vice-President of the Atchison, Topeka and Sante Fe Railroad Company, explained how the separation of the Central Pacific from the Southern Pacific would tend to increase rates and would necessarily increase local rates because of the substitution of a two-line haul for the existing single line (III R. 947). He also explained how separation, although not increasing competition to any extent, would seriously impair both the freight and passenger service; and he added that traffic arrangements cannot possibly obviate all the disadvantages of separate ownership. Again (III R. 982), he emphasized the inadequacy of joint arrangements to compensate for loss after separation and to maintain the present service. He testified further that separation would disarrange the train service; that in the San Joaquin Valley the through service would be displaced by local service and that freight now moving over the Central Pacific lines in the interior valleys from northern to southern California, would, after separation, have to be sent by way of Port Costa (III R. 986, 989). We may append here his significant remark (III R. 971) that from the Atchison point of view h

would prefer to compete against the Central Pacific and Southern Pacific as two separate lines, implying that separation would lessen competition instead of increasing it.

Mr. Kruttschnitt recited in detail the results which would follow dismemberment (II R. 742-751, 799) and estimated that the expense to the Southern Pacific of separation and duplication of terminals would amount to $85,715,000. (This figure was taken by Mr. Kruttschnitt from a computation of reproduction costs, made in 1912. It need hardly be added that the present cost, due to advanced prices, would be very much greater.) Mr. Kruttschnitt also testified that the standard of efficiency would be irreparably lowered by separation (II R. 800).

Judge Lovett said that the Central Pacific separated would be in the position of the Western Pacific; that is to say, it would have to do a great deal of building to supplement the present line and provide feeders for it (I R. 302).

Mr. Sproule testified (I R. 241) that a forced sale of the Central Pacific to a road other than the Southern Pacific would be an amputation so serious as to amount to a capital operation. He testified further (I R. 252) that there is no particular respect in which the public would be advantaged by separation; that on the contrary, it would suffer with the Southern Pacific in the distinct disadvantages to the company consequent upon the dismemberment of the Southern Pacific system.

Mr. Spence outlined the disastrous consequences of dismemberment (III R. 1175) and said that the separation of the Southern Pacific-Central Pacific system would effect no change in transcontinental rates but, on the other hand, would increase local rates (III R. 1068-1069). He added that separation would impair service.

In addition to all this testimony, which had to do principally with California, it is to be recalled that dismemberment would have disadvantageous results in respect of traffic (*a*) between California and Oregon; (*b*) between California and Arizona, and (*c*) between Oregon and California on the one hand and Nevada on the other. Indeed, it is quite likely that the dismemberment of the system would be very disadvantageous to Nevada, even in respect of westbound traffic, and this view is suggested in the remarks of Senator Newlands of Nevada on June 18, 1913 (50 Congressional Record, Part II, p. 2076), as follows:

> "Mr. President, so far as I am concerned, I have always thought that it would be to the advantage of my State if the Central Pacific Railroad were joined to the Union Pacific Railroad, thus constituting a through line from the Missouri to the Pacific. * * *
>
> I must confess that recently my view as to where the Central Pacific system should be placed in this readjustment of lines has been somewhat affected by the approaching completion of the Panama Canal. The Panama Canal will make San Francisco the great distributing point of the western coast, and it is a question whether the interest of Nevada does not lie rather in maintaining the Central Pacific system as a part of the Southern Pacific system, thus giving that system a radial

distribution toward the east from San Francisco, rather than in connecting it with the Union Pacific system, which involves absentee control far off in New York instead of practical home rule through the Southern Pacific system, which has its home office at San Francisco."

In addition to all these considerations, reference should be made to the three competing branches from Utah to the Coast, which the Union Pacific would own if it were to acquire the Central Pacific, as is shown by the accompanying diagram maps.

Union Pacific Lines to the Pacific Coast, and Their Relation Geographically to the Central Pacific Main Line.

Union Pacific Lines to the Pacific Coast, and Their Relation Geographically to the Central Pacific Main Line, Feeders and Extensions.

It thus appears that if the Union Pacific were to acquire the Central Pacific line, it would be (*a*) the

owner of the Oregon Short Line from Granger to Portland, of which it is said in the *Union Pacific Case*, 226 U. S., foot page 89, "the Portland route was a factor in ratemaking to the Coast", (*b*) the half owner of the Salt Lake-Los Angeles route, which Judge Lovett (I R. 296) calls a competitor with the Southern Pacific Company, *i. e.*, the Central Pacific line; and lastly, (*c*) the owner of the Central Pacific line. As a result, the Union Pacific, as Mr. Kruttschnitt said, would then be "in absolute control of the Pacific Coast business". If dismemberment were decreed the last condition of the public would be worse than the first.

---

(36) Mileage of lines owned by Southern Pacific and proprietary companies, and detailed table of mileage of Central Pacific lines.

(a) Mileage of lines owned by Southern Pacific and proprietary companies (June 30, 1915).

First Main Track	10,560.08
Conditional Main Track	530.88
Sidings	3,859.52
Ferries	17.90
Water Lines	4.873.
	19,841.38

(b) Detailed mileage table of Central Pacific lines:

	First Main Track.	Add'l Main Track.	Sidings.
CENTRAL PACIFIC RAILWAY:			
Main Lines:			
Oakland Pier to West Oakland, Cal.	1.01	1.01	
Oakland Pier to Elvas, Cal.	133.46	35.86	
Sacramento, Cal., to Cecil Junction, Utah	692.05	196.98	
Roseville, Cal., to Oregon State Line	290.59		
Niles to San Jose, Cal.	17.58		
Niles Junction to Redwood Junction, Cal.	16.24		
Lathrop to Goshen Junction, Cal.	146.45	4.62	
Branches:			
Oakland Pier to West Oakland, Cal.	1.01	1.01	
Oakland Pier to Dutton ave., Oakland, Cal.	11.99	11.99	
Oakland, Antonio Junc., to Fruitvale, Cal.	4.83	4.49	
Elmhurst to Stonehurst, Cal.	.75	.73	
Halvern to Alvarado, Cal.	2.63		
Sacramento to Walnut Grove, Cal.	24.30		
Barber to Stirling City, Cal.	30.57		
Fernley, Nev., to Westwood, Cal.	136.57		
Hazen to Fallon, Nev.	15.92		
Hazen, Nev., to Keeler, Cal.	288.65		
Churchill to Mound House, Nev.	26.27		
Filben to Candelaria, Nev.	5.51		
Tulasco to Metropolis, Nev.	7.89		
Umbria Junc., Nev., to near Ogden, Utah	142.48		
Weed, Cal., to Kirk, Ore.	126.49		
Natron to Oakridge, Ore.	34.39		
Mojave to Owenyo, Cal.	142.90		
San Francisco to Oakland Pier (Ferry 3.50 miles)			
San Francisco to Broadway, Oakland (Ferry 6.40 miles)			
San Francisco to Sacramento (River line 125 miles)			
	2,306.53	256.69	943.76
Owned jointly with:			
Denver and Rio Grande R. R. Co.:			
In Ogden yard	—	—	.38
Leased from:			
Southern Pacific Co.:			
Alameda—Lincoln Junc. to High st.	1.43	1.43	.08
Alameda—Pacific Junc. to Encinal Junc.	1.47	1.12	.04
Union Pacific Railroad Co.:			
5 miles west of Ogden.	4.53	.15	.63
Oregon Short Line R. R. Co.:			
Corinne Junc. to Brigham, Utah	3.98		
Ogden Union Ry. & Depot Co.:			
Trackage rights through terminal grounds	.81		
	12.22	2.70	1.11
	2,318.75	259.39	944.87
Less leased to:			
Butte County R. R. Co.:			
Barber to Stirling City, Cal.	30.57	—	2.91
Oregon Short Line R. R. Co.:			
Sidings in Ogden Yard	—	—	15.68
South Pacific Coast Ry. Co.:			
At West Alameda	—	—	2.54
Southern Pacific R. R. Co.:			
Sacramento to Walnut Grove, Cal.	24.30	—	8.62
Fresno to Goshen Junction, Cal.	33.58	3.35	41.92
	88.45	3.35	74.67
	2,230.30	256.04	870.20
Operated jointly with:			
Southern R. R. Co.:	5.38	—	—
Brighton to Sacramento, Cal.	2,235.68	256.04	870.20

(37) Several subsidiary matters may be here noted to facilitate an understanding of the case.

(a) United States v. Southern Pacific Co., United States Circuit Court, Southern District of California, commenced July 16, 1894, dismissed August 4, 1894.

While the railroad strike of 1894 was at its height, the Government filed a bill against the Southern Pacific Company, Central Pacific Railroad Company, and all the other corporations whose lines now comprise the Southern Pacific-Central Pacific system, to dissolve, on the ground that their unified operation constituted a monopolization of trade. The record in the case is Defendants' Exhibit 96. The bill was filed July 16, 1894, and nineteen days later, August 4, 1894, it was dismissed by direction of the Attorney-General. In the bill a decree was prayed, among other things for the annulment of the leases of the Southern Pacific Railroad Company and the Central Pacific Railroad Company to the Southern Pacific Company, dated February 10, 1885, and February 17, 1885, respectively.

In *United States v. Debs,* (1894) 64 Fed. 724, it will be seen that the suit there brought was commenced July 2, 1894, and the injunction violated by Debs and others, from that date on, resulted in proceedings in contempt, which were filed July 17, 1894 (64 Fed., top p. 726).

(b) A brief reference to the history of the more important corporations which figure in the case.

In examining the record it may be found convenient to have a brief summary of the corporate history to which easy reference may be made.

1. Central Pacific Railroad Company of California was incorporated as a California corporation June 28, 1861. By two consolidations, June 23, 1870, and August 22, 1870, it absorbed a number of other California railroad corporations, including the Western Pacific Railroad Company and the California and Oregon Railroad Company. The Central Pacific Railroad Company (the name assumed after the consolidation of 1870) continued as the owner of the Central Pacific lines until July 29, 1899, when, in the reorganization occasioned by the settlement with the Government, it transferred all its properties to the Central Pacific Railway Company, a Utah corporation.

2. Central Pacific Railway Company was organized in Utah by articles dated July 26, 1899, and filed July 29, 1899, on which day the (old) Central Pacific Railroad Company conveyed all its assets to the new company. Since then the (new) Central Pacific Railway Company has been the owner of the Central Pacific lines, and as such, is one of the defendants in the case.

3. Southern Pacific Railroad Company was organized as a California corporation December 2, 1865, and is still in existence. By consolidations under the laws

of California this company on October 12, 1870, August 19, 1873, December 18, 1874, May 14, 1888, and April 14, 1898, absorbed a number of other railroad corporations. By further consolidation under the laws of the State of California it absorbed Southern Pacific Railroad Company of Arizona and Southern Pacific Railroad Company of New Mexico on March 10, 1902.

4. Southern Pacific Railroad Company of Arizona was incorporated under the laws of Arizona September 20, 1878, and built the Arizona section of the Sunset-Gulf line. It was absorbed by the Southern Pacific Railroad Company, a California corporation, by the articles of consolidation of March 10, 1902.

5. Southern Pacific Railroad Company of New Mexico was incorporated under the laws of New Mexico April 14, 1879, and built the New Mexico section of the Sunset-Gulf line. It was absorbed by the Southern Pacific Railroad Company, a California corporation, by the articles of consolidation of March 10, 1902.

6. Southern Pacific Company was incorporated under the laws of Kentucky (Acts Ky. 1883-4, Vol. I, p. 725) March 17, 1884, and thereafter became the owner of the entire capital stock of the three companies known as the Southern Pacific Railroad Company, and organized under the laws of California, Arizona and New Mexico. It also acquired all the capital stock of the two Texas and two Louisiana corporations whose lines form the eastern part of the Sunset-Gulf route.

(v. p. 55, *supra.*) In 1899, or thereabouts, it became the owner of all the common and preferred stock of the (new) Central Pacific Railway Company (Kruttschnitt, II R. 734).

7. Western Pacific Railway Company was organized under the laws of the State of California, March 16, 1903, as a part of the Gould system. This company is not to be confounded with the Western Pacific Railroad Company which was absorbed by the (old) Central Pacific Railroad Company in the consolidation of June 23, 1870.

(c) The construction by the Southern Pacific Company of the line through the west side of the San Joaquin Valley.

The Southern Pacific construction from Oakland to a point on the Southern Pacific line below Goshen, by which that company was enabled to travel over its own rails from Oakland to Los Angeles via the San Joaquin Valley, via what is known as the West Side line in the San Joaquin Valley, was completed in 1891.

The construction occurred as follows:

West Oakland	to Shellmound	August	16, 1876.
Shellmound	to Martinez	January	9, 1878.
Martinez	to Tracy	September	3, 1878.
Tracy	to Newman	July	1, 1888.
Newman	to Los Banos	November	1, 1889.
Los Banos	to Armona	August	28, 1891.

(thence via Alcalde-Goshen line to Goshen, and via main line to Los Angeles.)

It should also be noted that the West Side line was built to relieve congestion in valley traffic, caused by one-line operation.

The route is shown in the following map:

San Joaquin Valley Lines.

1. Main Line (C. P. 1872): Lathrop-Goshen.
2. West Side Line (S. P. 1891): Tracy-Ingle-Kerman-Armona-Goshen.
3. West Side Line (S. P. 1892): Tracy-Ingle-Kerman-Fresno-Goshen.

It is important to note, that when the Sunset-Gulf route was opened to New Orleans in 1883, the Central Pacific road from Lathrop to Goshen formed a part of the line, and that it was impossible until eight years after the route was opened, and six years after the lease of 1885, for the Southern Pacific to reach Yuma over its own rails. It first became possible to travel from San Francisco to the southern boundary of the state over Southern Pacific rails in 1891, when this result was

brought about, not by the construction of a substitute for the main line Central Pacific link, but by the building of the West Side line to relieve congestion in the San Joaquin Valley.

It will be remembered that the Southern Pacific-Central Pacific system has three lines to the boundaries of California. The eastern line to Ogden is Central Pacific; the northern line from Tehama to Oregon is Central Pacific; and the southern line to Yuma until 1891 was partly Central Pacific. It thus appears that the Southern Pacific has but one outlet from San Francisco to the borders of the state, and that until 1891 it had none. This fact is constantly to be kept in mind, for it illustrates in a striking manner the unified construction and operation of California's railroad system, and the fact that the Southern Pacific and Central Pacific Companies are and always have been a single entity.

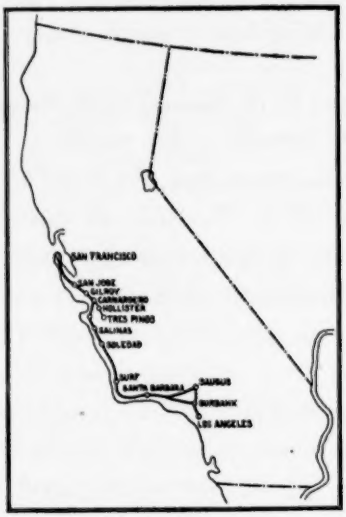
(d) The construction by the Southern Pacific Company of the Coast Line from San Francisco to Los Angeles.

The Coast Line from San Francisco to Los Angeles was opened in 1901. Portions of this line had been constructed many years before that time, but the last gap was not closed until 1901.

The construction is shown by the following table:

San Francisco	to Menlo Park	Oct.	17, 1863
Menlo Park	to San Jose	Jan.	16, 1864
San Jose	to Gilroy	Mar.	13, 1869
Gilroy	to Pajaro	Nov.	27, 1871
Pajaro	to Salinas	Nov.	1, 1872
Salinas	to Soledad	Aug.	12, 1873
Soledad	to Templeton	Nov.	16, 1886
Templeton	to Santa Margarita	Jan.	13, 1889
Santa Margarita	to San Luis Obispo	May	5, 1894
San Luis Obispo	to Guadalupe	July	1, 1895
Guadalupe	to Lake	Dec.	31, 1895
Lake	to Surf	Aug.	18, 1896
Surf	to Honda	During	1898-99
Honda	to Cuate Canon	During	1899-00
Saugus	to Ellwood	Dec.	21, 1887
Completion of gap between Ellwood and Cuate Canon, thus opening Coast Line		March	1901

The route is shown in the following map:



Southern Pacific Coast Line from San Francisco to Los Angeles. Opened 1901.

It is important to note that the direct Coast Line route of the Southern Pacific to Los Angeles was not completed until 1901, after the Sunset-Gulf route had been in operation nearly twenty years.

(e) The gradual decline in the importance of the Sunset-Gulf route since 1897.

In the early years of its existence, the Sunset-Gulf route commanded a large portion of the Atlantic seaboard traffic because it was able to give shippers more satisfactory service than was afforded to them by the all-rail routes. It may be said that during the first fourteen years of its existence (until 1897) it had a preponderance of such traffic, although before the year last named its traffic commenced to decline. Since 1897 there has been a gradual falling off, and its importance has decreased.

Mr. Spence, in speaking of the early history of the Sunset-Gulf route, said that it attracted a great deal of traffic from sailing vessels and afforded facilities for marketing traffic which had not before existed; that it had the effect, too, of expediting the movement of traffic which had been delayed on the congested lines east of Ogden (III R. 1175-1176).

He also testified that it was difficult to fix the date when the ascendancy of the Sunset-Gulf route came to an end because the change was a gradual process; that the all-rail lines gradually improved their service and co-ordinated their efforts; that their number had been gradually increasing with a corresponding increase in the army of soliciting forces, as the all-rail lines ap-

proached the standard of the Sunset-Gulf route; that the Sunset-Gulf route handled the major part of the traffic until about 1885; that by 1897 the all-rail lines had secured a preponderance of the business; that from the period of its ascendancy until the present time the Sunset-Gulf route has applied a "continuous competitive spur to the all-rail lines" (III R. 1029).

He further testified that the decline in the Sunset-Gulf route's business is an absolute decline in tonnage, and that at present the tonnage is very substantially below its maximum; that the falling off is due in part to the opening of the Panama Canal, but that a decrease of thousands of tons had been recorded long before the opening of the Canal (III R. 1124).

Mr. Schumacher gives as one reason for the Sunset-Gulf route's early prominence, the local organization of the Southern Pacific in San Francisco, enabling the company to "do a great many things locally for shippers that a foreign line could not do; I mean legitimate things. Their service was better" (I R. 149). He testified that in the eighties, about ninety per cent. of the New York-San Francisco business moved over the Sunset-Gulf route; that now it is scarcely fifty per cent. (I R. 155); and that the Sunset-Gulf route is less strong in influence now than it has been at any time (I R. 169).

Mr. Chambers testified that at first the Sunset's unified management gave the best service, but that later a division of traffic ensued when the all-rail lines were improved (III R. 942-943). He further testified

(III R. 958) that after the reorganization of the Atchison line in 1895 a marked improvement was made in the conduct of the line, and he adds (III R. 959) that then the Santa Fe was the only line which could really compete with the Sunset-Gulf route.

(f) Fires which prevented the production by the defendants of several records in the case.

The Southern Pacific Company's offices in San Francisco were burned in the fire of April 18, 1906. Other records were lost in the Equitable fire in New York January 8, 1912; and two fires at the Southern Pacific Pier in New York, one in 1907 and the other in 1910, also destroyed their records (Van Deventer, III R. 905).

(g) The witnesses for the Government.

It is worthy of note that no shipper has appeared in the case to complain of the treatment of himself or of shippers generally, and in this respect, not to mention others, the case is unique.

That the case is purely theoretical and not a practical one, is well shown by the list of witnesses called by the Government:

JOHN MUIR, Traffic Superintendent of Northern Pacific Railroad Company.

HUGH NEILL, Secretary of Southern Pacific Company.

JAMES C. LINCOLN, Manager of Traffic Bureau of Merchants Association of New York.

FRANK H. DAVIS, Assistant Treasurer of Southern Pacific Company in 1901.

THOMAS H. ROSSBOTTOM, Secretary of Panama Railroad Company.

EDWIN S. ALLEN, Vice-President of National Railway Publication Company.

THOMAS M. SCHUMACHER, Chairman of the Chicago, Rock Island and Pacific Railway Board, and previously in the employ of the Union Pacific Railroad Company for a number of years.

WILLIAM SPROULE, President of the Southern Pacific Company.

HENRY RUHLANDER, a member of the firm of Speyer & Company.

OSCAR L. COLES, Transfer Clerk, Central Trust Company.

ANGUS D. MCDONALD, Comptroller of Southern Pacific Company.

ARTHUR A. TOPPING, Clerk Interstate Commerce Commission.

ROBERT S. LOVETT, Chairman of Executive Committee of Union Pacific Railroad Company.

JOHN B. DE FRIEST, General Eastern Agent of Union Pacific Railroad Company.

RALPH MILLER JOHNSON, General Eastern Agent of Chicago and Northwestern.

WILLIAM W. HALL, General Agent of Chicago, Milwaukee and St. Paul.

BENJAMIN T. BOOZE, Chief Clerk of Transcontinental Freight Bureau.

WILLIAM H. CONNOR, General Agent Union Pacific Railroad Company in Cincinnati.

JOHN A. MUNROE, Vice-President and Traffic Manager, Union Pacific Railroad Company.

(38) Conclusion.

The foregoing Statement of the Case is sufficient to bring out *our case,* as contradistinguished *from our reply to the Government's case.* We have thought that a full understanding of the case would be better arrived at if we dealt in our Statement of the Case principally with those facts which bring out in sharp relief our own case. We shall have occasion in the discussion of the contentions made by the Government to deal with other facts, but those facts are naturally so interwoven with the argument with which they are connected that they may be advantageously omitted from the narrative of the case and reserved for the argument, which follows.

Argument.

I.

This case does not involve any combination of competitive units, or any combination at all, for the Southern Pacific and Central Pacific lines were projected and built and have been operated since their origin as one property.

In the statement of the case (pp. 55-123, *supra*), it has been demonstrated that the Central Pacific lines and Southern Pacific lines have been operated as one property ever since the commencement of the construction south of Goshen in 1872.* In the early days (from 1872 to April 1, 1885), they were operated by the Central Pacific Railroad Company and were known as "Central Pacific and Leased Lines"; on April 1, 1885, they became "Southern Pacific Company and Leased Lines", and later simply "Southern Pacific Company".

Judge Hook has summarized the history of the system as follows (239 Fed. 1000; VI R. 2329):

> "The Central Pacific Railroad Company of California, the ancestor of the present Central Pacific, was incorporated in 1861. Up to 1870 it had constructed or acquired and put in operation the lines from San Francisco to Ogden, from Niles to San Jose in California, and from Roseville to Chico† in the same state. The Southern Pacific Railroad Company was incorporated in 1865, and in 1870 the construction of the Southern Pacific lines was actively commenced. There was not much of importance of the Southern Pacific before that

* In order to avail itself of the terms of the Atlantic and Pacific Act, the Southern Pacific constructed thirty miles, San Jose to Gilroy, in 1869-70; twenty miles, Gilroy to Tres Pinos, in 1870-71. The remainder of the construction was from Goshen south, the first twenty miles being completed 1871-2. (See *supra*, pp. 35-36.)

† Chico is on the Central Pacific line from Roseville to Tehama (see map p. 214, *supra;* also table p. 28, *supra*). It is 75 miles north of Roseville, and 28 miles south of Tehama.

year. In 1870 and prior thereto the Central Pacific was dominated and controlled by Leland Stanford, Charles Crocker, C. P. Huntington and Mark Hopkins, and in that year, if not earlier, the same group of men were in control of the Southern Pacific. For at least fifteen years thereafter and during the most important constructive period of the Southern Pacific, a common control and dominance over both companies was exercised by them or the representatives of their estates. Parts of the lines of both companies were built by the same construction companies owned by Mr. Stanford and his associates, under the same superintendence and with the same equipment. The primary financing of the enterprise was done by them. The Central Pacific was employed as the principal or parent company and the Southern Pacific as its subsidiary, or rather as the corporate instrumentality for the expansion of its system. Except as to corporate title and bookkeeping there were generally the aspects of a single enterprise. In this respect the conditions were not unlike those which have characterized the growth of many of the important railroad systems of the country in which, for necessity or convenience of financing and in some instances because of local laws, separate corporate organizations were utilized. Between 1870 and 1883, as fast as the Southern Pacific lines were built from Goshen, California, the terminus of the Central Pacific, south to Los Angeles, thence eastward to Yuma and across Arizona and New Mexico and into Texas, they were turned over by completed sections to the Central Pacific for operation. Up to 1885 all the Southern Pacific railroads including the main line to New Orleans (with an unimportant exception), were officially announced, advertised and operated by the Central Pacific as part of its system. The legal relation between the two companies was expressed in executed leases, and the system was known as 'Central Pacific Railroad and Leased Lines'. In Febru-

ary, 1885, the Southern Pacific having become the major factor the relation was reversed, and the Central Pacific leased all its railroad to the Southern Pacific Company (of Kentucky) for ninety-nine years from April 1, 1885. The old leases of the Southern Pacific lines to the Central Pacific were surrendered by the same instrument. This was five years before the passage of the Anti-Trust Act."

It is thus clearly shown by the history of the system from the time of its construction—indeed, from the time the lines were projected—that the system is the outcome of a *normal natural growth*, and that the constituent lines were built to constitute one system, that in point of fact they were constructed as one system, and that, since their construction, they have always been operated as one system. It is equally clear that these lines are now operated as they have been from the beginning, and that therefore, if they are not now competitive, they never have been. In any event, it cannot be said that they have ever been "combined".

The result of the unified construction and operation of the system is forcefully illustrated in the large map in colors, which is printed at the end of the appendix. This map shows most clearly the intertwining and interdependence of the lines of the two companies, and proves that they were built as parts of a unified whole, and that the system in its very nature is such that it could not have been the result of a combination of independent parts.

As Judge Hooks says (239 Fed. 999; VI R. 2328):

> "The location and physical interdependence of the lines of these companies in California and Oregon give the distinct appearance of a single system of railroads. So clearly is this so of the lines in California and Oregon north of Sacramento that when an attempt was made in 1913, in the matter of the dissolution of the Union Pacific and Southern Pacific, also to divorce the Central Pacific from the Southern Pacific, it was generally agreed they should be left with the latter company. It is equally clear as regards the Central Pacific and Southern Pacific lines in California south from Sacramento and San Francisco. Those of the Central Pacific appear on the map as natural links and parts of the Southern Pacific System. Practically all of the spurs, branches and tributary feeders of the Central Pacific lines are the property of the Southern Pacific. . . . This aspect of the railroad map is confirmed in great measure by the history of the construction of the various roads."

In *United States v. Union Pacific,* 226 U. S. 61 (1912), a combination is said to be something "whereby natural and *existing* competition in interstate commerce is unduly *restricted* or *suppressed*" (p. 85); again, "the *consolidation* of two great competing systems of railroad . . . *creates a combination* . . . because, in *destroying* or greatly *abridging* the free operation of competition *theretofore existing,* it tends" etc. (p. 88); again, that "it is the scope of such combinations and their power to *suppress* or *stifle* competition" which makes them unlawful (p. 88); and that the Anti-trust Act deals with "power *unlawfully obtained*" (p. 96).

It is therefore apparent that the Southern Pacific system does not come within any of the definitions of a combination; but on the contrary, to quote from the opinions in the Steel Corporation case, it is the lawful result of "normal growth and development" (Mr. Justice McKenna, 251 U. S. 447), and "obtained by lawful means and developed by natural growth" (Mr. Justice Day, 251 U. S. 460). It cannot be said that dismemberment would result in *"recreating"* or *"restoring"* "competitive conditions which the combinations have destroyed" (Mr. Justice Day, 251 U. S. 462, 464), because the conditions which exist to-day have existed from the very origin of the properties.

The petition in this case is based upon the idea that prior to 1885 two transcontinental routes were in competition: (*a*) the Central Pacific *with connections* (at Ogden) *to the Atlantic Ocean;* and (*b*) the Southern Pacific Sunset-Gulf route from San Francisco via New Orleans and thence by water to New York, and that the violation of the Anti-trust Act arose out of the fact that by the lease of February 17, 1885, that competitive condition had been destroyed. It is true that the petition alleges the acquisition of the stock of the Central Pacific in 1899, but the underlying idea of the petition is that there had been a competitive condition between the two transcontinental routes and that it was destroyed in 1885. This is shown by the following extract from the petition:

> "The lines now owned by the Central Pacific Railway Company, in so far as then existing, were operated prior to 1885 in connection with the

lines of the Union Pacific Railroad Company as a continuous connecting route between San Francisco and the Missouri River, with connections eastward to the Atlantic Ocean, and were in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation (I R. 8)."

After the proofs were taken, the Government realized that the Central Pacific and Southern Pacific lines were always operated in the same way both before and after the lease of 1885, and that it would be impossible, therefore, to establish first that there had been a competitive condition differing from the present condition, and second, that it had been destroyed. Consequently, the Government has adopted a different position and in terms claims that the alleged violation of the Anti-trust Act consists in having prevented competition from coming into existence rather than in "destroying", "abridging", "suppressing" or "stifling" competition, to employ the terms just quoted from *United States v. Union Pacific,* 226 U. S. 61 (1912).

We shall later take up and consider the contention of the Government that competition has been prevented, but we content ourselves at the moment with the establishment of the proposition with which we are at present concerned; namely, that this case does not involve any combination of competitive units, or any combination at all, because the Southern Pacific and Central Pacific lines were projected and built and have been operated since their origin as one property.

II.

At the time of the passage of the Anti-trust Act (July 2, 1890) the Southern Pacific and Central Pacific lines were owned by a single proprietor, although the Central Pacific lines were held under a 99-year lease made February 17, 1885, instead of in fee; but "it is obvious that in principle the right of a lessee is the same as that of a purchaser in fee" (224 U. S. 565).

In 1885 the Southern Pacific Company became the lessee of all the Southern Pacific railroad lines, including the Sunset Gulf Route between San Francisco and New Orleans, and acquired all or substantially all of the stock of the companies owning the said Southern Pacific railroad lines. In the same year the Southern Pacific Company became lessee of the Central Pacific lines for a 99-year term commencing April 1, 1885, by virtue of a lease dated February 17, 1885 (I R. 6, 13).

It is provided in the lease that

> "The said Central Pacific Railroad Company hereby leases to the said Southern Pacific Company, for the term of ninety-nine years, from the first day of April, A. D., 1885, the whole of its railroad . . . with the right to possess, maintain, use, operate and enjoy the said property and to receive the rents, issues and profits thereof." (I R. 14.)
>
> "And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company." (I R. 18.)

The lease was carried into effect in accordance with its terms. In 1885, therefore, the Southern Pacific Company became the full proprietor of the Southern Pacific railroad lines and the *proprietor* for a term of ninety-nine years of the Central Pacific lines.

We say "proprietor" because in principle the right of a lessee is the same as that of a purchaser in fee. In the early common law an interest for a term of years did not confer an estate in land. But this notion is obsolete, and now a lease has a double aspect; (*a*) it grants a vested estate, a right *in rem,* in respect of the term transferred to the lessee, and (*b*) it is usually executory only in respect of the obligations due from the lessee to the lessor.

In *1 Austin's Jurisprudence,* p. 387, it is said (3rd Am. Ed.):

> "Rights *in rem* sometimes arise from an instrument which is called a contract, and are therefore said to arise from a contract. The instrument in those cases wears a double aspect, or has a twofold effect. To one purpose it gives *jus in personam,* in another purpose it gives *jus in rem* and is a conveyance. When a so-called contract passes an estate, or, in the language of the civilians, a right *in rem,* to the obligor, it is to that extent not a contract, but a conveyance; although it may be a contract to some other extent and considered from some other aspect."

In *24 Halsbury's Laws of England,* p. 264, it is said:

> "At common law an interest for a term of years did not originally confer an estate in the land. Between lessor and lessee there was only a relation of contract, with the result that, if the lessee was evicted, his remedy was to recover compensation

> from the lessor, and though it was afterwards held that he could recover the land itself, the interest in the land which he thereby acquired was liable to be defeated by a collusive recovery suffered by the lessor. This liability was partially removed by the Statute of Gloucester, and more completely by a later statute. The estate in the land which the termor thenceforward enjoyed is therefore in effect the creation of statute."

In the very early common law the lessee's remedy was a personal one against the lessor, in covenant if he was ejected by the lessor; on a warranty for peaceful possession, perhaps, if he was ejected by a stranger. The reason why no possessory action was allowed a lessee originally was that such actions were reserved for freeholders.

Ultimately, however, the law allowed the lessee the legal advantages of possession. This, as stated above, was brought about by the enactment of two statutes passed in 1278 and 1529, each of them designed to protect the lessee in his possession and to prevent a dispossession of the lessee by a feigned recovery suffered by the lessor in an action brought by a third person.

Thus it came to pass that the lessee was given a possessory action theretofore reserved only for the owners of freehold estates, and by being thus confirmed in his possession and the right to recover possession if evicted, the lessee came to be regarded as the owner of an interest in the land itself, and the lease as an interest in the land.

The rights of a lessee having been perfected long before the American Colonies were founded, the rights of the lessee and the incidents of a lease as they existed

in England at the time of the foundation of the colonies became a part of the common law of each of the American states which adopted the common law as its basis of jurisprudence. When, therefore, we speak of the common law rights of a lessee in any of the American states, we mean the rights which a lessee had in England at the time the colonies were founded. This, as we have already shown, was not the original common law right, but the right as developed and altered by statute to give the lessee an interest in the land itself and to make a lease a conveyance of an interest in land. Under the common law of every American state, therefore, a lease is a conveyance of an interest in land, and is for all practical purposes a sale of the subject matter of the lease for a term of years instead of in perpetuity.

In principle, there is no inherent difference between a sale and a lease. A lease may be said to be a conveyance for a term of years, and a sale a conveyance in perpetuity. Each vests an estate—a sale an estate in perpetuity; a lease an estate for years.

That there is no difference in principle between a leasehold interest and a fee was recognized by this court in *Waskey v. Chambers*, 224 U. S. 564 (1912).

Mr. Justice Holmes, in giving the opinion of the court, said (pp. 565-6):

> "It is obvious that in principle the right of a lessee is the same as that of a purchaser in fee. . . . Blackstone defines a lease as a conveyance, 2 Com. 317, and in Sheppard's Touchstone, 267, leases are ranked under the head of grants,—'as in other grants'."

See, also, the following:

"That a lease is a conveyance has frequently been judicially recognized. . . . A lease is, primarily, not a contract but a conveyance."

I Tiffany on Real Property, (2nd Ed.) Vol. I, p. 98.

" 'A lease has a dual character—it presents the aspect of a contract and also that of a conveyance.' (Pollock on Contracts, 3d Am. ed., p. 531.) 'Consequently the lease has two sets of rights and obligations—one comprising those growing out of the relation of landlord and tenant, and said to be based on the 'privity of estate', and the other comprising those growing out of the express stipulations of the lease, and so said to be based on 'privity of contract'."

Samuels v. Ottinger, 169 Cal. 209, 211 (1915);

Realty and Rebuilding Company v. Rea (Sup. Ct. Cal., 1920), 194 Pac. 1024, 1026.

"A lease is a conveyance or grant. . . . The use of the word 'lease' in the agreement operated to convey. . . . In our opinion, the instrument conveyed an unconditional estate of real property."

Milliken v. Faulk, 111 Ala. 658; 20 So. 594, 595 (1896).

"A lease is but a conveyance of an estate in realty. It divests the owner, for a given time, of a certain estate in the realty, leaving in him the reversion. In a sense, therefore, the lessee is as much the owner of the right of possession of the leased premises as the grantee in a deed is the owner of the freehold,"

Mattingly's Executor v. Brents; 155 Ky. 570, 159 S. W. 1157 (1913).

In *Venner v. New York Central & H. R. R. Co.*, 177 App. Div. 296, 347, 164 N. Y. S. 626, 660 (aff'd. 226 N. Y. 583; petition for writ of certiorari denied by this court, 249 U. S. 617), the court, in speaking of leases made prior to the Sherman Act, said:

> "It is not the intention of the Federal acts [Sherman and Clayton Acts] to subvert titles vested before their passage. . . . In the Standard Oil case the court took account of acts prior to the passage of the statute only as they reflected upon the subsequent acts, a course followed in U. S. v. E. I. Du Pont de Nemours & Co. (188 Fed. Rep. 127, 134). . . . In United States v. Freight Association (166 U. S. 290) the court was not dealing with property long vested in ownership. There were involved acts begun before the incoming of the Federal statute, and pursuant to an agreement from which any party could retire on thirty days' notice, and which the parties dissolved on one day by a resolution of the previous day. It vested no property rights, and was not intended to do so, and its obligation was practically at the will of each member. The court said: 'We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it has been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act'."

It was held accordingly that the status created by the leases before the act was passed could not be challenged.

We reserve for later consideration the argument of counsel for the Government that the lease of the Central Pacific lines to the Southern Pacific Company was invalid.

III.

The Act of July 7, 1898 (30 Stat. 652, 659) creating the commission for the settlement of the Central Pacific debt, contemplated as natural if not inevitable, the agreement subsequently made, and it invested the commission with full authority to agree to the plan which was adopted for the payment of the indebtedness, including the provision by which the Southern Pacific Company acquired the stock of the Central Pacific Company.

March 16, 1897, Mr. Gear introduced a bill for the appointment of a commission consisting of the Secretary of the Treasury, Secretary of the Interior and the Attorney General to settle the debt of the bond-aided Central Pacific lines (p. 140, *supra*). The report accompanying the bill speaks of the failure of Congress to enact any measures for the adjustment of the Central Pacific indebtedness as follows (p. 143, *supra*):

> "In each instance, however, the proposed bills have failed, either on account of failure of the Houses of Congress to reach them for consideration, or on account of adverse action which it is believed was predicated, to a controlling extent, upon the conviction that Congress, with the vast multiplicity of matters constantly demanding its attention, could not devote the requisite time to the grave consideration of the many diverse elements affecting this question and necessarily affecting any specific plan devised for its adjustment."

The report points out that it was believed that the matter could be more adequately dealt with by three members of the Cabinet, subject to the approval of the President. This plan, as we know, was adopted by the enactment of the law passed July 7, 1898.

The lease of the Central Pacific to the Southern Pacific of February 17, 1885, had been laid before Congress, February 5, 1886 (p. 126, *supra*), and all of the later leases except one had been submitted to Congress, January 13, 1897 (p. 138, *supra*). The exception is the lease of April 15, 1897, which had not yet been made, and which was executed only in order that the fiscal year, for purposes of accounting might conform to the requirement of the Interstate Commerce Commission.

It is clear, therefore, that Congress understood the situation very fully, and knew that the Southern Pacific owned the Central Pacific lines for a 99-year term ending January 1, 1984.

It is also to be remembered that the Act of July 7, 1898, was intended to procure a settlement and not to bring about a foreclosure. The Government wished its debt paid; it did not wish foreclosure. Senator Gear's report of March 16, 1897, says:

> "It is believed, however, that a result much more advantageous to the United States can be reached by agreement with the Railroad Company than would be reached by a foreclosure of the second lien held by the Government, subject to this large first mortgage lien, or by the foreclosure of the first mortgage and the Government liens concurrently."

The act, therefore, was an act for an adjustment and settlement with both the Central Pacific and Southern Pacific companies, for it was inconceivable that any settlement could be reached without the consent of the Southern Pacific Company. There could have been foreclosure of course, but foreclosure was neither intended nor desired.

Judge Hook describes the settlement with the Government as follows (239 Fed. 1002; VI R. 2331):

> "That the Southern Pacific control of the Central Pacific was not regarded as contrary to the statutes of the United States appears from the proceedings under the Act of July 7, 1898 (30 Stat., 659). By that act a commission consisting of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, was appointed to settle the Central Pacific debt to the United States. The act provided that 'any and all settlements' should be subject to the approval of the President. William McKinley was then President and the other officials were Lyman J. Gage, Cornelius N. Bliss and John W. Griggs. The settlement was effected as of February 1, 1899. At that time the Central Pacific debt to the United States for Government aid in the construction of the lines between Sacramento and Ogden, and Sacramento and San Jose, amounted to $58,812,715.48. More than half of this amount was accrued interest and it was secured by a statutory lien on the two bond aided lines subject to prior first mortgages. In addition the Central Pacific bonded debt then amounted to $57,471,000, most if not all of which was secured by first mortgages upon its various lines of road. It had outstanding $67,275,500 of stock. Before stating the details of the settlement, the conditions in the light of which the statute authorizing it was passed may be briefly mentioned. Congress had been

fully aware for many years of the relations between the Central Pacific and the Southern Pacific. As early as 1886 the President transmitted to the House of Representatives a copy of the lease of 1885 and from that time on the connection of the two companies was frequently the subject of official and legislative communications and reports. In February, 1890, a copy of the lease was laid before the Senate with the report of a committee in which it was said:

> 'It is manifest from the terms of their lease that any bill for the adjustment and settlement of the debt of the Central Pacific Company must, in order to be efficacious, contain provisions by which this lease and the obligations of the Southern Pacific Company under it shall become security to the United States, and that the consent of the Southern Pacific Company shall be obtained to such provisions of the bill.'

The committee was of the opinion that the existing security of the Government on the Central Pacific property was inadequate and that in case of foreclosure of the first mortgages the property would be substantially exhausted in satisfying them. They reported that among the plans suggested to them was one 'That all the associated lines forming the Southern Pacific Company (and these include the Central Pacific as consolidated) become parties' to 2 per cent. bonds of the United States secured by a first lien upon the consolidated properties of all the lines. The above is but a small part of a continuous history of legislative efforts in the years preceding the act appointing the commission. Congress was fully informed of the lease and its terms, and that in any conventional settlement the Southern Pacific could not be ignored but had to be reckoned with. Agreement or litigation with the Southern Pacific were unavoidable alternatives, and the remedy by foreclosure of the statutory lien meant prob-

able substantial loss. While the bills introduced in Congress to effect a direct legislative settlement did not pass, it does not appear that the failure was due to a definite opposition of that body to the relation between the two companies. But however that may be, the whole situation in all its angles and complications was public history, and with definite knowledge of it Congress committed the settlement to the commission. The commission was given 'full power to settle the indebtedness . . . upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads'. The power, however, was subject to the following limitations: The Government was to receive not less than the full amount of principal and interest due it; in equal semi-annual installments; with interest not less than 3 per cent. per annum, payable semi-annually; 'with such security as to said commission may seem expedient'; final payment and full discharge not to be postponed beyond ten years; all to become due upon default in any installment or interest; and if settlement was not perfected the President should proceed at once to foreclose. No other conditions than these were prescribed.

An agreement of settlement as of February 1, 1899, was made and signed by the commissioners, the Central Pacific and Messrs. Speyer & Co., who were managing the reorganization of that company. It was approved by the President. Contemporaneously with the consummation of the settlement the Central Pacific was reorganized under a plan that provided for a new Central Pacific company and its issue of $100,000,000 of first refunding 4 per cent. mortgage bonds. The plan also contemplated the guaranty of the bonds by the Southern Pacific and its acquisition of the stock of the new company. There was the same publicity of the details of this plan as generally attends the reorganization of important railroad

systems, and the commission was advised of them in the early stages of its preparation. By the agreement of settlement the Central Pacific was to execute to the United States twenty promissory notes dated February 1, 1899, payable, respectively, on or before the expiration of each successive six months for ten years, each for the sum of $2,940,635.48 or one-twentieth of the total debt, and bearing interest at 3 per cent. per annum, payable semi-annually. Each note contained a provision for the maturity of all upon partial default as provided in the act appointing the commission. The Central Pacific 'or its successor company having title to the aforesaid railroads' was also to make an issue of 45 year four per cent. gold bonds not exceeding $100,000,000 in all, secured by a first refunding mortgage upon all its railroads, whether bond aided or not, and all its equipment and terminals. The bonds were to be further secured by the guaranty of the Southern Pacific and were to be, as expressed in the agreement of settlement, 'prior in lien to any lease of the railroads of said Central Pacific'. Of these bonds $58,820,000 were to be deposited with the Treasurer of the United States as security for the twenty installment notes. In addition, Speyer & Co., reorganization managers, were within one month after the execution and delivery of the notes to purchase from the United States without recourse the four earliest maturing and pay therefor the face amount, $11,762,543.12, and accrued interest. A proportionate amount of the collateral mortgage bonds was to go with the four notes. The above constituted the security which seemed expedient to the commission within the authority conferred by the Act of Congress.

The agreement of settlement was carried out in all its details. The lease to the Southern Pacific was subordinated to the mortgage securing the new first refunding bonds by an indenture executed by that company which recited as consideration

'the benefits and advantages to be derived by said party of the first part (the Southern Pacific) from the carrying out of the agreement between the United States, the Central Pacific Railroad Company and Messrs. Speyer & Co., dated February 1, 1899'. On February 15, 1899, the commission reported to the House of Representatives. The report was in general terms and referred to the agreement of settlement a copy of which accompanied it. No reference to the guaranty of the Southern Pacific appeared in the report or the agreement, but the proof is convincing that the commission regarded it as a vital feature of a settlement. In the annual report of the Attorney General to the Senate and House of Representatives in November, 1899, the completion of the settlement was set out but the guaranty of the Southern Pacific was inadvertently stated as being upon the notes instead of upon the bonds securing them. With the exception of some credits which will be presently mentioned the notes held in the Treasury of the United States were paid by the checks of the Southern Pacific. That company charged the amounts to the Central Pacific upon their inter-company accounts."

It is therefore clear that Congress contemplated the likelihood of an adjustment of the matter through the Southern Pacific, actuated by its interest in and affiliations with the Central Pacific. The fact that the President and the three members of his Cabinet saw nothing wrong in making the settlement does not suggest that they were unmindful of their duty, but argues that what they did was in full performance of their duty and quite within the law, and the contemplation of Congress.

Judge Hook's opinion contains the following upon this point (239 Fed. 1004; VI R. 2333):

"The rule as to the persuasive force of an administrative construction of statutes is a familiar one and is frequently applied, but in the case before us there was more than the ordinary acts of public officers subject to legislative restraint. Here there was a commission composed of the very highest officials of the government specially created and charged with the adjustment of a difficult and complicated business that had for years engaged the attention of Congress. Limitations upon their power and conditions to be observed were expressly set forth in the statute but none remotely suggesting any obstacle in the Anti-Trust Act. Except as to those limitations and conditions plenary power was given them. The relations between the Southern Pacific and the Central Pacific, long a matter of public history, naturally foreshadowed the engagement of the former in any adjustment of the financial condition of the latter; and additional considerations then affecting the other transcontinental railroad companies pointed the same way. *So natural if not inevitable was the settlement that was made that the omission of limitations now urged is most significant.* We do not say the commission was authorized to violate or to sanction the violation of the act of Congress, but the adjustment they effected necessarily involved the question of its pertinence to the business in hand. The acceptance of the guaranty of the Southern Pacific was a recognition that it had sufficient corporate interest in the Central Pacific to justify it. Without such interest its accommodation guaranty of $100,000,000 of bonds of another company would manifestly have been *ultra vires*—a gross, indefensible excess of its corporate powers. Again the acceptance of the guaranty implied a recognition of its possible, natural result, that is to say,

> the enforcement of the rights of a guarantor against the property of a debtor. The addition of the stock ownership by the Southern Pacific to its long leasehold interest did not so change the situation as to make unlawful what was not so before."

In the Steel Corporation case, Mr. Justice McKenna comments to similar effect upon the effect of administrative approval.

> "There is, however, an important circumstance in connection with [the purchase of] the Tennessee company which is worthy to be noted. It was submitted to President Roosevelt and he gave his approval. His approval, of course, did not make it legal; but it gives assurance of its legality" (251 U. S. 446).

It will be noted that the case described by Mr. Justice McKenna involved merely a conference with the President, while in the present case, we have a formal agreement, authorized and ratified by Congress, and executed by the President and three members of his Cabinet.

IV.

In any event the government is estopped by its conduct to question the legality of the unified control of the Central Pacific and the Southern Pacific lines.

The 99-year lease by the Central Pacific to the Southern Pacific Company is dated February 17, 1885. The Southern Pacific Company took over the operation of the Central Pacific lines April 1, 1885, and, of course, the fact that it had done so was a matter of

common knowledge throughout the country. The obligations of the Central Pacific to the Government consequent upon the bond aid which it received in the construction of its lines, made it necessary to notify the Government of the lease practically contemporaneously with the event, and that it did so appears from the mention of the lease in the report of the Secretary of the Interior dated November 1, 1885 (p. 124, *supra*). On February 5, 1886, the lease was laid before Congress pursuant to its request (p. 126, *supra*). The existence of the 99-year term created by the lease was frequently considered in Congress in relation to the measures for the refunding of the indebtedness, and in all or nearly all of those measures it was required that the Southern Pacific should insure the financial ability of the Central Pacific to pay the amount which was due.

To sum up briefly, it may be said that Congress dealt with the matter as though the debt could not be settled without the concurrence or participation in the settlement by the Southern Pacific Company. It is true that the 99-year lease was subordinate to the bond issues and to the Government's lien, but the Government did not desire foreclosure. It wanted only to collect the amount due and had no disposition to operate the Central Pacific lines. When, therefore, the Act of July 7, 1898, was passed, it was clearly contemplated that the settlement of the debt would require a plan in which the Southern Pacific Company would participate or, at the very least, to which its consent would be necessary and, indeed, vital. The Southern

Pacific could only have been cut out by foreclosure; but, as foreclosure was not planned except as a last resort, the participation of the Southern Pacific in the plan was a certainty.

As pointed out in the statement of the case (p. 154, *supra*), this settlement required an arrangement that would satisfy (*a*) the bondholders, (*b*) the Government, (*c*) the Southern Pacific, and (*d*) the stockholders of the Central Pacific. If the stockholders of the Central Pacific did not join in the reorganization of the company, there could be no adjustment of the debt and foreclosure would be inevitable.

It was not necessary to the reorganization that all the persons participating in the plan should execute the same instrument; in fact, it frequently occurs in complicated transactions that they do not do so. In dealing with such a transaction, however, it often happens after the event that the instruments are treated, construed and given effect as though they were one instrument.

In *Metropolitan Securities Co. v. Ladd* (C. C. A., 2nd Ct., 1909), 173 Fed. 269, a very complicated plan involved a lease of surface street railway systems in the City of New York, and instruments executed in transactions incident to the lease. The contracts were not all made by the same persons, but they were nevertheless held to constitute a single contract in the language following:

> "In our opinion the true view of the obligation between these parties can only be obtained by considering all the traction companies as being merely

parts or administrative divisions of one complex concern, and all the separate contracts executed, in relation to obtaining $8,000,000 for the New York City Company, *as being one contract,* to be construed together." . . . "These four contracts were made at the same time, were in *pari materia,* and are to be construed together as constituting, in fact, one contract."

This is in accordance with the general rule. Thus, in *Page on Contracts,* Sec. 1116, it is said:

"Even if two writings are executed on different dates and between different parties, they may from their subject matter be so connected that even without express reference the later contract is to be construed as to be read in connection with the earlier."

In *Gammon v. Freeman,* 31 Maine 243 (1850), it was held:

"To constitute several conveyances parts of the same transaction, it is not necessary that the deeds bear the same date; nor that in each of the deeds, the parties should be the same persons."

In the body of the opinion, the Court said (p. 245):

"It will be sufficient that the deeds are delivered at the same time to accomplish the agreed purpose."

In *MacDonald v. Wolff,* 40 Mo. App. 302 (1890), the syllabus is as follows:

"When several instruments are executed at the same time in relation to the same subject-matter and to accomplish a common purpose, and the execution thereof is known to every party to either instrument, they should be construed as one contract, though the parties to each instrument are not the same."

In the body of the opinion, the court said (p. 308):

> "The plaintiff's contracts with defendant and Bowman were of the same date; they related to the same subject-matter; had but a single object, and were substantially between the same parties. It is a well-recognized rule of law that a contract may be contained in several instruments, which, if made at the same time, between the same parties and in relation to the same subject-matter, will be held to constitute but one contract; and for the purpose of arriving at the true intention of the parties all the instruments will be read as one, and the recitals in each may be explained or limited by reference to the others; and it is not necessary that the instruments should in terms refer to each other. . . . In the case of *Gammon v. Freeman, supra*, the Supreme Court of Maine held that, to make two or more instruments one transaction or contract, it was not necessary that the parties to each instrument should be the same; it was sufficient if the contracts were known to all the parties, and were delivered at the same time to accomplish an agreed purpose."

Similarly in *Houck v. Frisbee,* 66 Mo. App. 16 (1896), the syllabus is as follows:

> "A contract may be contained in several instruments. These, if made at the same time, between the same parties and in relation to the same subject-matter, may be read together as one instrument, and the recitals in one way be explained or limited by reference to the other; nor is it necessary that the instruments should in terms refer to each other. And the rule obtains even when the parties are not the same, if the several contracts were known to all the parties and were delivered at the same time to accomplish an agreed purpose."

The two Missouri cases last cited were quoted with approval in *Western Adv. Co. v. Star Publishing Co.,*

146 Mo. App. 90, 123 S. W. 969 (1910), wherein the syllabus is as follows:

> "Several instruments, if made at the same time, between the same parties, and in relation to the same subject-matter, will be read together as one contract, even in the absence of any reference in one to the other, and though the parties are not the same, if the contracts were known to all the parties, and were delivered at the same time to accomplish an agreed purpose."

Another case sustaining the rule is *Bass v. Occidental Life Ins. Co.*, 19 N. M. 193, 142 Pac. 798 (1914), wherein the syllabus is as follows:

> "Even if two writings are executed on different dates and between different parties, they may from their subject-matter be so connected that, even without express reference, the latter contract is to be so construed as to be read in connection with the earlier."

In the body of the opinion the court quoted with approval the cases of *MacDonald v. Wolff* and *Houck v. Frisbee*, also Sec. 1116 of *Page on Contracts.*

In the following cases instruments executed by different parties were construed together, and the procedure was not questioned:

Logan v. Tibbott, 4 Green (Ia.) 389 (1854);

Bradley v. Marshall, 54 Ill. 173 (1870);

Shaw v. First Baptist Church, 44 Minn. 22; 46 N. W. 146 (1890);

Roberts v.Vonnegut, 58 Ind. App. 142, 104 N. E. 321 (1914).

It is not to be said that the entire plan was not known to the President and to the three members of his Cabinet, for the uncontradicted evidence is to the contrary.

The agreement was executed for the Government by President McKinley, Secretary Bliss and Attorney General Griggs February 15, 1899, and by Secretary Gage February 16, 1899. The settlement was reported to both Houses of Congress February 20, 1899. Five days later the plan in full, accompanied by a comprehensive editorial review, appeared in *The Commercial & Financial Chronicle* February 25, 1899 (6 R. 2258-2268), one of the leading financial journals of the country. Frequent accounts of the plan of reorganization of the Central Pacific later appeared in its columns (6 R. 2268-2279).

It is clear upon the facts stated that the Government is estopped to dispute the validity of the 99-year lease or of the acquisition of the Central Pacific stock of the Southern Pacific Company. It remains for us to enquire whether the defense of Government estopped is available to us. In support of this proposition we rely upon the authorities following:

In the Steel Corporation case, 251 U. S. 417, 452-3, Mr. Justice McKenna said:

> "It is certainly a matter for consideration that there was no legal attack on the corporation until 1911, ten years after its formation and the commencement of its career. We do not, however, speak of the delay simply as to its time—that there is estoppel in it because of its time—but on account of what was done during that time—the many millions of dollars spent, the development

made, and the enterprises undertaken, the investments by the public that have been invited, and are not to be ignored."

In *United States v. Willamette Co.*, 54 Fed. 807, 811 (1892), Judge Gilbert said:

> "There is good authority, based upon sound reasoning, to support the doctrine that where the government has acted by legislative enactment, resolution, or grant, or otherwise than through the unauthorized or illegal acts of its agents, and the parties dealing with the government have relied upon the same, and in good faith have so changed their relation to the subject-matter thereof that it would be inequitable to declare such action or grant illegal, the government will be estopped. Com. v. Andre, 3 Pick. 224; Cahn v. Barnes, 7 Sawy. 48, 5 Fed. Rep. 326; State v. Milk, 11 Fed. Rep. 397; Pengra v. Munz, 29 Fed. Rep. 830; Woodruff v. Trapnall, 10 How. 190. . . . It was well said in Woodruff v. Trapnall that we naturally look to the action of a sovereign state to be characterized by a more scruplous regard to justice and a higher morality than belong to the ordinary transactions of individuals."

In *United States v. Detroit Timber & Lumber Co.* (C. C. A., 8th Ct., 1904), 131 Fed. 668, Sanborn, Circuit Judge, says:

> "This is a suit in equity. The equitable claims of the United States appeal to the conscience of a chancellor with the same, but with no greater or less, force than would those of an individual in like circumstances."

In *State of Iowa v. Carr* (C. C. A, 8th Ct., 1911), 191 Fed. 257, 266, Sanborn, Circuit Judge, says:

> "They (counsel for appellants) also contend that every sovereignty is exempted from the rule of

equitable estoppel. But the great weight of authority, the stronger reason, and the settled rule upon this subject in the courts of the United States, is that while mere delay does not, either by limitation or laches, of itself constitute a bar to suits and claims of a state or of the United States, yet when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances."

The State v. Illinois Central R. R. Co., 246 Ill. 188, 92 N. E. 814, 835 (1910):

"Cases may arise of such a character that right and justice will require that equitable estoppel may be asserted even against the State when acting in its governmental capacity."

In *United States v. Flint*, 4 Sawyer 42, 58; aff'd 98 U. S. 61, Mr. Justice Field says:

"The United States, by virtue of their sovereign character, may claim exemption from legal proceedings; but when they enter the courts of the country as a litigant they waive this exemption, and stand on the same footing with private individuals. Unless otherwise provided by statute, the same rules as to the admissibility of evidence are then applied to them; the same strictness as to motions and appeals is enforced; they must move for a new trial or take an appeal within the same time and in like manner, and they are equally bound to act upon evidence within their reach. *And, when they go into a court of equity, they must equally present a case by allegation and proof entitling them to equitable relief.*"

In *United States v. Clark* (C. C. A., 9th Ct., 1905), 138 Federal 294, 299, Ross, Circuit Judge, says:

> "As a matter of course, when the government comes as a suitor into a court of equity, its claims appeal to the chancellor with no greater force than do those of an individual under like circumstances, etc."

In *U. S. v. Flint* (1876), Fed. Cas. No. 15,121 (Field, Circuit Judge), the syllabus reads as follows:

> "If, on consideration of all the circumstances of a given case, it be inequitable to grant the relief prayed against a citizen, such relief will be refused by a court of equity, although the United States be the suitor."

In *United States v. White,* 17 Fed. 561-565 (1883), Sawyer, J., says:

> "When the United States goes into a court of equity as a suitor, it is subject to the defenses peculiar to that court."

In the case of *The Siren,* 7 Wallace 152, 159, it was held that the government by its appearance in court

> "waives its exemption and submits to the application of the same principles by which justice is administered between private suitors."

In *Commonwealth v. Turnpike Co.,* 153 Pa. St. 47, 54, 25 Atl. 1105 (1893), the court says:

> "In England, from whence we derived the great body of common law, and most of our principles in equity, it is well settled that while time will not run against the crown, yet time, together with other elements, may make up a species of fraud and estop even sovereignty from exercising its legal rights."

The relation of acquiescence to estoppel is well expressed in *Norfolk Railroad Co. v. Perdue,* 40 W. Va. 442, 21 S. E. 755 (1895), as follows:

"If a person having a right, and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This is the proper sense of the term 'acquiescence', and in that sense it may be defined as "quiescence", under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct."

V.

The present status of the Southern Pacific-Central Pacific lines was confirmed by the Acts of March 3, 1899 (30 Stat. 1245), and March 3, 1901 (31 Stat. 1023).

In the statement of the case (p. 176, *supra*), we deal with the Act of March 3, 1899, conferring authority upon the Secretary of the Treasury to carry into effect the settlement of the Central Pacific indebtedness to the Government; and (p. 185, *supra*), we deal with the Act of March 3, 1901, which recognized the settlement so made and authorized credits (due in part to the *Southern Pacific*) to be given on the Central Pacific notes executed and delivered to the Government as a part of that settlement.

Judge Hook's opinion deals as follows with Congress's ratification of the settlement (239 Fed. 1005; VI R. 2334):

"With knowledge of the settlement, and, it may be fairly presumed, of the details that were public

history, Congress authorized the Secretary of the Treasury to dispose of 'any notes in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States'. Act of March 3, 1899, 30 Stat. 1245. Further, by the Act of March 3, 1901, 31 Stat. 1023, the Secretary of the Treasury was authorized and directed to settle claims for interest growing out of transportation services for the Government 'over non-bond aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting' the amounts upon the Central Pacific instalment notes. This was done. The claims were just debts of the Government, and the legislative direction to credit those due the Southern Pacific upon the indebtedness of the Central Pacific was a recognition in some degree at least of a relationship between the two companies that justified it. There was no other warrant or authority than that which arose from the proprietary position of the Southern Pacific."

If these Acts of Congress had been less plain, clear and explicit than they are, they would nevertheless have been sufficient to ratify the settlement made by the Government, including the provision by which the Central Pacific stock was acquired by the Southern Pacific Company. This will appear from the following authorities:

In *Grogan v. San Francisco,* 18 Cal. 590, 609 (1861), Mr. Justice Field says:

> "The State may ratify the acts of her agents upon a subject within the constitutional control of the Legislature, when they exceed their powers. *She may do this by legislation directly affirming the acts, or by legislation proceeding upon their assumed validity.*"

In *Abbott v. N. Y. etc. R. R. Co.*, 145 Mass. 450, 459; 15 N. E. 91, 102 (1888), Mr. Justice Holmes says:

> "It thus appears that for twenty years the Commonwealth has constantly dealt with this corporation and its predecessor as having a good title to the road, and as having possessed the powers which they assumed to exercise. The Commonwealth has advanced a large sum of money on that assumption. For nearly twenty years before these actions were brought the plaintiffs have acquiesced in the same view, while the road over their lands has been in public operation. Meantime the mortgage was made, and the bonds were sold in the market. *We think that courts should be slow to pronounce the Legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will, when for so long a time everything has been conducted upon that footing.* But we are satisfied, for the reasons which we have given, that the opinion of the Legislature was correct, and that the Boston, Hartford and Erie Railroad Company must be taken to have had the power and right to make its location of July 30, 1866."

In *Deseret Salt Co. v. Tarpey*, 142 U. S. 241 (1891), Mr. Justice Field said (p. 253):

> "We do not think the provision was designed to impair the force of the operative words of transfer in the grants of the United States, or invalidate the numerous conveyances by sale and mortgage of the lands made by the railroad company, *with the express or implied assent of the government.*"

In *United States v. Northern Pacific Ry. Co.*, 177 U. S. 435, 441, Mr. Justice Shiras said:

> "There would seem to be room for a fair presumption that Congress was aware of the action of the President and of the functionaries of the land department in the particulars before mentioned, and approved of the same."

In the case of *State v. Hallock,* 20 Nev. 73, 15 Pac. 472 (1887), it was held that the legislature of the state acquired knowledge of the methods pursued by the fiscal officers of the state in dealing with appropriations made by it for the carrying on of the Government, through the reports of the Comptroller which were annually transmitted to the legislature. At page 74 of the opinion the court says:

> "At each biennial session the legislature appropriates money for the purpose of carrying on the government for the two years then running. . . . The fiscal officers of the state government have uniformly construed these laws, by usage, as intending an appropriation for the limited time only; that is to say, the appropriation is to meet, within the named fiscal years, the liabilities incurred during those years. Unexpended balances against which no warrants have been drawn are considered as having lapsed, and are carried to the general fund of the treasury. This manner of treating appropriations made for the support of the civil government *is known to the legislature from the annual reports of the comptroller, submitted at each session for its information.*"

In *Michigan Land & Lumber Co. v. Rust,* 68 Fed. 155, 164 (C. C. A., 6th Ct., 1895), the court said:

> "The state . . . in its legislative capacity knew how the adjustment (of the state land grant) was going forward. The reports of the Commissioner of the State Land Office showed it, and the legislature of 1857 enacted a statute to forbid sales of lands before patents were received."

In *Michigan v. Jackson etc. R. Co.* (C. C. A., 6th Ct., 1895), 69 Fed. 116, 121, the court said:

> "*Express knowledge was communicated to successive legislatures by the reports of the Commissioner of the State Land Office, and messages from the Executive.*"

Shaw v. Kellogg, 170 U. S. 312, 339, holds that reports of the Surveyor-General and of the Land Department made to Congress, are notice of their contents to the legislative body.

> "As it appears by the report of the Surveyor-General and of the Land Department, transmitted to Congress in 1864, the fact that this land had been finally appropriated to the claim of the Baca heirs was disclosed. *Mention of that fact was also made in subsequent reports to that body, and yet from that time to the present Congress has taken no action in the matter, and has thus by its silence confirmed the proceedings of the Land Department.*"

In *State v. New Orleans,* 104 La. 685, 690, 29 So. 312 (1900), it appeared that the State had granted to a railroad company a right of way for its road over some public land adjoining a canal, and the company had subsequently transferred this right to another company. The court said:

> "The State was formally notified of what had been done, and was apprised not only of the fact that its grantee had transferred all the rights granted, including the free use of the land in question, but was informed of the manner of the transfer and the consideration therefor, *by the filing in the office of the Secretary of State in January, 1876, of a copy of the instrument by which the said transfer was effected.*"

In *State v. Flint etc. Railroad Co.,* 89 Mich. 481, 491-2, 51 N. W. 103 (1891), certificates prepared by the

Department of the Interior, attesting that the lands in controversy had been granted to the State under the Railroad Act of June 3, 1856, were filed in the appropriate state department; and it was held that the filing in the department of these certificates was notice to the State that it had acquired the lands under the Act referred to.

> "The identification of these lands", said the court, "and their certification to the State, were a solemn declaration on the part of the United States that they came to the State under the railroad grant, and not under the swamp-land grant. This declaration stood for 28 years without challenge from the State, and *with the evidence thereof on file in its own department. It knew that the railroad company took these lands under the railroad act.*"

In *Atchison v. Peterson,* 20 Wall. 507, 512 (1874), this court said:

> "*The government, by its silent acquiescence, assented* to the general occupation of the public lands for mining, and, to encourage their free and unlimited use for that purpose, reserved such lands as were mineral from sale and the acquisition of title by settlement."

In *Buford v. Houtz,* 133 U. S. 320 (1890), this court, while speaking of the depasturing of the public lands by the public, said (p. 326):

> "*The Government of the United States, in all its branches, has known of this use, has never forbidden it, nor taken any steps to arrest it. No doubt it may be safely stated that this has been done with the consent of all branches of the government, and, as we shall attempt to show, with its direct encouragement.*"

Finally, we may say of our rights, as this court said:

In *Broder v. Water Co.*, 101 U. S. 274, of the rights of the miners (p. 276):

> [These] "are rights which the Government had, by its conduct, recognized and encouraged and was bound to protect."

VI.

It is established by the opinion and decree in United States v. Union Pacific Railroad Company, 226 U. S. 61 (1912), that up to the time of the Union Pacific merger in 1901, "sharp, well defined and vigorous" competition existed between the Ogden and El Paso routes, notwithstanding the ownership of the Central Pacific by the Southern Pacific; and it is here in proof that the competitive conditions of 1901 and before were restored after the unmerger in 1913.

The defendants have offered in evidence the Government's Brief of Facts filed in this court in the Union Pacific Case (III R. 933).

In that brief the Government argued (p. 39) that

> "there was the same incentive to active, energetic competition between these lines [the Ogden and El Paso routes] that there would have been had the Southern Pacific not owned the lines between Ogden and San Francisco."

Again (p. 78):

> [The defendants] "made no effort to break down or contradict the showing made by the complainant as to the active competition thus existing up to the time of the merger between the two systems."

Again (p. 86):

> "The Southern Pacific, *as a matter of self-preservation,* was always compelled to and did gladly interchange business with the Union Pacific, accepting for its share of the through haul the division of the through rate accorded to it by consent, from 1870 down to the present time."

Again (p. 88):

> "It is a new suggestion, born out of the necessities of this case, that the Union Pacific could not be a competitor of the Sunset Route of the Southern Pacific because it does not reach through to California, and hence had no power independent of its connections to make rates."

Again (p. 276):

> "The Southern Pacific was helpless to destroy that competition simply by the ownership of the line from Ogden to San Francisco."

These extracts from the Brief of Facts show clearly what the Government attempted to establish in the Union Pacific case. The decision of this court upon the point was in accordance with the contention of the Government, and it was found in terms and declared to be the fact that, notwithstanding the ownership of the Central Pacific by the Southern Pacific, competition between the Ogden and El Paso lines at the time of the merger in 1901 and before was "sharp, well defined and vigorous".

The Southern Pacific Company was a party defendant in the Union Pacific suit from the beginning and the Central Pacific Railway Company became a party before the final decree. The opinion and decree are

therefore binding upon the Government, and conclusively determine the fact.

It has been established by uncontradicted testimony in the present case that the competitive conditions which existed in 1901 and before have existed ever since the unmerger in 1913 (p. 220, *supra;* also Spence, III R. 1038).

VII.

It is thus apparent that we may draw upon the three departments of the Government of the United States for support in our position that the Southern Pacific may and does lawfully control and operate the Central Pacific and that no violation of the Anti-trust Act is involved in such control and operation.

Legislative Action.

Congress's long acquiescence in the control of the Central Pacific by the Southern Pacific arising out of the lease of February 17, 1885; the Act creating a commission "*with full power to settle* the indebtedness to the Government" which was clearly intended to give authority if the Commission were so minded, to deal with the Southern Pacific; and the passage of the Acts of March 3, 1899 (30 Stat. 1245), and March 3, 1901 (31 Stat. 1023), whereby Congress ratified the action of the Commission in participating in a plan having for one of its essential features the acquisition of the Central Pacific stock by the Southern Pacific—all establish beyond peradventure a determination by Congress that the ownership of the Central Pacific by the

Southern Pacific did not involve undue restraint of commerce or any other violation of the Anti-Trust Act.

Executive Action.

The same determination was made by the Executive Department of the Government. The President, Secretary of the Treasury, Secretary of the Interior and Attorney General, upon a full understanding of the facts, entered into a plan which included the acquisition of the Central Pacific stock by the Southern Pacific Company as one of its essential features, and their action can only be interpreted to mean that they determined by implication that the ownership of the Central Pacific by the Southern Pacific did not involve an undue restraint of commerce or the violation of any other provision of the Anti-Trust Act.

It is true that Attorney General Griggs was asked if that question had been considered or discussed, and that he answered no (III R. 1008), but the very fact that it did not arise and did not suggest itself to any of the officers of the Government is striking proof that the plan was not unlawful in conception or execution.

Judicial Action.

We have already shown that the Union Pacific case determined that no undue restraint of commerce resulted from the ownership of the Central Pacific by the Southern Pacific.

Governmental Acquiescence.

Silence and acquiescence when it would be a duty or natural to speak in protest, were protest justified, is

taken the world over as evidence of the rightfulness of conduct. This principle, born of common experience, is applicable to the present case. The Government knew, the whole world knew, that the Southern Pacific acquired the Central Pacific stock, and they knew it in 1899. There was no protest by the executive department of the Government—there was no protest by Congress—that the Government had been overreached, or that in the settlement of the Government debt with the Central Pacific the Southern Pacific had brought about an illegal combination and violated the Anti-Trust Act. The Government acquiesced in the purchase. There was no murmur of protest, and no challenge, until 1913 (fourteen years after the event), when the then Attorney General, while attempting to devise a plan for the disposition of Southern Pacific stock held by the Union Pacific, conceived the idea that the Southern Pacific should be compelled to sell the Central Pacific to the Union Pacific.

We rely upon these fourteen years of silence and acquiescence (not to mention the added nine years, 1890-1899, of Southern Pacific operation under the lease of 1885) for persuasive and indeed compelling evidence and argument, both in point of fact and of law, that the Southern Pacific rightfully and lawfully acquired the stock of the Central Pacific.

VIII.

Irrespective of the considerations already dealt with, and considering the matter as an open question, traffic conditions between the El Paso and Ogden routes are such that the control of the Central Pacific line by the Southern Pacific Company, does not constitute an undue restraint of commerce.

In order to make out a case under the Anti-trust Act it was incumbent upon the Government to show (a) acts done by defendants in violation of the statute, i. e., a contract, combination, or conspiracy, or an attempt to monopolize, of the prohibited character and purpose; and (b) a resulting unreasonable restraint of trade existing at the time of the institution of the suit. We have already presented the facts and reasons which show that the common control of the Central Pacific lines and the other lines of the Southern Pacific System did not arise from and do not constitute a contract, combination or conspiracy, or an attempt to monopolize, within the prohibition of the Anti-trust Act. Having established the defense based on the origin and nature of the union under one control of the railway lines in question, that ends the case, and it is immaterial to consider the potentialities of the situation in respect to competition, whether there would be any more benefical and effective competition than now exists, if the common control complained of were dissolved by a separation of the lines standing in the name of the Central Pacific from the other lines of the Southern Pacific System.

For the purpose of covering the whole case we now, however, leave out of consideration the defense based on the original conception, the construction, and the subsequent growth and development of the Central Pacific and the other lines of the Southern Pacific System always as one enterprise and one property, and present the facts and reasons which, in our opinion, show that the common control of the Central Pacific lines and the other system lines has not prevented the competition referred to in the Government's petition, the prevention of which is relied upon to establish an unlawful restraint of trade, and that the termination of this common control as prayed for would not increase such competition or make it more effective, and would not benefit the public by any addition to the general stock of railroad competition.

There is no competition, actual or potential, between the Central Pacific lines considered by themselves and the other lines of the Southern Pacific System. The competition, the destruction or prevention of which is complained of, is the competition between the Ogden route and the Sunset-Gulf route. It is alleged, not that the Central Pacific is a competitor, but that the Central with its eastern connections is a competitor, of the Sunset-Gulf route (I R. 7). On this branch of the case the real and substantial question is the effect of the common control on the competitive striving for traffic between these two alternative routes.

Another fact to be borne in mind is that competition between the two routes is subject to certain inherent

and natural limitations. It is thus limited in respect of territory and in respect of commodities.

For example, the Sunset-Gulf route and the Ogden route are not competitors for traffic originating in the Middle West and destined to Southern California (I R. 365). The existence of the line from Salt Lake to San Pedro controlled by the Union Pacific Railroad Company is shorter by some four hundred miles than the route through Sacramento, via Ogden, and consequently no appreciable traffic having the origin or destination above mentioned now moves via Ogden and Sacramento (I R. 361). On the contrary it is actively competed for by the Union Pacific and its San Pedro branch and the Sunset route through its connections at El Paso (I R. 364). On traffic originating in the Middle West and destined to Central or Northern California, the Sunset-Gulf route has scarcely ever been a substantial factor. The Ogden route as to such traffic is, and always has been, the best and shortest route, and according to the Government's chief witness (Mr. Connor), any Middle West shipper who understood his business and knew anything about traffic conditions would select the Ogden route for Northern and Central California freight (I R. 364). This same witness gave it as his prediction that by 1917, seventy-five per cent. of this traffic would pass over the Ogden route, twenty per cent. over the Sante Fe, and the other five per cent. over the Western Pacific. The Sunset Gulf route would be completely eliminated from this traffic (I R. 362, 363). Thus it would appear that on traffic originating in the Middle West and destined

to Southern California, the route by way of Ogden has been eliminated as a competitive factor by reason of the advent of the Union Pacific line between Salt Lake and San Pedro. On the other hand, the Sunset-Gulf route has never been a substantial factor in the transportation of freight originating in the Middle West and destined to Central and Northern California. For the same reasons, the Ogden route has been eliminated with respect to traffic originating in Atlantic seaboard territory, being the territory east of Buffalo, Pittsburg and Cleveland and north of the Ohio and Potomac Rivers (I R. 61), and destined to Southern California.

The natural limitations imposed upon competitive relations by territory, is shown by Mr. Lincoln, a witness for the petitioner, when speaking of the competition between the Santa Fe and Ogden route, the Western Pacific and the Rock Island. He says:

> "They are restricted, as I say—some of the main lines in the territory of competition—by reason of natural conditions, and by reason of service. A fair illustration of the competition that existed in 1901 and the competition that exists to-day, is this: At one time there was considerable traffic moving through Central Freight Association territory—not from Chicago proper, but Central Freight Association Territory, Ohio and Indiana points—down by way of New Orleans to California points, *and I do not believe that there is much of that business moving to-day* because it is too long a line. To-day that business will move for San Francisco through the Missouri River gateways very largely, and to Southern California through the Southwestern gateways." (I R. 126, 127.)

So also competition between the Sunset line and the Ogden line is inherently restricted by the character of the commodity carried. Certain traffic cannot be moved by a mixed rail and water line (III R. 1036, 1037). Climatic conditions also act as an inherent limitation upon competition between the two lines. Thus, perishable fruits and vegetables and the like at certain periods of the year on account of the heat cannot be moved over the Sunset route without the extra expense of refrigeration (I R. 165, 184, 185).

In the testimony of the witness Spence (III R. 1032-1037) it is also shown that for the reasons above named the two routes are competitive only for traffic between Northern or Central California and Atlantic Seaboard territory, capable of transshipment. This is only about 16% of the through tonnage over the Ogden route (Id. 1048). This figure is significant in showing the immense volume of traffic which the Southern Pacific has an interest in securing for the Ogden route and which it could not secure if, for the sake of a much smaller amount of traffic, it failed to keep its end of the Ogden line in the best condition or injured the good will or reputation of the Ogden route by failing to give the best of services in respect of any traffic moving over that route.

We shall now undertake to establish the following propositions:

1. The common control complained of has not prevented active, vigorous and effective competition between the Ogden route and the Sunset-Gulf route.

2. Such common control has not created either motive or power to prevent such competition.

3. The termination of the common control would not increase such competition or benefit the public in any way. On the contrary the competition would be less effective and the public would receive less efficient service at greater cost.

---

1. The first proposition, that there exists active, vigorous and effective competition between the two routes is established in the following ways:

(a) In passing upon the application of the Southern Pacific Company, under the Panama Canal Act amendment of the Interstate Commerce Act, for permission to continue to operate the line of steamships which form part of the Sunset-Gulf route, it became the duty of the Interstate Commerce Commission to consider the competitive relations between the Ogden route and the Sunset-Gulf route. This application was filed on February 18, 1914, submitted June 1, 1916, and decided January 24, 1917 (see *Southern Pacific Company's Ownership of Atlantic Steamship Lines*, 43 I. C. C. 168). The Commission found, and so reported, that there existed "most active and vigorous competition" between the Ogden route and the Sunset-Gulf route. A fuller discussion of the nature and effect of this report will be found at pp. 253-259, *supra*.

(b) The existence of "sharp, well defined and vigorous competition" between the two routes, notwith-

standing the inclusion of the Central Pacific lines in the Southern Pacific System, was alleged, proved and decided in the suit of the United States against the Union Pacific Railroad Company et al., to unmerge the Union Pacific and the Southern Pacific. In its brief in that case the Government argued successfully that the Southern Pacific Company's ownership of the line between Ogden and San Francisco created neither power nor motive to prevent such competition. In deciding the case in favor of the Government this court referred to the competition between the two routes prior to the merger of the Union and Southern Pacific as "sharp, well defined and vigorous". We have already called attention (Point VI, *supra*) to the inconsistency between the contentions of the Government, which prevailed in the unmerger suit, and its contention in this suit that the common control it complains of is destructive of competition between the two routes.

(c) The existence at all times, except during the merger of the Union Pacific and the Southern Pacific, of active, vigorous and effective competition between the Ogden route and the Sunset-Gulf route is shown by the uncontradicted testimony of a number of competent witnesses, witnesses for the Government as well as for defendants. All the witnesses concurred in declaring that, in respect to all the traffic for which the two routes could compete, the Southern Pacific Company, on the one hand, and the Union Pacific, in connection with representatives of its eastern lines, on the other hand, strove in every way known to railroad men, one

to secure the traffic for the Sunset-Gulf route, the other for the Ogden route, and that the Ogden route was not handicapped, in any way, in this competitive contest, by service on the western end or otherwise. The Ogden route is declared by the witnesses to be the best maintained, equipped and operated of the all-rail transcontinental routes and the strongest and ablest competitor for such traffic. See testimony of Spence (III R. 1037-1039; 1045-1048); of Kruttschnitt (II R. 732-4; 740); of Schumacher (I R. 148; 163-167; 173); of Lincoln (I R. 121, 123); of Chambers (III R. 950-952; 967-968; 983).

2. That the common control complained of has not created either motive or power to prevent active and effective competition between the Ogden route and the Sunset-Gulf route is testified to by a number of competent witnesses, who support their statements by convincing reasons, and there is no evidence to the contrary. See testimony of Mr. Kruttschnitt (II R. 733-4; 740) and of Mr. Spence (III R. 1048).

The Southern Pacific Company as owner of the capital stock of the Central Pacific and as the guarantor of its bonds has a tremendous financial interest in that Company. The Government therefore, must admit that the Southern Pacific wants the Central Pacific to get all the traffic which the Sunset-Gulf route cannot compete for or which it fails to get by competition. The Government must also know that the traffic which is not subject to competition between the two routes far exceeds in volume and value the competitive traffic and that all of such traffic is the subject of the fiercest

competition. Especially is this true of traffic for which the two routes compete. Participating in the struggle therefor are the all-rail route of the Santa Fe, the Santa Fe-Mallory Line route, the Western Pacific and its eastern connections, the Rock Island-El Paso route, and the half dozen steamship lines via Panama, the most powerful of all the competitors. It would be suicidal, as Mr. Kruttschnitt says, for the Southern Pacific Company to do anything in the way of impairing service on its end of the Ogden route, or to fail to do everything in the way of service to make that route a success, in the hope of benefiting the Sunset-Gulf route. Such conduct would in all likelihood result in benefit to some one or more of the outside competitors, and would undoubtedly cause incalculable injury in its reaction upon the immensely larger and more valuable traffic which the forces of the Southern Pacific and Union Pacific are striving to secure for the Ogden route. It was held in effect by this court in deciding the Union Pacific-Southern Pacific unmerger suit that the Southern Pacific Company was, at the time of the merger, powerless to prevent competition between the Ogden and Sunset-Gulf routes. Subsequent changes in conditions have only made the Southern Pacific Company more impotent in this respect. Among these changes may be mentioned the Hepburn Act (34 Stat. 584) empowering the Interstate Commerce Commission to establish through routes and joint rates between connecting lines; the amendment to the Interstate Commerce Act in 1910 (36 Stat. 552) giving to the shipper the right to designate the routing of his freight; the

construction to San Francisco in 1910 of the Western Pacific Railway Company's line, which connects with the Denver and Rio Grande at Salt Lake City; the doubling of the "retaliatory powers" of the Union Pacific by its acquisition of the San Pedro line from Salt Lake City to Los Angeles.

The foregoing is confirmed by the fact, testified to by a number of witnesses, and disputed by none, that the Ogden route is the strongest and most successful of the all-rail competitors for transcontinental traffic, including Atlantic seaboard territory traffic, and is also confirmed by the absence of any complaint from the Union Pacific in regard to physical maintenance, service, arrangements for through business, or otherwise in respect to the Southern Pacific's end of the Ogden route.

3. That the separation of the Central Pacific from the Southern Pacific would not cause increase of competition or improved service, but would likely occasion impaired service at increased cost, is a fact which was established by the uncontradicted testimony of a number of competent witnesses.

Among others Mr. Kruttschnitt (II R. 741 ffg.), Mr. Spence (III R. 1015, 1037-1039, 1068-1069), Mr. Eshleman (III R. 877 ffg. and 882 ffg.), and Mr. Chambers (III R. 946-949, 968, 971) give convincing testimony that the separation of the Central Pacific lines from the Southern Pacific System would greatly impair the efficiency, and increase the operating costs, of both the through routes and of the local lines; that there would

be no increase in competition and, in all probability, an increase in local rates.

Even the head of the Union Pacific, an interested bystander, was not of the opinion that the separation would result in improved service on the Central Pacific and of the Ogden route or enable the Ogden route to get more business than it now secures (I R. 295, 297, 300).

The foregoing facts are very significant. They supplement and confirm the testimony in respect to the common control having no appreciable effect on competition and in respect to the character of the service maintained on the Southern Pacific end of the Ogden route.

That the Central Pacific, if separated from the Southern Pacific, would constitute an additional effective competitive factor in the situation, is inconsistent wth the foregoing testimony, and is especially denied in the testimony of Mr. Spence (III R. 1039). Another soliciting agent, in addition to the more than two score agents working for the Ogden route, would not appreciably affect the sum total of existing competition for Atlantic seaboard territory traffic, especially when it is considered that he would be soliciting for a line weakened and impaired by the loss of the parts belonging to the Southern Pacific Railroad, as, for instance, the Benicia cut-off and the line from Redwood to San Francisco (Kruttschnitt, II R. 721, 743; Spence, III R. 1015, 1039).

We believe that this court, like the court below, will reach a conclusion in favor of defendants without finding it necessary to consider the traffic questions which have been discussed under this heading. Should, however, a decision of the case require an examination of the traffic conditions surrounding the origin and subsequent growth of the Southern Pacific System, there will be found full information on the subject in the analysis of the testimony of Mr. Spence in the note below.*

*For an orderly statement of the traffic relations between the Ogden route and the Sunset-Gulf route, covering all the points of this branch of the case, see the testimony of Mr. Spence on direct examination, III R. 1012-1077.

The following analysis will show the order and scope of his testimony: Qualifications, 1012-1014; description of the Southern Pacific System, showing interrelation of its different parts, etc., 1014-1018; statement of the growth and development of transcontinental traffic and of the transcontinental lines which transport it, showing conditions at different periods, etc., 1018-1025; policy of Southern Pacific Company as new transcontinental lines were opened, 1025; opening of Panama Canal, and effect of competition of steamship lines, 1025-1028; fierceness of the general competition for the traffic for which the Ogden route and the Sunset-Gulf route compete; rise and decline of the Sunset-Gulf route in the struggle for such traffic, and final supremacy of the Panama-Canal carriers, 1028-1032; policy of Southern Pacific in respect to solicitation and routing of traffic, showing natural limitations upon the traffic for which the Ogden and Sunset-Gulf routes may compete, etc., 1032-1036; explanation of movement of imported raw silk over all-rail lines in passenger trains, 1037; active and vigorous competition between Ogden and Sunset-Gulf routes, reasons why exclusion of Central Pacific from Southern Pacific System would not increase such competition, but would make it less effective, 1037-1039; dependence of Central Pacific line between Ogden and San Francisco, for its efficiency, upon parts of other lines of the system, 1039; number of soliciting agencies for transcontinental traffic and effect thereof, 1039-1041; relative growth and development of the Sunset-Gulf route and the all-rail transcontinental lines, showing the influence of the Sunset-Gulf route as a continuous competitive spur, 1041-1045; the close, friendly, and mutually satisfactory cooperative relations which have always existed between the Union Pacific and the Southern Pacific in respect to the maintenance and operation of the line between Ogden and San Francisco as part of the Ogden route, 1045-1046; the Union Pacific much less dependent on Southern Pacific now than in 1901, the date of merger, 1047; excellence of service on Southern Pacific's end of Ogden, and absence of interest or motive to impair such service, 1048; explanation of traffic statistics contained in petitioner's exhibits 43 to 58, and in defendants' exhibits 63 to 80, 1048-1061; absence of possible participation by Sunset-Gulf route in Asiatic traffic, 1062; further traffic statistics, defendants' exhibits 81-82, 1063-1064; absence of control by Southern Pacific over routing of traffic originating on its own lines, shippers

Considering the testimony upon the three points we have been discussing, considering that this testimony is in harmony with the contentions of the Goverment which prevailed in the Union Pacific unmerger case, and is in accordance with the findings of the Interstate Commerce Commission on the application of the Southern Pacific Company for permission to continue to operate the line of steamships forming an essential part of the Sunset-Gulf route, we feel justified in asserting as facts established beyond dispute, that the so-called combination of the Central Pacific with the other lines of the Southern Pacific System has not prevented competition or created power or motive to prevent competition, and that the dissolution of the system prayed for will not increase competition or in any way benefit the public. If this be true, we cannot conceive how the so-called combination, irrespective of its origin and the other defenses elsewhere presented in this brief, can be condemned as a contract, combination or conspiracy in unreasonable restraint of interstate trade or commerce.

Counsel for the Government are here contending that the mere fact that a railroad system includes parts

almost always exercising the right to prescribe routing, 1064; growing influence of water carriers via Tehuantepec route and via Panama Canal which compete for all traffic that is competitive between the Ogden and Sunset-Gulf route, the result being that the water carriers control the situation and have made the rates so low that the mixed rail-and-water line of the Southern Pacific has been left practically alone to compete with them, the eastern connections of the Ogden route being unwilling to meet the low water rates, 1065-1067; separation of Central Pacific from Southern Pacific would have no effect in the way of reducing traffic rates, would tend to increase local rates, and impair service, local and through, 1068-1069; value of Central Pacific lines to Southern Pacific System, 1070; general rule in this country for a railroad system to include lines which form parts of alternate and competing routes, illustrative examples and maps of different systems (defendants' exhibits 85 to 93), 1071-1076.

of through lines which offer alternative routes for traffic (in this case the whole of one through line and a fraction of another) of itself, without more, establishes a violation of the Anti-trust Act, and that no amount or character of evidence can avail to save such a system from condemnation. Such it is contended is the inevitable conclusion from the decision of this court in the Union Pacific unmerger case.

In a supplemental brief we distinguish this case from the case presented by the merger of the Southern Pacific and the Union Pacific. We have already called attention to the inconsistency between the Government's contention and the implications of the Panama Canal Act (pp. 253-259, *supra*). It has been shown by the testimony in this record (Spence III R. 1071-1076), and it is a fact of which the court, in the absence of any evidence, would take judicial notice, that practically every large system of railroads in this country embraces lines which, in connection with other railroads, form through routes that compete with the main lines of the parent company. If the contention under discussion were approved by this court, every large railroad system of the United States would become an unlawful combination in restraint of trade.

IX.

The government, by reason of the position taken and claims urged by it in the Union Pacific case, is estopped from questioning the validity of the ownership and control of the Central Pacific Railway Company by the Southern Pacific Company.

The petition in the Union Pacific case sets forth in detail the lines of railway and steamship lines included in the Union Pacific system, also the lines of railway and steamship lines of the Southern Pacific system, which is substantially the same as that described in the petition in this case as the lines of railway and steamship lines controlled by the Southern Pacific Company. The petition also particularly alleges that the rail lines of the Southern Pacific Company from the Mississippi River to Portland, Oregon, by way of San Francisco and Los Angeles, were in active competition with the lines of railroad of the Union Pacific Railroad Company for the transportation of vast quantities of freight from points in the Mississippi valley and in the Eastern states, both to and from the Pacific Coast and points in Colorado and other interior states, and that the steamship line of the Southern Pacific Company from New York to New Orleans and Galveston, together with its rail lines run in connection therewith, was in active competition with the rail lines of the Union Pacific Railroad Company for a large amount of traffic originating on the Atlantic coast and Central states.

These allegations directly include the competition which was alleged to have existed prior to 1901 be-

tween the Central Pacific-Union Pacific line, known as the Ogden route, and the Southern Pacific or Sunset route.

The petition further sets forth the acquisition of the control in 1901 of the Southern Pacific Company by the Union Pacific Railroad Company, alleging that by means of that control the competition formerly existing between the said two railway systems, with their steamship lines, had been destroyed.

The answer of the defendants substantially denied the existence of the competition alleged between these respective railway systems and further sought to justify the acquisition of the control of the Southern Pacific Company for reasons not material here.

It thus appears that the Government, as a necessary basis for its assault upon the control of the Southern Pacific, which had been acquired by the Union Pacific, squarely maintained that prior to that control, created in 1901, there was active and substantial competition between the Central Pacific-Union Pacific Ogden route and the Sunset route.

This was, in effect, asserting that this competition existed notwithstanding the ownership and control of the Central Pacific by the Southern Pacific.

In the Government's brief in the Union Pacific case, filed in this court, we find an elaborate discussion, with detailed reference to the testimony, showing that prior to the merger, which occurred through the purchase of Southern Pacific stock by the Union Pacific, there had been active and thorough competition between the

Union Pacific system and the Southern Pacific system and, especially, that such competition existed between the Central Pacific-Union Pacific Ogden route on the one hand and the Sunset route on the other.

Counsel for the Government urged, in substance, that as to the competition between these two transcontinental routes there was at all times prior to the merger the same incentive "to active, energetic competition between these lines that there would have been had the Southern Pacific not owned the line between Ogden and San Francisco". (See page 39 of Government Brief, also, for the discussion generally of this subject, see pages 34 to 272 of that brief.)

The opinion of this court sets forth the contention of the Government that, prior to the stock purchase, the Union Pacific and Southern Pacific were competing systems of railroad engaged in interstate commerce and acted independently as to a large amount of such carrying trade, and that since the acquisition of the stock in question the dominating power of the Union Pacific had eliminated competition between the two systems. Upon this contention this court found that

> "A large amount of the testimony in this voluminous record was given by railroad men of wide experience, business men and shippers, who, with practical unanimity, expressed the view that prior to the stock purchase in question the Union Pacific and Southern Pacific systems were in competition, sharp, well defined and vigorous, for interstate trade."

And this court concluded that such competition had been suppressed by means of the control of the South-

ern Pacific acquired by the Union Pacific, and, therefore, granted the Government appropriate relief to terminate such control.

It thus appears that the Government in the Union Pacific case squarely contended that, prior to the Union Pacific stock purchase in 1901, there was active and vigorous competition between these railway systems, that such competition existed despite the fact that the Southern Pacific Company owned the line between Ogden and San Francisco, which, at the time, was the only line over which the Union Pacific transcontinental traffic could move to and from the Pacific Coast, and that such competition had been suppressed by the Union Pacific through its control of the Southern Pacific acquired by the stock purchase in question. This contention was squarely sustained by the decision of this court, which granted the Government the relief appropriate to terminate the control of the Southern Pacific by the Union Pacific.

Under a well established rule, sustained, we might say, by all the authorities upon the subject, the Government cannot now be heard to claim that the competition between the Central Pacific-Union Pacific line and the Sunset line was suppressed or destroyed by the control of the Central Pacific by the Southern Pacific when it had maintained the contrary of this position, viz., that, notwithstanding such control, there was active and vigorous competition between these two lines, and upon that contention was successful in its former litigation.

The maxim "*Allegans contraria non est audiendus*" expresses the trite saying of Lord Kenyon, that a man shall not be permitted to "blow hot and cold" with reference to the same transaction, or insist at different times on the truth of each of two conflicting allegations, according to the prompting of his private interest (*Broom's Legal Maxims*, 169).

That this rule is at the foundation of the administration of justice is well stated in "*Bigelow on Estoppel*", page 717, as follows:

> "If parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralyzed; the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the rights of all men, honest and dishonest, are in the keeping of the courts, and consistency of proceeding is therefore required of all those who come or are brought before them.
>
> It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it; one cannot play fast and loose."

The above is quoted and followed in *Canton Roll & Machine Co. v. Rolling Mill Co.*, 155 Fed. 321 (1907).

In Herman on Estoppel, section 165, it is said:

> "A party who either obtains or defeats a judgment by pleading or representing anything in one aspect, is generally held to be estopped from giving the same thing another aspect in a suit founded on the same subject-matter."

In *Railway Co. v. McCarthy,* 96 U. S. 258 (1878), this court said:

> "Where a party gives a reason for his conduct and decision touching anything involved in a controversy, he cannot, after litigation has begun, change his ground, and put his conduct upon another and a different consideration. He is not permitted thus to mend his hold. He is estopped from doing it by a settled principle of law" (96 U. S. 267-8).

In *Davis v. Wakelee,* 156 U. S. 680 (1895), this court said:

> "It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him" (156 U. S. 689).

To the same effect, see *Town of Weston v. Ralston,* 48 W. Va. 170, 36 S. E. 446 (1900).

In *Michels v. Olmstead,* 157 U. S. 198 (1895), Michels sued Olmstead to recover damages for breach of a written contract. Olmstead offered oral evidence that the writing in question was not intended as a contract nor understood by either party to be binding as such. Upon plaintiff's objection the court excluded this evidence as incompetent to control the written contract. Subsequently Olmstead filed a bill in equity to restrain the prosecution of the action at law, setting forth as grounds for equitable relief the facts which he sought to prove in the action at law, the evidence of which was

excluded. In the brief for Michels filed in the equity case, it was suggested that if the writing signed was not intended as a contract this should be set up in the action at law and tried by a jury. To this suggestion this court replied:

> "But the conclusive answer to the suggestion is, that evidence of this very fact was offered in the action at law, and excluded, upon his objection, as incompetent in that action; and that he is thereby estopped now to assert that it could or should be availed of at law" (157 U. S. 201).

In *Daniels v. Tearney,* 102 U. S. 415 (1880), suit was brought against Daniels to recover upon a statutory bond given under an unconstitutional statute. This court held that Daniels could not defeat recovery on this bond upon the ground of the unconstitutionality of the statute, saying:

> "Where a party has availed himself for his benefit of an unconstitutional law, he cannot, in a subsequent litigation with others not in that position, aver its unconstitutionality as a defense, although such unconstitutionality may have been pronounced by a competent judicial tribunal in another suit. In such cases the principle of estoppel applies with full force and conclusive effect" (102 U. S. 421).

In *Caldwell v. Smith,* 77 Ala. 157 (1884), Alexander sued Caldwell in ejectment. Caldwell defended that he held the land as tenant under Smith and defeated Alexander's action. Then Smith sued Caldwell for recovery of the land, and he sought to defeat Smith by proving that he held the land under tenancy from Alexander. Chief Justice Stone said:

"On the strength of Caldwell's testimony on the first trial, he obtained a valuable benefit in the defeat of Alexander's suit. It is now attempted by disproving what was then proved, to secure to Caldwell's estate another benefit, in defeating Smith's suit. One of these lines of defense must, of necessity, be untrue. We may concede it was the first. Yet, under its maintenance as true, Caldwell gained that suit. He will not be allowed to deny it, as a means of defeating this" (77 Ala. 168).

In the main opinion by Somerville, J., it is said:

"So, a party who either obtains or defeats a judgment, by pleading or representing anything in one aspect, is generally held to be estopped from giving the same thing another aspect, in a suit founded upon the same subject matter,—Herman on Estop., Par. 165" (77 Ala. 165).

In *Denton v. Erwin,* 5 La. Ann. 18 (1850), the court said:

"A man should not be permitted to deny what he had solemnly acknowledged in a judicial proceeding, nor to shift his position at will, to a contradictory one, in relation to the subject matter of litigation, in order to frustrate and defeat the actions of the law upon it" (5 La. Ann. 22).

In *Del Bondio v. Insurance Co.,* 28 La. Ann. 139 (1876), the court said:

"After having gained an advantage by judicially alleging and maintaining that the contract was valid in the suit decided, this defendant will not be listened to when setting up the nullity of the same contract" (28 La. Ann. 140).

In *Walker v. Walker,* 37 La. Ann. 107 (1885), the court said:

"It is well established that one is bound by his judicial allegations to such extent that he will not be heard to contradict them. *School Bd. Concordia v. Hernandez,* 31 Ann. 158; *Watkins v. Cawthon,* 33 Ann. 1198; *Folger v. Palmer,* 35 Ann. 744. Certainly he cannot recover on an alleged state of facts which is so counter to those set up in a previous suit that if the one be true the other must necessarily be false. Wells on *Res Adjudicata,* secs. 9 et seq." (37 La. Ann. 107-8).

In *Galt v. Provan,* 131 Iowa 277, 108 N. W. 760 (1906), the defendant insisted that no recovery could be had upon the contract sued upon because the consideration had failed by breach of a condition precedent, but the court said:

"It appears that, after knowledge of the claimed breach of condition, defendants set up this contract and succeeded in defeating the previous action brought by plaintiff, by reason in part at least of the agreements contained therein. See *Galt v. Provan,* 108 Iowa 565. Having used the contract in that case, and insisted upon its validity for the purpose of defeating plaintiff, it cannot now be heard to say that the contract is not in force. Defendants will not be allowed to assume such inconsistent positions. *Kramer v. Kramer,* 68 Iowa 567; *Scott v. Lutcher,* 44 Iowa 572: *Hyatt v. B. C., R. & N. R. R.* 68 Iowa 662; *Shropshire v. Ryan,* 111 Iowa 677; *Riegel v. Ormsby,* 111 Iowa 10" (131 Iowa 280).

In *Ogden v. Rowley,* 15 Ind. 56 (1860), the defendant in a suit upon an award set up facts to impeach it for mistake, misconduct and fraud. Plaintiff replied that in a prior suit pending in favor of the plaintiff against the defendant for the same cause of action and subject matter upon which the award now sued on

was founded, the defendant had pleaded the award now sued on and thereby defeated said action. The court said:

> "The award was, by the defendant, treated as valid, in the answer setting it up as a defense to the former action. . . . Having had the benefit of it, as a valid award, in that suit, he should not now be permitted to impeach it. *Washington Hall Co. v. Stipp,* 5 Blackf. 473—2 B. Monroe, 257,—2 Sumner's R. 589" (15 Ind. 58).

In *Moser v. Phila. H. & P. R. R. Co.,* 233 Pa. 259, 82 Atl. 362 (1912), the court said:

> "'It is settled law', says Trunkey, J., in McQueen's App., 104 Pa. 595, 'that a man who obtains or defeats a judgment by pleading or representing an act in one aspect, will be precluded from giving it a different and inconsistent character in a subsequent suit upon the same subject.' To the same effect will be found *Campbell v. Stephens,* 66 Pa. 314; *Aronson v. Cleveland & P. R. R. Co.,* 70 Pa. 68. The general rule in such cases is thus stated in 16 Cyc. 799, 'A claim or position taken in a former action or judicial proceeding will estop the party to make an inconsistent claim or to take a conflicting position in a subsequent action or judicial proceeding to the prejudice of the adverse party, where the parties are the same, and the same questions are involved'" (233 Pa. 269-270).

In *Hodges v. Winston,* 95 Ala. 514, 11 So. 200 (1892), it was held that when the defendant, claiming under a conveyance from a judgment-debtor, has successfully excluded evidence assailing the conveyance for fraud, on the ground that the property conveyed was the homestead of the debtor, he is precluded from afterwards

contending that it was not in fact the debtor's homestead. The court said:

> "Having obtained a substantial advantage by taking and successfully maintaining the position that the lands in question constituted a homestead, they (the defendants) estopped themselves from claiming, on the same state of evidence, that they were not a homestead. They could not support one position of defense by claiming that the lands constituted a homestead, and at the same time obtain the advantage of another position which involved a denial of the homestead character of the land. A defendant who, for the purpose of maintaining a defense, has deliberately represented a thing in one aspect, cannot be permitted to contradict his own representation by giving the same thing another aspect in the same case.—*Caldwell v. Smith,* 77 Ala. 157; *Hill v. Huckabee,* 70 Ala. 183; *Herman on Estoppel* (4th Ed.), 687" (95 Ala. 517).

The Government cannot claim exemption from the rule above discussed.

In *United States v. Stinson et al.* (C. C. A. 7th Ct., 1903), 125 Fed. 907, affirmed 197 U. S. 200 (1905), the court said:

> "But when the government seeks its rights at the hands of a court, equity requires that the rights of others as well should be protected. *Carr v. United States,* 98 U. S. 438, 25 L. Ed. 209. The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considera-

tions underlying the doctrine of estoppel apply to a government as well as to individuals. *Chope v. Detroit Plank Road Company,* 37 Mich. 195, 26 Am. Rep. 512; *Commonwealth v. Andre,* 3 Pick. 224" (125 Fed. 910).

In *Walker v. United States,* 139 Fed. 409 (1905), the court said:

> "When the sovereign becomes an actor in a court of justice, especially in an action which proceeds on equitable principles, that his rights must be determined upon those fixed principles of justice which govern between man and man in like situation, and that the sovereign will be bound, as an individual would be, by his own acts, or by (what is the same thing) acts of his agents lawfully done within the purview of the authority he commits to them" (130 Fed. 412).

In *State of Iowa v. Carr,* 191 Fed. 257 (1911), the court said:

> "But the great weight of authority, the stronger reasons and the settled rule upon this subject in the courts of the United States, is that, while mere delay does not, either by limitation or laches, of itself, constitute a bar to suits and claims of a state or of the United States, yet, when a sovereign submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances" (191 Fed. 266).

See also cases cited pp. 308-312, *supra.*

X.

The final decree in the case of the United States v. Union Pacific Railroad Company, Southern Pacific Company, and others, is a bar to all relief sought by the government in this case.

The main purpose of the Union Pacific suit was to remove all restraint of trade and commerce which had been imposed by the defendants, or any of them, and which affected the Central Pacific and connecting transcontinental lines on the one hand and the Sunset line on the other.

Such restraint was alleged to have been accomplished, first, by the Union Pacific Railroad Company obtaining control of the Southern Pacific Company through the purchase of the capital stock of that company in the year 1901. The petition described the system of rail and steamship lines operated and controlled by the Union Pacific Railroad Company, also the system of rail and steamship lines operated and controlled by the Southern Pacific Company, alleging that these two systems were competitive for the transportation of large quantities of freight and passengers between the Atlantic seaboard and the Pacific coast, and between various other points, which competition had been suppressed by the Union Pacific Railroad through its control of the Southern Pacific Company.

The petition further alleged that the Southern Pacific Company was the owner of all the capital stock of the Central Pacific Railway Company, which company, in turn, was the owner of the line of railroad extending from San Francisco to Ogden, Utah, and that

encouragement."

by virtue of such ownership the Southern Pacific Company, in all respects, controlled the management and operation of the Central Pacific Railway Company.

The Southern Pacific Company, in its answer, admitted its ownership of the capital stock of the Central Pacific Railway Company, averring that said company succeeded to the ownership of the railroad from San Francisco to Ogden, with other lines formerly owned by the Central Pacific Railroad Company, and that at all times since January 1, 1901, the Southern Pacific Company possessed and operated all the railroads of the Central Pacific Railway Company by virtue of instruments of lease theretofore made and entered into, this being the lease of Central Pacific Railroad Company to the Southern Pacific Company, dated February 17, 1885.

While a special prayer for relief was made as against the control of the Southern Pacific Company by the Union Pacific Company, the Government, also, by such petition, prayed for such relief as the nature of the case might require and to the court seem proper in the premises.

The proceedings in the Union Pacific suit were, briefly, as follows: after the taking of testimony and the hearing, the Circuit Court entered its decree dismissing the petition and denying the Government any relief whatever. Upon appeal, this court reversed said decree only upon the point that the control of the Southern Pacific Company by the Union Pacific Railroad Company was illegal and in violation of the Act of July 2, 1890; but as to all other matters this court

said, "We find no reason to disturb the action of the court below", and as to such matters the final decree was against the Government and in favor of the defendants.

In the case at bar, the Government's petition sets forth the lines of railroad owned by the Central Pacific Railway Company, which include the main line from San Francisco to Ogden; also, the lines of railroad controlled by the Southern Pacific Company through stock ownership and as lessee, which include the line from San Francisco to New Orleans, known as the Sunset line. The Government's petition also sets forth the stock ownership and control of the Central Pacific Railway Company by the Southern Pacific Company and the lease of the Central Pacific lines to the Southern Pacific Company, dated February 17, 1885. The petition also shows the competitive traffic which might have moved, either by the Central Pacific line and connections through Ogden, or by the Sunset line, and avers that the ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company and its lease of the properties of that company result in a suppression of competition for said traffic, and that therefore the Southern Pacific Company's domination, management and control of the Central Pacific Railway Company constitute a combination in restraint of interstate and foreign trade and commerce and a monopolization thereof in violation of the Act of July 2, 1890.

The principal relief prayed for is that the Southern Pacific Company be required to dispose of the capital

stock of the Central Pacific Railway Company and to cancel and relinquish its lease, control, management and operation of the lines of that company.

It thus appears that the Government, in the case at bar, is seeking a decree declaring that the ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company and its lease of the properties of that company, and its domination, management and control thereof are in violation of the Act of July 2, 1890.

In Paragraph X of the answer the Southern Pacific Company and the Central Pacific Railway Company plead, as a special defense to the action, the estoppel of the decree in the Union Pacific suit.

The issue in the present suit could have been litigated and adjudicated in the Union Pacific suit and all suitable relief given there which could be obtained here. The Southern Pacific Company was a party to the Union Pacific suit and was the only necessary party defendant in granting the relief which is sought in the present case. The Central Pacific Railway Company was not a necessary party, but, if it had been, its absence would not affect this question (*Curtis v. Trustees of Bardstown*, 29 Ky. (6 J. J. Marsh) 538). There was nothing in the way of making it a party; in fact, that company was made a party defendant to the Union Pacific suit before final decree.

All the evidence which has been introduced by the Government in the case at bar would have been admissible in the Union Pacific suit to show, if that were

true, that the ownership and control of the Central Pacific Railway Company by the Southern Pacific Company created an unlawful combination in restraint of trade and commerce under the Act of July 2, 1890.

The "subject matter" or "cause of action" in the Union Pacific suit was to free two competing transcontinental routes, viz., the Ogden route and the Sunset route, from the unlawful restraint of trade and commerce which had been imposed upon them by the defendants, or any of them, and whether such combination or restraint was created by one or more transactions of the defendants, or any of them, the "subject matter" or "cause of action" was *one thing,* not to be divided or presented piecemeal for the purpose of litigation.

To allow the Government in this case to litigate the questions which were *sub judice* in the Union Pacific case, is to violate well settled principles of law which forbid litigation by piecemeal and require litigants to present fully their claims upon the subject matter in question, failing in which a decree against such litigants is a conclusive adjudication barring any further litigation by them upon the "subject matter" or "cause of action" in the first suit.

This rule has been followed in this court in a long line of cases, beginning with *Stockton v. Ford,* 18 Howard 418 (1855), where this court said:

> "One of the questions now sought to be agitated again is precisely the same as this one in the previous suit; namely, the right of the plaintiff to the judicial mortgage under the execution and sale

against Prior. The other is somewhat varied; namely, the equitable right or interest in the mortgage of the plaintiff, as the attorney of Prior, for the fees and costs provided for in the assignment to Jones. But this question was properly involved in the former case, and might have been there raised and determined. The neglect of the plaintiff to avail himself of it, even if tenable, furnishes no reason for another litigation" (18 How. 420).

In *Aurora City v. West,* 7 Wallace 82 (1869), it is said:

> "Courts of justice, in stating the rule, do not always employ the same language; but where every objection urged in the second suit was open to the party within the legitimate scope of the pleadings in the first suit, and might have been presented in that trial, the matter must be considered as having passed *in rem judicatam,* and the former judgment in such a case is conclusive between the parties.
>
> "Except in special cases, the plea of *res judicata,* says Taylor, applies not only to points upon which the court was actually required to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time" (7 Wallace 102).

In *Beloit v. Morgan,* 7 Wallace 619 (1869), Mr. Justice Swayne said, quoting from *Henderson v. Henderson,* 3 Hare 115:

> "Where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to bring forward their whole case, and will not, except under special circumstances, permit the

same subject of litigation in respect of a matter which might have been brought forward as a part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted a part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

To this, Mr. Justice Swayne adds:

"A party can no more split up defenses than indivisible demands, and present them by piecemeal in successive suits growing out of the same transaction" (7 Wallace 623).

In *Wiggins Ferry Co. v. O. & M. Ry.*, 142 U. S. 396 (1892), it is said:

"Where the judgment in the former action is upon demurrer to the declaration, the estoppel extends only to the exact point raised by the pleadings or decided, and does not operate as a bar to a second suit for other breaches of the same covenants, although if the judgment be upon pleadings and proofs, the estoppel extends not only to what was decided, but to all that was necessarily involved in the issue. *Wash. & Alexandria Packet Co. v. Sickles*, 24 How. 333; s. c. 5 Wall. 580; *Gould v. Evansville etc. Railway*, 91 U. S. 526; *Boyd v. Alabama*, 94 U. S. 645; *Russell v. Place*, 94 U. S. 606, 608; *Morrell v. Morgan*, 65 California 575" (142 U. S. 410).

In *Cromwell v. County of Sac*, 94 U. S. 351 (1877), this court held that where the second action between

the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered, but the court reiterated the rule that a judgment is a bar or estoppel against the prosecution of a second action upon the same claim or demand, such judgment being a finality "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose" (94 U. S. 352).

The case of *United States v. California & Oregon Land Company*, 192 U. S. 355 (1904), is strongly in point. In that case it was decided that a decree rendered upon a bill in equity brought by the United States under the Act of March 2, 1889, to have patents for certain lands declared void and to establish the title of the United States to the land was a bar to the subsequent bill brought against the same defendants to recover the same land on the ground that it was excepted from the original grant as an Indian reservation. This court said:

> "On the general principles of our law it is tolerably plain that the decree in the suit under the foregoing statute would be a bar. The parties, the subject matter and the relief sought all were the same. . . . Here the plaintiff is the same person that brought the former bill, whatever the difference of the interest intended to be asserted. See *Werlein v. New Orleans*, 177 U. S. 390, 400, 401. The best that can be said, apart from the act just quoted, to distinguish the two suits, is that now

the United States puts forward a new ground for its prayer. Formerly it sought to avoid the patents by way of forfeiture. Now it seeks the same conclusion by a different means, that is to say, by evidence that the lands originally were excepted from the grant. But in this, as in the former suit, it seeks to establish its own title to the fee.

It may be the law in Scotland that a judgment is not a bar to a second attempt to reach the same result by a different *medium concludendi. Phosphate Sewage Co. v. Molleson,* 5 Ct. of Sess. Cas. (4th Ser.) 1125, 1139; although in the same case on appeal Lord Blackburn seemed to doubt the proposition if the facts were known before. S. C. 4 App. Cas. 801, 820. But the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim, *Fetter v. Beale,* 1 Salk. 11; *Trask v. Hartford & New Haven Railroad,* 2 Allen 331; *Freeman, Judgments,* 4th Ed., Sec. 238, 241; and, *a fortiori,* he cannot divide the grounds of recovery. Unless the statute of 1889 put the former suit upon a peculiar footing, the United States was bound then to bring forward all the grounds it had for declaring the patents void, and when the bill was dismissed was barred as to all by the decree. *Werlein v. New Orleans,* 177 U. S. 390; *Bienville Water Supply Co. v. Mobile,* 186 U. S. 212, 216, 217; *Hoseason v. Keegan,* 178 Massachusetts 247; *Wildman v. Wildman,* 70 Connecticut 700, 710; *Sayers v. Auditor General,* 124 Michigan 259; *Foster v. Hinson,* 76 Iowa 714, 720; *State v. Brown,* 64 Maryland 199; *Boyd v. Boyd,* 53 App. Div. N. Y. 152, 159; *Shaffer v. Scuddy,* 14 La. Ann. 576; *Henderson v. Henderson,* 3 Hare. 100, 115.

. . . . . .

But if the United States was at liberty to state all its grounds for claiming the land, it was bound to do so on 'the same principles and rules of jurisprudence as other suits in equity are therein

> tried' by which principles and rules, as has been shown, it was expressly enacted that the case should be tried. . . . It would not be consistent with the good faith of the United States to attribute to it the intent to keep a concealed weapon in reserve in case these suits should fail" (92 U. S. 357-360).

It is needless to cite other decisions of this court to the same effect, also innumerable cases which could be cited from the District and Circuit Courts of the United States and from the different State courts which unanimously sustain the rule above stated. But perhaps it is worth while to quote from the decision of the United States Circuit Court of Appeals, Ninth Circuit, in the case of *Stone v. United States*, 64 Fed. 667 (1894), where Judge Hawley states this rule in the following language:

> "It is also well settled that the plea of *res adjudicata*, except in certain special cases, is not only conclusive upon the questions which the courts were required to form an opinion and pronounce judgment on, but upon every point which properly belonged to the subject of litigation, and which was, or might properly have been, brought forward in the former suit. One of the safest rules for courts to follow in determining whether a prior judgment between the same parties, concerning the same matters, is a bar, is to ascertain whether the same evidence which is necessary to sustain the second action, if it had been given in the former suit, would have authorized a recovery therein" (64 Fed. 670).

In *Detroit Ry. v. Mich. Comm.*, 235 U. S. 402, 406 (1914), Mr. Justice Holmes declares:

> "We must assume that the plaintiff was bound to present its whole case. *Calaf v. Calaf*, 232 U. S. 371, 374."

Applying the rule thus stated to this case, how can we escape the conclusion that the decree in the Union Pacific case is a bar to the relief sought in the present case? Undoubtedly the Government might have offered in the Union Pacific case the evidence which has been advanced by it in this case, and it could have secured in the Union Pacific case any relief to which that evidence would entitle it in this case.

The Government cannot escape the decree in the Union Pacific suit by any technical refinements or sophistication intended to show that it had really two distinct causes of action, one based upon the control of the Southern Pacific Company obtained by the Union Pacific Railroad Company through purchase of stock, and the other based upon the control obtained by the Southern Pacific Company over the Central Pacific Railway Company by purchase of stock and lease of road. Even if these two transactions might have been dealt with separately and independently, and the Government might have elected to confine the Union Pacific case strictly to the first transaction, the answer is, that it did not do this; that by the allegations in its petition and the parties joined as defendants, the Government presented its case so comprehensively that it could have secured full and complete relief as to both of these transactions, and as the cause of action or relief sought affected one thing, namely, restraint of competition between these two transcontinental routes prohibited by the Anti-Trust Act, it was most proper and most desirable that the Government should present its

whole case so far as it existed against these defendants in the Union Pacific suit.

How can the Government now argue that it could not, or did not, by its petition in the Union Pacific case, present its cause of action so that full relief could be had by it as to each of the transactions above mentioned? Certainly there was no thought in the minds of the then Attorney General of the United States or his associate counsel, who drew the petition in the Union Pacific case, that there was anything in the way of the Government presenting many different, separate and disconnected transactions upon which it might recover appropriate relief. For example, in the Union Pacific case the petition set forth not only the acquisition and control of the Southern Pacific by the Union Pacific through purchase of its stock and also the like control over the Central Pacific Company by the Southern Pacific Company through ownership of stock, but the petition further set forth that the defendants had acquired and were the owners of a large amount of the capital stock of the Northern Pacific Railway Company and also of the Great Northern Railway Company, which stocks were illegally held by the Oregon Short Line Railroad Company for the purpose of suppressing competition theretofore existing between the various railway systems and water lines described in the petition. And, further, the petition set forth that the defendants Clark and Harriman, for the purpose of preventing competition between the San Pedro, Los Angeles & Salt Lake Railroad Company and the Union Pacific system, had made certain contracts by which

the capital stock of the last mentioned railroad company was divided in equal parts between Clark and Harriman; and the petition further set forth that the defendants Harriman and others had made large purchases of stock of the Atchison, Topeka & Santa Fe Railway Company, which stock, or a large part thereof, had been acquired by the Union Pacific Railroad Company, with the result that the competition between the systems of railways controlled by the Union Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company had, to a large extent, been eliminated, and that the defendants caused the Southern Pacific Company to abandon extensions, improvements and additions to their interstate railway in the State of California, and also, the Atchison, Topeka & Santa Fe Railway Company had been in the same manner caused and induced to abandon extensions and additions to its interstate railway lines in California, and that these extensions, so projected, had been amalgamated and placed in a corporation known as the Northwestern Pacific Railroad Company, the stock of which was owned in equal parts by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company. And as to all these transactions involving the Northern Pacific Railway Company, the Great Northern Railway Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company, the petition prayed special relief by decree adjudging the acquisition of the stocks above mentioned to be illegal and to dissolve the combinations which had been created there-

by. As to all these transactions the Government introduced voluminous testimony and urged the court to grant the relief prayed for in the petition.

This case presents in exaggerated form an effort by the Government to litigate matters which were essentially a part of the subject matter or cause of action in the Union Pacific case. This court could not have determined the whole case presented there without considering these matters, and under all the authorities they are disposed of by the decree in that case.

XI.

No violation of the Pacific Railroad Laws is presented in this case.

The Government contends that each of the constituent roads franchised under the Pacific Railroad Laws must work actively and exclusively for one another and make a one hundred per cent. interchange at junction points. There are many replies to this contention:

(*a*) The conditions complained of as violating the Pacific Railroad Laws have been in existence for more than thirty years (1883 to 1914), and have been unchallenged all these years.

(b) No Committee of Congress has ever claimed that the constituent roads above mentioned are required by the Pacific Railroad Laws to work exclusively for one another or to make a one hundred per cent interchange at junction points.

(*c*) Indeed, the Pacific Railway Commission in 1885-1887 (D. Ex. 31, V. R. 1921, p. 115) investigated the question whether the Southern Pacific Company (then operating the Central Pacific under a 99-year lease) was discriminating against the Ogden route in favor of the Sunset-Gulf route, and thereby depriving the Ogden route of traffic which it would otherwise have enjoyed. The Commission reported (p. 235, *supra*) that no such discrimination had occurred, and that traffic had only been diverted when convenience and public advantage required it. The Commission did not consider that the Central Pacific was under obligation to work actively and exclusively for the Ogden route and to make a full interchange at that point. If it had, it would not have investigated the nature of the diversion that had occurred. The fact that the Commission reported as it did is cogent argument that the Pacific Railroad Laws are not open to the construction which the Government here seeks to put upon them.

(*d*) The Union Pacific Railroad Company, whose rights are said to be violated by the failure of the Central Pacific to work actively and exclusively with a view to procuring all possible traffic for the Ogden route and its delivery to the Union Pacific at Ogden, has never during the thirty years of the Sunset-Gulf route's existence (1883-1914), made any such claim or awakened to the possibility that the Pacific Railroad Laws were open to any such construction.

(*e*) In fact, the Union Pacific has proceeded upon the very opposite construction, notably in the acquisition of the Oregon Short line and the San Pedro line.

(*f*) Indeed, in the Union Pacific case, the Company argued that it had acquired the Southern Pacific to avoid being bottled up by the Central Pacific at Ogden; an argument totally inconsistent with the idea that the Central Pacific was bound to work actively and exclusively for the Ogden route and to make a full interchange of business with the Union Pacific at that point.

(*g*) It never occurred to the Attorney General, in the Union Pacific case, to argue that the question of the Union Pacific being bottled up was conclusively answered by a requirement of the Pacific Railroad Laws, whereunder the Central Pacific was bound to work actively and exclusively for the Ogden route and to make a full interchange of business with the Union Pacific at that point.

(*h*) It does not seem to have occurred to any of the Circuit Judges who sat in the Union Pacific case, that the argument of the Union Pacific that it had bought the Southern Pacific to prevent the Central Pacific from bottling it up at Ogden could be fully or at all answered by the suggestion that under the Pacific Railroad Laws the Central Pacific was bound to work actively and exclusively for the Ogden route and to make a full interchange of business with it at that point.

(*i*) This court in the Union Pacific case did not even intimate that under the Pacific Railroad Laws the Central Pacific was bound to work actively and exclusively for the Ogden route and to make a full interchange at that point with the Union Pacific. If

it had occurred to this court that this was the meaning of the Pacific Railroad Laws, it would have adopted it as a short cut in reply to the Union Pacific's argument that it might be bottled up by the Central Pacific at Ogden.

In *Chicago, etc., R. R. v. R. R. Commission,* 237 U. S. 220 (1915), a point was raised in the argument in this court which had not been submitted to the Supreme Court of Wisconsin. This court said:

> "If the Supreme Court of the State had so thought, *it would have accepted that short way to the decision of the case, and not have occupied itself with other and more complex questions.*

(*j*) A number of the officers of the Union Pacific were called as witnesses in the case at bar, but it does not seem to have occurred to any one of them that the Central Pacific was bound to work actively and exclusively for the Union Pacific nor is there any suggestion or complaint by any of them that the Central Pacific has discriminated in any way against the Union Pacific.

(*k*) The Interstate Commerce Act, and its amendments, in terms, either direct or authorize the Interstate Commerce Commission to require all the railroads of the country to afford to each other equal advantages and facilities as to rates, time, and transportation, which is all that is required of the Pacific Railroads by the laws under which they were created. No one has ever contended, however, that the Interstate Commerce Act requires connecting carriers generally to work actively and exclusively for

one another and to make a full interchange at junction points.

(*l*) The original English Railway and Canal Traffic Act of 1854 (17 and 18 Vict., Chap. XXI) provided that:

> "Every railway company and canal company and railway and canal company having or working railways or canals *which form a continuous line of railway or canal or railway and canal communication;* . . . shall afford all due and reasonable facilities for receiving and forwarding all traffic arriving by one of such railways or canals by the other."

The Pacific Act of July 2, 1864 (13 Stat. 356) obligated each of the companies

> "to afford and to secure to each equal advantages and facilities as to rates, time and transportation."

It may be seen that the object of the English Act of 1854 and of our own Act of 1864 was two-fold:

(1) To insure the use and operation of connecting lines as "one continuous line"; and
(2) To compel each connecting carrier in the "continuous line" to afford equal facilities for receiving and forwarding traffic coming from another of the lines.

The idea that these provisions respecting the handling of traffic had anything to do with the obligation to contribute to the revenues of the connecting lines, seems never to have occurred to the English authorities nor, indeed, until this action, to the American authorities.

(*m*) The Pacific Railroad Laws were not intended to compel each of the constituent Pacific roads to con-

tribute traffic for the common benefit, but were designed to secure the appropriate handling of the traffic by the requirement of adequate transportation facilities.

(*n*) The Government on its own behalf is interested in the service to be obtained by one continuous line from the Missouri River to the Pacific Ocean, and it is also interested in securing "good service at fair rates" for the public. It is not interested in the queston of the revenues of the carriers as such. Although it was once a creditor of these roads, it ceased to be so over fifteen years ago (1899-1914). Moreover, the provision for a continuous road and for equal facilities as to rates, time and transportation had nothing to do with increasing the earnings of the roads indebted to the Government.

(*o*) In dealing with the arguments of the Government to the effect that the Southern Pacific has discriminated through the Central Pacific against the Union Pacific, it is not to be forgotten that the Union Pacific controlled the Southern Pacific and consequently the Central Pacific, from 1901 to 1913. Failure to note this fact gives rise to deductions which would not otherwise be made. Take the argument of the Government in relation to the discrimination against the Union Pacific in the matter of traffic in Nevada wool.* This alleged discrimination in the shipment of

*Many years ago some shipments of wool were made from points on the Central Pacific in Nevada via Sacramento and the Gulf Route to points on the Atlantic seaboard (I. R. 381). This was because of a through rate made by the Southern Pacific Company on this wool via the Sunset route, and as a natural consequence of the fact that prior to 1909 (and during 8 years of the Union Pacific control) no rates had been made on wool between points west of Elko, Nevada, and the east by the carriers composing the all-rail transcontinental

Nevada wool was going on when the Union Pacific acquired control of the Southern Pacific, but the routing of the wool under Union Pacific direction remained unchanged for eight years thereafter. It would seem that if this constituted discrimination against the Union Pacific, the Union Pacific would have corrected it.

(*p*) It is argued by the Government that the Central Pacific lagged behind the Union Pacific in service, and also that there was a marked improvement in the condition of the Central Pacific after the merger of 1901. It is to be remembered, however, that the Central Pacific debt was not settled until 1899, and that before that settlement, there could have been no certainty as to the future of the company. The lines were mortgaged and no one could forecast the result of a reorganization. The uncertainties of the situation undoubtedly crippled or restricted the credit of the company so that it would have been difficult, if not impossible, to procure the money necessary to build up the property. It would be very natural, therefore, to expect that when the property was freed, it would receive the full attention which an unencumbered line would be sure to have when its future was secure. The improvement in the Central Pacific is not to be attributed to the Union Pacific, although this improve-

route (I. R. 371), for the reason that the carriers east of Ogden were not then in a position to handle through shipments of this commodity promptly or to give as satisfactory service as on the Sunset Route (I. R. 219). In recent years, however, nearly all of this wool from Nevada has gone over the Ogden route, even though there are still through rates on the Sunset route (I. R. 381; P. Ex. 32, V. R. 1616).

This Nevada wool movement was abnormal, superinduced by a through rate and good service over the Sunset Route, while no through rate, or good service, was accorded by the carriers composing the direct line.

ment may have commenced contemporaneously with the Union Pacific's control over the line. This was a mere coincidence. The fact of larger importance is that the Central Pacific debt had been readjusted and the company reorganized, and the owners thought their property was secure.

(*q*) Next, it is not suggested that the Central Pacific does not cooperate fully in handling traffic originating on its lines and destined for the Union Pacific (and *vice versa*) or in its treatment of traffic coming on to its own lines and destined for or actually delivered to the Union Pacific (and *vice versa*). Indeed, Judge Lovett testified that he could not say that the Central Pacific operation would be improved if placed in other hands (I R. 297).

The following testimony by Mr. Spence, fully fortified in other portions of his testimony and uncontradicted, makes clear that the Central Pacific cooperates fully in every particular. He testified (III R. 1045-1046):

> "Going back, now, to the regular order of your testimony, what are the relations between the Union Pacific and the Southern Pacific in respect to the through route via Ogden?
>
> A. There are but few connecting lines whose relations are as close and co-operative. There are no connecting lines whose relations are closer and more co-operative than the relations between the Union Pacific and the Southern Pacific. The lines are operated as one connected, continuous line.
>
> Q. What about the personal relations between the officers of those lines in respect to mutual satisfaction as to the nature and extent of the co-operation?

A. They are exceedingly cordial and co-operative. I do not know of a complaint on either side, and I know of no cause for complaint on either side.

Q. What arrangements have you, for instance, with them in regard to advertising the Ogden through route?

A. We joined the Union Pacific in advertising the through train service between Chicago and San Francisco by the annual creation of a joint advertising fund, to which the lines contribute on a *pro rata* basis. Very much the largest share of that fund is spent in westbound advertising, and is placed in the hands of the Union Pacific for that purpose.

Q. They spend the fund to which you contribute as they see fit?

A. Yes.

Q. Can you give us the approximate amount annually which is expended for this westbound advertising?

A. The amount spent, between Chicago and San Francisco, during the current year will be about $140,000.

Q. What have been the results of this co-operative effort to afford the public a through line via Ogden? What kind of a line is that through line thus created?

A. Briefly stated, the results of this co-operation have been to establish the best through transcontinental line, taking passenger and freight service together, across the country.

Q. Of all the all-rail lines that you have mentioned, in your opinion, the Ogden route is the best?

A. Yes."

Mr. Schumacher testified (I R. 173):

"There may be connections that work 100 per cent. with each other. The Central and Union

do not, but aside from their Sunset territory, I do not believe two lines could work any more closely together than the Union and Southern or Central."

(*r*) In short, the Pacific Railroad Laws obligated the companies (which were five in number, *supra*, p. 14) constituting the Pacific Railroads so to operate and use their roads that in use and operation the roads would be "one connected, continuous line". Each of the companies was prohibited from discriminating in favor of or against the roads or business of any of the other of the companies, and was required to accord to each of the other companies "equal facilities *as to rates, time and transportation*". When we consider that the Act of 1862 was passed shortly after the outbreak of the Civil War, when a through line of transportation to the Pacific Ocean was necessary for the transportation of troops and munitions of war, the meaning of the provisions of the Pacific Railroad Laws is obvious. The Government was not interested in the apportionment of freight or earnings among the several roads. It was interested only in securing such treatment by each road of the others as would assure unhindered through transportation. To accomplish this end, the Pacific Railroad Laws used plain, simple language. They required each of the Pacific Railroads to accord to each of the others "equal facilities as to rates, time and transportation": terms having no relation to the apportionment of traffic or earnings or community interest in revenues, but, on the contrary, peculiarly appropriate to the subject of adequate transportation facilities, and to that subject alone.

The court below summarily disposed of the Government's contention based upon the Pacific Railroad Laws. Judge Hook said (239 Fed. 1006; VI R. 2336):

> "It is contended that the control of the Central Pacific line from San Francisco to Ogden by the Southern Pacific is in violation of the Pacific Railroad Acts. The proofs show no foundation in fact for this contention. When this suit was brought and since, the line was being maintained and operated in every particular required as a part of a continuous railroad from the Missouri River to the Pacific Coast. In conjunction with the Union Pacific there were through rates, through billings and through freight, passenger and mail trains. There were no criticisms of the track, the service or the schedule. The Government and the public were being served adequately. Those statutes require physical connection with the Union Pacific to make a through line and the furnishing of equal advantages and facilities as to rates, time and transportation without discrimination of any kind. If those requirements are met it does not seem material whether they are performed by the Southern Pacific as lessee and stockholder or by the Central Pacific independently."

XII.

The construction which the Government attempts to put upon the Pacific Railroad Laws is inconsistent with the position which has always been taken by the three departments of the Government concerning the control of the Central Pacific by the Southern Pacific.

In no instance, except in the case at bar, has the argument ever been put forward in any department of the Government that the Pacific Railroad Laws re-

quired the constituent roads to work actively and exclusively for one another and to make full interchange at the junction points. On the contrary the opposite position has been taken by the three departments of the Government. This matter is sufficiently covered in Points VII and XI and need not be considered further. (See quotation from opinion of Mr. Justice McKenna in Steel Corporation case, p. 308, *supra.*)

XIII.

Even though a violation of the Pacific Railroad Laws were proved in the case, the remedy would not be dismemberment but would be injunction of restraint or of command to comply with the provisions of the acts.

United States v. Great Lakes Towing Co., 208 Fed. 733, 746 (1913), decides:

> "Where the illegality of the combination results alone from purely administrative conditions, which may be effectually eliminated, a prohibition of the offending practices may be sufficient to vindicate the statute."

The court also said (217 Fed. 658) that, under such circumstances, the remedy

> "is clearly to resort to restraint rather than to dissolution, except where restraint alone is inadequate".

In the *Steel Corporation* case, 251 U. S. 417, 451, it is said:

> "We recall the distinction we made in the Standard Oil case (221 U. S. 1, 77) between acts done in

violation of the statute and a condition brought about which 'in and of itself, is not only a continued attempt to monopolize, but also a monopolization'." [In the first case, "adequate measure of relief would result from restraining the doing of such acts in the future"; the second case required "the application of broader and more controlling remedies" (221 U. S. 77)].

In *United States v. New England Fish Exchange*, 258 Fed. 732 (D. Ct. Mass. 1919), it was held that although the Boston Fish Market Corporation was operating a fish pier in violation of the Sherman Act it should not be dissolved, but should be required to open the pier to all persons under reasonable regulations. Said the court (p. 748):

> "As the Boston Fish Market Corporation and the Exchange are facilities which may be operated for the good of the trade, by amending or eliminating the rules of the Exchange that place an undue restraint on the business, and by requiring the Boston Fish Market Corporation to open up the pier upon equal and reasonable terms to such dealers as may desire the privilege of doing business there, we think that the Boston Fish Market Corporation should not be dissolved, provided the pier is thus opened up, and that the Exchange should not be dissolved, provided its rules are reformed."

XIV.

There is no evidence whatever of any attempts at monopoly or monopolistic practices.

The argument of counsel for the Government in their brief is simply to the point that these railroads had a monopoly because they pioneered the field of rail-

road building in California. This does not give rise to a monopoly in the invidious sense, otherwise every pioneer would be a monopolist.

XV.

It is impossible to dismember the Southern Pacific-Central Pacific system without substantial deterioration in the public service.

We refer to our treatment of this matter at pp. 259-268, *supra,* also to the large map at the end of the appendix. It is our contention that the impairment of the public service which would result from the dismemberment of the system here sought to be torn asunder, may be relied upon by us for the following reasons:

(*a*) It is convincing proof that a system so welded together must have come into existence as the result of a normal growth.

(*b*) Such impairment of service is a full defense in equity.

(*c*) It is an item in the defense that there is no undue restraint of commerce.

(*d*) It is equally an item in the defense of estoppel by conduct.

If this system cannot be torn apart without inflicting substantial and serious injury upon the public, it must be because the present condition has obtained for many years and grown into the needs of the communities served by it. If, therefore, it should prove to be true, as we contend, that substantial and serious public in-

jury will result from dismemberment, that should be a full answer in equity.

> "We are unable to see that the public interest will be served by yielding to the contention of the Government respecting the dissolution of the company or the separation from it of some of its subsidiaries; and we do see in a contrary conclusion a risk of injury to the public interest, including a material disturbance of, and, it may be serious detriment to, the foreign trade. And in submission to the policy of the law and its fortifying prohibitions the public interest is of paramount regard." (*Steel Corporation* case, 251 U. S. 457.)

Moreover, public injury is an item to be taken into account in support of our defenses that there is no undue restraint of commerce, and that the Government is estopped by its conduct.

> "It is certainly a matter for consideration that there was no legal attack on the Corporation until 1911, ten years after its formation and the commencement of its career. We do not, however, speak of the delay simply as to its time—that there is estoppel in it because of its time—but on account of what was done during that time—the many millions of dollars spent, the development made, and the enterprises undertaken, the investments by the public that have been invited and are not to be ignored." (*Steel Corporation* case, 251 U. S. 453.)

Again, the impairment of the public service and the impossibility of dismemberment are established by the circumstance that the Central Pacific and Southern Pacific with full dispositon to contract for a readjustment of the status of the Central Pacific were unable to do so in a manner consistent with the public good, as determined by the Railroad Commission of Cali-

fornia. The whole matter may be summed up in the language attributed to the then President of the University of California, when the question of the separation of the Central Pacific and Southern Pacific was discussed in 1913 and 1914, as follows:

> "The Central and Southern Pacific Railroads are so thoroughly bound together that no man can foresee the result of tearing them asunder" (*The Outlook*, Vol. 106, p. 609).

We indicate in the following list, some of the necessary incidents of dismemberment, for which some sort of adjustment will have to be attempted; and we may pertinently ask, as did Mr. Justice McKenna in the *Steel Corporation* case, "By whom and how shall all the adjustments of preservation or destruction be made?" (251 U. S. 453).

(*a*) The problem of the Oakland Mole;*

(*b*) The problem of the Tehama-Oregon Line (p. 214, *supra*);

(*c*) The loss of one of the San Joaquin Valley Lines (p. 274, *supra*);

(*d*) The breaking up of California transportation into two and three-line hauls;

*The terminus of appellees' railway system on the easterly side of San Francisco Bay is at Oakland Mole or pier with ferry connection to San Francisco. This Terminal, including all the terminal yards, shops and ship yard used for the ferry steamers, together with the line of railroad extending thence to Sacramento via Niles and Stockton, is the property of Central Pacific Railway Company (II R. 748).

The Southern Pacific, on the other hand, owns railroads connecting with the Central Pacific tracks at the shore or east end of Oakland Mole and extending thence to Sacramento via the so-called Benicia cut-off (p. 215, supra). Thus, while the Southern Pacific owns the short line between Oakland and Sacramento, it owns no terminal on San Francisco Bay.

(*e*) The destruction of a one-line haul between Oregon and California;

(*f*) The destruction of a one-line haul between many parts of California and Arizona;

(*g*) The destruction of a one-line haul between Oregon, California and Arizona;

(*h*) The destruction of a one-line haul between California and Nevada;

(*i*) The destruction of a one-line haul between Oregon and Nevada;

(*j*) The impairment of the Ogden route as an interstate carrier consequent upon (i) the loss of the Southern Pacific part of the main line from San Francisco to Sacramento, and (ii) the loss of all Southern Pacific rails as feeders;

(*k*) The impossibility of selling the Central Pacific line from Ogden to Sacramento, unless preferential rights over the Southern Pacific entrance to San Francisco are granted, and the California Railroad Commission will not permit such an arrangement;

(*l*) The impairment of the Sunset-Gulf route as an interstate carrier on account of (i) the loss of the Central Pacific part of the main line from Lathrop to Goshen, and (ii) the loss of all Central Pacific rails as feeders;

(*m*) Reproduction costs and duplication of tracks and terminals were estimated at $85,000,000 in 1912, a figure which would be greatly increased by the present scale of prices;

(*n*) And finally, summing up the matter as Mr. Eshleman did: (1) it is very problematical if there would be any benefit to interstate commerce; (2) it is practically certain that public detriment and great impairment of service in intrastate commerce would result; and (3) there would be one dominant line and one much impaired line.

It will not do to say that the difficulties of adjustment will be entirely or almost entirely overcome by negotiations between the lines. If they must negotiate a working arrangement between them, why divorce them? If the lines cannot be separated without an agreement for joint operation, why separate them? Again, if a decree be entered in this case for the separation of the lines, who can say what the course of negotiation may be or what we may expect in respect of the future of either of the properties? We shall not be dealing with an old condition, but shall be hurled into a new one.

It will not do to say that the Union Pacific and the Southern Pacific were able to make an accommodation agreement in 1913; that agreement was never put into effect, and might have worked out well or poorly. Moreover, many of the details of the matter had necessarily been left to be worked out in a spirit of good-will. It is enough that the two companies found it impossible to sever the Central Pacific without an arrangement which the Railroad Commission of California would not approve. How then can it now be said that arrangements for the divorce of these properties, which have

never been operated apart, can be made in keeping with the public interest so as to secure such a divorce as a court of equity would be disposed to decree?

Upon this point, Judge Hook says (239 Fed. 1006; VI R. 2335):

> "After the decision of the Supreme Court that the combination of the Union Pacific and the Southern Pacific was unlawful, those companies, to meet the suggestions of the Attorney General, incorporated in the plan to dissolve the combination provisions for the surrender by the Southern Pacific to the Union Pacific of all the Central Pacific lines except one from northern California to the northern state line and a branch therefrom into Oregon. These provisions were in excess of the mandatory requirements of the Supreme Court and their consummation depended upon the approval of the Railroad Commission of California. Upon a consideration of them the Commission expressed the belief that the arrangement would 'not substantially benefit the shippers of transcontinental freight either in rates or in service' and that it would be a distinct detriment to local commerce within the state. However, the Commission made certain modifications and conditions as to features within its jurisdiction, but the railroad companies were unable to agree to them, and that part of the plan was abandoned. The failure to agree was followed by this suit to separate the Southern Pacific and the Central Pacific, but we think the doubts of the California Commission would apply with equal force to the result now sought to be accomplished."

XVI.

It is not necessary here to consider whether properties which had been operated together as one from their origin continuously down to July 2, 1890, under say, tenures at will, could or could not thereafter be legally unified by purchase, lease, etc., because at the time of the passage of the Anti-trust Act, as we have elsewhere shown, the properties here involved were owned by a single proprietor, although the tenure under which a part of the properties was owned was a 99-year term and not a fee.

In this connection we may consider two hypothetical cases—(*a*) the unification by executed agreement after the passage of the Anti-trust Act, of properties which had *always from their origin been operated as a single unit,* although under executory agreement; and (*b*) the unification by executed agreement after the passage of the Anti-trust Act of properties which *at one time were competitive, but which were combined by executory agreement before the passage of the Anti-trust Act and then operated as a unit.*

(*a*). Let us suppose a case where properties had been operated together as one from their origin under, for example, tenures at will. We might take, for instance, the case of railroad properties which had been operated for several decades by two brothers without any binding agreement. The question might arise whether a transaction after the Anti-trust Act, by which they were for the first time bound together by executed agreement, would be valid. It could be said, and properly, that as they were united from their origin, no violation of the Anti-trust Act would be involved in their unification by executed agreement after

the enactment of the law, because such a unification did not involve a combination of competitive units. The properties had a *de facto* unification from their origin.

(*b*) Let us assume now the second hypothesis and take, for instance, a case of railroad properties which at one time in their history had been competitive units but were later operated under conventional arrangement before the passage of the Anti-trust Act, and then, after the passage of the act, joined by an executed agreement. In this case it would be argued that *U. S. v. Trans-Missouri,* 166 U. S. 290 (1897), controlled, because at one time the properties had been competitive units.

The present case, however, is quite excluded from the scope of either of these hypothetical cases, because the properties concerned (always one in practical effect) were unified in legal effect by a lease executed in all respects, so far as vested interest in the property is concerned, five years before the passage of the Anti-trust Act (see *Venner v. N. Y. C. and H. R. R. Co., supra,* p. 293).

XVII.

Considering that (a) these lines were operated as one from their origin, and that (b) on July 2, 1890, the Central Pacific lines were held under a 99-year term expiring April 1, 1984, it is clear that the lease of December 7, 1893, which cut down the term three months, viz.: to January 1, 1984, is entirely lawful, leaving out of view the argument next to be made that, even if the lease were unlawful, the lessee, Southern Pacific Company, would be deemed to hold under the original term created February 17, 1885.

In this case (*a*) the lines were operated as one from their origin, and (*b*) on July 2, 1890, the Central Pacific lines were held by the Southern Pacific under a 99-year term. There was thus a legal unification. Under those circumstances, it was entirely proper to make another agreement in respect of this legal unification, and even if it had developed that all rights under the agreement of 1885 were merged in the rights secured by the lease of December 7, 1893, it would by no means follow that no property rights whatever survived. In other words, the validity of the lease of December 7, 1893, would be sustained by the legal status which existed at that time and which had for its justification the history of the properties and their unification by executed agreement and conveyance on February 17, 1885, for a 99-year term.

The unchanged parts of the first lease would be deemed in force without interruption from the date the lease was made, just as revised or compiled laws are deemed in force from the date of their first enactment [*Bear Lake Co. v. Garland* (1896), 164 U. S. 1, 11].

Judge Hook puts it as follows (239 Fed. 1001; VI R. 2330):

> "In December, 1893, another lease from the Central Pacific to the Southern Pacific was executed, modifying the terms of the lease of 1885 in matters not important here, and though the older instrument was cancelled in terms, in legal effect the relation of lessor and lessee continued unbroken. The term of this last lease is until January 1, 1984. Whatever immunity or exemption from the operation of the Anti-Trust Act attended the proprietary relations existing prior to its passage was not destroyed by the change in the position of the parties affected by the lease of 1885. Nor did the amendment of that lease in immaterial respects in 1893 create a new starting point. It is not material that the amendment was by a revision substituted for the old instrument instead of by a separate supplement."

XVIII.

If the lease of December 7, 1893, were invalid as one executed after the passage of the Anti-trust Act, the Southern Pacific Company would nevertheless be treated at law and in equity as the holder of the 99-year term which it acquired under the lease of February 17, 1885, notwithstanding the provision of cancellation contained in the lease of December 7, 1893.

We have just argued that the lease of December 7, 1893, was valid, although executed after July 2, 1890. We now propose to show that even if the lease of December, 1893, were invalid, the Southern Pacific would nevertheless hold its 99-year term under the tenure of the lease of February 17, 1885; for it is established

that if a lessee makes a surrender of an outstanding term in consideration of the grant of a new term, and the grant of the new term is invalid for any reason, the lessee will be restored to his original estate upon principles analogous to those in cases of failure of consideration and mutual mistake of law. The law would not forbid the enjoyment of the new term and deprive the lessee of the old term which he surrendered in the belief that he was to obtain in its stead a new and valid term.

Let us refer briefly to these leases. The lease of February 17, 1885, was for a 99-year term commencing April 1, 1885. The Southern Pacific entered upon the enjoyment of its 99-year term April 1, 1885, and was in possession when it made the new lease of December 7, 1893. At the time it made the lease of December 7, 1893, the 99-year term would have expired April 1, 1984. The lease of 1893 provided that the term thereby granted should expire January 1, 1984; in other words, the lease of 1893 cut off three months from the end of the term fixed by the lease of 1885.

The lease of 1893 contains the following clause:

> "Fifth. The agreements between the same parties, dated February 17, 1885, and January 1, 1888, respectively, are hereby canceled, except so far as they relate to operation of said demised premises prior to January 1, 1894, and adjustment of accounts in respect to such operation thereof" (I R. 23).

Of course the lease of 1893 was simply intended to amend the lease of 1885, but the requirements of con-

veyancing made it take the form of a surrender of the old term and the grant of a new one. This intent is expressly stated in the lease of March 22, 1894, which amended the lease of 1893. The lease of 1894 provided as follows:

> "Whereas, heretofore and *under date of the 7th day of December, 1893, an indenture was made and entered into* by and between the parties hereto *revising and changing the then existing agreement of lease between said parties,* as by said indenture, dated the 7th day of December, 1893, by reference thereto will fully and at large appear" (I R. 24).

In his letter to Senator Gear, dated January 8, 1897 (p. 138, *supra*) Mr. Huntington speaks of the lease of February 17, 1885, as "original lease" and the subsequent lease and amendments as "modification of lease". It is plain that all that was intended was to modify the lease of 1885. It did take the form of a cancellation and the creation of a new term, but as we have already said the law will treat the Southern Pacific Company as enjoying its original term if it made the mistake of supposing that the lease of 1893 would be effective to give it a new term.

Judge Hook speaks of the leases of 1885 and 1893 as follows:

> "The old leases of the Southern Pacific lines to the Central Pacific were surrendered by the same instrument [the lease of 1885]. This was five years before the passage of the Anti-trust Act. In December, 1893, another lease from the Central Pacific to the Southern Pacific was executed modifying the terms of the lease of 1885 in matters not important here, *and ihough the older instrument*

was cancelled in terms, in legal effect the relation of lessor and lessee continued unbroken."

239 Fed. 1001, VI R. 2330.

The rule is that if an amended or substituted lease be invalid, the lessee will be treated as still holding his original term. If, of course, by subsequent contract that term is cut down, the law will treat it as cut down, and if there are amendments in other respects the law will enforce those amendments. But the intention of the parties will be enforced as far as may be lawfully done, and as to those matters in which the parties mistook the law, they will be restored to their position before the mistake of law occurred.

We cite the authorities which deal with this subject and it appears from them that the rule is the same in cases of express surrender as it is in cases of implied surrender. Obviously the rule is applied more frequently in cases of implied surrender, for they occur with greater frequency. It will appear from what follows, however, that the rule is the same in both cases.

Where a person having a lease for a given term accepts from the lessor another lease covering all or a portion of the unexpired term of the first lease, it is almost universally held that the second lease abrogates the first lease, because in the acceptance of the second lease there was an implied surrender of the first. The reason for this is obvious: without a surrender of the first lease the lessor would not have it in his power to grant the second. It is, therefore, presumed that the

parties intended by the execution of the second lease that the first should be surrendered.

This presumed intention has sometimes been supported on the doctrine of estoppel. It is the rule that by his acceptance of a lease the lessee is estopped to deny the title or power of the landlord to make the lease. If, therefore, a lessee accepts a second lease covering a portion of the term of a former lease, he is estopped to deny that the lessor did not have the power to make the second lease and is deemed, therefore, to have intended a surrender of the former lease, which would give to the lessor the power of making the second lease.

It would seem, therefore, that whenever the application of the rule of implied surrender would do violence to the real intention of the parties it should not be indulged, and this is the holding of the authorities.

In *Doe v. Poole* (1848), 11 Q. B. 714, 116 Eng. Repr. 641, it is said (p. 642):

> "The doctrine of surrender implied by law was introduced for the purpose of giving effect to the intention of the parties: the surrender is presumed for the purpose of making a grant operative which otherwise would be without effect."

See also:

Lester Agricultural Chemical Works v. Selby, 68 N. J. Eq. 271, 59 Atl. 247 (1904);

Van Rensselaer's Heirs v. Penniman, 6 Wend. 569 (1831);

Flagg v. Dow, 99 Mass. 18 (1868);

Thomas v. Zumbalen, 43 Mo. 471 (1869);

Schieffelin v. Carpenter, 15 Wend. 400, 405 (1836);

Witmark v. New York Elevated Railroad Co., 76 Hun. 302 (1894);

Coe v. Hobby, 72 N. Y. 141 (1878);

Smith v. Kerr, 108 N. Y. 31; 15 N. E. 70 (1888);

Chamberlain v. Dunlop, 126 N. Y. 45; 26 N. E. 966 (1891);

Woodfall on Landlord and Tenant (19th ed.), p. 350;

18 *Am. & Eng. Cyc. of Law* (2nd ed.), p. 359.

In *Doe v. Poole, supra,* it is said (p. 642):

"That an *express* surrender may be on condition either precedent or subsequent, is clear upon the authorities, as, if it be with reservation of rent, and conditioned to be void if the rent be not paid; Shep. Touchst. 307. 'A condition annexed to a surrender may revest the particular estate, because the surrender is conditional; Co. Lit. 218 b.' . . .

"The implication of a condition, that the surrender should be void in case the new grant should fail, appears to us to be free from objection. Indeed, where the terms of a lease import an *express* surrender solely in consideration of the new grant, we think a construction that such surrender was conditional would be warranted, and would give effect to the intention of the parties."

It was held, accordingly, that the acceptance of a lease which is voidable and which does not pass an interest according to the contract is not a surrender of a preceding lease.

In *Doe v. Courtenay,* 11 Q. B. 702, 116 Eng. Rep. 636 (1848), the point of the decision is thus stated in the syllabus (p. 637):

"Held, that the surrender was inoperative, and that the first lease remained in force; and this, whether the second lease, at the time of the demise, was void or only voidable at the will of the tenant for life, and *whether the surrender was implied or express;* the ground of decision being that the new lease did not pass an interest according to the contract, and therefore the acceptance of it, *though with express words as above stated,* did not effect an absolute surrender."

In the opinion it is said by Coleridge, J. (p. 640):

"In the case of a surrender implied by law from the acceptance of the new lease, a condition ought also to be understood as implied by law, making void the surrender in case the new lease should be made void; and that, in case of an *express* surrender, so expressed as to show the intention of the parties to make the surrender only in consideration of the grant, the sound construction of such instrument, in order to effectuate the intention of the parties, would make that surrender also conditional to be void in case the grant should be made void."

See also:

Noble v. Ward, L. R. 2 Ex. 135 (1867);

Easton v. Penny, 67 Law Times Rep. (N. S.) 290, 41 W. R. 72 (1892);

Corporation of Canterbury v. Cooper, 99 Law Times Rep. (N. S.) 612 (1908); affirmed 100 L. T. 597, C. A. (1909);

Zick v. London United Tramways, Limited, L. R. 2 K. B. 126 (1908).

The case last cited is based upon and quotes from *Doe v. Courtenay,* supra.

The conclusions from the above cases may be briefly summarized as follows:

1. The doctrine that a lease will be deemed to have been surrendered where the lessee accepts a second lease during the term of the first is one based upon the presumed intention of the parties and yields whenever it does violence to such presumed intent.

2. In no case will the acceptance of a new lease be held to be a surrender of an old lease where the new lease is, for any reason, invalid, or does not convey the interest and estate which the parties intended it to convey. This is true, notwithstanding the fact that the second lease may be given in consideration of the surrender of the old lease, and, in terms, provide for such surrender.

These rules are based upon the theory, deduced from the presumed intention of the parties, that the surrender of the old lease, whether *express* or *implied,* was to be operative only *upon condition that the new lease was valid and effectual.* If, therefore, the new lease is not valid or effectual, the condition upon which the old lease was to be surrendered fails, and there is no surrender.

XIX.

We here argue but only briefly the point that the Anti-trust Act, did not make unlawful the operation by a single proprietor of lines owned by him at the date of the passage of the act which were not then competitive but which could be made competitive if divorced.

Upon the oral argument below, counsel for the Government took the extreme position that the Sherman

Act makes unlawful the operation by a single proprietor of lines owned by him at the date of the passage of the Anti-trust Act and not then competitive, but which could be made competitive, if divorced. In other words, the Government argued that the Anti-trust Act was intended not only to forbid combinations, but also to forbid the unified operation of properties which *could be made competitive* if released from a unified ownership.

The language of the Anti-trust Act is open to no such construction. The law forbids the *combination* of *existing competitive* units. If it had been the intention of Congress to forbid the ownership by a single proprietor of two railroads which *could be made to compete,* but which were not competing at the time of the passage of the Sherman Act or for a long period before the act was passed, or which indeed might never have been competitive, Congress would have expressed that idea with clearness and precision, would simply have declared it unlawful for any person to own two railroads which were capable of being made competitive.

In the petition in this case and throughout the argument, counsel for the Government speak of lines as "*natural* competitors" and roads as "*naturally* competitive". These terms are intended to indicate railroad lines which are not competing, but which could be made to compete, if divorced. Counsel also employ the term "*potential* competitors", by which they mean lines of railroad which could be made to compete, but are not competing and perhaps never have competed.

On this point, then, the question is simply this: Does the Anti-trust Act forbid the combining of competitive units (*i. e.*, units that are actually competing), or does it declare unlawful the ownership of property no matter how, or when acquired, or upon what tenure, if parts of the property can be made to compete, if divorced, without regard to the question of when they competed, if as a matter of fact, they ever did so?

It is submitted that the meaning of the Anti-trust Act is plain, and that the act does not make unlawful the operation by a single proprietor of lines owned by him and not competitive at the time of the passage of the act, but which forsooth could be made competitive if divorced.

Upon this point, the court below said (239 Fed. 1001; VI R. 2330):

> "There was from 1870 an existing, continuous, common control of the railroads of both companies created by leases executed and observed by the parties and unquestioned by the State. This was the situation when the Central Pacific debt to the United States was settled in 1899 pursuant to the Act of July 7, 1898 (30 Stat., 659), and when the Southern Pacific acquired all the stock of the present Central Pacific which was then organized to succeed the old company. . . .
>
> There never was a time, in our opinion, when there was in any real, substantial sense, 'a natural and existing competition in interstate commerce' between the Southern Pacific and the Central Pacific within the intent of the Anti-Trust Act. . . .
>
> We do not think the statute was intended to create competition by destroying a proprietary relation formed long before its passage and by the very means of which a railroad system has been brought into existence."

XX.

The argument of counsel for the Government in this case overlooks the value and importance to the Government of the guaranty of the bonds by the Southern Pacific Company in 1899.

It is argued by the Government that the $100,000,000 issue of Central Pacific bonds bore the guaranty of the Southern Pacific to satisfy the First Mortgage bondholders, and that the guaranty was of no consequence to the Government. It is not difficult to prove that the guaranty of the Southern Pacific was indispensable to the reorganization of the Central Pacific and to the payment of the Government debt. Nobody expected the Central Pacific to pay $58,000,000 in ten years out of its revenues. The money had to be raised from the sale of its bonds, and unless the bonds were salable the money with which to pay the Government could not be obtained. It has been suggested by the appellant, and it must have been the fact, that the installment notes were paid largely from funds derived from the sale of the bonds. It was therefore indispensable that the bonds should be salable, and we have the testimony of Mr. Speyer that they could not have been marketed without the Southern Pacific Company's guaranty. But Mr. Speyer's testimony was not necessary to prove that fact. The earnings of the Central Pacific would not have enabled it to market the bonds involved in the reorganization without the support of the Southern Pacific Company.

Counsel for the Government also overlooks another very important fact. *The Central Pacific might have*

defaulted in the payment of the notes. If it had done so, what would the plight of the Government and the administration have been without the guaranty of the Southern Pacific Company? The Government would, in the event supposed, have held 47 per cent of the $100,000,000 issue of bonds payable forty-five years after date. But the act of July 7, 1898, appointing the commission required that the debt should be paid within ten years. What answer would President McKinley and the three members of his Cabinet have given to the country if there had been a default in the payment of the notes and the bonds had been simply a lien on the properties of the Central Pacific Company? A moment's reflection makes it clear that the Government had a very great interest in seeing that the bonds were as salable and as valuable as it was possible for the Government to have them. It is for this reason that Judge Hook speaks repeatedly in his opinion of the "security" which was provided for. "The Government was to receive not less than the full amount of principal and interest 'with such *security* as to said commission may seem expedient'. . . . The bonds were to be *secured* by the guaranty of the Southern Pacific. . . . The above constituted the *security* which seemed expedient to the commission." (VI R. 2332-2333.)

It is argued by counsel for the Government that the written agreement did not provide for the guaranty of the Southern Pacific. But the President and his Cabinet understood that the bonds were to be guaranteed, and we may depend upon it that the transaction

would have broken down if the bonds, without the guaranty, had been tendered.

Moreover, the contract with the Government provided (I R. 55), as follows:

> "The payment of the principal and interest of the said notes and of the indebtedness represented thereby, shall be secured by the pledge of $58,820,000, face value, First Refunding Mortgage Four Per Cent Gold Bonds issued by the Central Pacific Railroad Company, or its successor company having title to the aforesaid railroads, such bonds to be part of an issue hereinafter described not exceeding $100,000,000 in all, one-twentieth part of such pledged bonds to be held as security for each of said notes."

The First Refunding Mortgage of the Central Pacific was fully described in the railroad company contracts and plan of readjustment brought out by Speyer & Co. The Government was familiar with the plan and the terms and conditions of the First Refunding Mortgage, and Attorney General Griggs testified that the Government was to get $58,000,000 in bonds of that issue and that he knew that the Southern Pacific Company was to guarantee the issue and, speaking for himself and the administration, he said that no bond not carrying that guaranty would have been satisfactory (III R. 1000-1002). To the same effect is the testimony of Secretary Gage (III R. 1011-1012) and Mr. Speyer (III R. 1182-1185). See also pp. 166-174, *supra*.

In point of fact, the bonds which the Government received did carry the endorsement of the Southern

Pacific Company. The case aptly illustrates the remark of Lord St. Leonards, quoted in Waterpark v. Fennell, 7 H. C. L. 684, 11 Eng. Rep. 273, "Tell me what you have done under such a deed and I will tell you what the deed means". In other words, the bonds which the Government received were guaranteed and it was therefore agreed with the Government that they should be guaranteed. This circumstance corroborates the testimony of the only survivors of the transaction, all of whom were called by the defendants and testified as we have indicated.

XXI.

Both sides seem to be agreed, although for different reasons, that the Government cannot be said to have been an accomplice in the violation of its own laws: the appellees contending that no laws were violated, and counsel for the Government asserting either that (a) the Government did not know the facts; or (b) was unconscious of the law; or (c) in final analysis had no power through its own officers to violate its own laws.

We have shown elsewhere that the Government's petition in this suit is framed upon the theory that prior to the lease of 1885 the Central Pacific, with its connections to the Atlantic Coast, was in competition with the Sunset-Gulf route from San Francisco via New Orleans to New York; and that this competition was suppressed by the lease of February 17, 1885.

Counsel for the Government now contend that the combination by which the Sherman Act was violated oc-

curred February 20, 1899. They say that the combination complained of was made pursuant to a plan promulgated February 20, 1899, whereby the Southern Pacific Company, then owning the stock of the Southern Pacific Railroad Company, acquired all the stock of the Central Pacific Railroad Company.

It is important in this connection to note the events immediately preceding February 20, 1899. For several months negotiations for the reorganization of the Central Pacific had been going on. The parties interested in the negotiations were (*a*) the Government with a claim of $58,812,715.48; (*b*) the first mortgage bondholders representing $57,471,000; (*c*) a large number of stockholders holding an undefined portion of an issue of $67,275,500 par value; (*d*) the Southern Pacific Company as holder of an unexpired term of about 85 years under the Central Pacific lease; and (*e*) Speyer & Co.

In years past, the stock of the Central Pacific had been sold in large blocks and for large sums in England and on the Continent, and presumably at home. This stock had not been sold to railroad operators, but to investors. The investment had not been a profitable one, and in the years preceding the reorganization of the company the uncertainty respecting the future of the property impaired the value of its shares. All of this was public knowledge here and in financial circles abroad.

The reorganization of the property could not have been accomplished without the concurrence of all the interests represented. The Government was seeking to

collect the amount due to it. The Commission was appointed to *settle* the indebtedness and it was bound to arrange a settlement that would bring in the amount due within ten years. There was also a provision in the act that if an agreement of settlement were not made within a year, foreclosure must occur. It was far from the policy of the Government, however, to force a foreclosure and become a railroad proprietor; its object was to collect the debt due to it. The bonded debt plus the Government claim amounted to over $116,000,000, and the record fails to show any possible purchaser for the property at that or any other figure, except the Southern Pacific Company.

These were the circumstances of the case when the agreement for the reorganization of the properties took final shape. As is usual in such reorganizations, the papers of agreement were numerous and all the parties in interest did not execute, nor was it expected that they would execute, a single instrument. Each of the parties in interest executed the agreement which was appropriate to his interest and engagements. The agreement in respect of the indebtedness of the Government was drawn to bear date February 1, 1899, and the amount due was figured as of that day.

As elsewhere shown, the agreement was executed by President McKinley, Secretary Bliss and Attorney General Griggs at Washington, February 15, 1896, and by Secretary Gage at Boston, February 16, 1896.

This brings us to February 20, 1899, the day which counsel for the Government specifies as the one on

which the alleged violation of the Anti-Trust Act began. What occurred that day? Two things: (*a*) the Secretary of the Treasury, the Secretary of the Interior and the Attorney General submitted to each of the Houses of Congress a report, saying that they had executed the agreement, providing for the payment of the debt to the Government; (*b*) Speyer & Co. on that very day issued and sent out to the financial world at home and abroad the comprehensive plan which had been formulated for the reorganization of the Central Pacific with a view to the payment of the Government debt; and in this plan, prominent and conspicuous, were the provisions that the Southern Pacific Company was (1) to guarantee bonds to the amount of $125,000,000 for the corporate purposes of the Central Pacific; (2) to buy for $20,000,000, as and when required, the preferred shares of the reorganized Central Pacific; (3) to purchase the stock of the Central Pacific, paying for it, par for par, with its own shares, plus $25 per share of bonds issued upon the Central Pacific shares preferred and common; and (4) to issue in accord with these engagements, its own issue of bonds of $36,819,000 secured by the Central Pacific shares, preferred and common, out of which latter sum it was to set apart $20,000,000 for the purchase of the preferred shares and use the other $16,819,000 to pay $25 per share upon the outstanding stock of the Central Pacific, amounting, as before stated, to $67,275,500.

In a word, counsel for the Government fix the date of the so-called combination at the time the Government first became assured of the payment of the fifty-

eight millions that were due it; they find the origin of the combination in the acts of the President, his Cabinet and Congress; and they discover illegal restraint of trade in the fact that the Government chose to accept the Southern Pacific guaranty, instead of proceeding to foreclosure in order that it might itself become a competitor of the Sunset-Gulf route.

Is it any wonder, therefore, that while counsel for the Government and ourselves agree that the Government cannot be an accomplice in the violation of its laws, we disagree in the reasons for our attitude? We say that the Government is not an accomplice in the violation of its own laws because its laws were not violated. Counsel for the Government, on the other hand, argue that the Government did not violate its own laws either: (*a*) because the Government did not know the facts; or (*b*) if it did know the facts, it was unconscious of the law; or (*c*) if it knew the facts and was conscious of the law, it had no power (or at least its officers had no power) to agree to a violation of the law.

The case, therefore, in respect of the matter with which we are at the moment dealing, falls within very narrow compass, and we are content to submit it for the consideration of the court without further comment.

XXII.

The argument of counsel that the 99-year lease of the Central Pacific lines to the Southern Pacific Company, dated February 17, 1885, was or is invalid, is without merit.

It is alleged in the petition (I R. 8):

> "By an instrument dated February 17, 1885, all railroads, equipment and other properties owned by the Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, were leased to the Southern Pacific Company for a term of ninety-nine years, and all leases of the Southern Pacific Railroad Company's properties held by said Central Pacific Railroad Company were by the same instrument transferred to said Southern Pacific Company. Under that and subsequent leases and amendments the Southern Pacific Company has ever since controlled and operated said properties and the additions thereto."

It is now claimed, for reasons which we shall presently consider, that the lease is invalid. We take the position, however, that there is no allegation in the petition to that effect. On the contrary the petition proceeds upon the theory that the lease was valid as between the parties thereto, and invalid only under the Anti-Trust Act, or perhaps under the Pacific Railroad Laws, or both. In any event, however, there is no allegation to support the argument now made that the lease was invalid upon any ground not appearing on the face thereof.

In *Dahl v. Montana Copper Co.*, 132 U. S. 264 (1889), one of the points urged was that the defendant in error, a New York corporation, was not authorized to acquire or own any real property in the territory of Montana,

because it had not complied with the laws of Montana in respect of foreign corporations. Holding that this point was not available to the plaintiff in error, because not pleaded, this court said (p. 326):

> "No question is therefore raised on the pleadings as to its competency to do business within the Territory for want of compliance with the provisions of the territorial law. . . . It is sufficient in this case to say that such incompetency cannot be considered unless set up in the pleadings in the court below. A failure to comply with the provisions of the law will not be presumed in the absence of any allegation on the subject."

Let us consider the grounds upon which counsel for the Government claims that the lease is invalid.

(1) Counsel argue that the power to lease was not included in the articles of association of the Central Pacific Railroad Company. To this we reply that there is a distinction between corporate purposes and corporate powers, and that it is not at all necessary that the powers of corporations should be specified in the articles of association. In 1880 the California law was amended to permit railroad corporations to lease to other railroad corporations "doing business in the state".

The statute in full is as follows (Stats. Cal. 1880, p. 114):

> "Section 1. That every railway corporation, and every corporation organized for the purpose of carrying freights or passengers, which has or may be created or organized under or by virtue of any of the laws of any State or Territory of the United States of America, or any Act of Congress of the United States of America, may hereafter build railways, exercise the right of eminent domain, and

do or transact any other business which such corporation might if the same had been created or organized under or by virtue of the laws of this State, having the same rights, privileges, and immunities, and subject to the same laws, penalties, and obligations, and burdens, as though said corporations had been created by or organized under the laws of the State of California.

Sec. 2. Railroad corporations doing business in this State and organized under any law of this State, or the United States, or of any State or Territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

Sec. 3. All laws inconsistent with this Act are hereby repealed."

The only question which we are at the moment dealing with is whether the lease is invalid because the power to make leases was not inserted in the articles of association. At the time the articles were filed, the law did not in terms provide for leases, but the constitution of California from the very beginning reserved the right of the legislature to alter, amend or repeal corporate charters. This gave it the power lawfully to enact that all railroad corporations should have the power to lease their lines. When it did so, all railroad corporations of California thereupon became possessed of the power to lease their lines, and were not required to take any steps themselves to be entitled to exercise that power. The argument of counsel that such a power could not be exercised by a particular corporation except upon the consent of the stockholders is fully

answered by the authorities which declare that a stockholder gives his consent in advance when he becomes a stockholder in a corporation organized under the laws of a state which has reserved the right to amend, alter and repeal corporate charters.

In *Market Street Co. v. Hellman,* 109 Cal. 571 (1895), in reply to a contention that an amendment authorizing the consolidation of corporations was ineffective if applied to a corporation organized prior to the amendment, except with the consent of its stockholders, the court said:

> "When an individual becomes a stockholder in a corporation it is with the implied assent on his part to the right of the legislature to alter and amend the law within the scope of the constitutional provision, and is as binding upon him as a contract to like effect of his own making would be" (p. 584).

See also:

McKee v. Chautauqua Assembly (C. C. A., 2nd Ct. 1904), 130 Fed. 536;

Schenectady & Saratoga Plank Road Co. v. Thatcher, 11 N. Y. 102 (1854).

(2) The second objection to the lease is that the California legislature never authorized the lease because the Southern Pacific Company was not "doing business" in California, when the lease was made February 17, 1885. The lease, however (I R. 13), recites that the Southern Pacific Company is "now doing business in the State of California". Moreover, there is no allegation in the petition that the Southern Pa-

cific was not doing business in the State of California February 17, 1885, yet counsel for the Government treat this as an issuable point in the case.

In the next place the lease of February 17, 1885, provided for a term to commence April 1, 1885, and before that time the Southern Pacific Company had commenced doing business in California, and for a month prior to that date was operating the Southern Pacific Railroad Company and allied lines. It is clear that if a state law authorizes a corporation doing business in the state to lease property, the law is complied with if the lessee commences doing business in the state by operating the leased property contemporaneously with the commencement of the demised term, even though the lease were executed six weeks before.

The situation presented in the case is similar to that of an alien forbidden by law to acquire property, who actually purchases the same, and becomes a citizen before any proceedings are taken to divest him of title. It is held that under these circumstances the title of the purchaser becomes indefeasible as soon as he acquires citizenship.

In *Harley v. State*, 40 Ala. 689 (1867), the syllabus reads as follows:

> "An alien may purchase lands, and acquires by his purchase a defeasible estate, subject to be defeated by office found; and if he becomes a naturalized citizen before an information is filed for the the forfeiture of the lands, his title becomes perfect, and cannot be divested by proceedings afterwards instituted."

In the opinion it is said (p. 697):

> "When Harley purchased the land in controversy, and during the period of his alienage thereafter, he was seized of a defeasible estate in the premises, accompanied with all the incidents of ownership of such an estate. During the same period, the only right which the State could have in the premises was the right to have the land escheated, by a judicial proceeding in the nature of an inquest of office. This prerogative right of sovereignty was not asserted during the period of Harley's alienage; but he was permitted to retain his estate, without molestation, until he had been admitted to full citizenship. This result effected an extinguishment of the right of the State to escheat the land, if such right existed, and perfected the title of Harley."

So, also, the parties by acquiescence in the lease of February 17, 1885, after the Southern Pacific commenced to do business in California, will be deemed to have ratified that lease, and to have given to it the validity that it would have had if executed after the Southern Pacific commenced doing business.

In *Montgomery Traction Co. v. Montgomery Light & Water Power Co.*, 229 Fed. 672 (C.C.A., 5th Ct., 1916), it was held that although the plaintiff corporation was not qualified to transact business in Alabama on January 30, 1909, when it made the contract which the defendant sought to declare invalid, its disqualification had nevertheless been removed on June 11, 1909, by its complying with all the requirements of the state law, and that therefore the validity of the contract could not thereafter be assailed. The court said (p. 675):

"The averments of the bill show that, up to the time it was filed in September, 1911, there was a continuing recognition by each of the parties of the existence of the alleged contract, evidenced in part by the instrument of January 30, 1909, and the evidence adduced as to the dealings between the parties subsequent to June 11, 1909, after which date there was no disability to contract, evinces a mutual understanding or agreement between the parties to conform their dealings to the terms of the contract expressed in the instrument dated January 30, 1909. The conduct of the parties after the removal of the only legal obstacle standing in the way of the making of a valid contract between them had the effect of an adoption by them of the contract expressed in the instrument dated January 30, 1909. While the parties could not by any act of ratification make a void contract a valid one from the time it was undertaken to be made, they could, when each of them was duly qualified to contract, elect to adopt as the whole or a part of the contract by which their dealings were to be governed what was expressed in an instrument which was ineffectual at the time it was signed. Turner Construction Company v. Union Terminal Company, 229 Fed. 702."

The case of *Turner Construction Co. v. Union Terminal Co.*, 229 Fed. 702 (C. C. A. 5th Ct., 1916), referred to in the opinion in the foregoing case, was a suit to enforce a mechanic's lien. The plaintiff was a New York corporation. At the time it entered into the contract for the doing of the work upon which the claim of lien was based it had not complied with the laws of Florida authorizing foreign corporations to do business. During the progress of the work, however, the plaintiff did comply with the Florida statutes. Under these circumstances it was held that the parties had

ratified the contract, and that its validity could not be challenged. Said the court (p. 704):

> "It may be conceded that an effect of this provision was to prevent the acquisition by the plaintiff of any enforceable right as a result of the signing of the instrument on November 21, 1912, and that no right thereunder could have accrued to it prior to its compliance with the statute. But its compliance with those requirements and the issue of the permit to it on January 11, 1913, effectually removed its disability to acquire contractual rights in Florida. . . . It could acquire rights theretofore ineffectually undertaken to be contracted for by the operation in its favor of an estoppel upon the party dealt with to deny the existence of such rights, or by joining with that party in adopting as the evidence of a subsisting contract between them the instrument which, when it was signed, did not, because of a statutory prohibition, confer any enforceable right on the plaintiff. . . . After both the parties were free of any disability they could make a new contract and recognize the instrument already signed as embodying the terms of it. Williams v. Morris, 95 U. S. 444, 457, 24 L. Ed. 360."

Again, it appears (p. 108, *supra*) that the lease by the Southern Pacific Railroad Company to the Southern Pacific Company bore date February 10, 1885, and ran for a term of 99 years *from the date last named.* It is true that the testimony is that the Southern Pacific Company began the *operation* of these lines March 1, 1885, but on February 10, 1885, it became the owner of the Southern Pacific Railroad Company's lines for a 99-year term and this is sufficient to satisfy the requirements that it should have been "doing business" in California when it took the Central Pacific lease February 17, 1885.

Moreover, the lease of February 17, 1885, was modified by an agreement between the parties executed January 1, 1888, and at that time the Southern Pacific Company was engaged in doing business in the State of California because it was operating both the Southern Pacific and the Central Pacific lines. It is clear that nothing more need be said on this point.

(3) The third point is that the lease to a competing road is invalid. In the first place, that question cannot be raised in a state of the United States in respect of conditions that antedated the enactment of the Anti-Trust Act of July 2, 1890. In the next place, the Central Pacific and Southern Pacific were operated together as a property with a single identity from their very origin, and they would neither come within the philosophy nor the letter of the rule urged in this objection.

(4) The fourth proposition is that no lease could be made by the Central Pacific to the Southern Pacific Company without the consent of Congress on account of the privileges and franchises conferred upon the Central Pacific by the Pacific Railroad Laws. The Central Pacific, notwithstanding the grants from Congress, remained a California corporation, and it sued and was sued in the State and Federal Courts as such. It derived collateral powers from Congress, but its corporate powers as such and its corporate existence it took and has always held under the laws of the State of California.

In *Central Pacific R. R. Co. v. California*, 162 U. S. 91 (1896), it was held that:

> "The Central Pacific Company is a corporation of California, recognized as such by the acts of Congress granting it aid and conferring upon it Federal franchises, and it was not the object of those acts to sever its allegiance to the State or transfer the powers and privileges derived from it; nor did those consequences result from the acceptance of the grant by the corporation."

In this connection, it may be noted that the right of the old Central Pacific to sell to the new Central Pacific was recognized in *United States v. Union Pacific R. R. Co.* (1912), 226 U. S. 61, 92, where the court, speaking of the transfer of the properties from one company to the other, said:

> "The obligation to keep faith with the Government continued, as did the legislative power of Congress concerning these roads, *notwithstanding changed forms of ownership and organization.*"

If the old Central Pacific could lawfully sell all of its properties to the new Central Pacific without a Congressional enabling act, it certainly had power to make a lease of its properties to the Southern Pacific Company without Congressional action.

(5) In the agreement of settlement between the Government and the Central Pacific dated February 1, 1899, the lease of February 17, 1885, and the modifications thereto were expressly recognized, and it was expressly required that the lease should be subordinated to the hundred million dollar bond issue. This was done by the Southern Pacific and the Government cannot now urge that this lease was invalid because of the lack of Congressional sanction.

(6) Finally, in dealing with all of the objections to the lease, we submit that: (*a*) in view of the settlement of the Central Pacific debt, notably the requirement that the Southern Pacific should subordinate its lease to the lien securing the $100,000,000 issue, the Government is estopped to question the validity of the lease; and (b) if the lease be attacked at all, it can be attacked only in a suit brought by the State of California.

See *Kerfoot v. Farmers & Merchants Bank*, 218 U. S. 281 (1910). The question decided is stated in the syllabus as follows:

> "The United States alone can object to the want of authority of a national bank, under U. S. Rev. Stat. § 5137, U. S. Comp. Stat. 1901, p. 3460, to accept a conveyance of real property to be held in trust."

Many cases are cited in the opinion in support of the conclusion of the court. The following quotation from *Union National Bank v. Matthews*, 98 U. S. 621, is held to be decisive of the case:

> "Where a corporation is incompetent by its charter to take a title to real estate, a conveyance to it is not void, but only voidable, and the sovereign alone can object. *It is valid until assailed in a direct proceeding instituted for that purpose.*"

The court states that the rule recognizes "the authority of the *government to which the corporation is amenable*". In the present case, of course, the State of California was the "authority to which the corporation [Central Pacific] was amenable", since it was incorporated under the laws of California.

XXIII.

This case does not come within any rule or supposed rule dealing with the prevention of competition coming into existence.

Counsel for the Government undertake to justify a decree, not upon the ground that competition has been suppressed, but that competition, threatened and imminent, was prevented from coming into being on February 20, 1899. They argue that since the Act of July 7, 1898, provided that unless the settlement was perfected within a year the President should proceed at once to foreclose the lien, foreclosure must inevitably have resulted in the acquisition of the Central Pacific Railroad by the United States, or by purchasers not subject to the control of the Southern Pacific Company, unless it was acquired by that company or in its interest. From this they contend that the immediate prospect was a *naturally competitive railroad,* a part of the most direct railroad in the United States, from the Atlantic Ocean to the Pacific Ocean, in the control of independent competitors. The foregoing states the appellant's case. But the Government did not desire foreclosure; it wanted a settlement of the debt that was due to it. There was a precautionary provision, it is true, that if no settlement were obtained, foreclosure should take place. But the Southern Pacific made settlement possible and foreclosure was averted with the consent and by the desire of the Government.

Counsel argue, however, that if foreclosure had not been averted the Central Pacific might have been acquired by the United States, or by purchasers not sub-

ject to the control of the Southern Pacific Company, *unless it was acquired by that company or in its interest.* In other words, counsel seem to realize that the Southern Pacific might have been a bidder at the foreclosure sale. If that had come to pass, and the property had been struck off in the Government foreclosure to the Southern Pacific Company, would the Government have been thereafter in a position to contest the legality of the acquisition of the property by the Southern Pacific Company?

Or let us assume that the Central Pacific had defaulted in its payment of the twenty notes to the Government, maturing semi-annually over a period of ten years. The Southern Pacific was the guarantor of the bonds which secured those notes. It would have been compelled to supply any deficit, in interest or principal, and to look to the Central Pacific for reimbursement. If in so doing, it took over the Central Pacific road, could it have been claimed that in pursuing its strictly legal remedy, it was entering into a combination in violation of the Sherman Act?

Counsel treat a transaction involving $116,000,000 as an every-day occurrence. We do not doubt that the Government would have been able to purchase the property, but there is no evidence whatever that any one else had any desire or expectation of acquiring the Central Pacific. It is very clear that the English and Dutch stockholders did not want to operate the property; they had purchased the shares as an investment, and they were anxious above all things to see the property put upon a firm footing.

Therefore, this argument of counsel for the Government is narrowed down to the contention that we averted Government ownership by paying the Central Pacific debt, that is, by doing precisely what the Government desired. Is the Government now to say to us that as we paid the debt at its request and upon its desire, in point of fact we did it to avert threatened competition through foreclosure, and that therefore our acquisition of the property is illegal under the Anti-Trust Act? Unless this position is sound there is nothing in the point, and we are ready to take the decision of the court upon it.

Even less tenable than the argument last stated is the contention of counsel for the Government that competition between the Southern Pacific Railroad and the Central Pacific Railroad was directly, immediately, and substantially threatened continuously from 1866 to 1899.

The Central Pacific was controlled and operated from its origin by four men, and these same four men acquired the control of the Southern Pacific Railroad Company in 1870. Thenceforward these roads were controlled by the same men or by the survivors of them. It is true that a large percentage of the stock of the Central Pacific was sold on the market between, say, 1878 and 1884, when the Southern Pacific was engaged in very expensive construction. But the Government has argued, and for the purposes of the present point we shall assume, that in 1884 and 1885 about twenty-five per cent. of the capital of the Central Pacific was owned by three of these four men and the widow of the fourth. It should be remembered, however, that of the other

seventy-five per cent. of the shares, forty-five per cent. stood in the names of the employees of these same four men or of the company itself. In other words, forty-five per cent. of the capital stock had been sold to persons who, presumably, bought it as an investment in reliance upon the operation of the properties by the four men with whom we are here concerned.

It therefore appears that for all practical purposes these two roads have been operated together as though they had been owned, not by separate corporations but by the four men by whom they were controlled for so long a period. To talk, therefore, of a threat of competition direct, immediate and substantial over a period of thirty-three years is to give words a meaning not in accordance with ordinary usage. So far as the record shows there never was a time when there was any attempt whatever to separate the Central Pacific-Southern Pacific lines. If the Government had not been settled with, foreclosure would have occurred. In that event the lines might have come into the hands of the owners of the Southern Pacific Company, or they might have passed into other hands. This is remote possibility and all conjecture; what is certain and established beyond cavil is that there was no one ready, able or willing except the Southern Pacific Company to meet the requirements of the Government settlement, and thereby to acquire the Central Pacific lines.

XXIV.

The purely theoretical nature of the present suit is shown by the complete absence of complaint on the part of shippers or the public generally.

We have listed, pp. 279-280, *supra,* the names of the nineteen witnesses called by the Government in this case. Thirteen of the number are railroad men—four with the Southern Pacific, five with the Union Pacific, and four with other roads. Not a single witness was called who protested on behalf of shippers or the public generally against the manner in which the Southern Pacific Company operates its system. On the contrary, the testimony is all the other way, and as we have repeatedly shown, points out the disastrous consequences that would attend dismemberment.

> "The situation is indeed singular, and we may wonder at it, wonder that the despotism of the corporation, so baneful to the world in the representation of the Government, did not produce protesting victims. . . .
>
> We are unable to see that the public interest will be served by yielding to the contention of the Government respecting the dissolution of the company or the separation from it of some of its subsidiaries; and we do see in a contrary conclusion a risk of injury to the public interest. . . . And in submission to the policy of the law and its fortifying prohibitions the public interest is of paramount regard."
>
> *Steel Corporation Case,* 251 U. S. 449, 457.

Judge Hook observes "that this case of the Government, unlike others of similar character, finds little, if any, support in testimony from complaining shippers or the public generally" (239 Fed. 1006; VI R. 2336).

XXV.

In its last analysis the relief here sought is experimental and not judicial in its nature. The Government does not seek the destruction of a new and unlawfully created condition which took the place of an old and natural one; it seeks the destruction of an old and natural condition in order that it may create by a new and untried experiment a condition which has no prototype.

The obvious purpose of a suit under the restraint of commerce clause of the Anti-Trust Act is to restore the existence of an old and natural condition which has been destroyed by the substitution of a new and artificial condition unlawfully created. This is usually, if not invariably, accomplished by the destruction of the new condition so unlawfully created.

In dealing with such cases, courts are engaged in administering relief entirely judicial in its nature. They are ascertaining (*a*) that an old and natural condition did exist; (*b*) that it was superseded by a new and artificial condition; (*c*) that the latter is unlawful; and, finally, (*d*) that they can restore the old condition by destroying the new.

This suit does not present the case of an old and natural condition which has been superseded. We have an old and natural condition which never has been superseded; a condition which has existed from the origin of the properties. The court, therefore, is not asked to ascertain what the old condition was and to restore it. No court can restore what has never been displaced. What the Government asks is the destruction of the old condition and the substitution in its place of a new

condition, experimental in character, which has no prototype.

> "Our present purpose is . . . practical decision upon existing conditions, that we may not by their disturbance produce, or even risk, consequences of a concern that cannot now be computed."
>
> *Steel Corporation Case,* 251 U. S. 444.

In asking the court to engage in the creation of experimental conditions which have never existed, we submit the Government asks for relief which is not judicial in its nature.

XXVI.

Matters of subsidiary importance.

(a) The price paid in 1899 by the Southern Pacific Company for Central Pacific shares was not excessive.

In endeavoring to give a sinister aspect to the reorganization of the Central Pacific in 1899 as one undertaken and accomplished with a view to suppress commerce, counsel for the Government argued that the price paid by the Southern Pacific Company for the Central Pacific stock was excessive. The shares of the Central Pacific were taken over by the Southern Pacific at the price of $125 per share: (*a*) $100 in par value of the stock of the Southern Pacific and $25 per share in bonds secured by the Central Pacific shares so acquired by the Southern Pacific in the reorganization. The argument of counsel carries with it the underlying assumption that the stock of the Southern Pacific was salable at par and presumably that the company was paying divi-

dends. There is no evidence in respect of either fact in the case and we might therefore rely upon technical grounds alone, and say that there is no evidence of the market value of Southern Pacific shares or that the Southern Pacific Company had paid dividends before that time, or at all. We would not feel justified, however, in invoking such a technical rule, if we did not know the facts, viz., that in January and February, 1899, the price of Southern Pacific shares ranged from $36 to $41 per share and that the company never paid a dividend until October 1, 1905.

(b) Neither the Northern Division of the Southern Pacific Railroad nor its Coast Line opened in 1901 bears upon the issues here involved.

Upon the oral argument, we mentioned the fact that in the early days of the Northern Division of the Southern Pacific Railroad Company, that is to say, prior to 1885, the Northern Division (p. 68, *supra*) was operated independently; in other words, the general manager of that division—which might be said to be a local road—reported directly to the executive officers of the Southern Pacific Railroad Company, who were, of course, Stanford, Huntington, Hopkins and Crocker, rather than to Mr. A. N. Towne, who was the general manager of the system then operated as "Central Pacific and Leased Lines".

In a passing reference to this situation, we made the point, in the court below, that the Northern Division was utterly unrelated to the lines which give rise to the controversy in this case, which we now repeat and

support by a reference to the maps on pp. 43 and 68, *supra*.

Judge Hook referred to the Northern Division as follows:

> "Up to 1885 all the Southern Pacific railroads, including the main line to New Orleans (*with an unimportant exception*), were officially . . . operated by the Central Pacific as part of its system" (239 Fed. 1000; VI R. 2330).

In his closing argument, in the court below, counsel for the Government replied that the Northern Division was of much consequence because it finally grew into the coast line (p. 276, *supra*), and that it was in proof that the coast line carried the great bulk of traffic from San Francisco via Los Angeles to Yuma and thence on over the Sunset-Gulf route; in other words, he practically argued that we are not dealing with the Goshen-Mojave-Los Angeles line, but with the coast line. All this is readily answered by the circumstance that the Southern Pacific construction involved is the Sunset-Gulf line, built under the Texas and Pacific Act, which empowered the Southern Pacific to build from near the Tehachapi Pass via Los Angeles to Yuma. It is therefore clear that the coast line has nothing whatever to do with the question with which we are now concerned. This is rendered even more certain by the fact that the coast line was not opened until 1901 (p. 276, *supra*), more than two years after the alleged combination of February 20, 1899.

(c) In considering the estoppels against the Government arising out of the settlement of 1899, it is of no consequence whether the provisions thereof which were designed to protect the Government were in the first instance suggested by Mr. Speyer or by the Government itself.

One argument of counsel in respect of the settlement with the Government not elsewhere dealt with, deserves passing notice. The point is made that the plan to which the Government agreed was suggested by Mr. Speyer and that none of its provisions were asked for or exacted by the Government. From this, counsel argue that the Government, although it took advantage of the provisions obviously designed for its protection and benefit, is not subject to the considerations which give rise to estoppel, because the provisions for its benefit were not asked for or exacted by it, but were offered to it voluntarily. We had supposed that estoppel proceeded upon other considerations and that it arose sometimes from benefits obtained whether asked or not, and sometimes because a change of position would operate as a fraud upon the other contracting party. We submit that the distinction that counsel seeks to import into this case has no foundation in law or morals, and that whether or not the Government asked for the protection which it received, it is bound by the consequences of the protection which it accepted and of which it has enjoyed the benefit.

(d) The powers of the Commission under the Act of July 7, 1898, were limited in those particulars only which are expressed in the act. In respect of matters not so limited the Commission had what the act gave it, "full power" in the matter.

Counsel has failed to realize the significance and purpose as well as the plenary power of the Commission created by the Act of July 7, 1898.

There were to be limitations upon its power, but these were all expressed. "No other conditions than these were prescribed" (Judge Hook, VI R. 2332). *If there had been any intention on the part of Congress to exclude the possibility of the acquisition of the Central Pacific by the Southern Pacific Company, that limitation would have been imposed in terms by the act.*

It is true that refunding measures had failed of passage, but that does not establish the fact that they failed of passage because Congress was unalterably and irrevocably or otherwise opposed to the acquisition of the Central Pacific by the Southern Pacific. Indeed, it was a case of many men, many minds. Some had one view, some had another. And, as it was all summed up in Senator Gear's report of 1897 (p. 144, *supra*), it was impossible, with all the public business before Congress, to reconcile all views upon this subject and to agree upon a plan involving many details.

The first measure for the appointment of the commission was introduced January 13, 1897 (p. 139, *supra*), and dealt with the indebtedness of *both* the Union Pacific and Central Pacific.

This was in the last days of President Cleveland's second administration and just before President McKinley took office.

The first measure for the appointment of the Commission introduced during President McKinley's administration was presented March 16, 1897, and dealt with the Central Pacific's indebtedness *alone* (p. 140, *supra*). This is the measure which (after amendments) became a law July 7, 1898, and it is quite evident that Congress, long tired of vainly seeking a *modus operandi* for the settlement of the indebtedness consistent with the divergent views in Congress, and the imperative and engrossing demands of other public business, determined to entrust the whole matter to the administration and to give to the President and three members of his Cabinet "full power to settle the indebtedness" (I R. 51), subject only to those limitations which were stated in the act. In other words, Congress determined to sink the divergent views held in the two Houses and to confide the matter to the judgment, discretion and authority of three members of the President's Cabinet, with "full power" to act if and when such action was approved by the President.

This view of the case is fully supported by the attitude of Senator Morgan, who gave his support to the passage of the Act of July 7, 1898, without attempting to impose any limitations upon the power of the Commission except those stated in the act.

If it had been intended that there should have been any other limitations, it is reasonably to be supposed that Senator Morgan, long acquainted with the subject-

matter of the legislation, would have made an attempt further to limit the powers of the Commission. That he did not do so is of controlling importance and significance.

All of the proceedings in Congress prior to July 7, 1898, may be appropriately referred to in order to ascertain the grasp of this subject-matter which was possessed by Congress; and when we realize the full grasp it had of the subject, we will be able to give true significance to the particulars of the terms of the settlement on which no limitation was put. Chief among these is the matter of the future relation of the Southern Pacific Company to the Central Pacific lines. And we may say again that the whole matter was summed up by Speaker Cannon when he said (p. 148, *supra*) that, by the enactment of the law, the Commission was authorized to arrange for the settlement of the debt "with the Southern Pacific or with the Union Pacific or with the Rock Island, or with the Northwestern or with anybody".

(c) Because of the 30 years' de facto unification of the properties, this case is in a class apart.

In the consideration of this case, and particularly in respect of the claims of suppression of competition and discrimination against the Union Pacific, it is to be recalled that we are dealing with a condition of thirty years *de facto* existence. In many cases under the Anti-Trust Act, courts have had occasion to consider unification of recent date, and they have had occasion in connection therewith to say that what is happening at the

present moment may not happen in the future. In our case, however, we have a history of thirty years to draw upon, to show that during this long period there has been neither suppression of competition nor unfair treatment of the Union Pacific.

(f) Testimony contained in Report of Pacific Railroad Commission is not competent evidence of facts therein narrated.

Counsel for the Government quote testimony which the Pacific Railroad Commission reported in 1887 as evidence given before that body by the President of the Central Pacific Railroad Company. It is, we think, very well understood that testimony reported by a Congressional Committee is not receivable as evidence: (*a*) either as to the *fact* that the testimony was given, or (*b*) as to the *truth* of the facts said to have been testified to by the witness. [See, *United States v. Reading Co.*, 183 Fed. 427, 442; *Parks Estate*, 29 Utah 257; 81 Pac. 83; *Stetson v. Stetson*, 146 N. Y. S. 245].

It is true, and we so concede and claim, that it is proper for the court to resort to all legislative proceedings and executive action so far as they bear upon any of the issues of this case. (See 7 Encyc. of the U. S. Supreme Court Reports, 687, where an abundance of authority on this point will be found.)

XXVII.

Conclusion.

It is respectfully submitted that the decree appealed from should be affirmed.

San Francisco, March, 1921.

Respectfully submitted,

WILLIAM F. HERRIN,
JOSEPH P. BLAIR,
GARRET W. MCENERNEY,
Counsel for Appellees.

Appendix

INDEX

I. Pacific Railroads as Contemplated by the Act of July 1, 1862.

II. Pacific Railroads as Constructed.

III. Bond-Aided Line: Ogden-Sacramento-San Jose.

IV. Central Pacific Non-Bond-Aided Extensions.

V. Approximate Route of Southern Pacific Railroad Company's Line. Contemplated in the Articles of Association, December 2, 1865.

VI. Central Pacific-Southern Pacific Arterial System.
Showing the four lines to the Boundaries of California authorized by Congress.

VII. Eastern Rail Connections of the Southern Pacific.

VIII. Northern Division of Southern Pacific Railroad Company as it existed in 1873, and its relation geographically to the Central Pacific-Southern Pacific Arterial System.

IX. Southern Pacific Company's Coast Line opened 1901. San Francisco-Los Angeles.

X. San Joaquin Valley Lines.

XI. Routes between Sacramento and San Francisco.

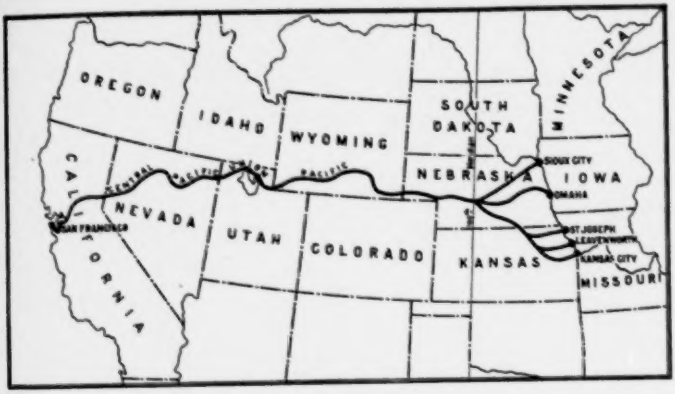
XII. Rail Connection between Tehama and Portland.

XIII. Union Pacific Lines to the Pacific Coast, and their relation geographically to the Central Pacific Main Line.

XIV. Union Pacific Lines to the Pacific Coast, and their relation geographically to the Central Pacific Main Line, Feeders and Extensions.

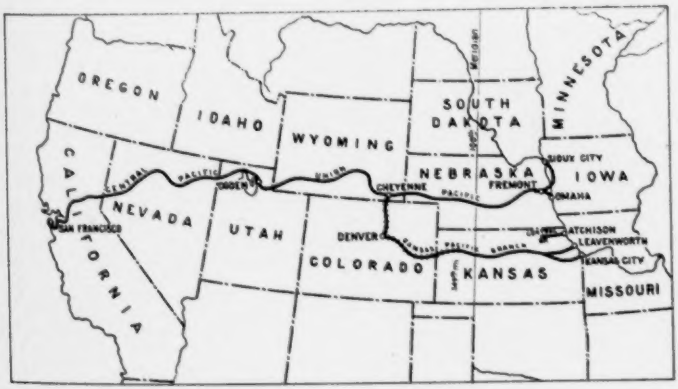
XV. Photographic Relief Map of California.

XVI. Southern Pacific System.



I.

PACIFIC RAILROADS AS CONTEMPLATED BY THE ACT OF JULY 1, 1862.



II.

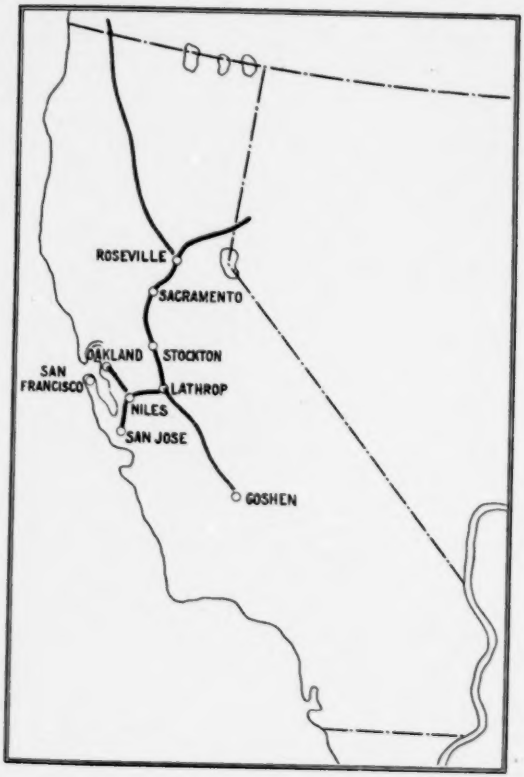
PACIFIC RAILROADS AS CONSTRUCTED.

III.

BOND-AIDED LINE: OGDEN-SACRAMENTO-SAN JOSE.

Ogden-Sacramento: Central Pacific Construction.
Sacramento-San Jose: Western Pacific Construction.

Note: The Western Pacific was absorbed by the Central Pacific in the consolidation of June 23, 1870.

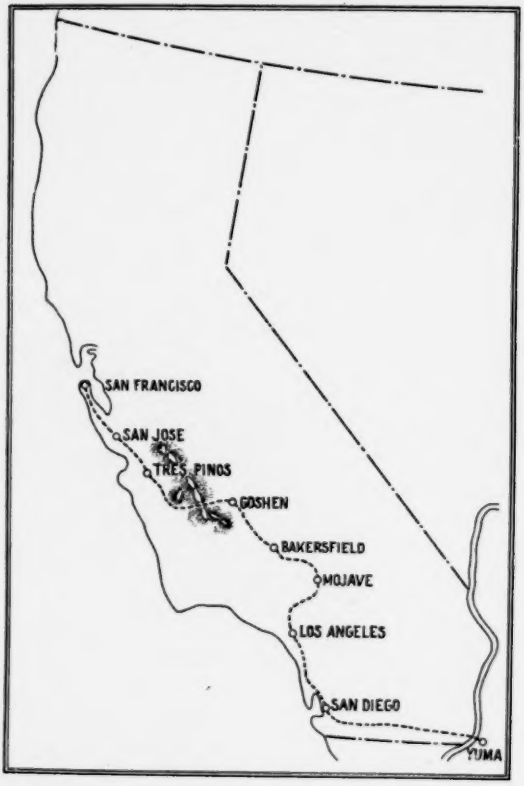


IV.

CENTRAL PACIFIC NON-BOND-AIDED EXTENSIONS.

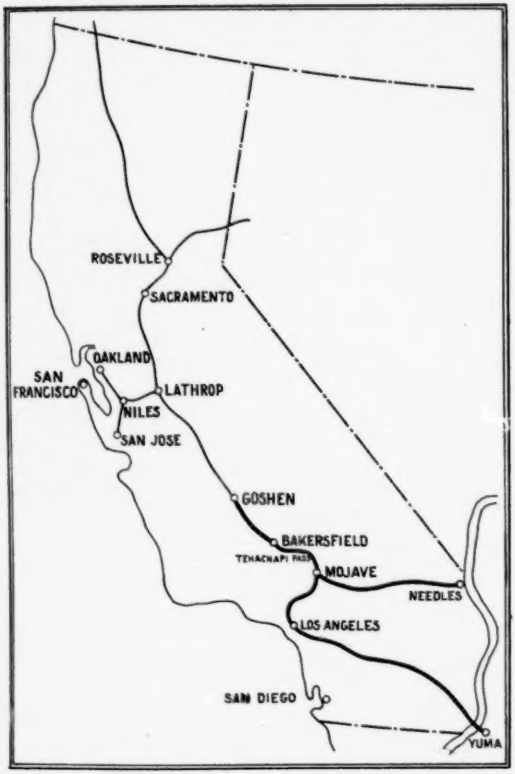
1. Roseville-Oregon line.
2. Niles-Oakland.
3. Lathrop-Goshen.

Non-bond-aided extensions.
Main bond-aided line.



V.

APPROXIMATE ROUTE OF SOUTHERN PACIFIC RAILROAD COMPANY'S LINE, CONTEMPLATED IN THE ARTICLES OF ASSOCIATION, DECEMBER 2, 1865.



VI.

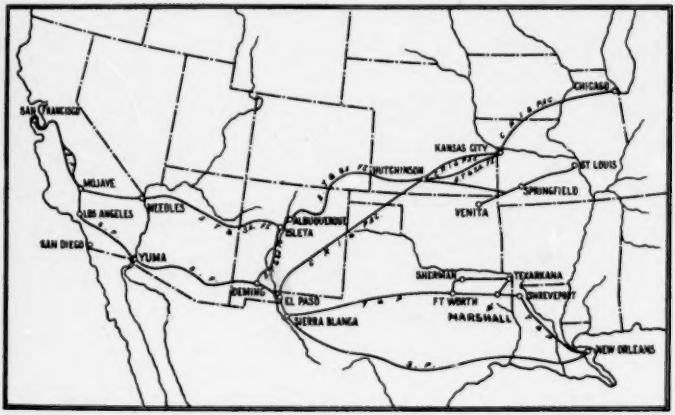
CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

Showing the four lines to the boundaries of California authorized by Congress:

1. Sacramento-Ogden: Act of July 1, 1862 (12 Stat. 489).
2. Roseville-Oregon Line: Act of July 25, 1866 (14 Stat. 239).
3. Goshen-Mojave-Needles: Act of July 27, 1866 (14 Stat. 292).
4. Mojave-Los Angeles-Yuma: Act of Mar. 3, 1871 (16 Stat. 573).

——Central Pacific.
▬▬Southern Pacific.

(Note: The Mojave-Needles line was leased by the Southern Pacific to the Santa Fe when completed in 1883, and was purchased by the Santa Fe in 1911.)



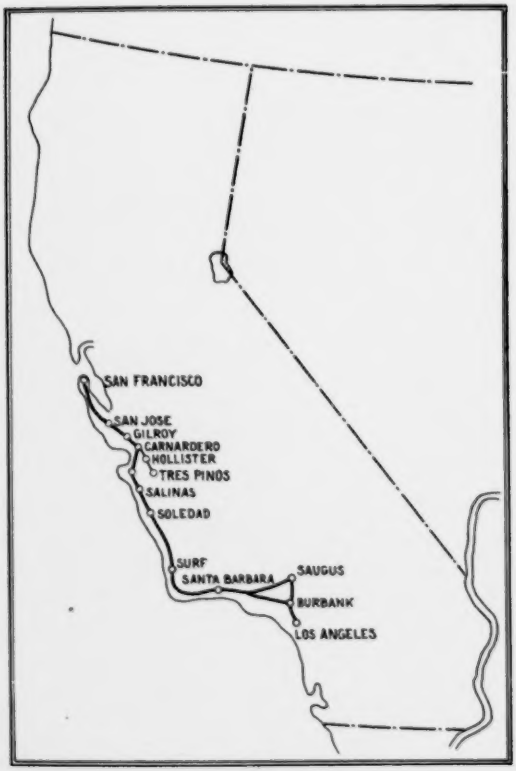
VII.

EASTERN RAIL CONNECTIONS OF THE SOUTHERN PACIFIC.

VIII.

NORTHERN DIVISION OF SOUTHERN PACIFIC RAILROAD COMPANY AS IT EXISTED IN 1873, AND ITS RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC-SOUTHERN PACIFIC ARTERIAL SYSTEM.

Northern Division of Southern Pacific Railroad Co.
Central Pacific-Southern Pacific Arterial System.
Unbuilt connection between Tres Pinos and Alcalde.



IX.

SOUTHERN PACIFIC COMPANY'S COAST LINE OPENED 1901. SAN FRANCISCO-LOS ANGELES.

X.

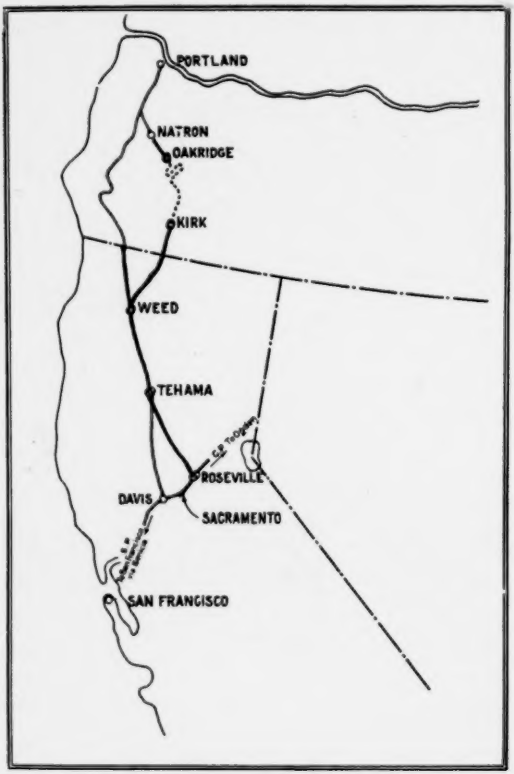
SAN JOAQUIN VALLEY LINES.

1. Main Line (C. P.): Lathrop-Goshen (1872).
2. West Side Line (S. P.): Tracy-Ingle-Kerman-Armona-Goshen (1891).
3. West Side Line (S. P.): Tracy-Ingle-Kerman-Fresno-Goshen (1892).

XI.

ROUTES BETWEEN SACRAMENTO AND SAN FRANCISCO.

1. Sacramento-Lathrop-Niles Oakland-San Francisco.
2. Sacramento-Napa Junction-South Vallejo-San Francisco.
3. Sacramento, via Benicia cut-off-Suisun-Benicia-Oakland-San Francisco.
4. Sacramento-Lathrop-Niles-San Jose-San Francisco.
5. Sacramento-Lathrop-Niles, via Dumbarton cut-off-Newark-Redwood-San Francisco.



XII.

RAIL CONNECTION BETWEEN TEHAMA AND PORTLAND.

Southern Pacific.
Central Pacific.
Central Pacific-Unfinished section.

N. B. Tehama is the most northerly point in California reached by the Southern Pacific over its own rails; all points in California north of Tehama are reached by Central Pacific rails only.

San Francisco to:	Miles
Tehama—S. P. via Benicia and Davis	186
Tehama—S. P. to Sacramento, C. P. via Roseville	212

Tehama to:	Miles
Red Bluff	1?
Redding	46
Delta	112
Weed	163
Oregon State Line	217

XIII.

UNION PACIFIC LINES TO THE PACIFIC COAST, AND THEIR RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC MAIN LINE.

XIV.

UNION PACIFIC LINES TO THE PACIFIC COAST, AND THEIR RELATION GEOGRAPHICALLY TO THE CENTRAL PACIFIC MAIN LINE, FEEDERS AND EXTENSIONS.

INDEX.

	Page.
PLEADINGS	1–3
DECISION OF THE DISTRICT COURT	3–5
ASSIGNMENTS OF ERROR	5–9
INTRODUCTORY OUTLINE	9–18
FIRST ASSIGNMENT	18–118
In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic, and the combination between them unreasonably, directly, substantially, and wholly prevented and destroyed competition between them, and continues to do so, and the combination artificially created a monopoly to the public injury	18
1st. The Central Pacific Railroad and the Southern Pacific Railroad are competitive and have been so continuously since 1883	19–23
2d. The area as to which they are competitive is large, and the volume of competitive freight is enormous	23–33
3d. The combination in February, 1899, unreasonably restrained this competition	33–109
4th. The combination also produced a monopoly	109–118
SECOND ASSIGNMENT	119–162
The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal voluntary cooperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad, and the systematic and preconcerted discrimination which the Southern Pacific company in operating the franchise of the Central Pacific Railroad has practiced against the Union Pacific Railroad in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad furnishing the incentive of self-interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury	

SECOND ASSIGNMENT—Continued. Page.
of the public and to the defeat of the purpose of those laws, which was to create and develop three separate, competitive systems of railroad to the Pacific coast, with all the advantages that would come to the public from three railroads which were competitive..... 119-120
1st. The Central Pacific Railroad was under a duty not to discriminate against the Union Pacific Railroad..... 120-132
2d. The combination into the Southern Pacific company which created the lively incentive to discriminate against the Union Pacific Railroad was in itself violative of that duty, even if no actual discrimination occurred..... 132-136
3d. There has been long continued discrimination against the Union Pacific Railroad as a result of the combination..... 136-162
THIRD ASSIGNMENT..... 162-196
The payment by the Central Pacific Railroad Company of its debt to the United States and the transactions leading thereto did not exempt the Southern Pacific Company from the provisions of the Sherman Anti-trust Act of July 2, 1890, or permit that company to make a combination which otherwise would be one in restraint of trade, because (1) the settlement commission did not seek any guaranty by the Southern Pacific Company, (2) the contract of settlement did not require such a guaranty, (3) the United States received only payment of a debt already due and adequately secured, (4) neither the commission, nor the President, nor the Congress purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all other corporations, and (5) such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress..... 163-164
1st. The action taken by the Congress, the President, and the settlement commission, showed no intention to construe the Antitrust Act, or to grant any special indulgence or advance pardon to the Southern Pacific Company to violate it..... 165-187
2d. The commission, the President, and the Congress had no power under the Constitution to grant such an indulgence or advance pardon..... 187-189
3d. A construction put by these functionaries of the Government, either upon the Antitrust Act, or upon the Act under which the commission was appointed, would not be binding upon this court or a guide to it..... 189-192
4th. No estoppel runs against the United States when it is seeking, as here, to enforce the criminal law..... 192-196

Page.

FOURTH ASSIGNMENT..... 196–234

The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but on the contrary were always two distinct railroads; (1) separately projected by separate and unrelated groups of men; (2) separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate competitive systems of railroad between the Atlantic Ocean and the Central United States on the east, and the Pacific Ocean on the west, and enacted prior to 1867 and before any person interested in the one railroad was interested in the other; (3) separately owned by separate corporations organized by separate groups of men; (4) separately constructed at the expense of and for these separate corporations; (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads; (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899; and (7) separately stock owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and Europe..... 197–234

1st. The two railroads were separately projected by separate and unrelated groups of men..... 198–206

2d. The two railroads were separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate, competitive systems of railroad between the Atlantic Ocean and the central United States on the east, and the Pacific Ocean on the west, and enacted prior to 1867, and before any person interested in the one railroad was interested in the other..... 207–211

3d. These two railroads were separately owned by separate corporations organized by separate groups of men. 211–212

4th. These two railroads were separately constructed at the expense of and for these separate corporations..... 212–216

5th. These two railroads were separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads..... 217–220

6th. These two corporations were separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899..... 221

FOURTH ASSIGNMENT—Continued. Page.
7th. These two corporations were separately stock owned always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each corporation held by widely scattered stockholders in the United States and in Europe..... 221-234
FIFTH ASSIGNMENT..... 234-253
The Southern Pacific Co. on February 20, 1899, had no contractual or property, or vested interest, direct or indirect, in the Central Pacific Railroad, because (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Co. was void for lack of power in that company to make, it both under the laws of California and under the laws of the United States, the sovereignty from which it derived its franchises; (2) in 1893 this lease was canceled and the new purported lease then given was equally void for the same reason; and (3) the leasehold interest was subject to immediate destruction by the foreclosure of the underlying lien of the United States..... 234-236
1st. The purported lease of February 7, 1885, by the Central Pacific Railroad Co. was void for lack of power in that company to make it, both under the laws of the State of California and under the laws of the United States, the sovereignty from which it derived its franchises..... 237-249
2d. In 1893 this lease was canceled and the new purported lease then given was equally void for the same reason. 249-251
3d. The leasehold interest was subject to immediate destruction by the foreclosure of the underlying lien of the United States..... 252-253
SIXTH ASSIGNMENT..... 253-283
Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Anti-trust Act was passed, this would not render lawful a combination for the increase and perpetuation of that control, formed after this Act was passed..... 253-258
The additional defenses alleged by the defendants which were not discussed in the opinions in the district court.. 258
1st. In the case of the United States against the Union Pacific Railroad Company the court did not adjudge expressly or by inference that it was not unlawful for the Southern Pacific Company to hold the stock of the Central Pacific Railway Company..... 259
(a) The court made no decision on this question.... 261-263
(b) Indispensable parties for such a decision were absent..... 263-265
(c) The effect of a decision in such a case is limited to what was actually decided..... 265-271

SIXTH ASSIGNMENT—Continued. Page.
2d. The United States is not estopped by any inconsistent position taken in the Union Pacific case..... 271
3d. The United States is not barred by absence of complaint of this restraint of trade in the Union Pacific case..... 272–273
4th. The petition is not barred by laches..... 273
(a) There has been no unreasonable delay or laches in bringing the suit at bar..... 273–274
(b) Laches by a sovereign is not a defense to a petition to enforce a criminal law..... 274–275
5th. The lapse of more than five years since the formation of this combination is not a bar..... 275–283
(a) This is not an indictment, information, suit, or prosecution for a penalty or forfeiture..... 277–281
(b) The occurrence of an offense more than five years ago does not bar a proceeding to prevent the continuance of it hereafter..... 281–282
CONCLUSION..... 283
This combination is unlawful, and its continuance should be prevented..... 283–286

AUTHORITIES CITED.

Cases:
Adams v. *Woods*, 2 Cranch. 336..... 278, 279
Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211, 237, 242, 243..... 61, 92, 93, 95, 99
Alger v. *Thatcher*, 19 Pick. 51..... 240
Anglo-American Land Co. v. *Lombard*, 132 Fed. 721, 736..... 238
Armour Packing Co. v. *United States*, 209 U. S. 56, 62, 80..... 257
Arnold v. *Norfolk & New Brunswick Hosier Co.*, 63 Hun. 176..... 266
Arnot v. *Pittston Coal Co.*, 68 N. Y. 558..... 240
Atchison, Topeka & S. F. Railroad v. *Denver & New Orleans R. R. Co.*, 110 U. S. 667, 672, 680..... 129
Bigelow v. *Calumet & Hecla Mining Co.*, 155 Fed. 869, 875..... 61
Board of Comm'rs v. *Sutliff*, 97 Fed. 270..... 270
Boyd v. *Alabama*, 94 U. S. 645..... 192, 195, 265, 270
Boyd v. *New York & Harlem R. R. Co.*, 220 Fed. 174, 180..... 257
Brady v. *Daly*, 175 U. S. 148, 156..... 280
Branch v. *Jesup*, 106 U. S. 468..... 237
Breese v. *United States*, 203 Fed. 824..... 282
Cahn v. *Barnes*, 5 Fed. 326..... 194
California v. *Pacific Railroad Co.*, 127 U. S. 1, 42, 44..... 126, 200, 245
Carr v. *United States*, 98 U. S. 433..... 194
Cassell v. *Great Nor. Ry.*, 161 U. S. 646, 676..... 95
Central Pacific R. R. Co. v. *California*, 162 U. S. 91..... 126, 245, 246
Central R. R. Co. v. *Collins*, 40 Ga. 582, 628..... 240
Central Transportation Co. v. *Pullman's Palace Car Co.*, 139 U. S. 24, 53..... 237, 239

Cases—Continued. Page.

Chattanooga F. & P. Works v. *Atlanta*, 101 Fed. 900; 127 Fed. 23; 203 U. S. 390 281
Chesapeake & Ohio Fuel Co. v. *United States*, 115 Fed. 610, 623. 62, 96
Chicago Coal Co. v. *People*, 214 Ill. 421 240
Chicago Co. v. *Wabash Co.*, 61 Fed. 993 239
Chicago, R. I. & P. Ry. v. *St. Joseph Union Depot Co.*, 92 Fed. 22 270
Clark v. *Blair*, 14 Fed. 812 266
Cooke v. *United States*, 91 U. S. 389, 398 194
Cromwell v. *County of Sac*, 94 U. S. 351 ..... 265, 267–269, 270
Davis v. *Brown*, 94 U. S. 423 ..... 265, 270
DeKoven v. *Lake Shore & M. S. Ry.*, 216 Fed. 955, 959 275
De La Vergne Co. v. *German Savings Inst.*, 175 U. S. 40, 54 .. 238
Dobbins' Distillery v. *United States*, 96 U. S. 395 280
Eastern States, etc., Asso. v. *United States*, 234 U. S. 600, 613 .. 92, 93, 94, 98–99
Elkins v. *Camden, etc., Co.*, 36 N. J. E. 5 ..... 238, 240
Elliott Machine Co. v. *Center*, 227 Fed. 124 257
Emma Silver Min. Co. (Ltd.) v. *Emma Silver Min. Co. of New York*, 7 Fed. 401 266
Ex parte Wells, 18 How. 307, 312 188
Fairchild v. *Lynch*, 99 N. Y., 359, 368 266
Farrington v. *Stucky*, 165 Fed. 325 239
Finck v. *Schneider Granite Co.*, 187 Mo. 244 257
Ford v. *Chicago Milk Shippers Asso.*, 155 Ill. 166 257
Fove v. *Patch*, 132 Mass. 105 266
Gelston v. *Hoyt*, 3 Wheat. 246, 310 280
Getz v. *Federal Salt Co.*, 147 Calif. 115 239
Gibbs v. *Consolidated Gas Co.*, 130 U. S. 396, 408 ..... 37, 38, 239
Gompers v. *United States*, 233 U. S. 604, 611 279
Green Bay, etc., R. R. Co. v. *Union Steamboat Co.*, 107 U. S. 98. 237
Harrison v. *Remington Paper Co.*, 140 Fed. 385 271
Hedderly v. *United States*, 193 Fed. 561, 569 282
Hough v. *Buchanan*, 27 Fed. 328 194
Howlett v. *Tarte*, 10 C. B. N. S. 813 ..... 266, 270
Hunter v. *United States*, 5 Pet. 173 194
Huntington v. *Attrill*, 146 U. S. 657, 667 280
International Harvester Co. v. *Missouri*, 234 U. S. 199, 207, 209–210 ..... 92, 93, 94, 97
Johnson v. *So. Pac. R. R. Co.*, 154 Calif. 285 ..... 238, 243
Jones v. *United States*, 162 Fed. 417, 426 282
Judson v. *United States*, 120 Fed. 637, 643 194
Kihlberg v. *United States*, 97 U. S. 398 194
Kindred v. *Union Pac. R. R. Co.*, 168 Fed. 648 274
Last Chance Mining Co. v. *Tyler Mining Co.*, 157 U. S. 683, 687. 266, 270
Lee v. *So. Pac. R. R. Co.*, 116 Calif. 97 243
Lees v. *United States*, 150 U. S. 476 279
Lonabaugh v. *United States*, 179 Fed. 476, 478 282

Cases—Continued. Page.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 688, 691, 693, 695–700, 698 ..... 21, 192, 196, 238, 239, 255
Louisville v. *Mottley*, 219 U. S. 467 257
Lytle v. *Arkansas*, 9 How. 314, 332 194
Mackin v. *United States*, 117 U. S. 348, 353 279
Michigan v. *Jackson*, 69 Fed. 116, 123 194
Mill Co. v. *Hayes*, 76 Calif. 387 239
Minnesota v. *Northern Securities Co.*, 184 U. S. 199 265
Monarch Tobacco Works v. *Am. Tobacco Co.*, 165 Fed. 774, 781 .. 62
Morris Run Coal Co. v. *Barclay*, 68 Pa. St. 173 240
Mugler v. *Kansas*, 123 U. S. 623 255
National Cotton Oil Co. v. *Texas*, 197 U. S. 115, 129 ..... 94, 100
Nesbit v. *Riverside Ind. District*, 144 U. S. 610 ..... 265, 270
New Orleans v. *Citizens' Bank*, 167 U. S. 371, 396 266
Northern Pacific Ry. Co. v. *Ely*, 197 U. S. 1 274
Northern Pac. Ry. Co. v. *Slaght*, 205 U. S. 122, 131 ... 265, 266, 267, 269
Northern Pac. Ry. Co. v. *Townsend*, 190 U. S. 267 ..... 196, 274
Northern Securities Co. v. *United States*, 193 U. S. 197, 325, 331, 332, 337, 352 ..... 21, 37, 59, 60, 92, 93, 95, 98, 100, 110, 192, 283
O'Halloran v. *American Sea Green Slate Co.*, 207 Fed. 187, 190, 191 ..... 63, 95, 104
Oliver v. *Gilmore*, 52 Fed. 562 239
Oregon Ry. Co. v. *Oregonian Ry. Co.*, 130 U. S. 1 237
Pacific Factor Co. v. *Adler*, 90 Calif. 110 239
Packett Co. v. *Sickles*, 5 Wall. 580, 592 266
Pearce v. *Madison & Indianapolis R. R.*, 21 How. 441 237
Pearsall v. *Great Northern Ry.*, 161 U. S. 646, 676 ..... 79, 93, 100–101
Pengra v. *Munz*, 29 Fed. 830 194
Pennsylvania T. T. Co. v. *St. Louis R. R. Co.*, 118 U. S. 290 .. 237
Phila., Balto. & Wash. R. R. Co. v. *Schubert*, 224 U. S. 603, 613. 192, 255
Pittsburgh Ry. Co. v. *Keokuk, etc., Co.*, 131 U. S. 371 237
Queen v. *Detme*, 10 Modern 199 193
Raymond v. *Leavitt*, 46 Mich 447 240
Salt Co. v. *Guthrie*, 35 Ohio St. 666 240
Sheffield v. *Ratcliffe, Hobart*, p. 334a (1 Am. ed., p. 501) 193
Sinking Fund Cases, 99 U. S. 700, 724, 728, 751 ..... 126, 130, 181, 245, 246, 247
South Pasadena v. *Pasadena Land Co.*, 152 Cal. 579 238
Southern Pac. Co. v. *Orton*, 32 Fed. 457, 460 199
Southern Pacific Co. v. *R. R. Comm'rs*, 78 Fed. 236, 249 243
Southern Pacific Co. v. *United States*, 28 Ct. Cls. 77 243
Southern Pacific R. R. Co. v. *United States*, 168 U. S. 1, 49 ... 266
Southern Pacific R. R. Co. v. *United States*, 189 U. S. 447, 449 .. 205
Standard Oil Co. v. *United States*, 221 U. S. 50, 67, 74 ..... 35, 49 94, 110, 240, 254, 276
Standard Oil Co. v. *United States*, 173 Fed. 177, 186 254
Standard Sanitary Mfg. Co. v. *United States*, 226 U. S. 20, 49 .. 92, 94, 100

Cases—Continued.

	Page.
Stanley v. *Schwalby*, 147 U. S. 508, 515	274
Stark v. *Starr*, 94 U. S. 477	270
State v. *Hartford & New Haven R. R. Co.*, 29 Conn. 538	240
State v. *Milk*, 11 Fed. 389, 397	194
State v. *Vanderbilt*, 37 Ohio 590, 644	238
Thomas v. *R. R. Co.*, 101 U. S. 71	237
Thomsen v. *Cayser*, 243 U. S. 66, 87	92, 93, 94, 98
Thomsen v. *Union Castle Mail S. S. Co.*, 166 Fed. 251, 253	257
Union Bridge Co. v. *United States*, 204 U. S. 364, 400	193, 255
Union Pacific R. R. Co. v. *Mason City & Ft. Dodge R. R. Co.*, 199 U. S. 160	132
Union Pac. Ry. Co. v. *Chicago, R. I. & Pac. Ry. Co.*, 163 U. S. 564, 581	237
United States v. *American Can Co.*, 230 Fed. 859, 901	95, 106
United States v. *Am. Tobacco Co.*, 221 U. S. 106, 179	94, 110, 240, 254
United States v. *Am. Tobacco Co.*, 221 U. S. 106, 179, 182	35
United States v. *Am. Tobacco Co.*, 164 Fed. 700, 702, 722	95, 103, 254, 257
United States v. *Asso. Bill Posters*, 235 Fed. 540	95, 105
United States v. *Bonness*, 125 Fed. 485	194
United States v. *Chesapeake & Ohio Fuel Co.*, 105 Fed. 93, 103, 105	61, 96, 102
United States v. *Dalles Military Road Co.*, 140 U. S. 599, 632	274
United States v. *Delaware & Hudson Co.*, 213 U. S. 366	192, 255, 257
United States v. *E. C. Knight Co.*, 156 U. S. 1, 16	60–61
United States v. *Gleason*, 175 U. S. 588	194
United States v. *Great Lakes Towing Co.*, 208 Fed. 733, 741, 743, 744	63, 95, 104–105
United States v. *Insley*, 130 U. S. 263	274
United States v. *International Harvester Co.*, 214 Fed. 987, 999.	95, 275
United States v. *Joint Traffic Asso.*, 171 U. S. 505, 562.	21, 37, 46, 92, 98
United States v. *Kirkpatrick*, 9 Wheat. 720, 735	274
United States v. *Kissel*, 218 U. S. 601	257, 282
United States v. *Lake Shore & M. S. Ry. Co.*, 203 Fed. 295, 312	95, 103–104
United States v. *Lehigh Valley R. R. Co.*, 41 Sup. Ct. Rpts. 104, decided Dec. 6, 1920	255
United States v. *McAndrews*, 149 Fed. 823, 833	61
United States v. *McLaughlin*, 30 Fed. 147	194
United States v. *Missouri Railroad Co.*, 37 Fed. 68	194
United States v. *Nashville, Chat. & St. L. Ry. Co.*, 118 U. S. 120	274, 276
United States v. *Northern Securities Co.*, 120 Fed. 721, 726, 730.	61–62, 95, 102
United States v. *Pacific & Artic Co.*, 228 U. S. 87	20, 37, 47
United States v. *Patterson*, 59 Fed. 280, 283	49
United States v. *Quaker Oats Co.*, 232 Fed. 499, 502	95, 106
United States v. *Reading Co.*, 226 U. S. 324, 348–352, 353, 357	20, 37, 42, 49, 92, 93, 94, 98, 191

Cases—Continued. Page.
United States v. *Reading Co.*, 226 Fed. 229, 266, 271.... 64, 95, 191, 192
United States v. *Reading Co.*, 253 U. S. 26..... 37, 64, 94, 97, 274
United States v. *Southern Pacific Co.*, 146 U. S. 570, 572, 574.. 205
United States v. *Standard Oil Co.*, 221 U. S. 1, 70..... 49
United States v. *Standard Oil Co.*, 173 Fed. 177, 179, 184, 187. 50–52, 63, 95, 100, 103
United States v. *Stanford*, 161 U. S. 412..... 126, 223, 245
United States v. *Stanford*, 70 Fed. 346; 69 Fed. 25, 44..... 245
United States v. *Stevenson*, 215 U. S. 190, 198..... 279
United States v. *Swift*, 188 Fed. 92, 101..... 61
United States v. *Swift*, 186 Fed. 1002..... 257
United States v. *Terminal Asso.*, 224 U. S. 383..... 37, 39, 59, 110
United States v. *Trans-Missouri Freight Asso.*, 166 U. S. 290, 319, 342..... 21, 37, 46, 94, 255, 257, 283
United States v. *Union Pacific R. R. Co.*, 226 U. S. 61, 85, 88, 91, 92..... 21, 22, 36, 37, 49, 56, 59–60, 65, 79, 94, 95–6, 110, 115, 120, 124–6, 132, 135, 162, 191, 276, 286
United States v. *Union Pacific R. R. Co.*, 91 U. S. 72..... 126, 131
United States v. *Union Pacific R. R. Co.*, 98 U. S. 569, 613.. 126, 130, 181
United States v. *Union Pacific R. R. Co.*, 188 Fed. 102, 120, 124..... 22, 49, 71, 276
United States v. *Union Pacific R. R. Co., the Oregon Short Line R. R. Co., and others*..... 141–143
United States v. *Union Pacific Ry.*, 160 U. S. 1, 28..... 245
United States v. *United Shoe Machinery Co.*, 227 Fed. 507..... 257
United States v. *Van Zandt*, 11 Wheat. 184..... 274
United States v. *Whiting*, 212 Fed. 466, 477..... 95, 105
United States v. *Williamette, etc., Co.*, 54 Fed. 807, 810, 811... 193, 194, 274
Virginia-Carolina Chem. Co. v. *Kirven*, 215 U. S. 252, 257..... 265, 269
Visalia Gas & Elec. Light Co. v. *Sims*, 104 Cal. 326..... 238
Vulcan Powder Co. v. *Hercules Powder Co.*, 96 Cal. 510..... 239
Ware v. *United States*, 154 Fed. 577, 579..... 282
Washington, etc., Packet Co. v. *Sickles*, 24 How. 333..... 266
Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86, 108..... 257
Whiskey Cases, 99 U. S. 594..... 195
Williams v. *Wells Fargo & Co.*, 177 Fed. 352, 355..... 279
Wilson v. *United States*, 190 Fed. 427, 435..... 282
Wright v. *Rider*, 36 Cal. 342..... 239
York & Maryland R. R. v. *Winans*, 17 How. 30..... 238
Zabriskie v. *Cleveland R. R., 23 How. 381*..... 237

Statutes:
1 Stat., chap. 9, sec. 32, p. 112..... 277–278
1 Stat., sec. 89, p. 696..... 278
2 Stat., chap. 91, sec. 9, p. 452..... 278
3 Stat., chap. 40, sec. 3, p. 290..... 278
5 Stat., chap. 36, sec. 4, p. 322..... 279
12 Stat., chap. 120, p. 489..... 121, 127, 207

Statutes—Continued. Page.
13 Stat., chap. 216, p. 356 ..... 122, 127, 166, 208
13 Stat., chap. 88, p. 504 123
14 Stat., chap. 278, p. 292 ..... 200, 208
15 Stat., chap. 77, p. 79 201
16 Stat., chap. 122, p. 573 209
16 Stat., p. 382 201
18 Stat., chap. 331, p. 111 ..... 123, 129
19 Stat., chap. 56, p. 32 276
30 Stat., chap. 571, p. 659 ..... 41, 172–173, 190, 252
30 Stat., chap. 427, p. 1245 178
34 Stat., chap. 3591, p. 584 255
38 Stat., sec. 7 (Clayton Act), p. 730 64
United States Comp. Stat., 1916, secs. 1708, 1712, pp. 3577, 3588 276
California statutes:
Acts 1852, chap. 77, p. 150 ..... 120, 245
Acts 1852, chap. 77, p. 276 245
Acts 1861, chap. 534, p. 609 241
Acts 1864, chap. 417, p. 471 246
Acts 1870, page 883 201
Acts 1880, chap. 65, p. 114 242
Acts 1903, chap. 45 238
California Constitution, adopted May 7, 1879 241
Miscellaneous:
Bigelow on Estoppel, 6 ed., p. 371 193
2 Black on Judgments, 2 ed., sec. 609, p. 926; sec. 614, p. 938 .. 266
5 Chitty's Ed. of Burns' Justice, 2 188
Coke's Third Institute, 237 188
Cong. Rec., vol. 21, pp. 2457, 2726 94
Deering's Civil Code, ed. 1903, sec. 494 239
Everest & Strode on Estoppel, 2 ed., p. 8 193
4 Hawkins' P. C. Bk., 2, ch. 37, sec. 28 188
2 Herman on Estoppel, p. 1263 193
1 Hittell, art. 838 242
2 Kerr's Cyc. Codes, ed. 1907, sec. 494 239
10 Vin. Ab. Estoppel, p. 433 193

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, et al. } No. 21.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

BRIEF FOR APPELLANT.

This is an appeal from a decree dismissing a petition to dissolve a combination as unlawful under the Sherman Antitrust Act and for relief under the Pacific Railroad laws.

PLEADINGS.

This is a petition filed on February 11, 1914, by the United States against the Southern Pacific Company, the Central Pacific Railway Company, the Union Trust Company of New York, and the officers and directors of the Southern Pacific Company for relief under the Sherman Antitrust Act of July 2, 1890, and under the Pacific Railroad laws, against

the continuance of a monopoly and of a combination in restraint of trade, formed by the Southern Pacific Company by acquiring all the capital stock in the Central Pacific Railroad Company and in its successor, the Central Pacific Railway Company, pursuant to a plan promulgated February 20, 1899, at which time the Southern Pacific Company already held all the stock of the Southern Pacific Railroad Company.

The defenses presented by the answer may be summarized as follows:

1. The two lines made by the Central Pacific Railroad and its connections and the Southern Pacific Railroad and its connections are not and have not been natural competitors (28).

2. Competition between the two lines has not been restrained (29).

3. The defendants have not monopolized or attempted to monopolize commerce (30).

4. The defendants have not violated the Pacific Railroad laws by failing to operate the Central Pacific Railroad with the Union Pacific Railroad as one connected, continuous line, or by discriminating against the Union Pacific Railroad (31).

5. The two lines composed of the Southern Pacific Railroad and its connections and the Central Pacific Railroad and its connections were built, extended, controlled, and operated as one property (36).

6. The United States is estopped from maintaining this petition by its conduct in connection with

the settlement of the debt of the Central Pacific Railroad Company (36).

7. The decree in the case of the United States against the Union Pacific Railroad Company is res adjudicata against the present petition (45).

8. The United States is barred by its laches (46).

9. The United States is barred under the statute of limitations by the lapse of more than five years since the accrual of the causes complained of (46).

[References, unless otherwise indicated, are to pages of the printed record.]

DECISION OF THE DISTRICT COURT.

This case was heard in the first instance in the district court by Judges Sanborn, Hook, and Carland, on evidence and exhibits taken wholly before an examiner and submitted in print to the court. A decree was entered dismissing the petition pursuant to the opinion of Judge Hook, Judge Sanborn concurring and Judge Carland dissenting.

To quote from the dissenting opinion, "it is difficult to determine from the opinion of the majority exactly upon what ground or grounds the bill in this case is dismissed" (2336).

The opinion of the majority describes the physical relation of the two railroads (2328), the acquisition of control over the Southern by the promoters of the Central (2329), the control by these promoters over the construction of the two railroads, the operation of the Southern by the Central as lessee; the leasing of the two to the Southern Pacific Com-

pany (2330), the consequent absence of competition (2330), the acceptance of the securities of the Southern Pacific Company in 1899 by the commission on the collection of the Pacific Railroad debt (2332), and leaves it open to conjecture on what ground the dismissal is based.

The majority opinion gives no effect to the difference of ownership of the two railroads at all times prior to 1899, or to the invalidity of the leases under the Acts of Congress (and holds immaterial their invalidity under the State laws), or to the obligations to compete under the terms of the leases. It fails to consider the principle that the existence of relations restraining competition between two railroads before 1890 would not validate a new combination made in 1899.

The minority opinion, on the other hand, says:

> It seems to be conceded that but for the common control there would be competition.
>
> There is natural competition which is suppressed by reason of the control of the Central Pacific by the Southern Pacific.
>
> The fact that prior to the passage of the antitrust law there had been a practical control of the Central Pacific by the Southern Pacific through a leasing arrangement in no way validates the present combination, if it be unlawful.
>
> The evidence in the record in my opinion establishes beyond question that the Southern Pacific extending from San Francisco Bay to New Orleans, with its steamship connection

to New York, is a natural competitor of the Central Pacific, both as to California-Atlantic Seaboard freight, and central and western United States freight, to and from California.

It follows that the free flow of interstate commerce is restrained.

I do not think the evidence shows that the Central Pacific and the Southern Pacific were created originally and have always continued to be one system. They have always been and are now operated as separate systems.

The settlement by the United States of the debt of the Central Pacific in 1899 can not be held to estop the United States from insisting at this time that the combination between the two roads is in violation of the antitrust act.

Finally, I am unable to reconcile the decision of the Supreme Court in the case of *U. S.* v. *Union Pacific Railroad Company*, 226 U. S. 61, with the conclusion reached by the majority in this case. The Union Pacific and the Central Pacific constitute one transcontinental line from Omaha, Nebr., to the Pacific coast.

If it is unlawful for the Union Pacific, being one section of the through line to control the Southern Pacific, why is it not unlawful for the Southern Pacific to control the other section of the through line?

ASSIGNMENT OF ERRORS.

The United States of America, the petitioner, assigns as the errors in the proceedings and final decree entered March 9, 1917, in the above-entitled cause, on which errors it will rely in the prosecution of its

appeal from said decree, that a decree should not have been entered dismissing the petition, but that, on the contrary, a decree should have been entered granting relief to the petitioner to dissolve the combination and monopoly complained of, and to prevent the further infraction of the Pacific Railroad laws, and for greater particularity the petitioner assigns that said errors were committed in failing in said proceedings and decree to give sufficient consideration and effect to the matters of law and matters of fact apparent in the record as follows, namely:

First. In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic, and the combination between them unreasonably, directly, substantially, and wholly prevented and destroyed competition between them, and continues to do so, and the combination artificially created a monopoly to the public injury (*infra*, p. 18).

Second. The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad, the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal voluntary cooperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad, and the systematic and preconcerted discrimination which the Southern Pacific Company in operating the franchise of the Central Pacific Railroad has practiced against

the Union Pacific Railroad in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad furnishing the incentive of self-interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury of the public and to the defeat of the purpose of those laws, which was to create and develop three separate competitive systems of railroad to the Pacific coast, with all the advantages that would come to the public from three railroads which were competitive (*infra*, p. 119).

Third. The payment by the Central Pacific Railroad Company of its debt to the United States and the transactions leading thereto did not exempt the Southern Pacific Company from the provisions of the Sherman Antitrust Act of July 2, 1890, or permit that company to make a combination which otherwise would be one in restraint of trade, because (1) the settlement commission did not seek any guaranty by the Southern Pacific Company, (2) the contract of settlement did not require such a guaranty, (3) the United States received only payment of a debt already due and adequately secured, (4) neither the commission, nor the President, nor the Congress purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all

31536—21——2

other corporations, and (5) such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress (*infra*, p. 162).

Fourth. The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but, on the contrary, were always two distinct railroads, (1) separately projected by separate and unrelated groups of men, (2) separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate, competitive systems of railroad between the Atlantic Ocean and the central United States on the east and the Pacific Ocean on the west, and enacted prior to 1867, and before any person interested in the one railroad was interested in the other, (3) separately owned by separate corporations organized by separate groups of men, (4) separately constructed at the expense of and for these separate corporations, (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads, (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899, and (7) separately stock owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and in Europe (*infra*, p. 196).

Fifth. The Southern Pacific Company on February 20, 1899, had no contractual, or property, or vested interest, direct or indirect, in the Central Pacific Railroad, because (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Company was void for lack of power in that company to make it, both under the laws of California and under the laws of the United States, the sovereignty from which it derived its franchises, (2) in 1893 this lease was canceled and the new purported lease then given was equally void for the same reason, and (3) the leasehold interest was subject to immediate destruction by the foreclosure of the underlying lien of the United States (*infra*, p. 234).

Sixth. Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Antitrust Act was passed, this would not render lawful a combination for the increase and perpetuation of that control, formed after this act was passed (*infra*, p. 253).

INTRODUCTORY OUTLINE.

The combination which the Government seeks to dissolve was made pursuant to a plan promulgated February 20, 1899.

In 1852 the project to build railroads to connect the Atlantic and Pacific Oceans across the United States resulted in an act of the legislature of California to grant a right of way to the United States through the State for this purpose.

In 1861 the Central Pacific Railroad Company of California was incorporated to construct a railroad from Sacramento to the eastern boundary of California.

In 1862 and 1864 Congress passed the Pacific Railroad laws, which incorporated the Union Pacific Railroad Company to build a railroad from the Missouri River westward, and authorized the Central Pacific Railroad Company to build eastward to a meeting point. These acts (1) empowered these two companies to issue first mortgage bonds at the rate of $16,000, $32,000, and $48,000 per mile, dependent upon the character of the country and (2) granted to them an equal amount of bonds of the United States for the payment of which, the United States was secured by a lien second only to the first mortgage bonds, and (3) granted them 20 square miles of public lands for each linear mile of railroad constructed.

These acts directed in return (1) that these two railroads should, as far as the Government and the public were concerned, be operated as one continuous line, and (2) that neither should discriminate in favor of either, or against either.

The promoters of the Central Pacific Railroad were Leland Stanford, Collis P. Huntington, Mark Hopkins, and Charles Crocker. They acquired a large part of the capital stock of this company. There was always a substantial amount of this stock owned by others.

Between 1864 and 1869, this railroad, and the Western Pacific Railroad (which was afterwards consolidated with it), was constructed from San Francisco Bay to a junction with the Union Pacific Railroad at Ogden, Utah, thus completing a line of railroad from the Atlantic Ocean to the Pacific Ocean, running for some distance near the forty-first parallel of latitude.

In 1865, pursuant to a project for through routes via the thirty-second and thirty-fifth parallels of latitude, the Southern Pacific Railroad Company was organized by an entirely different group of men for the purpose of constructing a railroad from San Francisco Bay via San Diego to the eastern boundary of California, to connect with a contemplated railroad from that point to the Mississippi River.

In 1866, Congress passed an Act to incorporate the Atlantic & Pacific Railroad Company to construct a railroad near the thirty-fifth parallel of latitude from Springfield, Mo., to the Pacific Ocean. This Act authorized the Southern Pacific Railroad to connect with the Atlantic & Pacific Railroad near the eastern boundary of California, and gave to both of these companies a subsidy of public lands.

In 1867, the Southern Pacific Railroad Company changed its route to turn eastward without going as far south as San Diego. In 1870, Congress and the California Legislature ratified this change.

In 1871, Congress passed an Act to incorporate the Texas Pacific Railroad Company to construct a rail-

road near the thirty-second parallel of latitude from Marshall, Tex., via El Paso, Tex., to the Pacific Ocean at San Diego, and to connect on the east with existing railroads, and on the west with the Southern Pacific Railroad. This Act authorized the Southern Pacific Railroad Company to construct a railroad from Tehachapi Pass to a junction with the Texas Pacific Railroad at the eastern boundary of California. This act also gave both companies a subsidy of public lands. It authorized the Texas Pacific Railroad to consolidate with other railroads, provided that they were not competing lines. These several railroads accepted these several acts and undertook the duties imposed by them.

So were launched, with Government aid, three projects for competing lines of railroad to the Pacific Ocean, one of them dependent on the Central, and two of them dependent on the Southern to reach the more settled part of California.

The promoters of the Central perceived the impending competition from the Southern, and in 1870 acquired a controlling amount of the stock of the Southern Pacific Railroad Company. Before 1885 they had acquired all its stock.

By 1872, the Central had extended a southerly branch, from its main line, to Goshen in the San Joaquin Valley.

When the promoters of the Central acquired control of the Southern in 1870, its line extended southerly from San Francisco to Gilroy. It was projected from

this point to a point in the San Joaquin Valley near Goshen, and thence southerly to the two connections, one with the Atlantic & Pacific Railroad and the other, with the expected Texas & Pacific Railroad.

The section to connect Gilroy with Goshen was never completed. Instead, the construction was taken up in 1872 at Goshen at the end of the branch of the Central and without interruption the line was completed southerly through Tehachapi Pass, and thence one fork to a junction with the Atlantic & Pacific Railroad at The Needles on the Colorado River at the eastern boundary of the State, and the other fork to the southeasterly corner of the State opposite Yuma, Ariz., thence across Arizona and New Mexico to a junction with the Texas & Pacific Railroad at Sierra Blanca, Tex. and to a connection at El Paso, Tex., with the Galveston, Harrisburg & San Antonio Railroad, thus eventually completing a through line to New Orleans.

As the sections of this southern line were built they were leased temporarily to the Central.

It is not unlikely that the first mortgage bonds and the Government loaned bonds yielded enough money to construct the Central.

Under the terms of the acts of 1862 and 1864, the Central was not obliged to pay currently the interest on the Government bonds. It paid substantial dividends, and its stock acquired a good market value.

On the strength of the dividend showing, the promoters of the Central sold the greater part of its

stock. These sales began as early as 1877. By 1883, a majority of the stock had been sold, and was held by strangers, and to a large amount in Europe.

The stock certificates were issued, largely in the names of office employees. They had attached to them dividend warrants payable to bearer, similar to coupons on a bond. This, coupled with the fact that there was a stockholder's liability for debts of the corporation, deterred the recording of transfers of shares. This left the apparent stock-voting power in the promoters and these office employees.

Although the competition between the two lines was imminent, it did not become possible to any extent until 1881.

In 1881, the Southern Pacific Railroad made a junction with the Atchison, Topeka & Santa Fe Railroad at Deming, N. Mex. Then, for the first time, competition between the Southern and the Central in the transportation of transcontinental freight became possible. In 1882, the Southern made a junction with the Texas & Pacific Railroad at Sierra Blanca, Tex., thus making another through route. In 1883, the direct line of the Southern in connection with the Galveston, Harrisburg & San Antonio Railroad and its eastern connections was completed through to New Orleans.

In 1883, the Southern made its junction with the Atlantic & Pacific Railroad at The Needles, and so completed another railroad (now the Atchison, Topeka & Santa Fe) to the east.

All these southern lines were dependent upon the Southern Pacific to reach California.

The Union Pacific was dependent on the Central Pacific to reach California.

On these several dates, when competition first became possible, the Central was owned by the Central Pacific Railroad Company, and the stock in it was in widely scattered ownerships, and the Southern was owned by the Southern Pacific Railroad Company and connecting lines, the stock of which was owned wholly or nearly so by Stanford, Huntington, Crocker, and the Hopkins estate.

This separation in ownership continued until the combination in 1899.

In 1884, the Southern Pacific Company was organized in Kentucky.

In the early part of 1885, this company acquired all the stock of the Southern Pacific Railroad Company and its connecting lines to New Orleans with steamship connections to New York, but it acquired no stock in the Central Pacific Railroad Company.

In 1885, these southern railroads purported to make a lease to the Southern Pacific Company, and the Central Pacific Railroad Company purported to make a separate lease to the Southern Pacific Company. These leases, and particularly that by the Central Pacific Railroad Company, for reasons hereinafter stated (p. 237), were void.

The terms of the lease of the Central, made the rental dependent in part upon the earnings of that

railroad, so that the Southern Pacific Company was under obligation to compete for as much business as possible for the Central Pacific Railroad against the Southern Pacific Railroad.

In 1893, this lease was canceled, and a new lease (also void) was given to the Southern Pacific Company.

In 1898, the obligation of the Central Pacific Railroad Company to retire the bonds given it by the Government had matured. In July, Congress passed an act for the creation of a commission composed of the Attorney General, the Secretary of the Treasury, and the Secretary of the Interior, to negotiate a settlement of this debt. This Act directed the President to foreclose the lien upon the railroad if settlement was not made within a year.

The Central Pacific Railroad Company then had outstanding (1) first-mortgage bonds amounting to about $59,000,000; (2) Government bonds, on which the Government was protected by the second lien, about $58,000,000; and (3) common stock, about $67,000,000. Its average earnings for 10 years had been sufficient to enable the company to pay 4½ per cent annually on the $117,000,000, bonded debt but no dividends on stock.

If the Government lien was foreclosed, it would destroy the lease whether valid or void, and the Central Pacific Railroad, then already in a separate corporate and essential ownership from the Southern Pacific Railroad, would pass into the operating con-

trol of persons not associated with its competitor. To avoid this, a plan was devised for refunding first mortgages sufficient in amount to take care of the existing first mortgage and the Government lien and some additional amounts, and for the transfer of the stock of the Central Pacific Railroad Company to the Southern Pacific Company in return for stock and bonds of the Southern Pacific Company.

The plan was carried out, and the Southern Pacific Company, which never before had owned any part of the securities or stock of the Central Pacific Railroad Company, acquired virtually all the stock in that company and its immediate successor, the Central Pacific Railway Company, and it retained all the stock in the Southern Pacific Railroad Company and the connecting lines to New Orleans and New York.

This transaction, if valid, suppressed all competition and all possibility of competition between the two railroads.

The freight as to which the two lines are competitive is enormous in amount and value.

The control of the Southern Pacific Company owning a through line over the Central Pacific Railroad furnishes the incentive of personal gain to divert as much of the freight of the Central Pacific Railroad as possible from the Union Pacific Railroad to the Southern Pacific Railroad; and, responsive to this incentive, the Central Pacific Railroad, under the control of the Southern Pacific Company, has dis-

criminated continuously against the Union Pacific Railroad in favor of the Southern Pacific Railroad, contrary to the duties imposed by the Pacific Railroad Acts.

The combination of the two railroads under one control not only restrained trade, but monopolized the interstate railroad transportation with all parts of California north of Tehachapi Pass, notwithstanding that at the time there were in existence these two railroads, separately owned and competitors for the business.

FIRST ASSIGNMENT.

In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic, and the combination between them unreasonably, directly, substantially, and wholly prevented and destroyed competition between them, and continues to do so, and the combination artificially created a monopoly to the public injury.

(1) The Central Pacific Railroad and the Southern Pacific Railroad are competitive and have been so continuously since 1883. (2) The area as to which they are competitive is large, and the volume of competitive freight is enormous. (3) The combination in February, 1899, unreasonably restrained this competition. (4) This combination produced also a monopoly.

FIRST.

THE CENTRAL PACIFIC RAILROAD AND THE SOUTHERN PACIFIC RAILROAD ARE COMPETITIVE AND HAVE BEEN SO CONTINUOUSLY SINCE 1883.

An inspection of a railroad map of the United States is enough to show the competitive character of these two railroads with respect to the transportation of interstate freight between California, and to some extent Oregon and Nevada on the west, and all parts of the eastern half of the United States on the east.

The *Central Pacific Railroad* extends from San Francisco Bay to Ogden, Utah, with a branch extending north from Roseville in central California to the northern boundary of California, and to Kirk in Oregon, and a branch extending south from Lathrop in central California to Goshen, Calif., and a branch extending south from Hazen in Nevada to Mojave in California, and a branch extending northwest from Fernley in Nevada to Susanville in California, and a short line from Oak Ridge in Oregon to Natron in Oregon. At Ogden, the Central Pacific Railroad connects with the Union Pacific Railroad which extends to Omaha, Nebr., and Kansas City, Mo. The Central Pacific Railroad also connects at Ogden with the Denver & Rio Grande Railroad, which, with its allied connection, the Missouri Pacific Railroad, extends to the Missouri River. From the Missouri River connecting railroads extend

to all important points in the central and eastern parts of the United States.

The *Southern Pacific Railroad*, in connection with other railroads controlled by the Southern Pacific Company, extends from San Francisco Bay through El Paso, Tex., to Galveston, Tex., and to New Orleans, and connects at these last two cities with steamship lines operated by the Southern Pacific Company to New York City. At El Paso, it connects with the Rock Island, so called, which runs to Omaha and to Chicago. At New Orleans, the Southern Pacific Railroad connects with a number of railroads extending to all important points in the eastern part of the United States. It owns and operates a number of branches in Texas, New Mexico, Arizona, and Oregon, and many in California.

The Central Pacific Railroad and the Southern Pacific Railroad, with their connections, form separate complete routes from many of the important California terminals to all the important terminals east of the Missouri River, and of the Mississippi River (Maps, P. Ex. 1, p. 1223; P. Ex. 74, p. 1671; D. Ex. 55, p. 2242).

Two railroads transporting freight to a substantial extent by different routes between two common points are naturally competitive.

United States v. *Pacific & Arctic Co.*, 228 U. S. 87.

United States v. *Reading Co.*, 226 U. S. 324.

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61.

Northern Securities Co. v. *United States*, 193 U. S. 197.

United States v. *Joint Traffic Association*, 171 U. S. 505.

United States v. *Trans-Missouri Freight Association*, 166 U. S. 290.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 691, dictum.

United States v. *Union Pacific Railroad Company*, 226 U. S. 61, determined, as the fundamental point of the decision, the competitive character of these two railroads. In that case, the competitive railroads considered were the Southern Pacific on the one hand, and the Union Pacific on the other. For these competitive operations, the Union Pacific Railroad used the Central Pacific Railroad from Ogden to California, and used independent connections eastward. If the Union Pacific is competitive with the Southern Pacific, it follows inevitably that the Central Pacific is competitive with the Southern Pacific.

The witnesses for the defendant concur with those for the petitioner and admit the *actual* and *practical* competitive character (and not merely theoretic) of these two railroads. It is not in dispute. (Spence, 1018, 1079, 1080, 1084, 1097, 1164, 1166, 1171; Kruttschnitt, 774, 816, 807, 739, 805, 772, 737; Rail-

way Guide, p. 39; P. Ex. 28, p. 1523; Stubbs, 97; P. Ex. 22, p. 1476; Stanford, 98; Lincoln, 109, 113, 122, 123, 297; Schumacher, 149, 150, 156, 164; Munroe, 371, 372; Lovett, 294, 297; Chambers, 965, 950, 968; Connor, 336; Sproule, 224, 180, 182, 199, 241, 245.)

In *United States* v. *Union Pacific Railroad Co.*, 188 Fed. 102, 124, Judge Hook, whose conclusion was approved by the Supreme Court, said (if "Central" be substituted for "Union") that—

> In a broad and substantial sense, in the sense in which the terms are used in consitutions and statutes and in railroad and business circles, the (Central) Pacific and Southern Pacific lines were parallel and competing. That they were so regarded by practical men having to do with transportation in its various phases is shown, I think, by an overwhelming mass of evidence. But, had no witness testified regarding it, we should come to the same conclusion.

The test of competitiveness is not extension for the total distance between common points. It is the actual capacity in practical operation to transport between such points, either by lines independently controlled, or with the assistance of lines controlled by others, but available in practice for the completion of the transportation.

U. S. v. *Union Pacific Railroad Co.*, 226 U. S. 61.

There is nothing that can be said in favor of the competitiveness of the Union Pacific Railroad against the Southern Pacific Railroad which can not be said for the Central Pacific Railroad. On the other hand, the Central Pacific Railroad is more effectively competitive. It is the initial or terminal line in the through route and that gives it more control than is possessed by an intermediate line. (Connor, 345; Schumacher, 154.) The firmness of this control is discussed later.

SECOND.

THE AREA AS TO WHICH THEY ARE COMPETITIVE IS LARGE, AND THE VOLUME OF COMPETITIVE FREIGHT IS ENORMOUS.

(1) The *area* as to which these two railroads are competitive is not much in dispute. The defendants admit that these two railroads are competitive between northern and central California on the west and Atlantic Seaboard Territory and the Middle West Territory on the east. The evidence establishes that the western area includes also Nevada, southwestern Oregon, and the southern part of California, as far south or east as Banning (Spence, 1079, 1083, 1089, 1092, 1096). Apparently, the only dispute as to this southern part of California is as to whether the division line should be drawn at Banning, or at Mojave and Santa Barbara. Mojave is on the valley line of the Southern Pacific

just south of the pass through the Tehachapi Mountains, and Santa Barbara is on the coast line of the Southern Pacific in the same approximate latitude. Banning is farther south and east.

Atlantic Seaboard Territory includes everything east of a line drawn from Toronto, Ontario, through Buffalo, Pittsburgh, Wheeling, and Bristol, Tenn., north of the line of the Norfolk & Western Railway to the Atlantic Ocean. (P. Ex. 64, p. 1666; Lincoln 109; Schumacher, 143; Spence, 1035.)

Middle West Territory includes everything west of Atlantic Seaboard Territory and north of the Ohio River and the northern boundaries of Arkansas and Oklahoma, and east of the line of the Chicago, Rock Island & Pacific Railroad from its intersection with this northern boundary, and thence via McFarland and Belleville, Kans., and Des Moines, Iowa, to St. Paul, Minn. (Spence, 1079.)

Central Freight Association Territory is the portion of the Middle West Territory east of the Mississippi River. (P. Ex. 64, p. 1666; Schumacher, 144; Munroe, 375; Sproul, 198.)

From *south of Mojave* to east of the Missouri River there is a substantial movement of citrus fruits over the Central Pacific Railroad. (Spence, 1128.)

Southwestern Oregon also is in the competitive area. Probably this is not disputed. Mr. Kruttschnitt, the chairman of the executive committee of the Southern Pacific Company, testified that the

competitive area extends as far north as Oregon. (Kruttschnitt 816.) The statistics of tonnage hereafter referred to show substantial movements from and to this territory over the Southern route, and all of this crosses the Central route.

Nevada also is in the competitive area. The Central route is the natural direct route for this territory, but a volume of freight, large in comparison with the entire freight of this State, has been transported from Nevada over the Southern route.

(2) The *volume* of freight moved over these two railroads between the territories as to which they are competitive is enormous.

Common knowledge establishes this sufficiently, but this is convincingly reinforced by the evidence.

Between these territories, in the year ending June 30, 1914, the Southern Pacific moved either through El Paso or through Ogden 1,473,135 tons, for which the revenue for this company alone was $13,799,059. (Spence 1101.)

The tables prepared by the Southern Pacific Company (P. Ex. 43–58, pp. 1648–1654; D. Ex. 62–83, pp. 2247–2256), which show certain freight movements for the year ending June 30, 1914, reduced to a single table, are as follows:

Origin.	Destination.	Gateway.	Tons.	Dollars.
Nevada, Oregon, California north of Banning.	Atlantic seaboard	Ogden	154,229	926,433
Do.	do	El Paso	85,059	1,202,109
Do.	Middle West	Ogden	368,975	2,576,384
Do.	do	El Paso	222,325	1,838,626
Atlantic seaboard	Nevada, Oregon, California north of Banning.	Ogden	68,916	593,339
Do.	do	El Paso	94,737	1,899,083
Middle West	do	Ogden	259,648	2,451,700
Do.	do	El Paso	219,246	2,311,283
Central Pacific rails	Atlantic seaboard	do	34,812	646,005
Do.	Middle West	do	31,180	269,457
Nevada	Atlantic seaboard	do	0	0
Do.	Middle West	do	0	0
Oregon & Northern California	Atlantic seaboard	do	22,161	426,334
Do.	Middle West	do	5,351	51,384
San Francisco & Oakland	Atlantic seaboard	do	4,598	95,841
Do.	Middle West	do	10,295	76,209
Atlantic seaboard	Central Pacific rails	do	50,045	1,093,267
Middle West	do	do	63,734	663,035
Atlantic seaboard	Nevada	do	539	13,281
Middle West	do	do	30	909
Atlantic seaboard	Oregon & Northern California	do	2,801	84,200
Middle West	do	do	13,122	124,919
Atlantic seaboard	San Francisco & Oakland	do	38,933	920,302
Middle West	do	do	40,497	433,465
Central Pacific rails	Atlantic seaboard	Ogden	154,229	926,433
Do.	Middle West	do	368,975	2,576,384
Nevada	Atlantic seaboard	do	28,234	456,501
Do.	Middle West	do	16,852	140,671
Oregon & Northern California	Atlantic seaboard	do	27,517	167,059
Do.	Middle West	do	86,165	471,253
San Francisco & Oakland	Atlantic seaboard	do	14,025	127,697
Do.	Middle West	do	52,432	336,753
Atlantic seaboard	Central Pacific rails	do	68,916	593,339
Middle West	do	do	259,648	2,451,700
Atlantic seaboard	Nevada	do	2,138	30,198
Middle West	do	do	25,898	286,737
Atlantic seaboard	Oregon & Northern California	do	4,684	40,231
Middle West	do	do	17,362	146,726
Atlantic seaboard	San Francisco & Oakland	do	44,214	380,258
Middle West	do	do	126,237	1,140,547
South of Mojave	Atlantic seaboard	do	[1] 13,329	
Do.	Middle West	do	[2] 37,757	
North of Mojave	Atlantic seaboard	El Paso	[3] 58,644	
Do.	Middle West	do	[4] 80,000	
Atlantic seaboard	North of Mojave	do	[4] 60,225	
Middle West	do	do	[5] 95,000	

[1] Approximately (p. 1095).
[2] Approximately (p. 1096).
[3] Approximately (p. 1098).
[4] Approximately (p. 1099).
[5] Approximately (p. 1100).

On this table the figures against "Central Pacific rails," origin or destination, include freight which originated, passed over, or was delivered on the Central Pacific Railroad, or originated or was delivered at points reached by the Central Pacific Railroad (Spence, 1052); "Oregon & Northern California" means Oregon and that portion of California north of Roseville, Davis, Elmira, Suisun, and South Vallejo; "San Francisco & Oakland" means those cities and other places whose transcontinental freight moved through San Francisco or Oakland.

The tonnage moved by the Southern Pacific Company through Ogden divided between the competitive and noncompetitive territories as follows:

	Tons.	Per cent.
Eastbound to Atlantic seaboard	154,229	20.6
Eastbound to Middle West	368,975	49.5
Eastbound to elsewhere	223,613	29.9
Total	746,807	100.0
Westbound from Atlantic seaboard	68,916	11.2
Westbound from Middle West	259,648	42.0
Westbound from elsewhere	289,361	46.8
Total	617,925	100.0

Of this eastbound Ogden tonnage, 70 per cent moved to territories as to which Ogden and El Paso are competitive gateways (Spence, 1082). Of that west bound, 53 per cent moved from such territories (Spence, 1083). The combined east and west percentage is 62.4 per cent of the total tonnage through Ogden.

The figures have not been compiled from which to make a similar comparison as to the tonnage moved through El Paso. (Spence 1083.)

The freight included in the sixteen items for movements through El Paso from or to Central Pacific rails, Nevada, Oregon, and Northern California and San Francisco and Oakland, cover freight which was moved over the Southern Pacific Railroad, notwithstanding the fact that it originated or was delivered in the territory of the Central Pacific Railroad.

Of the eastbound freight from competitive territory to Atlantic seaboard, moved through El Paso, 40 per cent originated in the territory of the Central Pacific Railroad. Of the westbound freight from Atlantic seaboard territory to competitive territory, moved via El Paso, about 52 per cent was delivered in Central Pacific Railroad territory. Of that so moved from the Middle West about 29 per cent was so delivered.

These last comparisons do not include that large volume of freight which, although not originating on the Central Pacific rails or delivered thereon, would nevertheless have had a much shorter haul if moved through Ogden.

Of the freight moved from Atlantic seaboard territory to competitive territory, via El Paso, over 41 per cent moved to or through San Francisco or Oakland. Of that so moved from Middle West territory, 18 per cent so moved. Of that so moved

from the Middle West territory, 6 per cent was delivered to points north of the main line of the Central Pacific Railroad from Ogden to Sacramento.

The figures given for the El Paso gateway do not include the freight moved between California and the southern, south central, and southeast part of the United States, or the freight moved between points south and east of Banning, Calif., on the west, and all other points on the east. They include substantially only that freight for the movement of which the Central Pacific Railroad is naturally in a position to compete.

The Central Pacific Railroad is in a better position than the Southern Pacific Railroad to compete for all classes of Atlantic seaboard and Middle West freight moved to or from points north of Mojave, Calif., and the Central Pacific Railroad is in as good a position as the Southern Pacific Railroad to compete for substantially all Atlantic seaboard and Middle West freight moved to or from points north of Banning, Calif. (Spence 1105.)

There is no class of this freight which moves through El Paso which could not be moved through Ogden.

The Sunset Gulf Route because of its water haul between Galveston or New Orleans and New York is said to be unsuited to handling certain classes of freight which move through Ogden. This objection does not apply to the movement of freight over

the Southern Pacific Railroad between California through El Paso, or other Texas junctions, or New Orleans, and over connecting railroads from these points. (Spence 1105.) A large amount of such freight now moves over the Southern Pacific Railroad and the Rock Island Railroad through El Paso, and a large amount of such freight moves over the Santa Fe Railroad.

The figures in evidence do not show the volume of the classes of freight that will not stand the split water and rail haul. (Eshleman 953.) It appears that there is a substantial amount of fresh fruit moving through Ogden and El Paso which does not move by the Sunset Gulf boats. Mr. Schumacher testified (159) that there are very few commodities that will not move part water and part rail.

Owing to the destruction of the records of the Southern Pacific Company the evidence is not as complete for earlier years as it is for the year ending June 30, 1914, but some information appears from outside sources.

From 1906 to 1914, the annual eastbound tonnage delivered by the Central Pacific Railroad to the Union Pacific Railroad at Ogden ranged from 472,615 tons to 623,162 tons. During the same period the annual westbound tonnage received by the Central Pacific Railroad from the Union Pacific Railroad at Ogden ranged from 501,848 tons to 672,852 tons. During this period the combined

east and west bound tonnage so delivered at Ogden ranged from 1,094,716 tons to 1,263,962 tons. (P. Ex. 73, p. 1671.) During this period the annual revenue of the Union Pacific Railroad alone derived from the movement of this freight ranged from $7,400,264.89 to $8,527,389.57. Since 1870 the joint rate between the Missouri River and California terminals has been divided in the ratio of 46 per cent to the Central Pacific Railroad and 54 per cent to the Union Pacific Railroad. (Schumacher, 155; Munroe, 370; P. Ex. 33, p. 1622.)

Mr. Connor, who since 1887 has been in charge of that part of the Middle West territory which lies southeast of an imaginary line drawn from St. Louis through Danville, Ill., Terre Haute, Ind., to Detroit, Mich., and a part of the territory just south of the Ohio River, testified concerning the movement from this territory through New Orleans and through Ogden.

Between 1901 and 1908 the number of westbound carloads moved annually from this territory through New Orleans or Ogden to California by the Southern Pacific Company ranged from 2,374 to 5,073. (P. Ex. 68, p. 1669; Connor, 355, 333.) In 1912, 4,647 carloads were so moved, and about one half were moved by the Central Pacific Railroad and the other half by the Southern Pacific Railroad. (P. Ex. 69, p. 1669.)

From 1890 to 1899 the freight moved west from this territory to California via New Orleans by the

Southern Pacific Company alone, amounted annually to an average of 972 carloads. In the largest year, 1898, the number was 1,942. (P. Ex. 66, p. 1668.) Mr. Connor did not have the figures showing the movement during this period over the Central Pacific Railroad. He believed that the tonnage which moved from this territory through New Orleans to California over the Southern Pacific Railroad ran as high as 65 per cent of the total movement from this territory to California (328).

He did not have the figures for the eastbound tonnage, but testified that in the fall and early winter there was a very heavy movement of canned fruits, dried fruits, lima beans, dried fish, and that class of commodities, and wine (330). He testified that there was a great variety of commodities moving from his territory in carload lots and innumerable others.

He testified that between 1899 and 1901 the tonnage from Pittsburgh via New Orleans and the Southern Pacific Railroad to California was in his judgment heavier than that moved from his territory to California (335), and that he thought that the annual tonnage from his territory to California via either the Southern Pacific Railroad or the Central Pacific Railroad in good years would be over 175,000 or 200,000 tons (336).

Mr. Sproule, the president of the Southern Pacific Company, testified that the volume of competitive traffic over the Central Pacific Railroad

and over the Southern Pacific Railroad is very large (241).

The New York representatives of the Union Pacific Railroad and connecting railroads testified to the same effect. (De Friest, 306; Johnson, 311; Hall, 312.)

From this testimony and from the exhibits it is apparent that the volume of competitive freight was at the time of the combination in 1899 and still is absolutely and relatively enormous.

THIRD.

THE COMBINATION IN FEBRUARY, 1899, UNREASONABLY RESTRAINED THIS COMPETITION.

It is admitted that since the combination pursuant to the plan of February 20, 1899, there has been no competition whatever between the Central Pacific Railway Company and the Southern Pacific Company. Indeed, the defendants contend that there never has been any such competition.

This contention is based upon the alleged prior existent unity of the two railroads. In fact, there never was any such unity. This is considered at length elsewhere (*infra*, p. 196).

This contention of the defendant is also based on the fact that at all times prior to February 20, 1899, this competition had been successfully restrained. This fact is immaterial. This subject is dealt with elsewhere (*infra*, p. 253).

The defendants contend that there is inconsistency in the position taken by the United States in the Union Pacific case and in the present case, because in the former case it was alleged that prior to 1901 there was competition between the Ogden gateway and the El Paso gateway, whereas in the present case it is contended that such competition was destroyed or prevented by the combination with the Southern Pacific Company in 1899. This statement of inconsistency is based on a false assumption as to the position of the petitioner in both cases.

In the Union Pacific case, the contention was not that prior to 1901 there was competition between the Ogden gateway, as such, and the El Paso gateway. The contention was that there was competition between the Union Pacific Railroad Company operating through the Ogden gateway, and the Southern Pacific Company operating through the El Paso gateway. There is nothing in this inconsistent with the contention that there was no competition by the Central Pacific Railroad Company under the control of the Southern Pacific Company for freight to be carried through the Ogden gateway.

In the present case, it is not contended that after 1899 there was no competition against the Southern Pacific Company for freight to be carried through the Ogden gateway, but it is contended that this competition was confined to the eastern connections of the Central Pacific Railroad, and that there was no competition by the Central Pacific Railroad. There is

nothing in this contention inconsistent with the contention for the petitioner in the Union Pacific case.

Actual competition at all times between the Ogden route and the El Paso route, or Sunset Gulf route, is referred to repeatedly by the witnesses for the defendant. This involves no qualification of the admission that there is no competition between the Central Pacific Railway Company and the Southern Pacific Company. It means only that the two railroads being open for business are inevitably inanimate competitors, or else that the eastern connections of the Central Pacific Railroad are competing for business which, if they get it, is carried part of the way over the Central Pacific Railroad. The immateriality of this is considered elsewhere (*infra*, p. 52).

It remains true that the Central Pacific Railway Company does not compete against the Southern Pacific. (Kruttschnitt 808; Munroe 374, 382; Lovett 292; Connor 336.)

This destruction of competition was a restraint of trade, as that term is used in the Act and repeatedly and consistently defined by this Court.

The contracts saved from the antitrust act by the rule of reason emphasized in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 67, and *United States* v. *American Tobacco Co.*, 221 U. S. 106, 179–182, are those only which would not have been regarded as contrary to the common law as restraints of trade, namely, the "normal and usual contracts to further trade by resorting to all normal methods," "contracts essential to individual

freedom and the right to make which were necessary in order that the course of trade might be free." The court expressly disclaimed any intention to take out of the statute any contract or combination merely because it would have been more reasonable to permit such (221 U. S. 112). A combination between two naturally competitive railroads which relieves one completely from the competition of the other is contrary to the common law and is not a normal or usual method of trade or essential to individual freedom, and it is not made so by any imagined or actual advantages in saving of expense, in reduction of rates, or in increase of public convenience. The decisions after, as well as those before, the Standard Oil decision leave no doubt remaining as to this.

In *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, the court said:

> A combination which places railroads engaged in interstate commerce in such relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act (85).
>
> The consolidation of two great competing systems of railroad engaged in interstate commerce by a transfer to one of a dominating stock interest in the other creates a combination which restrains interstate commerce within the meaning of the statute (88).

Whatever views may have been entertained as to the extent to which private individuals or companies may go in making agreements restraining their competitive efforts, there is no doubt that it is an unreasonable restraint for public service corporations to enter into combinations directly and substantially to deprive the public of the competition naturally existing between them.

> *United States* v. *Reading Co.*, 253 U. S. 26
> *United States* v. *Pacific & Arctic Co.*, 228 U. S. 87.
> *United States* v. *Reading Co.*, 226 U. S. 324.
> *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61.
> *United States* v. *Terminal Association*, 224 U. S. 383.
> *Northern Securities Co.* v. *United States*, 193 U. S. 197.
> *United States* v. *Joint Traffic Association*, 171 U. S. 505.
> *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290.
> *Gibbs* v. *Consolidated Gas Company*, 130 U. S. 396, 408.

In *Gibbs* v. *Consolidated Gas Co.*, decided in 1889, the court, in defining the *common law* rule, said:

> The supplying of illuminating gas [compare railroad transportation] is a business of a public nature to meet a public necessity. It is not a business like that of an ordinary corporation engaged in the manufacture of articles that may be furnished by individual

> effort. Hence, while it is justly urged that those rules which say that a given contract is against public policy, should not be arbitrarily extended so as to interfere with the freedom of contract, yet in the instance of business of such character that it presumably can not be restrained to any extent whatever without prejuduce to the public interest, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy.

The combination of two competing lines necessarily, directly, and immediately prevents or destroys, to a substantial extent, the competition between them. The competitive effort between the two can exist no longer.

In the case at bar the restrictive effect of the combination is unusually great, because of the dependence of all other railroads upon the two railroads which were combined.

On February 20, 1899, California was a great railroad terminal for transcontinental freight. The California terminal facilities for all the railroads in the country were almost exclusively the rails of the Southern Pacific Railroad or of the Central Pacific Railroad. The only exception was the rails of the Atchison, Topeka & Santa Fe Railroad, which was first opened into San Francisco later in the same year.

If the Central Pacific Railroad and Southern Pacific Railroad were not combined, there would be competing terminal rails in the principal communi-

ties of California north of Bakersfield. These included, among others, Fresno, Tracy, Stockton, Niles, San Jose, Sacramento, and San Francisco Bay. With the two roads combined, these facilities are reduced to noncompeting ones, with the consequent effect both upon the public of California and upon the other transcontinental railroads. With the exception noted and because of the combination, one of these railroads, the Southern Pacific Company, controls all the distributing rails in all these cities and towns. The other transcontinental railroads in their competition with the Southern Pacific Railroad, were dependent upon it for terminal tracks in California. The facilities of these other railroads are rendered correspondingly unequal. To get an entrance advantageously into California they must obtain the consent of the Southern Pacific Company. This gives to the combination the same vice that was held unreasonable restraint of trade in *United States* v. *Terminal Railroad Association of St. Louis*, 224 U. S. 383.

If the Southern Pacific Railroad Company and the Central Pacific Railway Company were owned and operated separately, and they made an agreement between them as to interstate business that rates should not be lowered, extensions built, service improved, or effort exerted by the one against the other to get business, except with the consent of both, the agreement would be contrary to the Sherman Antitrust Act, unquestionably. The com-

bination at bar is in essence such an agreement, but more effective.

The act of the Southern Pacific Company in acquiring all the stock in the Central Pacific Railroad Company and its successor, the Central Pacific Railway Company, inevitably ended, prevented and restrained any existing competition or possibility of competition between the two companies.

As the two railroads were not in a lawful unit ownership at the time of this acquisition (see *infra*, pp. 196–252), it was a restraint of trade because—

(1) These two separately owned railroads were about to become free of any restrictive, combined control;

(2) To prevent competition nonexistent but immediately threatened is a restraint of trade;

(3) This restraint is not validated by the competition of other railroads;

(4) There were no peculiar benefits to the public resulting from this restraint;

(5) The benefits derived from such a restraint do not exempt it from the provisions of the antitrust act; and,

(6) The public is injured by this restraint to as great an extent at least as by the other restraints of trade by common carriers which have been held unlawful.

1. *These two separately owned railroads were about to become free of any restrictive, combined control.*

On July 3, 1898, after years of congressional investigation and attempts at legislation, Congress passed

an act (30 St. at Large, chap. 571, p. 659) to create a commission to negotiate for the settlement of the debt of the Central Pacific Railroad Company to the United States, and directing the President of the United States to institute foreclosure proceedings if settlement was not made within one year.

At this time the Central Pacific Railroad Company had outstanding first mortgage bonds amounting to about $59,000,000, and owed the United States a debt of about $58,000,000, secured by a lien (second only to the first mortgage bonds) for the bonds and interest thereon which the United States had loaned to the company to pay for the construction of the railroad. The company had outstanding stock of a par value of about $67,000,000. This stock was owned, except to a very limited extent, by persons other than those interested in the Southern Pacific Company, and largely in small holdings in the United States and Europe. (See *infra*, p. 221.) The railroad was being operated by the Southern Pacific Company under a lease which was void and unlawful (see *infra*, p. 237), and which was also subject to destruction by the foreclosure of the Government lien, or by the foreclosure of the first mortgages.

The railroad had earned, on an average for 10 years, enough to enable it to pay interest at 4½ per cent or better on these mortgage and lien debts, but nothing for dividends on its stock. A sale of some sort on foreclosure proceedings to be begun before July 7, 1899, was inevitable. If the United States, or the stockholders, or anyone else bought

the railroad, the purchasers would hold the title free of any lease to the Southern Pacific Company, and this regardless of the validity or not of the lease.

The railroad was in existence, and equipped ready for operation. It was competitive with the railroad owned by the Southern Pacific Company, and immediately to fall into the hands of a competitor whose interests, as such, would cause vigorous competition.

It connected at Ogden with the Denver & Rio Grande Railroad and with the Union Pacific Railroad, and was the only access by rail for either to California, and was of enormous value to either or both of these railroads.

It was so vital to the business of these two railroads, that the Union Pacific Railroad Company, through the Oregon Short Line, inside of two and one-half years, acquired the controlling stock in the Southern Pacific Company, and claimed that it did so for the purpose of getting this access to California, and the Denver & Rio Grande Railroad and its ally, the Missouri Pacific Railroad, thereupon found it necessary to build a new parallel railroad (the Western Pacific) into California.

In this situation, the competition of the Central Pacific Railroad was no mere dream for the future. It was more immediately threatened than that of the undeveloped project, whose suppression was held to be unlawful in *United States* v. *Reading Company*, 226 U. S. 324.

The only way to stop this competition was for the Southern Pacific Company (Sproule, 242, 243), in defiance of the Sherman Antitrust Act, to acquire the railroad from its then owners.

The Southern Pacific Company's appreciation of the imminence and danger of this competition is shown by the price which the Southern Pacific Company was ready to pay for this railroad. By February, 1899, the first mortgage debt had become $59,453,000, and the Government second lien debt, $58,812,715.45—a total of $118,265,715.48. (Defendants' answer, Exhibit A, p. 47.) Its outstanding capital stock was $67,275,500. Its net annual operating income before the payment of fixed charges was $6,362,378.08. (Petitioner's Exhibit 35, p. 1634.) Its average net annual operating income before the payment of fixed charges for 10½ years had been $5,582,939.17. (Defendants' answer, Exhibit B, p. 71.)

During the preceding 15 years, the total dividends on capital stock had averaged four-fifths of 1 per cent a year, and during nine of these years, including the last five, no dividends had been paid.

The plan of reorganization under which the Southern Pacific Company acquired the property provided for:—

First mortgage 4 per cent, 45-year bonds	$100,000,000
Second mortgage 3½ per cent, 30-year bonds, first lien on sinking funds and lands	25,000,000
Four per cent cumulative preferred stock	20,000,000
Common stock	67,275,500
Total	212,275,500

This funding and capitalization was to provide no new money for the railroad, except that any part of the proceeds of the preferred stock not required for readjustment purposes, was to be used for improvements.

Notwithstanding this increase in funded debt, and this showing for earnings, the Southern Pacific Company agreed to purchase the common stock, par $100, at $125 per share, payable $100 in stock of the Southern Pacific Company and $25 in bonds of the Southern Pacific Company—a total of $84,094,500. In addition to this the Southern Pacific Company agreed to buy the preferred stock at par, and for this purpose to issue its own bonds as required to the extent of $20,000,000. This meant an expenditure by the Southern Pacific Company of $104,094,500 for stock in this corporation, subject to prior bonded debts of $125,000,000.

Nothing but the imminent danger of this competition could have warranted any such expenditure by the Southern Pacific Company.

The situation in 1899 was a repetition with greater emphasis of that which had led the promoters of the Central Pacific Railroad to secure in 1870 a controlling interest in the stock of the Southern Pacific Railroad Company. As to this, Leland Stanford, the president of the Central Pacific Railroad Company, testified before the Pacific Railroad Commission in 1887 that when the Southern Pacific Railroad Company was controlled by those having no interest in the Central Pacific Railroad Company—

> We early saw that if that line of railroad was completed—if it crossed the Sierra Nevada Mountains—all the valleys of the State would be open to it and it would be a very serious competitor of the Central Pacific. So we tried to control it, and we have succeeded in controlling it; and the consequence is that it has never been operated to the prejudice of the Central Pacific. It became a necessity, therefore, that we should control the Southern Pacific, and when opportunity offered we availed ourselves of it and purchased the controlling interest in that road. Since then the roads have worked in entire harmony, with all the advantages of a pooling arrangement, and the advantages resulting from our system of leases. (P. 99.)

This determination to restrain competition was in harmony with the attitude of these two companies during the entire period from 1870 to 1899, and thereafter.

The Central Pacific Railroad Company in its report for the year ending June 30, 1873 (D. Ex. 23, p. 1737), stated that the active competition with the California Pacific Railroad Company for the traffic between Sacramento and San Francisco was terminated by mutual agreement between that company and the Central Pacific Railroad Company, by which the latter guaranteed certain of the bonds of the California Pacific Railroad.

On September 28, 1883 (P. Ex. 18, p. 1421; P. Ex. 71, p. 1670), and on November 8, 1883 (P. Ex.

18, p. 1424; P. Ex. 72, p. 1671), and on December 1, 1887 (P. Ex. 63, p. 1661), these companies entered into agreements with the other transcontinental railroads not dissimilar to those held to be in restraint of commerce in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, and *United States* v. *Joint Traffic Association*, 171 U. S. 505.

These agreements provided for maintaining the rates in force or subsequently agreed to by the parties (P. Ex. 18, 19, pp. 1422, 1423, 1426), and that the railroads would bear proportionately the subsidy paid to the Pacific Mail Steamship Company, which was then operating a competitive line via Panama (P. Ex. 18, 19, pp. 1423, 1427), and for the control of rates by the unanimous action of a joint committee (P. Ex. 63, pp. 1662, 1663).

On October 1, 1889 (P. Ex. 24, p. 1480; P. Ex. 62, p. 1660), this association of railroads entered into a contract with the Pacific Mail Steamship Company by which the railroads guaranteed the gross earnings of the steamship company on its business between New York and San Francisco to be $75,000 per month (P. Ex. 24, p. 1481), and the steamship company gave the railroad companies the fixing of rates via the steamship company's lines (P. Ex. 24, p. 1481) and exclusive control of the business of the steamship company between New York and San Francisco (P. Ex. 24, p. 1482) and for the proportionate payment to the steamship company

by all the signatory railroad companies (P. Ex. 24, p. 1482).

At other times prior to 1887 these associated railroads bought or rented space from the Pacific Mail Steamship Company (Munroe, 388) to prevent competition from this line (Munroe, 389).

On December 6, 1895, the Pacific Mail Steamship Company, controlled by Mr. Huntington, the president of the Southern Pacific Company (Schwerin 694, 692), and operating by water from San Francisco to Panama, entered into a contract with the Panama Railroad Company, operating by rail from Panama to Colon and thence by water to New York (P. Ex. 25, p. 1484), not dissimilar to that held to be in unreasonable restraint of commerce in *United States* v. *Pacific & Arctic Company*, 228 U. S. 87. This agreement provided for the termination, in 1898, of the existing agreement of October 1, 1872, between the contracting parties (P. Ex. 25, p. 1485), and that the steamship company should have the exclusive privilege of through billing over the Panama Railroad (P. Ex. 25, pp. 1485, 1491), and for cooperation to prevent interference or competition (P. Ex. 25, pp. 1486, 1490), and for representation by the railroad company in making any rental agreement with the transcontinental railroads (P. Ex. 25, p. 1489), and that other connecting carriers should be charged full local rates (P. Ex. 25, p. 1490).

On June 11, 1900, about one year after the combination now complained of, the Pacific Mail Steam-

ship Company made another similar agreement with the Panama Railroad Company (P. Ex. 26, p. 1502) and a supplemental agreement (P. Ex. 27, p. 1517), which provided that if the railroad was prevented by pending proceedings in court from performing the exclusive through-billing provision of the principal contract (P. Ex. 27, pp. 1517, 1518) the parties would cooperate to procure a division of territory with other competitive steamship lines (P. Ex. 27, p. 1518), and if unsuccessful a new competing line south of Panama might be opened (P. Ex. 27, p. 1518) where these other steamship companies were then operating (P. Ex. 27, p. 1519).

When there was danger that the Texas & Pacific Railway Company would extend its line from the east toward California, there was a race of diligence by the Southern Pacific Railroad to head off this competition by extending its own line eastward as rapidly as possible. (Strobridge, 406, 415.)

The majority opinion in the district court seems not to take into consideration at all this imminence of competition in 1899.

2. *To prevent competition nonexistent but immediately threatened is a restraint of trade.*

It is as much a restraint of trade to take steps to prevent others from competing as it is to take steps to repress that competition after it has arisen. What the public is entitled to is the free flow of the competitive forces. Any unreasonable interference with these constitutes the restraint whether applied after

the competition has become well developed, or just before it is about to become so. It is the "potentiality of competition" (*Standard Oil Co.* v. *U. S.* 221 U. S. 1, 74) which should not be restrained.

In the case of railroads this potentiality, this restrainable competition, begins as soon as the project for the construction of the second line has progressed far enough to make its completion imminent. (*U. S.* v. *Reading Co.*, 226 U. S. 324, 348–352.)

In this sense the existence of competition is determined not by actual performance, but by the capacity for performance, if there is no restraint (*U. S.* v. *Union Pacific Railroad Co.*, 226 U. S. 61, 188 Fed. 102, 110, 121, 124; *U. S.* v. *Standard Oil Co.*, 221 U. S. 1, 70; 173 Fed. 177, 186.)

Even in an indictment for an attempt to monopolize commerce of a particular kind it is not necessary to allege that there is any commerce of this kind in existence. (*U. S.* v. *Patterson*, 59 Fed. 280, 283, C. C. Mass.)

In *United States* v. *Union Pacific Railroad Co.*, 188 Fed. 102, Adams, J., said:

> The contention of the Government in this particular, that a contract to strangle a threatened competition by preventing the construction of an immediately projected line of railway, which, if constructed, would naturally and substantially compete with an existing line for interstate traffic, would be in violation of the anti-trust law, may well be conceded. (*Id.*, p. 117.)

And Hook, J., said:

> This question involves the relative location of their lines on land and sea, and not only the parts they actually performed, but also those they were naturally capable of performing, in the movement of traffic. (*Id.*, p. 121.)
>
> Competition, as the antithesis of monopoly, is the influence which those in the same line of business have on each other, and that influence may as well be manifested in an existing capacity and preparedness as in the degree of active exercise. (*Id.*, pp. 124, 125.)

In *United States* v. *Standard Oil Co.*, 173 Fed. 177, 186 (C. C. Eastern District, Mo.), the court said:

> Those companies (the companies existing separately before 1890) were natural and potential competitors; but this group of stockholders held the power to prevent them from actively competing, and it is as incredible that they were actually doing so after they came under the control of that group as it is that the defendant corporations were engaged in actual competition during the nineties.
>
> For some time, therefore, before the transfer in each of these cases (the Northern Securities Company and the Standard Oil Company), a group of stockholders controlled a majority of the stock of potentially competitive corporations which they vested in the

> holding company, so that the latter had the power to operate them together without competition, and the rule which governs one must control the other.
>
> There is much more probability that corporations potentially competitive will separate and compete when each of their stockholders has a separate certificate of his shares of stock in each corporation, which he is free to sell, then when a majority of the stock of each of the corporations is held by a single corporation which has the power to vote the stock, and to operate them. (*Id.*, p. 189.)

In the opinion below in the present case the court says:

> That competition of the kind mentioned might now result from an enforced independence of the two companies, and a separation of the two railroads may be true, but we do not think that the statute was intended to create competition by destroying a proprietary relation formed long before its passage, and by the very means of which a railroad system has been brought into existence (2331).

In dissenting, Judge Carland says:

> As the breaking up of an unlawful combination does not create natural competition, but simply removes the barriers which prevent the free flow of interstate commerce, the concession that there might be competition if the combination was broken is also a concession

> that there is a natural competition which is suppressed by reason of the control of the Central Pacific by the Southern Pacific. * * *
>
> I do not think the evidence shows that the Central Pacific and the Southern Pacific were created originally and have always continued to be one system. They have always been and are now operated as separate systems (2337).

The majority opinion does not deal with the real contention made for the petitioner. It is not that a unit of ownership which has created two competitive forces without tending to suppress any competition by anybody should be broken apart so that those two forces can compete. On the contrary, it is that when two competitive forces have been created by two separate owners it is no less a restraint of trade to get them into one ownership that they have theretofore, through some device of common control, failed to compete. Particularly is this true if the device is about to terminate and the daily, active competition to begin

In this latter case both principle and, it is believed, the unbroken current of decisions in this court support the contention of the petitioner that to prevent the breaking out of immediately threatened competition is a restraint of trade

3. *This restraint is not legalized by the competition of other railroads.*

The defendants contend and have introduced evidence in the effort to show that competition is not restrained by the control of the Southern

Pacific Company over the Central Pacific Railroad because (1) the eastern connections of the Central Pacific Railroad are competing against the Southern Pacific Company for freight to be forwarded over the Central Pacific Railroad, and (2) the Atchison, Topeka & Santa Fe Railroad, and to a minor extent the Western Pacific Railroad and the Panama Canal routes are competing for transcontinental freight to and from California.

Even if this be so it is none the less true that the control of the Southern Pacific Company over the Central Pacific Railroad removes from the field as a competitor the Central Pacific Railway Company. This company is by far the most potent factor in California transcontinental transportation through Ogden. It is the initial or delivering carrier. This alone gives it greater influence than can be exercised by any of the intermediate carriers. (Connor, 345; Schumacher, 155; Chambers, 968; Sproule, 200, 213; Lovett, 301; Spence, 1158.) The line that has the terminals has the advantage. (Eshleman, 892.)

None of the other lines competing for freight through the Ogden gateway can get into California by rail without using the rails of the Central Pacific Railroad, except to the extent of the limited facilities furnished by the Western Pacific Railroad. On the other hand the Central Pacific Railroad has never been wholly dependent on the Union Pacific Railroad since 1883, the time at which the Rio

Grande & Western, now the Denver & Rio Grande, reached Ogden, forming a through connection to the east for the Central Pacific Railroad.

The Union Pacific Railroad has a means of getting into California by way of the Oregon Short Line and Oregon-Washington Railway & Navigation Company to Portland, and thence by steamer to San Francisco. While this is a rate-making factor, it does not appear that a pound of freight has traveled that way in the last 30 years, and it is unlikely that it will do so. All the evidence is to the contrary. (Connor, 341; Sproule, 235; Kruttschnitt, 768; Chambers, 960; Schumacher, 159, 171.)

The Union Pacific Railroad through the Oregon Short Line and the Salt Lake, Los Angeles & San Pedro Railroad has access to the southern part of California. It could reach San Francisco by boat from San Pedro. In the 12 years that the San Pedro Railroad has been in operation it does not appear that a pound of freight has moved this way. It is unlikely that any will so move. All the evidence is to the contrary. (Spence, 1159; Chambers, 961, 1131.)

For practical purposes the Union Pacific Railroad is absolutely dependent on the Central Pacific Railroad. (Schumacher, 157, 172; Spence, 1162; Kruttschnitt, 776.)

The power of the Pennsylvania or of any of the eastern trunk lines and of the Chicago & Northwestern Railroad or of any of the Iowa or central

lines when dealing with California freight is inconsiderable in comparison with the power of the Central Pacific Railroad, with its tracks at the door of the shipper or of the consignee. The tendency of injury to the public by being deprived of the competition of the Central Pacific Railway Company is scarcely affected by the efforts of railroads thousands of miles away.

The most powerful agency in the United States for competition in California against the Southern Pacific Company is restrained as long as that company holds the Central Pacific Railroad. (Connor, 346, 340; Schumacher, 150; Lovett, 295, 303; Munroe, 380; Sproule, 250; Kruttschnitt, 818; Chambers, 964, 975, 968; Eshleman, 896.)

The Atchison, Topeka & Santa Fe Railroad is the outgrowth of one branch of the plan of Congress to provide for three competitive railroads to the Pacific coast. (See *infra*, p. 198.) When one of those railroads (the Southern Pacific), is charged with restraining the competition of another (the Central Pacific), it is hardly an answer that it has not succeeded in controlling the competition of all of the railroad companies that exercise the franchises granted.

The Central Pacific route, with its eastern connections, is admitted by the defendants' witnesses to be the most powerful in California. (Chambers, 975.) There is no place of great importance in central and northern California which is reached by the Santa Fe and which is not reached by the Central Pacific or

the Southern Pacific. On the other hand, there are many places reached by these last two railroads which are not reached by the Santa Fe. In those places which the latter reaches, the Southern Pacific and the Central Pacific are the older railroads, and in much closer contact with the communities and with the industries served. The power of the Santa Fe is hardly comparable with that of the Southern Pacific.

The contention that the competition of the eastern connections of the Central Pacific and the competition of the Santa Fe legalized the restraint of the competition of the Central Pacific Railroad by the Southern Pacific Company has been authoritatively disapproved by this court in *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61.

The same contentions were made there. (Mr. Dunne's brief, pp. 164, 107, 108; Mr. Loomis's brief, pp. 96, 90; Mr. Dunne's brief, pp. 38, 81, 97, 99, 108; Mr. Loomis's brief, p. 88.) The court below in that case was apparently convinced of the correctness of the argument (188 Fed., 119), but it was disapproved in the Supreme Court.

The argument was at least equally applicable in that case, and this, whether the cases be compared with reference to the respective dates of the combinations complained of, or with reference to the respective dates of the decrees in the two cases.

The combination complained of in the present case was made in February, 1899, and that complained of in the Union Pacific case was made in 1901. The

decree in the present case was entered in March, 1917, and that in the Union Pacific case was entered June 30, 1913.

The alleviating competition of the Santa Fe Railroad was greater in 1901 than it was in February, 1899. The through line of the Santa Fe extended to Mojave in the southern part of California only in February, 1899. It was extended north in July of that year. It began to exercise a powerful and growing influence upon competition. By 1901 it was a much more considerable factor than in 1899.

In 1899 the only line operating from California by way of the Isthmus of Panama was the Pacific Mail Steamship Company, which was controlled by the president of the Southern Pacific Company. (Schwerin, 692, 694.) In 1901 this company was still operating, and the American-Hawaiian Steamship Company was also operating by way of the Straits of Magellan.

In 1899 and in 1901 the only interstate railroads reaching California were the Southern Pacific and the Central Pacific and the Santa Fe.

In 1913, when the decree was entered in the Union Pacific case, all the additional interstate railroads to California which have now been opened had then been opened. These additions are the Salt Lake, Los Angeles & San Pedro Railroad and the Western Pacific Railroad. The former was opened in 1905 and the latter in 1910. They were both extensively considered in the Union Pacific case.

The defendant in the present case has called attention to the fact that upwards of 50 railroads maintain soliciting offices in Californa and in New York for transcontinental business. (D. Ex. 58, p. 2242; D. Ex. 59, p. 2243; D. Ex. 56, p. 2242). Substantially all of these maintained these offices in New York and in California at the time of the Union Pacific merger in 1901 (Spence, 1144), and certainly there were no more such offices at the time of the combination in 1899 now complained of than there were in 1901.

The witnesses for the defendants who say that the competition of these other railroads requires the Southern Pacific Company to maintain good service over the Central Pacific Railroad say also that that competition required the Union Pacific Railroad also to do so during the time of the merger. (Chambers, 968; Kruttschnitt, 775, 773.)

There was no lessening of effort during the merger period to get as much freight as possible from the Atlantic seaboard via the Sunset Route. (Chambers, 968; Spence, 1125–1131; Sproule, 198.) During that period the effort in the Middle West was kept up with the boundary moved from a line from St. Louis to Detroit to a line along the Ohio River. (Lovett, 289; Munroe, 374; Sproule, 198; Lincoln, 113, 114; Schumacher, 150; Connor, 354, 330.)

Mr. Krutschnitt says that there was no change of policy (729) during the merger period beyond a gradual improvement, and that the Union Pacific Railroad had no greater control of competition than

the Central Pacific had. (Chambers, 968; Kruttschnitt, 776, 741–775.)

When this combination was made (Feb. 20, 1899), California was a great railroad terminal for transcontinental freight, and the terminal facilities for all the railroads of the country were the rails of the Southern Pacific Railroad or of the Central Pacific Railroad, except at the points reached by the Santa Fe south of Mojave. The combination of these terminals into one ownership (compare *U. S.* v. *Terminal Railroad Ass'n. of St. Louis*, 224 U. S., 383) could not be rendered harmless by the fact that other railroads were competing for freight to forward over one or the other of these terminals. Had the law been otherwise the decision in the case against the Union Pacific Railroad Company must of necessity have been otherwise.

It is not the total annihilation of competition which the antitrust act makes the test; it is the unreasonable restraint of competition.

There is such an unreasonable restraint when one company acquires control of two existing competitive railroads. (*U. S.* v. *Union Pacific Railroad Co.*, 226 U. S. 61, 85; *Northern Securities Co.* v. *U. S.* 193 U. S. 197.)

It is no defense that much other competition may remain.

In *U. S.* v. *Union Pacific Railroad Company*, 226 U. S. 61, the court said:

> A combination which places railroads engaged in interstate commerce in such relation

as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act (85).

The consolidation of two great competing systems of railroad engaged in interstate commerce by a transfer to one of a dominating stock interest in the other creates a combination which restrains interstate commerce within the meaning of the statute (88).

To preserve from undue restraint the free action of competition in interstate commerce was the purpose which controlled Congress in enacting this statute (87).

In *Northern Securities Co.* v. *United States*, 193 U. S. 197, 331, the court said:

> Every combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in interstate trade or commerce * * * is made illegal by the act.
>
> To vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly.

In *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 16, the court said:

> All the authorities agree that in order to vitiate a contract or combination it is not essential that its results should be a complete monopoly; it is sufficient if it really tends to

> that end and to deprive the public of the advantages which flow from free competition.

This was followed in *United States* v. *Chesapeake & Ohio Fuel Co.*, 105 Fed. 93, 105 (C. C. S. D. Oh.); in *United States* v. *MacAndrews*, 149 Fed. 823, 833 (C. C. S. D. N. Y.); in *Bigelow* v. *Calumet & Hecla Mining Co.*, 155 Fed. 869, 875 (C. C. W. D. Mich.); and in *United States* v. *Swift*, 188 Fed. 92, 101 (D. C. N. D. Ill.).

In *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 237, 243, the court said:

> The defendants were by their combination therefore able to deprive the public in a large territory of the advantages otherwise accruing to them from the proximity of defendants' pipe factories and, by keeping prices just low enough to prevent competition by Eastern manufacturers, to compel the public to pay an increase over what the price would have been if fixed by competition between defendants, nearly equal to the advantage in freight rates enjoyed by defendants over Eastern competitors.
>
> Total suppression of the trade in the commodity is not necessary in order to render the combination one in restraint of trade (244).

In *United States* v. *Northern Securities Co.*, 120 Fed. 721, 726 (C. C. D. Minn.), the court said:

> The point involved is whether the ownership of all of the stock of two competing and parallel railroads vests the owner thereof with the power to suppress competition be-

> tween such roads. We entertain no doubt that it does. Indeed, we regard the suppression of competition, and to that extent a restraint of commerce, as the natural and inevitable result of such ownership.

In *Chesapeake & Ohio Fuel Co.* v. *United States*, 115 Fed. 610 (C. C. A. 6th), 623, the court said:

> It is further contended that the competition is such in the market for which this coal is intended, and the coal produced by the operators, parties to this agreement, is such a small fraction of the quantity sold that it can not affect prices materially. It is not required, in order to violate this statute, that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement.
>
> The statute is not limited to contracts or combinations which monopolize interstate commerce in any given commodity, but seeks to reach those which directly restrain or impair the freedom of interstate trade. The law reaches combinations which may fall short of complete control of a trade or business, and does not await the consolidation of many small combinations into the huge "trust," which shall control the production and sale of a commodity (624).

In *Monarch Tobacco Works* v. *American Tobacco Co.*, 165 Fed. 774, 781 (C. C. W. D. Ky.), the court said:

> The act does not appear to require that the restraint of interstate trade and commerce shall be so complete as to amount to total destruction.

In *United States* v. *Standard Oil Co.*, 173 Fed. 177, 184 (C. C. E. D. Mo.), the court said:

> Any contract or combination of two or more parties, whereby the control of such rates or prices is taken from separate competitors in that trade and vested in a person or an association of persons, necessarily restricts competition and restrains that commerce.

In *O'Halloran* v. *American Sea Green Slate Co.*, 207 Fed. 187, 191 (D. C. N. D. N. Y.), the court said:

> It is no defense for such a combination to show that there is still some competition and some competitors, and that the acts of the combination do not wholly and entirely control interstate commerce in the article, or absolutely fetter it.

In *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733, 741, 743 (D. C. N. D. Oh. E. D.), the court said:

> A combination which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act.
>
> It is not necessary to a violation of the Federal statute that a complete monopoly of all towing on the Great Lakes be effected. A monopoly in 14 ports is as offensive against the act as a monopoly in 50 ports.

In *U. S.* v. *Reading Co.*, 226 Fed. 229, 271 (D. C. Pa.), it was held that a combination of two companies whereby 20 per cent of the anthracite coal production and 35 per cent of the anthracite transportation to the same market was consolidated into one control was a restraint of trade, notwithstanding the remaining effective competition, which controlled 80 per cent of the production and 65 per cent of the transportation.

In *U. S.* v. *Reading Co.*, 253 U. S. 26, this portion of the decision is unanimously approved.

Congress reaffirmed this principle in 1914 in section 7 of the Clayton Act (38 Stat. 730), providing that—

> No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition *between such corporations*, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. [Italics not in original.]

4. *There were no peculiar benefits to the public resulting from this restraint.*

(*a*) *The benefits claimed.*—The defendants contend that there would be an injury to the public in dissolving this combination because it would (1) compel the construction and maintenance of separate terminals at common points; (2) prevent the interchange-

able use of the tracks of the two companies; (3) introduce two-line hauls, with consequent increase in rates for one-line hauls.

The stimulant of advocacy and self-interest always tends to overemphasis of objections. They are tenable in all cases of restraint of trade by combination between two railroads. The economic savings of monopoly are constantly being urged in its favor. The arguments are not peculiar to this case, and have no peculiar basis in the facts of this case.

(*b*) *Securing these benefits by agreement.*—All of these difficulties would be overcome or minimized by the natural, practical operating methods that would be employed by railroads seeking economies. This is strikingly illustrated by an occurrence with respect to the two railroads in question.

Upon the decision of the Supreme Court in December, 1912, in the case of the *United States* v. *Union Pacific Railroad Company* (226 U. S. 61), the Attorney General became convinced that, as an inevitable consequence of that decision, the control of the Central Pacific Railroad by the Southern Pacific Company was an unlawful restraint of trade, and he informed the officials of the Southern Pacific Company that if the Southern Pacific Company did not dispose of the stock in the Central Pacific Railway Company he would, in the performance of his duties, file a petition against the Southern Pacific Company for a dissolution of this combination. (Kruttschnitt 785.) The Southern Pacific Company was reluctant to make this voluntary

dissolution of the combination, but nevertheless they took up negotiations for it with the Union Pacific Railroad Company, and under date of February 8, 1913 (P. Ex. 20, p. 1428), the Southern Pacific Company, the Union Pacific Railroad Company, the Central Pacific Railway Company, the Southern Pacific Railroad Company, and the Oregon Short Line Railroad Company entered into an agreement for the purchase by the Union Pacific Railroad Company of the stock of the Central Pacific Railway Company.

This agreement provided for a lease by the Central Pacific Railway Company to the Southern Pacific Railroad Company of the railroad from Tehama to the northern boundary of California, and for the conveyance by the Central Pacific Railway Company to the Southern Pacific Railroad Company of the railroad running north from Weed through Natron (thereby giving the Southern Pacific Company control of a through railroad from San Francisco to Portland, Oreg.), and for the joint use by the Southern Pacific Company and the Central Pacific Railway Company of the railroad controlled by the Southern Pacific Company from Sacramento through Benicia and Port Costa to Oakland, and for trackage rights to the Central Pacific Railway Company over the Southern Pacific Railroad from Redwood to San Francisco, and for the joint use by the two companies of the Central Pacific Railroad from Newark to Redwood, and for general interchange of traffic, and for the joint use of terminals, and for repairing and maintenance of rolling stock of the Southern Pacific Company at the shops of the Central

Pacific Railway Company in Sacramento, Oakland, and elsewhere.

The agreement was made conditional upon approval by the California Railroad Commission of the leases and conveyances of railroads in California, and of the contracts for joint use of terminals, and for trackage rights.

On February 7, 1913, the railroad companies applied to this commission for approval, and a week later this approval was granted, but subject to the conditions that the price of the property sold, or its valuation, should be subject to approval of the commission; that the rates of fare within the State of California should not be increased because of the altered conditions; that the term of the lease of the railroad from Tehama north should be 50 years, and thereafter subject to the approval of the commission; and that if the joint use of the Benicia cut-off was granted, then other railroads should be granted similar rights on equitable terms.

No attempt was made to comply with these conditions, and the plan was abandoned, with the result that this suit was begun about a year later. Mr. Sproule, the president of the Southern Pacific Company, testified that the commission's view at the time was that the trade was in some way collusive and not a bona fide separation of the properties (253).

Mr. Eshleman, formerly president of the commission, testified that the view of the commission was that the particular agreement did not restore com-

petitive conditions, and that it left the Union Pacific Railroad Company (893) in more complete control than it was before the decision against it, in that the agreement gave that railroad the exclusive joint use with the Southern Pacific Company of the Benicia cut-off from Sacramento to Port Costa, and of the terminals of the Southern Pacific Company. He stated that this objection was not intended to cover the exclusive joint use of terminals separated by decree of court if the same terminals had been used jointly by the same roads before that separation (893), and that the decision was not intended as a precedent for the case of the Central Pacific Railroad Company and the Southern Pacific Railroad Company if the combination between them was dissolved (893).

The agreement is of value in the present case as showing how completely it proved to be possible to overcome the difficulties of a dissolution if the parties in interest were minded to do so.

The joint use of terminals by two or more railroad companies at common points is a frequent occurrence. (Chambers, 976.) The Southern Pacific Company and the Central Pacific Railway Company are admittedly in an excellent position to bargain with each other for such use. (Kruttschnitt, 821, 777.) It would not be novel in the experience of these companies. The Central Pacific Railroad and the Union Pacific Railroad have had a joint terminal at Ogden for 48 years. (Kruttschnitt, 819.) The Southern Pacific Railroad and the Santa Fe

have had a joint use of the terminal at Mojave for years. (Kruttschnitt, 771.) A similar arrangement between the Central and the Southern would be natural, businesslike, and feasible. (Kruttschnitt, 800, 770; Chambers, 976, 977.)

The joint use of necessary connecting tracks by two or more railroads is common. The Southern Pacific Railroad and the Santa Fe have had such a joint use of the track from Mojave to Bakersfield for 18 years. Prior thereto there was a contract between these two railroads under which the Santa Fe had the right to operate its freight trains and engines over the tracks of the Southern Pacific Railroad and into the terminals of that company. (Chambers, 955.) The arrangements between the two roads have worked satisfactorily. (Kruttschnitt, 769, 770.)

The use of the Benicia cut-off by the Central Pacific Railway Company and of the railroad from Tehama to the northern boundary of California by the Southern Pacific Railroad Company for through trains is entirely feasible. (Chambers, 987, 976.)

The other tracks of these two railroads could by agreement between them be used interchangeably for the local service without its interfering in any degree with the competition between them for the interstate transportation as to which they are competitive. (Chambers, 976, 978.)

(c) *The benefits overstated.*—The extent to which the defendants have colored the disadvantages of having this restraint dissolved is strikingly illus-

trated by Mr. Kruttschnitt's testimony with reference to saving expense. He says that the Central Pacific Railroad Company now gets its fuel hauled by the Southern Pacific Company for nothing, and that the Southern Pacific Company now gets its ties and lumber hauled by the Central Pacific Railroad for nothing, whereas each would have to pay for these services if the two roads were separate. He made no comment, until cross-examined, upon the fact that the saving of expense to the one railroad was a corresponding loss of revenue to the other, and that the actual cost of the service was not affected. (Kruttschnitt, 820, 744.)

The defendants have introduced testimony to show that there would be a chance of increased rates for transportation within the State of California because railroad commissions allow a higher rate on a two-line haul than on a single line haul between the same points. Admittedly, this principle would not operate where there was a competitive railroad, such as the Santa Fe, to perform the same service. (Eshleman, 880; Chambers, 977.) No effort whatever has been made by the defendants, although in possession of the statistics, to show the comparative volume of the freight which might be injuriously affected if such an increase of rates was allowed. They take lumber as a specific illustration and say that lumber amounts to 18 per cent of the total volume of their freight. Of this it appears that only about one-seventh is transported within the State (Eshleman, 886), and most of this fraction would not be subject

to a two-line haul if the combination was dissolved. The great bulk of it would first reach whichever one of them was the delivering carrier. (Eshleman, 887.)

The whole theory that there would be any increase in rates for two-line hauls on this dissolution is well shattered by defendants' witness, Mr. Chambers. He says of the similar case of a combination between the Southern Pacific and the Atchison:

> If the Atchison and the Southern Pacific should enter into joint operation, it would not have the effect to materially reduce the rates in California between points that require the two services (977).

This is equally applicable to the Central Pacific and the Southern Pacific.

There is another instance of a disposition to overpress argument in Mr. Kruttschnitt's misapplication of the language used by Judge Hook in *United States* v. *Union Pacific Railroad Co.*, 188 Fed. 102, 120. In concurring with the majority in holding that the petition ought not to prevail with respect to the acquisition of the one-half interest in the San Pedro line by the Union Pacific Railroad Company, Judge Hook called that line "tangential." Mr. Kruttschnitt, in the present case, described the line of the Southern Pacific as a through line from New York or New Orleans to Portland, Oreg., with another line from San Francisco to Ogden, a divergent stem or tangential offshoot (736), and stated that he considered this quite an accurate description (773, 803). He even hesitated to describe the Central Pacific Rail-

road as a main trunk line (774), but finally consented to do so (774). No one familiar with the situation could doubt for a moment but that the Central Pacific, with its eastern connections, was one main transcontinental trunk line and that the Southern Pacific was another. Neither is a tangential offshoot or divergent stem of the other.

These incidents throw light on the weight to be given the *opinion* evidence offered for the defendants as to the effect of a dissolution upon *future* operations.

The only lines of either railroad which do not connect directly with the other lines of the same company (Kruttschnitt, 798, 799, 819) are (1) the lines of the Southern Pacific Railroad in Oregon which are reached over the Central Pacific Railroad from Tehama to the boundary of Oregon; (2) a short line of the Central Pacific Railroad from Eugene to Oak Ridge, Oreg., which is part of a projected, contiguous through line of that railroad, of which about a hundred miles remain to be completed (Kruttschnitt, 797); and (3) some short branches of the Southern Pacific Railroad springing from the Central Pacific Railroad between Fresno and Sacramento. The isolation of the Oregon lines is substantially no greater than that of all the Santa Fe lines north of Bakersfield. These are isolated from the rest of that company's system by about 70 miles of track of the Southern Pacific Company. (Kruttschnitt, 800, 803.)

(*d*) *Eleven other dissimilar railroads.*—The defendants, over the objection of the petitioner, have put in evidence maps of 11 railroads having alternative

freight routes. (D. Ex. 84–94; pp. 2256–2257; Kruttschnitt, 737, 817; Spence, 1142, 1153.)

It is not clear on just what principle of law the defendants conceive this evidence to be admissible. It seems to be offered as a sort of bogie of the difficulties in store for the Department of Justice and for the court if the restraint of trade by the Southern Pacific Company is dissolved. The evidence has no bearing whatever upon the present case. If these 11 railroads are restraining trade, such restraint should be stopped. If they are not restraining trade, they are not like the Southern Pacific Company. On the evidence presented, concerning these 11 other railroads, it does not appear that there is any restraint of trade by any one of them, unless it be possibly the New York Central Railroad. (Spence, 1142.) None of the alternative routes of these 11 railroads are shown to have been acquired when they were already competitive routes. None of them are shown to have been projected, built, or acquired to prevent the imminent competition of some other railroad or projected railroad. In these respects they all differ essentially from the combination made by the Southern Pacific Company.

It is worthy of note that if the existence of these 11 railroads establishes that the combination made by the Southern Pacific Company in 1899 was lawful, it establishes equally that the combination made by the Union Pacific Railroad Company in 1901 and by the Northern Securities Company in 1901 were lawful.

As the court held otherwise as to these two combinations, it has thereby decided the immateriality of the evidence offered.

The offer of this evidence is but one more indication of the determination of the defendants to confuse the case of a railroad having two alternative routes obtained without the restraint of any competition with the case of two railroads having competitive routes which can not be made the alternative routes of one railroad except by the acquisition of the two by one, and hence by a restraint of trade by the suppression of competition.

(*e*) *The resolution of the board of directors of the San Francisco Chamber of Commerce.*—The defendants have put in evidence a resolution (D. Ex. 22, p. 1702) adopted by the board of directors of the San Francisco Chamber of Commerce. This board consists of 21 members, and 11 are necessary for a quorum. It does not appear how many voted. A careful examination of the secretary, through whom the resolution was offered, failed to recall to his mind the authorship of the resolution. It was filled with erroneous statements of facts (Lynch, 849, 850) and contained a confident expression of opinion formed apparently without legal advice (Lynch, 842, 843) as to the lawfulness of this combination, and contrary to the opinion of the Attorney General. (Lynch, 843.) It was strikingly similar in phraseology to the language employed by the Southern Pacific Company and its employees and representatives in the answer in this case and elsewhere. (Lynch, 849.) The sec-

retary stated that many of the alleged facts for the resolution were obtained from the newspapers and from the office of the Southern Pacific Company. As the secretary could not remember who drew the resolution, and as none of the directors who participated in passing it testified, the petitioner is unable to assert who or what inspired this resolution (Lynch, 838, 849, 856, 860, 862); but it is not difficult to see how easy it would be for men as influential in San Francisco as those connected with the Southern Pacific Company to persuade the directors of the Chamber of Commerce by an *ex parte* argument.

That some such influence may have been at work is further evidenced by the fact that the resolution was passed without any consultation with the chamber's natural expert advisor, the head of the transportation department (Lynch, 857), and that the body had gone on record publicly as favorable to the dissolution of the Southern Pacific-Union Pacific merger (Lynch, 865), and before the California Railroad Commission had favored the separation of the Central Pacific Railroad from the Southern Pacific Railroad (Eshleman, 898) with its attendant advantages of competition in lower rates and better service. (Eshleman, 897, 896.)

The absolute immateriality, if not effrontery, of such a resolution as this when introduced in evidence requires but little comment. The Attorney General of the United States, convinced that the Southern Pacific Company is restraining trade, has in pursuance of his duties, filed this petition. If trade has

been restrained the petition should prevail. If it has not been restrained it should be dismissed. Whether or not there is a restraint is a question of fact or of law to be resolved by a consideration of evidence. The restraint is not to be found or to be ignored because a group of the residents of San Francisco think that it would be a good scheme to have the restraint continue; and their opinion upon the subject, not in court, not under oath, not submitted for cross-examination, and expressed for undisclosed motives or solicitation, is not helpful in the solution of any question of fact or law in the case.

There is probably not a community in the country where there can not be found a goodly number of people who believe that monopolies in railroad transportation with the resultant conveniences in daily transactions are better than competition, and who overlook entirely the ultimate injury to themselves and the general public interest coming from the lack of competition. In any such community a resolution against the dissolution of combinations in restraint of trade by two railroads can be secured quickly and with little effort.

This involves the question of the policy of the Sherman Anti-trust Act, which this court has always said is for Congress and not for this court to determine. Much more is it not for a small group of citizens here or there to determine.

(*f*) *Complaints by shippers, by the public, and by the California delegation in Congress.*—With respect to this same subject the majority opinion below says that

this case "finds little, if any, support in testimony from complaining shippers or the public generally." This is true, because the competitive character of the two railroads and the total absence of competition between them was so evident on the testimony of the defendants' own officials that it seemed useless to enlarge the record by constant reiteration from shippers.

Whether competition is restrained or not, and to a substantial degree, is not to be determined by the complaints of shippers or of the public. It is to be determined by evidence of the facts. If, on the evidence, it is not restrained, the complaints of shippers and of the public are of no assistance. If it is restrained, their complaints are immaterial.

As Judge Carland says in his opinion, "the Attorney General in instituting this action represents the public, including shippers."

The duty and the authority to make complaint of a restraint of trade is imposed upon the Attorney General, and it is not left in the hands of shippers and the public.

The opinions in the Union Pacific case and in the Northern Securities case, and in the other cases of combinations of competing railroads, rest the decisions on the facts of the several cases, and not on any complaints of shippers or of the public. In the Union Pacific case there was evidence of the competition between the Southern Pacific Company and the Union Pacific Company prior to 1901, and there was evidence of the reduction in that competition after

1901, and this evidence came from witnesses some of whom were railroad men, and some of whom were shippers, but it was no more convincing than is the evidence which in the present case comes from railroad men alone, particularly from the defendants' own officials. In the Union Pacific case there was no evidence of complaints either of shippers or of the public.

It would be most unfortunate and without precedent if the enforcement of the criminal law of the country not merely must wait until there was general complaint from the public or any particular class of it, but also must depend on introducing these complaints in evidence to secure conviction or preventive relief.

If the complaints are of importance, then it is of importance to consider that in 1896 (D. Ex. 37, p 1938, 54th Congress, 1st sess., H. R. Report No. 1497), two years and four months after the Central Pacific Railroad Company made the lease to the Southern Pacific Company under which it is now operating, and two years and 10 months before the Southern Pacific acquired the stock of the Central Pacific Railroad Company, it was stated in the minority report of the Committee on Pacific Railroads that—

> All the California delegation, with one exception it is said, are a unit against any refunding which will vest both these roads, the Southern Pacific and the Central Pacific, in the same control; that is, in the present control. They contend that the case is within the principle

> that has given rise to the prohibition in the constitution and laws of so many States to any leasing or consolidation of parallel or competing lines, and within the principle of the antitrust law of Congress, and that in this instance that monopoly has exerted the oppression for the prevention of which the laws referred to were enacted. They suggest that either the Government, without actually operating the Central Pacific, maintain it as a sort of a railroad turnpike, for the use of any or all other companies, or that the road be sold to the purchasers of the Union Pacific or any other company that will afford competition with the Southern Pacific.

This protest should be given as much weight certainly as the complaints of any shippers or the action of the directors of a chamber of commerce.

(*g*) *The disadvantages.*—Offset against the various objections which the defendants have urged are the benefits to be derived from having the law respected, the restraint of trade removed, and the advantages of competition provided.

Common knowledge and common experience are that normal competition is to the public advantage.

> *Pearsall* v. *Great Northern Railway Co.*, 161 U. S. 646, 676.
>
> *U. S.* v. *Union Pacific Railroad Co.*, 226 U. S. 61, 88.

There is peculiar advantage in securing competition by the Central Pacific Railway Company. It is the most important railroad entering California. It is

the "key" to California. (D. Ex. 23, p. 1738.) The Union Pacific Railroad and all its eastern connections are in the common and practical sense absolutely dependent upon it. (Sproule, 235, 236, 246; Lovett, 296; Chambers, 968; Kruttschnitt, 776, 778; Connor, 341; Munroe, 379, 380; Schumacher, 157, 172; Spence, 1162.) It has, of course, its route through Portland, Oreg., as a rate-making factor or instrument of strategy (Sproule, 235; Connor, 340; Kruttschnitt, 767; Chambers, 960; Schumacher, 159, 171), and also access to the limited facilities of the Western Pacific Railroad. But for the practical securing and carrying freight in competition, both in time, service, and expense, it is dependent on the Central.

The initial or terminal line is more powerful than the intermediate lines. (Connor, 177; Schumacher, 155; Lovett, 301; Spence, 1158; Chambers, 970, 974, Sproule, 200, 213). The line that has the terminals has the advantage. (Eshleman, 892). The Central Pacific is with respect to California freight in a more powerful position than the Union Pacific. (Kruttschnitt, 777; Chambers, 969.) The Union Pacific could not put into operation any plan for improved service which might enable it to compete with the Southern Pacific route without the consent of the Central Pacific. (Sproule, 240.) The welfare of the Union Pacific is dependent upon the attitude of the Southern Pacific toward the Ogden and the El Paso gateways. (Spence, 1162.)

The Southern Pacific Company is a very powerful road and looked upon as such in California. (Con-

nor, 329.) Its representative used to be looked upon as "boss." The other railroads usually did what he wanted because they could not get through rates and through service in any other way. (Schumacher, 154.)

There has been an improvement in the service over the Central Pacific Railroad, but, as far as appears, not in excess of that in the service over the railroads of the country generally; and by far the largest part of any improvement that has been made by the Central Pacific since the opening of the Southern Pacific through route in 1883 is that which was made between 1901 and 1913, when the Union Pacific Railroad Company was in control of the Central Pacific Railroad. (Munroe, 379; Kruttschnitt, 814, 815; Chambers, 979; Schumacher, 152.)

The development of the Central Pacific Railroad virtually stopped from the time that the promoters of it acquired control of the Southern Pacific Railroad Company and until the Union Pacific Railroad Company, with its incentive to improve the Ogden route, got control of the Southern Pacific Company.

The Central Pacific Railroad's main line was completed in 1869 (a year before its promoters acquired control of the Southern Pacific Railroad Company), and branches north and south were constructed. The branch north was carried to Redding in 1872, and extended as far as the Oregon line in the next 15 years. The branch south was stopped at Goshen in 1872. All lines subsequently

built up to 1901, whether or not branches of the Central Pacific were built for the Southern Pacific.

After the Union Pacific Railroad Company acquired control of the Southern Pacific Company in 1901, the lines built or acquired contiguous to the Central Pacific became the property of the Central Pacific Railway Company. (P. Ex. 42, p. 1639.) These included the line from Niles to Redwood across the southern arm of San Francisco Bay; the line from Weed through Kirk and Oakridge to Natron, Oreg., except the portion from Kirk to Oakridge not yet constructed; the line from Fernley to Susanville; and the line from Hazen, Nev., to Mojave, Calif.

There can be little doubt that if the Central Pacific Railroad Company had been free from the control of those interested in the Southern Pacific Railroad Company, it would have developed many branch lines and feeders between 1870 and 1901. (Chambers, 972.)

The failure of the Central Pacific Railroad Company to develop through freight service via Odgen was one of the striking results of the greater interest felt in developing the through Southern Pacific route. It is particularly noticeable by comparison with the accomplishments of the Atchison, Topeka & Santa Fe Railroad Company. The Central Pacific Railroad went into operation for through transcontinental business in 1869. It then had as complete a connection to the Atlantic Ocean as it now has. The Santa Fe Railroad did not have any connection to any part of California until 1883. It was 14 years

junior to the Central Pacific. Even in 1883 and for 16 years thereafter it extended to the southern part only of California. Yet it was the Santa Fe Railroad that first developed the system of through billing between California on the west and the middle west and Atlantic seaboard on the east. (Chambers, 943, 958, 959; Spence, 1118, 1124.)

Some effort has been made to suggest that the failure of the Central Pacific Railroad to institute this through billing was due to inability to get the cooperation of the eastern connecting lines (Spence, 1117, 1122), but no evidence has been offered to show that there was any unwillingness on the part of the eastern lines to cooperate in this way, and the Santa Fe secured the cooperation and secured it about 1889, or within six years of the time when the line was opened to the southern part of California. The Santa Fe service was an incitement to better service over the Central Pacific Railroad. (Chambers, 971.) Undoubtedly the failure of the Central Pacific Railroad to institute through billing by way of Ogden was due to the fact that those in control of the operations of the Central Pacific Railroad were interested to a greater extent in the Southern Pacific Railroad, which secured 100 per cent of the rate on freight moving via this route to and from the Atlantic seaboard, whereas the Central Pacific Railroad Company secured only about 25 per cent of the rate on freight moving via Ogden. On freight to Middle West territory the disparity in percentage was not so great, but was very substantial. The impairment

of the service on the Central Pacific would help to give business to the Sunset Route. (Chambers, 950.)

The difficulty with bringing the all-rail service into shape equal to the Sunset service was not with the eastern lines but with the lines west of Omaha and west of the Colorado junctions. (Chambers, 980.)

The Sunset Route would never have been able to secure a substantial share of the traffic between Atlantic seaboard and California if the Southern Pacific's short line had been to Los Angeles, or to the southern boundary of California, and its longer haul to Ogden; or, in other words, if the influence of the Southern Pacific upon that traffic had been exerted in favor of the Ogden haul the Sunset Route could never have made the progress that it did in getting business. (Spence, 1117.)

This through billing has been a great addition to the service. (Chambers, 943.)

This is only one of the impairments of service attributable to the lack of an undivided interest in the success of the Central Pacific Railroad Company, and the lack of normal competition by those in control of that railroad.

Competition always tends to an improvement in service and to a reduction of rates. Evidently this is not the time nor the place to present evidence of particular rates or particular items of service. The Interstate Commerce Commission is the body to deal with such matters. The destruction of normal competition is the injury complained of without going

into the special or peculiar injuries compounded upon that injury. The evidence bears out the common understanding of the seriousness of the injury.

The more competition the better the service the public will get; and to some extent, as a practical matter in railroading, the control of two lines by one company operates by so much as a restraint upon the competition. (Schumacher, 156.) It would help the volume of traffic passing over the Central if they had their own organization in San Francisco. (Schumacher, 157.)

Except so far as the Interstate Commerce Commission is able to exercise control (after the expense of time and money incident to applications to it), the rates to and from California are now controlled by the Southern Pacific Company and the Santa Fe. (Lincoln, 110, 129.) In February, 1899, they were controlled by the Southern Pacific Company. (Schumacher, 154; Kruttschnitt, 781; Stanford, 100; Chambers, 964; Lincoln, 111.)

If the Central Pacific were separated from and independent of the Southern Pacific control, and assuming that the Central Pacific is controlled by the motives that ordinarily control people, it would work very actively for business by way of the Ogden gateway and its connections east, while the Southern Pacific would work very actively for it by way of the El Paso gateway, much more so than is now the case. (Lovett, 293, 294.) The Soutern Pacific now controls all of the rail transportation in central Cali-

fornia except that controlled by the Santa Fe and Western Pacific. (Lovett, 294.) If the Central Pacific were separated, if it were independent, both the Central Pacific and the Southern Pacific would be in San Francisco, Oakland, San Jose, Stockton, Sacramento, Fresno, and all other towns and places in central California contending for traffic—one for the Ogden gateway, and the other for the El Paso gateway—and it would affect all that competition and would make competitive practically all the traffic of that territory going east. (Lovett, 303.) The increase of effort in the way of competition for the competing traffic would have the tendency to increase the quality of service. That is what always has been the result of competition—improvement in service. (Lovett, 297.)

The Interstate Commerce Commission, Mr. Chambers says, has taken no part in the reduction or the fixing of the transcontinental rates of the railroads, excepting long haul—short haul applications (964). With these exceptions, railroads themselves and the competitive influences have determined westbound rates to the terminal points. Up to the time the Atchison got into San Francisco, in northern California the Southern Pacific being either the delivering line or the originating line, no rates could be made without their concurrence—no through rates, joint rates. They were practically masters of the situation as to freight rates on all the rates which were known as joint rates, less than the combination of the local rates. (Chambers, 964.) The presence

of one or more railroads or of more than one railroad, capable of performing a given service, does have the effect of lowering the rates over a long period of time. It may have that effect to a considerable extent. (Chambers, 965.) Service is very much influenced by competition. If you have four railroads in position to do the same business, the chances are that you will get better service over them than if you have two. (Chambers, 965.)

In their efforts in behalf of the Sunset the Southern Pacific have put forth every effort they possibly could, in connection with the transaction of business, to influence patrons to their route and to hold them as clients. There are a thousand and one ways, so to speak, in which a common carrier can have influence with a patron. The local situation has a large bearing as to where the freight originates, the ability of the carrier to serve the patron on other than the traffic specifically involved and in question, the disposition to accommodate, and a lot of little things of that kind, all going to have influence with the shipper; and when pressed by the carrier, the shipper naturally desires to cooperate as far as he can consistently, without jeopardizing his own interests; and in the case of the Sunset the reforms instituted in the way of prompt settlements of claims, expedited service, special attention to special traffic, all tended to strengthen that route at the expense of all of the all-rail carriers overland. (Munroe, 376.) The Union Pacific was in advance of the Central Pacific until 1901. (Munroe, 379.) If the control of the Southern

over the Central was dissolved, there would be a marked increase in competition in everything that the word implies. Competition naturally tends toward helping the shippers, and that undoubtedly would be the case as much in the future as it has been in the past. (Munroe, 380.)

Competition as a practical matter does furnish an inducement for the maintenance of good service and the improvement of service on the part of the competitors, and competition has played a great part in the development and improvement of the service furnished by the railroads to the shippers everywhere, and will in all probability continue to do so. (Spence, 1173.)

The impairment of the service on the Central Pacific would help to give business to the Sunset Route. (Chambers, 950.)

A solicitor who makes it a point to trace freight cars and keeps his patrons advised of their whereabouts in transit and final delivery is considered very useful and beneficial to the shipper. If the Central Pacific was released from the control of the Southern Pacific, the Central Pacific would immediately then become an independent line, officered with president, vice president, general manager, freight traffic manager, auditor, purchasing department, and on down in the lesser capacities to freight solicitors, all of whom would have a reputation to maintain and a record to make. Their entire influence and efforts would be exerted constantly in behalf of the Central Pacific road. The industrial and commercial

interests served by that line would receive one hundred per cent of their efforts and all of the important cities and towns and territories served by the road would benefit to the same extent. This separation would improve the conditions to the shipper. Competition is the foremost factor in stimulating service, and were it not for competition the service would be down to a minimum. Competition most certainly has an effect upon both rates and classifications, and always will have. It would have a very decided influence over the making of rates. (Connor, 347.)

The through rates of fare for business between California and points in the Eastern States were regulated by competition. (Stubbs, 97; Kruttschnitt, 741.)

Up to the completion of the Santa Fe to southern California the rates were large and the railroads had no difficulty in getting whatever they thought was fair. They could charge whatever they thought best. When the other road was completed, however, business was divided and the rates cut down (Stanford, 99.)

The threatened competition of the Southern Pacific Company reduced the California-to-Europe grain rates to one-third in a short time. (Hopkins, 670.) The Southern Pacific Company did not keep that competition up very long. It was not necessary. It was a conspicuous example of the quick effect, in the reduction of a rate, of the presence of competition (686).

If the Central Pacific Railroad were separated and working with the Union Pacific Railroad, they would become active competitors of the Sunset, as a practical matter. That would be true of every one of the California terminals that that road reached, and any other terminals with which they could make suitable traffic arrangements, with the existing roads, including the Southern Pacific. If the Central Pacific were separate, it would compete at Sacramento, Marysville, Stockton, Oakland, and San Jose, and would doubtless have some arrangement for reaching San Francisco; and this competition would be as acute as any other competition. The tendency of a number of railroads competing is to reach out to the shipper and reach conclusions with him which do result in reductions of rates. (Sproule, 250.) Generally speaking, competition is to the public advantage . (Sproule, 253.) The release of the Central from the control of the Southern would be an advantage to the public to the extent that competition may be an advantage to the public. (Sproule, 254.)

If you have two roads which have a voice in the rate question you stand 100 per cent, or double, the chance of gaining tariff concessions that you do if there is only one road; if there are three roads, you stand three times the chance of getting your concessions; or if four, four times; and so on. (Wheeler, 897.) And, accordingly, the San Francisco Chamber of Commerce approved the general features of the agreement for the sale of the Central Pacific Railroad by the Southern Pacific Company (Wheeler, 897), and

in that connection their traffic manager stated that there might be some advantage in the separation of the Central and the Southern, if it is a genuine separation, so that they would have four roads instead of three. (Wheeler, 898.)

Any incidental benefits from the combination really rest on the theory that a Government-controlled monopoly is better than competition between railroads (Kruttschnitt, 771; Eshleman, 891), and that is a matter not of the law as it is, but a matter of legislative policy, on which Congress has declared against the creation of monopoly and in favor of normal competition. (Eshleman, 891.)

The attitude of the Californaia Railroad Commission is summed up by Mr. Eshleman in these words:

> If you desire an expression of opinion—and it may explain my attitude on this—my entire position and the position of the commission was assumed mainly on the theory that a regulated or Government-owned monopoly was better than any condition that could be brought about by competition in the case of railroads.
>
> My belief is that regulation by Government authority is an alternative to regulation by competition, and is only justified on the ground that competition does not do its duty. It ought to be a matter of legislative policy * * * But, as you say, that goes to the policy and not what the law demands (891).

Congress differs from the California Railroad Commission on this economic question. The petition

seeks the application of the law as it is, in the belief that the public interest is better served thereby in the long run.

5. *The benefits derived from such a restraint do not exempt it from the provisions of the antitrust act.*

A restraint of commerce is not rendered lawful by the fact that its effect is good in the particular case or that it was undertaken with good intent.

Restraint of trade by the unreasonable suppression of competition and not the result of that suppression is the crime which the Sherman Antitrust Act prohibits.

It is clearly established that, if the effect of a combination is to restrain trade or to monopolize it, the purpose for which it was formed does not save it.

Standard San. Mfg. Co. v. *U. S.*, 226 U. S. 20, 49.

Internat'l Harvester Co. v. *Mo.*, 234 U. S. 199, 207.

Eastern States Retail Lumber Dealers Assn. v. *U. S.*, 234 U. S. 600, 613.

Thomsen v. *Cayser*, 243 U. S. 66–87.

U. S. v. *Reading Co.*, 226 U. S. 324, 353.

Northern Securities Co. v. *U. S.*, 193 U. S. 197, 332, 352.

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S. 211, 234, 243.

U. S. v. *Joint Traffic Assn.*, 171 U. S. 505, 562.

It is more important to preserve free, fair competition than to secure benefits by methods which tend

to defeat competition. This is a public policy which Congress has determined by statute.

Thomsen v. *Cayser*, 243 U. S. 66, 86.

Eastern States Retail Lumber Dealers Assn. v. *U. S.*, 234 U. S. 600, 613.

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S. 211, 242.

Pearsall v. *Great Northern Ry.*, 161 U. S. 646, 676.

Internat'l Harvester Co. v. *Missouri*, 234 U. S. 199, 207.

United States v. *Reading Co.*, 226 U. S. 324, 353.

Northern Securities Co. v. *U. S.*, 193 U. S. 197, 332, 352.

In 1890, when the Sherman Antitrust Act was passed, the growing combinations then publicly discussed were feared because of the control which they could exercise. It was to prevent this control that the act was passed.

At that time at least three policies were open for adoption—(1) letting things take their own course; (2) permitting the organization of controlling units and subjecting those units to governmental regulation by commission or otherwise; and (3) adopting a law giving a preventive and punitive remedy against the creation of such controlling organizations, or of organizations tending in that direction, and so helping to maintain the competitive principle as the safest and best. This third course was followed.

The debates in Congress show that what was feared in monopoly and restraint of trade was the inherent power for injury.

21 Congressional Rec. 2457, 2726.

United States v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 319.

Standard Oil Co. v. *United States*, 221 U. S. 1, 50.

The crime defined by the act is not raising prices, or putting men out of business, or preventing their entering business, or engaging in unfair practices. It is restraining or monopolizing trade, or attempting to do so.

It is enough if the power is obtained, even if it is not exercised.

United States v. *Reading Co.*, 253 U. S. 26.

Thomsen v. *Cayser*, 243 U. S. 66, 86.

Eastern States Retail Lumber Dealers' Assn. v. *U. S.*, 234 U. S. 600, 613.

Internat'l Harvester Co. v. *Missouri*, 234 U. S. 199, 209, 210.

United States v. *Reading Co.*, 226 U. S. 324, 353.

Standard San. Mfg. Co. v. *United States*, 226 U. S. 20, 49.

United States v. *Union Pac. R. R. Co.*, 226 U. S. 61, 88.

United States v. *American Tobacco Co.*, 221 U. S. 106.

Standard Oil Co. v. *United States*, 221 U. S. 1.

Nat'l Cotton Oil Co. v. *Texas*, 197 U. S. 115, 129.

Northern Securities Co. v. *United States*, 193 U. S. 197, 331, 337.

Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211, 234, 243.

Cassall v. *Great Northern Ry.*, 161 U. S. 646, 676.

United States v. *Assoc. Bill Posters*, 235 Fed. (D. C. Ill.) 540.

United States v. *Quaker Oats Co.*, 232 Fed. (D. C. Ill.) 499, 502.

United States v. *American Can Co.*, 230 Fed. (D. C. Md.) 859, 901.

United States v. *Reading Co.*, 226 Fed. (D. C. Pa.) 229, 271.

United States v. *Internat'l Harvester Co.*, 214 Fed. (D. C. Minn.) 987, 999.

United States v. *Whiting Co.*, 212 Fed. (D. C. Mass.) 466, 477.

United States v. *Great Lakes Towing Co.*, 208 Fed. (D. C. Oh.) 733, 744.

O'Halloran v. *American Sea Green Slate Co.*, 207 Fed. (D. C. N. Y.) 187, 190.

United States v. *Lake Shore & Mich. So. Ry. Co.*, 203 Fed. (D. C. Oh.) 295, 312.

United States v. *Standard Oil Co.*, 173 Fed. (C. C. Mo.) 177, 187.

United States v. *American Tobacco Co.*, 164 Fed. (C. C. N. Y.) 700, 702.

United States v. *Northern Securities Co.*, 120 Fed. (C. C. Minn.) 721, 730.

Chesapeake & Ohio Fuel Co. v. *United States*, 115 Fed. (C. C. A. 6th) 610, 623.

United States v. *Chesapeake & Ohio Fuel Co.*, 105 Fed. (C. C. Oh.) 93, 103.

In most of these many cases, there was not a complete monopoly, nor any unfair methods of business, nor any increase of prices to the public, nor any driving out of competition, nor any other injurious use of the power or control which the combination had obtained.

Congress did not direct its prohibition against the *bad results* of combinations in unreasonable restraint of competition or against those combinations only which were formed with evil intent. It forbade the *combinations themselves*, and all of them. There was no exception made for those combinations in restraint of trade which worked a public good or for those undertaken with laudable intent. Congress considered the results which usually and ultimately follow such combinations and prohibited the creation of the despotic influence, however benevolent its exercise.

In *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61, 88, the court says:

> Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

> Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine. (83.)

In *United States* v. *Reading Co.*, 253 U. S. 26, 57, the court says:

> This dominating power was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management but by deliberate, calculated purchase for control.
>
> That such a power, so obtained, *regardless of the use made of it*, constitutes a menace to and an undue restraint upon interstate commerce within the meaning of the antitrust act has been frequently held by this court. (Italics not in original.)

In *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209, 210, the court says:

> It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect. *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62; *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, 49. The purpose of such statutes is to secure competition and preclude combinations which tend to defeat it.
>
> This is one of the results which the statute was intended to prevent, the unequal struggle of individual effort against the power of combination.

This restates a principle repeatedly recognized.

United States v. *Reading Co.*, 226 U. S. 324, 353.

Northern Securities Co. v. *United States*, 193 U. S. 197, 332, 352.

United States v. *Joint Traffic Association*, 171 U. S. 505, 562.

In *Thomsen* v. *Cayser*, 243 U. S. 66, 87, the court says:

> The resultant good of the plan, it is said, was "regularity of service, with steadiness of rates"; and that "the whole purpose of the plan under which the defendants acted was to achieve this result."
>
> We may answer the conjectures of the argument by the counter one that if defendants had not entered the trade others might have done so and been willing to serve shippers without constraining them, been willing to compete against others for the patronage of the trade.

In *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U. S. 600, 613, the court says:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the

national authority thus exerted. *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, 242.

> It (the Sherman Act) broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. It is true that this court held in the *Standard Oil* and *Tobacco Cases*, *supra*, and in the subsequent cases following them, that in its proper construction the act was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade. (609.)

In *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 234, 243, the court says:

> It is useless for the defendants to say they did not intend to regulate or affect interstate commerce. They intended to make the very combination and agreement which they in fact did make, and they must be held to have intended (if in such case intention is of the least importance) the necessary and direct result of their agreement.
>
> If the necessary, direct, and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and, that regulation existing, it is unimportant that it was not designed.

This is followed in *United States* v. *Standard Oil Co.*, 173 Fed. 177, 179 (C. C. E. D. Mo.).

In *Northern Securities Co.* v. *United States*, 193 U. S. 197, 331, the court says:

> Congress, * * * by the antitrust act, has prescribed the rule of free competition among those engaged in such commerce.

In *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 129, the court says:

> According to them (statutes against combinations), competition, not combination, should be the law of trade. If there is evil in this it is accepted as less than that which may result from the unification of interest and the power such unification gives.

In *Standard Sanitary Manufacturing Co.* v. *United States*, 226 U. S. 20, 49, the court says:

> Nor can they (the prohibitions of the act) be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results.

In *Pearsall* v. *Great Northern Railway*, 161 U. S. 646, 676, the court says:

> Whether the consolidation of competing lines will necessarily result in an increase of rates, or whether such consolidation has generally resulted in a detriment to the public is beside the question. Whether it has that effect or

not, it certainly puts it in the power of the consolidated corporation to give it that effect—in short, puts the public at the mercy of the corporation. There is and has been for the past three hundred years, both in England and in this country, a popular prejudice against monopolies in general, which has found expression in innumerable acts of legislation. We can not say that such prejudice is not well founded. It is a matter upon which the legislature is entitled to pass judgment. At least there is sufficient doubt of the propriety of such monopolies to authorize the legislature, which may be presumed to represent the views of the public, to say that it will not tolerate them unless the power to establish them be conferred by clear and explicit language. While, in particular cases, two railways, by consolidating their interests under a single management, may have been able to so far reduce the expenses of administration as to give their customers the benefit of a lower tariff, the logical effect of all monopolies is an increase of price of the thing produced, whether it be merchandise or transportation. Owing to the greater speed and cheapness of the service performed by them, railways become necessarily monopolists of all traffic along their lines; but the general sentiment of the public declares that such monopolies must be limited to the necessities of the case, and rebels against the attempt of one road to control all traffic between terminal points, also connected by a competing line.

In *United States* v. *Northern Securities Co.*, 120 Fed. 721, 730 (C. C. D. Minn.), the court says:

> It may be that such a virtual consolidation of parallel and competing lines of railroad as has been effected, taking a broad view of the situation, is beneficial to the public rather than harmful.
>
> It may be that the combination was the initial and a necessary step in the accomplishment of great designs, which if carried out as they were conceived, would prove to be of inestimable value to the communities which these roads serve and to the country at large.
>
> We shall neither affirm nor deny either of these propositions, because they present issues which we are not called upon to determine, and some of them are issues which no court is empowered to hear or decide, involving, as they do, questions of public policy which Congress must determine.

In *United States* v. *Chesapeake and Ohio Fuel Co.*, 105 Fed. 93, 103 (C. C. S. D. Ohio), the court says:

> It (the policy of the law) is opposed to the methods of combination, and will not suffer competition to be destroyed under the pretense that the public will be better served by combination.
>
> The important question is not whether the performance of the contract so far has resulted in actual injury to trade, but whether the contract confers power to regulate and restrain trade, upon those charged with its performance.

In *United States* v. *American Tobacco Co.*, 164 Fed. 700, 702 (C. C. S. D. N. Y.), the court says:

> What benefits may have come from this combination, or from the others complained of, it is not material to inquire, nor need subsequent business methods be considered, nor the effects on production or prices. The record in this case does not indicate that there has been any increase in the price of tobacco products to the consumer. There is an absence of persuasive evidence that by unfair competition or improper practices independent dealers have been dragooned into giving up their individual enterprises and selling out to the principal defendant.

In *United States* v. *Standard Oil Co.*, 173 Fed. 177, 187 (C. C. E. D. Mo.), the court says:

> It was the granting of the power to prevent competition to the holding company, not the subsequent exercise of that power, that in the opinion of the Supreme Court brought the combination (the Northern Securities Co.) under the ban of the law.

In *United States* v. *Lake Shore & M. S. Ry. Co.*, 203 Fed. 295, 312 (D. C. S. D. Ohio) the court says:

> Stress is laid both in the evidence and argument upon the economy of this interchange of facilities, since it secures easier grades over the Hocking Valley, as compared with those of the Toledo & Ohio Central, and avoids the necessity of building double tracks and of operating opposing trains over single-track roads with the usual sidings. These advantages may be

conceded from an operating point of view; yet the logic of it all would in the end destroy competition between parallel roads generally.

In *O'Halloran* v. *American Sea Green Slate Co.*, 207 Fed. 187, 190, 191 (D. C. N. D. N. Y.), the court says:

> The legality or illegality of a combination is not to be determined by weighing or balancing the benefits to the combining parties as against the injury to the public or public interests, or by weighing and balancing the possible benefits to the public interests as against the injury to such interests.
>
> To so construe this act would make injurious effects on the general public, and not interference with and restrictions or restraints upon interstate commerce, the essence of the offending.
>
> The power under and pursuant to the combination to do the prohibited things is what brands it (the combination) as illegal, not the actual exercise of that power.

In *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733, 744 (D. C. N. D. Ohio), the court says:

> The fact that the towing and wrecking service has been improved under the towing company's administration can not legalize the combination if otherwise unlawful. Not only do good motives furnish no defense to a violation of the antitrust act, but we have no right to assume that the unsatisfactory conditions existing in 1899 could not have been eliminated by lawful and normal methods.

> Whatever may be the views of individual economists, under the Federal statutory policy normal and healthy competition is the law of trade; and such evils as may result from such competition must be considered less than those liable to follow a complete unification of interests and the power such unification gives. The evil of unification lies in the temptation to higher rates and lessened regard for the public interests; and the tendency to this evil result must be recognized even though not in a given case yet realized in actual experience.

In *United States* v. *Whiting*, 212 Fed. 466, 477 (D. C. Mass.), the court says:

> The fact that the alleged agreement does not appear to have been used oppressively is not sufficient to save it. In cases of restraint of trade or monopoly not arising under the Sherman Act, the prevailing view (although there has been some difference of opinion on this point) is that the potential evils of a monopoly or dominating control in any trade are sufficient to invalidate agreements having that purpose or result without proof of actual injury or evil result. *People* v. *Sheldon*, 139 N. Y. 251, 34 N. E. 785.

In *United States* v. *Associated Billposters*, 235 Fed. 540 (D. C. Ill.), the court in holding that it was unlawful for an association to attempt to control the national billboard advertising in the cities and towns in which the members of the association were

located, said that the association was not saved from unlawfulness by the evidence presented of general improvement in and development of the billboard business during the existence of the organization, and that "even perfection in any line of business is not to be thus procured."

In *United States* v. *Quaker Oats Co.*, 232 Fed. (D. C. Ill.) 499, 502, Judge Mack says:

> A potential monopoly that has failed to exercise its tremendous power and has become and has been a very good trust, is none the less subject to the law.

In *United States* v. *American Can Co.*, 230 Fed. (D. C. Md.) 859, 901, the court says:

> One of the designs of the framers of the antitrust act was to prevent the concentration in a few hands of control over great industries. They preferred a social and industrial state in which there should be many independent producers.
>
> The law wishes that industrial and trading corporations shall operate under the checks and balances imposed by free and unrestrained competition.

6. *The public is injured by this restraint to as great an extent at least as by the other restraints of trade by combination of common carriers which have been held unlawful.*

It is safe to say that in every litigated case which has been presented to the courts to dissolve a restraint of trade consisting of the acquisition by one

railroad of the control over a competing railroad, evidence has been introduced to show the real advantages to the public which have resulted from the restraint and will result from permitting it to continue. There almost always are some such advantages. They have been commented on in a number of the cases cited in the preceding subsection.

In the *Northern Securities case* the court either was convinced of the great advantages to the public that were to be expected from the combination or took them for granted. (*Supra*, p. 102.)

In the *Union Pacific case* there was no evidence of any injury to the public beyond the one inherent in a restraint of trade. On the other hand, there was a mass of convincing evidence of the great improvements in the condition of the railroads and in the service to the public which had followed the restraint. (*Supra*, p. 96.)

In the *Lake Shore case* the evidence showed the economies and increased facilities that would result to the public from the restraint because of the interchangeable use of two lines of railroad by the one combination. (*Supra*, p. 103.)

In the *Great Lakes Towing case* the evidence showed the benefits to the public which had resulted from coordination of service by the combination.

It is asserted that the combination between the Central Pacific Railroad and the Southern Pacific Railroad reduces expenses, and that this enables

the railroads to give the public the benefit of a lower tariff.

The evidence in this case, taken at its best for the defendants, shows nothing more than in the other cases of restraint of trade of which the foregoing are specimens. When one combination acquires two railroads it always furnishes opportunity for the interchangeable use of tracks and the single ownership and operation of terminals at common points, and single line transportation from points on one road to points on the other, and the use of through trains for local service. In none of these respects is there anything peculiar to this case.

The witnesses for the defendant who say that the combination between the Central Pacific Railroad and the Southern Pacific Railroad is beneficial and not injurious, say the same concerning the combination between the Union Pacific Railroad and the Southern Pacific (Kruttschnitt, 820, 773; Chambers, 987; Sproule 239.)

In the *Union Pacific case*, there was a most impressive reason for permitting the combination, but for its offense against the law and the policy of preserving normal competition. The Union Pacific Railroad needed a direct line to San Francisco. The great weight of its business was to and from California. To secure such a line was a natural development. It was quite as natural as any common operation or common use of facilities by the Central Pacific and the Southern Pacific. It was not, however, an advantage to secure which the Union Pacific

Railroad Company should be permitted to restrain trade.

The same is true of such advantages as might come from the restraint of trade in this case.

The defendants carry their theories to their logical conclusion. Mr. Kruttschnitt says:

> If the Atchison and the Southern Pacific were under common management, I am convinced that in California alone hundreds of thousands of dollars in operating expenses would be saved by combining forces at all those junction points.
>
> I would carry that theory to its logical conclusion, if applied to all the railroads of the country, and say that if they were all combined under one control it would result in an enormous saving, in the elimination of duplications—an incalculably large saving, assuming that the management were able and efficient.

The present case is not peculiar. These advantages, such as they are in practice, existed in all the railroad combinations which have been held unlawful, despite them.

FOURTH.

THE COMBINATION ALSO PRODUCED A MONOPOLY.

The character of this combination as a monopoly is to be tested by the conditions which existed when it was formed pursuant to the plan of February 20, 1899.

A combination which brings into one corporate control the only two existing competitive agencies

in commerce of a particular kind monopolizes that commerce.

U. S. v. *Union Pacific Railroad Co.*, 226 U. S. 61.
U. S. v. *Terminal Association*, 224 U. S. 383.
Standard Oil Co. v. *U. S.*, 221 U. S. 1.
U. S. v. *American Tobacco Co.*, 221 U. S. 106, 179.
Northern Securities Co. v. *U. S.*, 193 U. S. 197, 325.

When this combination was formed it put into the single ownership of the Southern Pacific Company the stock in all the railroad corporations having railroad entrance from any part of the United States into California north of Mojave and Tehachapi Mountains.

This monopoly continues, except so far as modified by the extension of the Santa Fe Railroad, which opened to San Francisco Bay, July 1, 1899, and the Western Pacific Railroad, which opened to San Francisco Bay, July 20, 1910.

For traffic purposes the State of California divides itself to some extent at the Tehachapi Mountains near Mojave in the southern part of the State. What is described as the southern part of California is to the south of this point, and what is described as central and northern California, is to the north of this point.

On February 20, 1899, there were no railroads in California for the movement of interstate business except the Central Pacific Railroad, the Southern Pacific Railroad, and the Atchison, Topeka & Santa Fe Railroad.

The Atchison, Topeka & Santa Fe Railroad did not extend north of Mojave. It reached Mojave in 1885, and some of the principal points in the southern part of California soon thereafter. The Atchison, Topeka & Santa Fe Railroad Company had a working agreement with the Southern Pacific Company, which is not in evidence, and which gave the Atchison, Topeka & Santa Fe Railroad Company some rights to operate its rolling stock over the railroads controlled by the Southern Pacific Company, and also provided for joint through rates on transcontinental freight. By this agreement the division of the rate was 77 per cent to the Atchison, Topeka & Santa Fe for hauling from the Missouri River to Mojave or in the opposite direction, and 23 per cent to the Southern Pacific Company for hauling from Mojave to other California points, or in the opposite direction. (Spence, 1167.)

The right of the Santa Fe Company to operate its rolling stock over the rails of the Southern Pacific Company was not exercised. (Chambers, 955.)

In 1898 the Atchison, Topeka & Santa Fe Railway Company acquired the San Francisco & San Joaquin Valley Railway Company extending from San Francisco to a point near Bakersfield, about 70 miles north of Mojave. (Kruttschnitt, 800; Chambers, 954.) Steps were taken immediately to build a new line to connect the end of this railroad with the Santa Fe rails at Mojave. Thereupon an agree-

ment was made between the Atchison, Topeka & Santa Fe Railway Company and the Southern Pacific Company, under which the Santa Fe Company acquired the right to operate its trains from Mojave to a point near Bakersfield over the existing tracks of the Southern Pacific Company. (Chambers, 975.) This gave the Santa Fe a through line from Chicago to San Francisco, which was opened July 1, 1899. (Chambers, 954.)

Prior to this date the influence of the Santa Fe north of Mojave was comparatively slight.

Mr. Chambers, vice president of the Santa Fe, testified that the Santa Fe did not get any great bulk of the freight from the territory north of Techachapi; that there never was much; that they had a large volume of business from points on Southern Pacific rails, due chiefly to the efforts which they made with the consignees in the East (956,958); that, in the nature of things, the terminal lines, either initial or final, are in a much better position to compete than any intermediate carrier; that they did not reach to the business to any extent in northern California, and competition was just for the southern California business (959); that up to July 1, 1899, the Southern Pacific and the Central Pacific together held substantially an absolute monopoly of the California transcontinental rails north of Mojave. (Chambers, 954.)

Mr. Kruttschnitt, the chairman of the executive committee of the board of directors of the Southern Pacific Company, testified that up to the time of

the entrance of the Santa Fe into San Francisco the Central and Southern together continued to have a monopoly of the rail entrance into California north of Mojave. (Kruttschnitt, 764, 768.)

Mr. Spence, director of traffic of the Southern Pacific Company, testified that the Santa Fe was a factor in the competition before 1899 (Spence, 1029), because the Southern Pacific had to make as low rates to San Francisco as the Santa Fe did to Los Angeles in order to keep the people satisfied; that the Santa Fe was an active and successful competitor north of Mojave (Spence, 1030); that the possession of the initial or terminal lines, if they have been in the territory for a number of years, is of substantial advantage in competition. (Spence, 1158.)

Mr. Munroe, vice president of the Union Pacific Railroad, testified that the Santa Fe, prior to getting into San Francisco, had exerted a very limited influence only on the freight north of the Techahapi Pass (373), and that it took this railroad a little while after it reached San Francisco before it got a strong foothold (373).

Mr. Connor, commercial agent or general agent of the Southern Pacific Company in Cincinnati from 1889 to 1913, and now of the Union Pacific Railroad, testified that when the Santa Fe first got into San Francisco it was without terminals or branches and had no standing in California to speak of, and was not in a position to control or

influence more than a very small percentage of the business (362).

Mr. Eshleman, formerly of the California Railroad Commission, testified that the company in possession of the terminals always had the advantage (892); that he did not think that the Santa Fe (888) was allowed to get much business originating on Southern Pacific rails; and that the Santa Fe has never had many branches in California. (Kruttschnitt, 768, 817.)

The Central Pacific Railroad had an absolute monopoly of the California transcontinental railroad traffic until 1881. The Southern Pacific Railroad, building southerly and southeasterly from San Francisco, made a junction with the Atchison, Topeka & Santa Fe Railroad at Deming, N. Mex., in March, 1881, and with the Texas & Pacific Railroad at Sierra Blanca, Tex., on January 1, 1882; but the substantial monopoly of the Central Pacific Railroad was not broken until the opening of the Southern Pacific Railroad to New Orleans on February 1, 1883. (Schumacher, 145; Sproule, 224, 225; Kruttschnitt, 760, 763.)

The Northern Pacific Railroad was opened to Portland, Oreg., in 1883; the Canadian Pacific Railroad to Vancouver in 1887; and the Great Northern Railroad to Seattle in 1893; but none of these railroads ever have had any substantial effect upon California transcontinental freight. (Sproule, 227; Connor, 341; Chambers, 959.)

The Missouri Pacific Railroad from St. Louis, connecting with the Denver & Rio Grande Railroad and the Rio Grande Western Railroad, reached Ogden, Utah, in 1883 (Sproule, 224), but had no entrance into California except over the Central Pacific Railroad until the construction of the Western Pacific Railway in 1910.

The Oregon Short Line and Oregon Railway & Navigation Company connected the Union Pacific Railway at Granger, Utah, with Portland, Oreg., in 1884. It had no connection with California except by water from Portland to San Francisco. It did not reach interior California. The Supreme Court decided in *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61, that this route was a factor in rate making to San Francisco. Mr Sproule, president of the Southern Pacific Company, testified that it was potential but not powerful (233); that it would not be a matter of effective competition, but a matter of stratagem (235). Mr. Kruttschnitt testified that there was a rate war with the Portland steamers in 1895 (765); that he did not know much about the movement of transcontinental freight over this line beyond what the Supreme Court said in the Union Pacific opinion (765); that before this opinion they thought the competition over this line had been largely a theoretical one, but that they had accepted the court's view (768). Mr. Kruttschnitt did not state whether the rate war to which he referred was on transcontinental business or on business between Oregon and California. Mr. Spence testified

that this line does not carry any substantial freight traffic; that it could fix the terms for the other route; that all he meant was that the Portland route was a rate-making factor; that it was a reserve that put the Union Pacific in a position to see that the direct route did not seriously overreach it in the matter of terms (Spence, 1159). Mr. Chambers testified that it is likely that some freight moved that way, but not any great volume, and that it was not a serious competitor with the lines running directly to California. Mr. Schumacher, chairman of the directors of the Chicago, Rock Island & Pacific Railway Company, and former representative of the Union Pacific Railroad at San Francisco, testified that he never thought it a practicable route (160), and that he never called it a line at all (171). Mr. Connor testified that he never knew of a pound of freight going to San Francisco that way (341).

The Chicago, Rock Island & Pacific Railroad from Chicago joins the El Paso & Southwestern Railroad, which reached the Southern Pacific Railroad at El Paso, Tex., in 1902. (Sproule, 225.) It has no independent means of access to California.

The San Pedro, Los Angeles & Salt Lake Railroad, connecting the Union Pacific Railroad at Salt Lake City with Los Angeles and San Pedro, was opened on May 1, 1905. (Sproule, 225.) This is a practicable route for some points in the southern part of California, but not for any in the central or northern part. (Chambers, 960; Spence, 1159.)

The Western Pacific Railway has never succeeded in controlling a large amount of the transcontinental traffic of California. (Kruttschnitt, 818; Chambers, 960.)

There are many railroads in the western and central part of the United States that do a California business, but they are dependent upon the railroads above described to reach any part of California, Nevada, or southwestern Oregon.

In 1899 the only steamship line to California with connections across the Isthmus of Panama was that of the Pacific Mail Steamship Company. (Spence, 1150.) The control of this was at this time in the hands of Mr. Huntington, the president of the Southern Pacific Company. (Schwerin, 694.)

The American-Hawaiian Steamship Company began to operate vessels between New York and San Francisco via the Straits of Magellan in October, 1900. In 1907 this line was changed so that it operated by a rail connection over the Isthmus of Tehuantepec. (Spence, 1021.)

Since the opening of the Panama Canal several additional steamship lines have been put into operation between New York and San Francisco (D. Ex. 57, p. 2242). (Schwerin, 698.)

All of the steamship lines are dependent for deliveries in the interior of California upon the railroads already mentioned. (Spence, 1127.)

Within the last five years several electric lines have been opened in California, and these operate

under joint through rates with the Atchison, Topeka & Santa Fe Railroad.

The Southern Pacific Company still has a good deal of exclusive territory in the State of California (Eshleman, 881.)

Most of the more important California terminals are reached both by the Southern Pacific Railroad and by the Central Pacific Railroad. (Spence, 1167.) A number of these are reached also by the Santa Fe in connection with the electric lines. There are few, if any, important points reached by the Santa Fe which are not on the Central Pacific Railroad or on the Southern Pacific Railroad. (Spence, 1168.)

The changes stated, which have occurred since 1899, have reduced somewhat the area in which the Central Pacific Railroad and the Southern Pacific Railroad have a monopoly, but that monopoly still continues to an important extent. The Southern Pacific Company still has a good deal of exclusive territory in California. (Eshleman, 881.) In February, 1899, the monopoly covered the entire developed part of the State north of Mojave. A combination of the two railroads into the single ownership of the Southern Pacific Company perfected in one control the monopoly of these two railroads.

It is suggested for the defendants that this was the monopoly of a pioneer. It was not. Two competing pioneers combined to make this monopoly.

SECOND ASSIGNMENT.

The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal voluntary cooperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad, and the systematic and preconcerted discrimination which the Southern Pacific Company in operating the franchise of the Central Pacific Railroad has practiced against the Union Pacific Railroad in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad furnishing the incentive of self-interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury of the public and to the defeat of the purpose of those laws, which was to create and develop three separate, competitive systems of railroad to the Pacific coast, with all the advantages that would come to the public from three railroads which were competitive.

(1) The Central Pacific Railroad Company was under a duty not to discriminate against the Union Pacific Railroad Company. (2) The combination into the Southern Pacific Company which created the lively incentive to discriminate against the Union

Pacific Railroad was in itself violative of that duty even if no actual discrimination occurred. (3) There has been long continued discrimination against the Union Pacific Railroad as a result of the combination.

FIRST.

THE CENTRAL PACIFIC RAILROAD WAS UNDER A DUTY NOT TO DISCRIMINATE AGAINST THE UNION PACIFIC RAILROAD.

The Central Pacific Railroad Company was under a special duty not to discriminate against the Union Pacific Railroad. This was a duty peculiar to the railroads subsidized under the Pacific Railroad laws. It was something additional to the ordinary duty of a common carrier not to discriminate.

The duty not to discriminate was not performed merely by permitting tracks to join, through trains to run, and joint rates and through service to continue. It required the Central Pacific Railroad Company to abstain from any discriminative action injurious to the Union Pacific Railroad.

This is evident from the language of the Pacific Railroad laws read in the light of the circumstances existing at the time of their enactment, and it has been expressly declared by this court in *U. S.* v. *Union Pacific Railroad Company*, 226 U. S. 61.

On May 5, 1852, the California Legislature passed an act to grant to the United States a right of way through California for the construction of a railroad from the Atlantic to the Pacific Ocean (chap. 77, p. 150).

On July 1, 1862, Congress granted the fundamental franchise under which the Central Pacific Railroad was built. This act (P. Ex. 2, p. 1223) was entitled, "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." (12 Stat., c. 120, p. 489.)

This act incorporated the Union Pacific Railroad to construct a railroad near the forty-first parallel of latitude west and east from the one-hundredth meridian of longitude, which is near the center of Nebraska, to the western boundary of Nevada (P. Ex. 2, p. 1229), and to the Missouri River (P. Ex. 2, pp. 1231–1233). It authorized the Union Pacific Railroad Company to connect at the Nevada line with the railroad to be built by the Central Pacific Railroad Company of California (P. Ex. 2, pp. 1229, 1230). It authorized the Central Pacific Railroad Company of California to construct a railroad from the Pacific coast near San Francisco, or from the navigable waters of the Sacramento River to the eastern boundary of California, and thereafter to join in the completion of the railroad to the Missouri River (P. Ex. 2, p. 1231). It granted to these railroads a subsidy of public lands and also bonds of the United States to the amount of $16,000 for each mile of ordinary railroad, and double and treble that amount for certain sections (P. Ex. 2, p. 1232), these bonds to be paid at

maturity by the railroads. It required in part return that—

> The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line.

October 7, 1862, the Central Pacific Railroad Company of California accepted this act (P. Ex. 59, p. 1655) and on June 23, 1863, the Union Pacific Railroad Company accepted it (P. Ex. 60, p. 1658).

On July 2, 1864 (13 Stat., c. 216, p. 356), Congress amended the act of July 1, 1862, in several particulars (P. Ex. 3, p. 1236). This amendment doubled the land subsidy and permitted the railroads to issue first-mortgage bonds to an amount equal to the bonds to be furnished by the Government (P. Ex. 3, p. 1242). It provided that—

> The several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others. (P. Ex. 3, p. 1244.)

On March 3, 1865, 13 Stat., c. 88, p. 504, Congress passed an act (P. Ex. 4, p. 1250) ratifying the assignment which the Central Pacific Railroad Company of California had made to the Western Pacific Railroad Company of its right to construct a portion of the railroad west of Sacramento to San Jose.

On April 10, 1869, the Senate and House of Representatives passed a joint resolution (P. Ex. 8, pp. 1263, 1264) providing, among other things, that—

> The common terminus of the Union Pacific and the Central Pacific Railroads shall be at or near Ogden; and the Union Pacific Railroad Company shall build and the Central Pacific Railroad Company pay for and own the railroad from the terminus aforesaid to Promontory Summit, at which point the rails shall meet and connect and form one continuous line.

On June 20, 1874, (18 Stat., c. 331, p. 111), Congress passed an act (P. Ex. 10, p. 1274) adding by amendment to the act of 1864 a clause as follows:

> Any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of

said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, etc.

In *United States* v. *Union Pacific Railroad Company* (226 U. S. 61, 91) the court says:

> These acts required the two roads, the Central Pacific and Union Pacific, to be "operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line" (12 Stat. 489, 495, act of July 1, 1862, c. 120, sec. 12) and in such operation and use, "to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others * * *." (13 Stat. 356, 362, act of July 2, 1864, c. 216, sec. 15.) They also authorized the consolidation of the roads. These acts, it is said, are only intended to secure the permanent physical connection of the roads and to provide for equal accommodations upon the basis of independent carriage and outline no method by which the two roads can be compelled to make a joint through rate, and that at the time of the stock transfer there was no such provision in the interstate commerce acts. Therefore, it

is said that the Union Pacific, no less than the Rio Grande, would have been practically at the mercy of the Southern Pacific in the favorable or unfavorable treatment which might have been accorded to it in the matter of through business to be transported eastwardly. The purpose of Congress to secure one permanent road to the coast so far as physical continuity is concerned, is apparent, but we do not think the acts stop with that requirement. It is provided that facilities as to rates, time, and transportation shall be without any discrimination of any kind in favor of either of said companies or adverse to the road or business of any or either of the others, and the purpose of Congress to secure a continuous line of road, operating from the Missouri River to the Pacific coast as one road, is further emphasized in the act of Congress of June 20, 1874, c. 331, 18 Stat. 111, making it an offense for any officer or agent of the companies authorized to construct the roads or engaged in the operation thereof, to refuse to operate and use the same for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one continuous line, and making it a misdemeanor to refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of or adverse to any or either of said companies. *Such practices of systematic and preconcerted*

> *discrimination as are said to have destroyed the Rio Grande's carrying trade as a connection for the East for business at Ogden would have violated the statute as discriminations adverse to the Union Pacific and be equally violative of the letter and spirit of the acts of Congress.* Certainly such discriminations could be restrained by the courts (*Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 163 U. S. 564, 603, 604), and might possibly have resulted in a forfeiture of all rights under the acts of Congress. (Italics not in original.)
>
> Nor do we think it can be justly said that because of the connection with the Rio Grande road at Ogden the Southern Pacific was in position to discriminate at will against the Union Pacific in such wise as to greatly impair the latter road's carrying trade upon eastbound freight. (90)

This construction of the Pacific Railroad Acts follows from a consideration of the conditions under which they were passed and of the results sought.

These conditions and results have been considered by the court in a number of cases.

> *United States* v. *Union Pacific Railroad Co.*, 91 U. S. 72.
>
> *United States* v. *Union Pacific Railroad Co.*, 98 U. S. 569, 613.
>
> *Sinking Fund Cases*, 99 U. S. 700, 724, 751.
>
> *California* v. *Pacific Railroad Co.*, 127 U. S. 1.
>
> *United States* v. *Stanford*, 161 U. S. 412.
>
> *Central Pacific Railroad* v. *California*, 162 U. S. 91.

These acts were passed to secure a continuous railroad from the Missouri River to the Pacific Ocean. The title of the act of July 1, 1862, described " a railroad and telegraph line from the Missouri River to the Pacific Ocean." The body of the act provided that—

> The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel and transportation, so far as the public and Government are concerned, as *one connected, continuous line.*

The amendment of July 2, 1864, provided that—

> The several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, *without any discrimination of any kind* in favor of the road or business of any or either of said companies, or *adverse to the road or business of any or either of the others.* (Italics not in original.)

It has been argued for the defendants that "discrimination" in order to be within the prohibition of these acts must be not only *against* one of the railroads described in the act, but also *in favor of* one of these railroads. Upon this construction the defendants base the contention that any discrimi-

nation by the Central Pacific Railroad under the control of the Southern Pacific Company in favor of the Southern Pacific Railroad is not within these acts because the Southern Pacific Railroad was not one of those mentioned in the acts of 1862 and 1864.

This construction of these acts is not the reasonable one. There is nothing in the language that calls for any such construction. It is:

> Without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others.

This language covers any discrimination in favor of any one of these roads, or any discrimination against any one of these roads. There is no reason why Congress should wish to protect these roads against discrimination in favor of any one of these roads and be careless of protecting such road against discrimination in favor of some other railroad. Such discrimination would be just as injurious, even if the beneficiary of it was not incorporated under these particular acts. There is no reason for the distinction, and no such distinction is made by this court in dealing with the act in the Union Pacific case. On the contrary, the court says that the act would be violated by discrimination against the Union Pacific *in favor of the Denver & Rio Grande*, which is not mentioned in the act. It would be the same if it was in favor of the Southern Pacific.

The act of June 20, 1874, made it a misdemeanor for any officer or agent of any of the companies to refuse to carry out the provision above quoted from the act of 1864.

The benefits and burdens given and imposed by this section were peculiar to the particular companies to which the Government aid was extended.

This was not a mere codification of the well recognized principle of the common law that carriers must not discriminate. It differs in this respect from such a provision as that of the constitution of Colorado, which was construed in *Atchison, Topeka & Santa Fe Railroad* v. *Denver & New Orleans Railroad Company*, 110 U. S. 667, 672, 680. That provision was in favor of "all" individuals, associations, and corporations, and was imposed upon "any" railroad (672), and it contained no provision requiring operation in any respect as a "through" and "continuous" line (680).

The Pacific Railroad acts required operation as "one continuous line" and the discrimination prohibited was that adverse to the road or business of any or either of "the" others.

There were special reasons for these special provisions. Regardless of them, these corporations would be, by the common law, under a duty not to discriminate in the limited sense. This railroad was provided not merely for the ordinary public advantages that come to a particular region from the opening of a railroad. The need of a military highway to

the coast and of easy access for the East to the undeveloped West was national. It was thought to be so imperative as to warrant not merely giving the usual right of eminent domain, but also expending the public moneys and lands and extending the public credit. This made the relation of the United States to these railroads not only that of a sovereign, but also that of a creditor.

United States v. *Union Pacific Railroad Co.*, 98 U. S. 569, 613.

Sinking Fund cases, 99 U. S. 700, 724, 751.

The extension of unusual favors to these corporations warranted requiring the performance of unusual duties by them. The ordinary railroad, enjoying no special favor from the sovereign except the granting of the right of eminent domain, had not been required to enter into any business relations with any other railroad, beyond those undertaken voluntarily or with the public generally.

The component parts of this railroad were required to unify its operations and virtually to become one, except that they could maintain their separate corporate identities, and so make their profits and sustain their losses upon the particular section of the railroad which they respectively built and operated.

The United States was concerned in having a strong railroad not only because of its needs as a sovereign and the advantages in service which would come to the people of that sovereignty, but

also as a creditor, dependent for payment upon the success of this railroad.

The interests of the United States as a creditor demanded the financial success not only of the railroad company that might discriminate and gain financially thereby but also of the railroad company which might be the object of the discrimination.

As the United States could not obtain payment of the donated bonds, either principal or interest, for 30 years (*United States* v. *Union Pacific Railroad Company*, 91 U. S. 72), it was interested to secure the financial success of this railroad not only immediately but also for a long period in the future.

It was not open to doubt that the strength of the entire railroad would be increased if each part of it was cooperating for the success of the whole. It was to secure these results that Congress directed the operation of this road as one line and that no discrimination should be made by one part against the other.

The duty to operate as one continuous line and not to discriminate against parts of that line was a burden upon the franchise, and not merely upon the first corporations which acquired it. It was a condition to the acquisition and exercise of the franchise granted by the Pacific Railroad acts that it should be exercised in conformity to the requirements of these acts. The Central Pacific Railroad

Company could not convey the franchise to the Central Pacific Railway Company free of this burden.

Union Pacific Railroad Co. v. *Mason City & Fort Dodge R. R. Co.*, 199 U. S. 160.

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61, 92.

Those in control of the Central Pacific Railroad are now and always have been under a duty not to discriminate against the Union Pacific Railroad in favor of the Southern Pacific Railroad.

SECOND.

THE COMBINATION INTO THE SOUTHERN PACIFIC COMPANY WHICH CREATED THE LIVELY INCENTIVE TO DISCRIMINATE AGAINST THE UNION PACIFIC RAILROAD WAS IN ITSELF VIOLATIVE OF THAT DUTY, EVEN IF NO ACTUAL DISCRIMINATION OCCURRED.

With the Central Pacific Railroad Company under a duty not to discriminate against the Union Pacific Railroad, it would seem to be evident that any device by which the operation of its railroad was put into the control of those whose interest it was to discriminate against the Union Pacific Railroad would be *ipso facto* violative of that duty and unlawful. Parties should not be permitted by their voluntary acts to put themselves in a situation where their self-interest constantly prompts them not to perform their legal duties.

The combination into the Southern Pacific Company was just such an act. The Central Pacific Railroad Company, under the control of those inter-

ested exclusively in developing its business, would naturally strive to forward as much freight as possible to and from California through Ogden in preference to El Paso. The Southern Pacific Company, controlling the Central Pacific Railroad and the Southern Pacific Railroad, would naturally strive to forward all the freight possible to and from California through El Paso and Galveston and New Orleans, in preference to Ogden. The duty of the Southern Pacific Company to earn revenue for its stockholders would require of it the course of conduct which would increase that revenue. This duty was absolutely inconsistent with the duty to press for the success of the Ogden gateway. This inconsistency in the position of the Southern Pacific Company was created by its action in taking control of the Central Pacific Railroad, whose duties were directly opposed to the interests of the Southern Pacific Railroad.

Even if the Southern Pacific Company had performed the impossible task of doing everything that it could to further the interests of the Southern Pacific Railroad, and, at the same time, of doing everything that it could to further the interests of the Central Pacific Railroad, with its inconsistent duties, it would not render lawful the combination which produced the inconsistency. It is unlawful to contract oneself into a position where self-interest will conflict in this way with the performance of duty.

For a rival line to take control of the operation of the western half of the Central-Union line was destructive of the natural cohesion between the Central and the Union which was essential to make the two parts in operation one line. It materially diminished the power of the eastern half in its competition with the rival line, and it destroyed entirely that of the western half.

Even if the action of the western half fell short of affirmative discrimination against the eastern half and in favor of its rival, the paralysis of the incentive to build up the business of the older road, with a consequent subtraction from that of the controlling rival, would inevitably retard, if it did not destroy entirely, the success of the older road. The creation of the situation which would render this even possible was contrary to the laws which had prescribed that these two halves should have all the potential success which would come from real cooperation as one line from the Pacific coast to the Missouri River.

This combination was more than mere negative cessation of competition by the western half. It was the taking of an affirmative step calculated to produce this cessation, and to deprive the older road of its natural incentive to effort and its consequent chance of success.

The Pacific Railroad laws required of these railroads not only unity in track connections and train operation, and through rates and service, but also

required a road operating from the Missouri River to the Pacific coast "as one road." *U. S.* v. *Union Pacific Railroad Co.*, 226 U. S. 61, 91.

No railroad, one-half free and one-half in the bondage of a rival, could be operated as one road. Such a control, tending against the fulfillment of the requirements of the law, is to be judged by its tendency and not merely by its success. So tested, this control is an unreasonable and an unlawful restraint.

The defendants have stated the contention for the petitioner to be that the Pacific Railroad acts required the Central Pacific Railroad to solicit actively and exclusively for the Union Pacific Railroad. This is not an accurate statement of the Government's position.

It is one thing to say that this railroad must solicit actively and exclusively for the Union Pacific Railroad. It is quite another to say that it must abstain from soliciting actively against the Union Pacific Railroad.

Soliciting freight with indifference as to the line over which it should be forwarded is not discriminative in the same sense as solicitation directed in favor of a particular line, and therefore against another particular line.

If the Central Pacific Railroad, with indifference to the forwarding line, had sought to get all the freight that it could carry and had not tried to keep it away from the Union Pacific Railroad, the natural tendency would have been for much of the freight

to go over the Union Pacific Railroad which has gone instead over the Southern Pacific Railroad.

The control of the Central Pacific Railroad by the Southern Pacific Company was contrary to the Pacific Railroad Acts, not necessarily because of its tendency to stop solicitation by the Central Pacific Railroad *exclusively in favor of* the Union Pacific Railroad, but because of its tendency to produce solicitation by the Central Pacific Railroad *against* the Union Pacific Railroad. And it was this tendency, and not its success, which determined the unlawfulness of this control.

It distorted the normal development of the Central line in competition with the Southern line and deprived the public of the advantages to be expected from such competition required by the Pacific Railroad Acts.

THIRD.

THERE HAS BEEN LONG CONTINUED DISCRIMINATION AGAINST THE UNION PACIFIC RAILROAD AS A RESULT OF THE COMBINATION.

The discrimination prohibited has been defined by this court to include conduct tending to divert traffic from the Union Pacific Railroad and to other railroads—namely, "such practices of systematic and preconcerted discrimination as are said to have destroyed the Rio Grande's carrying trade as a connection for the East for business at Ogden." (226 U. S. 61, 91.) These practices consisted of active and persistent solicitation (Munroe, 377), and nothing more.

It is admitted that these practices of the Southern Pacific Company have been systematic and preconcerted. (Spence, 1155; Connor, 338.)

Since 1883 and up to the present time it has been the regularly established and systematic practice of the Southern Pacific Company to divert all the freight possible between California, Oregon, and Nevada in the West and the Middle West and the Atlantic seaboard on the East from the Ogden gateway to the Southern Pacific Railroad via El Paso and New Orleans or Galveston. (Sproule, 183, 184, 185, 189, 202, 203, 239, 255; Lovett, 289, 292; Connor, 338, 340, 329, 330, 360, 365; Munroe, 375, 376, 377, 378, 383, 371, 387; Schumacher, 149, 152, 174; Kruttschnitt, 739, 741, 808, 810, 825, 827; Chambers, 966; Lincoln, 113, 114; Spence, 1034, 1036.)

The evidence on this subject comes largely from the defendants' own witnesses and is not disputed. Yet the opinion of the court below contains no reference whatever to any of this evidence, or to the opinion of the Supreme Court in the Union Pacific case defining the duty of the Central Pacific Railroad not to discriminate (2328).

The natural, shortest, quickest, and best route between central and northern California on the West, and the Middle West territory and Atlantic seaboard on the East, during all this time, has been the Central Pacific-Union Pacific route. (Stubbs, 100; Lincoln, 127; Schumacher, 147; Lovett, 290, 293; Connor, 331, 343, 346, 363; Sproule, 205, 209, 210, 378; Munroe, 370, 375.)

The distance from San Francisco to New York City via the Central Pacific Railroad and the Union Pacific Railroad is 3,191 miles, and from San Francisco to New York City via rail to New Orleans and water to New York is 4,225 miles. To interior points in Atlantic seaboard territory the distance via the Union Pacific Railroad is even less, and via New Orleans correspondingly more. Buffalo is 442 miles short of New York City by the Union Pacific route and that much beyond New York by the water route. (Sproule 207.)

The distance from San Francisco to Cincinnati via the Central Pacific Railroad and the Union Pacific Railroad is 2,559 miles, and via New Orleans it is 3,323 miles. (P. Ex. 67, p. 1668.) Freight from Cincinnati to San Francisco via New Orleans moves 836 miles to reach New Orleans, and is then 72 miles, only, nearer San Francisco than when it started. (P. Ex. 67, p. 1668.) Of the 2,559 miles from Cincinnati to San Francisco, 1,000 miles are on the Union Pacific Railroad and 783 on the Central Pacific Railroad, a total of 1,783 miles. (Sproule, 206.) The advantage in distance via the Union Pacific Railroad and Central Pacific Railroad over the route via New Orleans increases as the point of origin moves northerly from Cincinnati.

The advantage in distance of the Union Pacific-Central Pacific route over the New Orleans route is even greater for northern, central, and eastern California and for southwestern Oregon than it is for

San Francisco. The junction point at Roseville is farther than San Francisco from El Paso and New Orleans and 107 miles nearer than San Francisco to Ogden. Every mile east of Roseville reduces by so much the distance over the Ogden route and increases correspondingly the distance over the El Paso or New Orleans route.

The ordinary time in transit for freight between San Francisco and New York is two or three days shorter by the Central Pacific-Union Pacific route than by the New Orleans route. (Munroe, 375.) The difference to Cincinnati is a trifle greater. (Connor, 342.) Delays on the route over the Central Pacific Railroad and the Union Pacific Railroad and eastern connections to the Atlantic seaboard seldom have occurred during the period since 1887. (Connor, 343, 344; Monroe, 375; Richardson, 639.) They have been no greater than on the Sunset Route. (Richardson, 639; Connor, 344.)

Freight requiring particularly rapid transportation and good service, such as valuable cargoes of silk from the Orient and deciduous fruits, have been moved over the Central Pacific Railroad and the Union Pacific Railroad to the exclusion of the Southern Pacific Railroad. (Lincoln, 113; Spence, 209; Schwerin, 700.)

Mr. Connor testified that, if not artificially diverted by solicitation, 75 per cent of the freight from northern and central California would go through Ogden, 20 per cent over the Atchison,

Topeka & Santa Fe Railway, 5 per cent over the Western Pacific Railway, and nothing over the Southern Pacific Railroad. (Connor, 337, 363.)

Notwithstanding these natural advantages, the Central Pacific Railroad, under the control of the Southern Pacific Company, has diverted traffic from its own rails and those of the Union Pacific Railroad to a large amount and for many years.

Before 1899 the Southern Pacific Railroad via the New Orleans route carried probably more than one-half of the Atlantic seaboard competitive business, probably as high as 80 or 90 per cent. (Chambers, 942.)

In the eighties probably as much as 90 per cent of the New York-San Francisco business was moved over this route. (Schumacher, 155.) In 1890 this route had secured the major part of the westbound traffic between the Atlantic seaboard and California of a character in which it could engage (Spence, 1028), and it continued to handle the major part of that traffic until 1895. (Spence, 1029.)

The Central Pacific Railroad and the Union Pacific Railroad have been operated as one railroad in the sense only that they have had joint through rates and through trains, but in no other respect. (Schumacher, 172, 173; Richardson, 636, Spence, 1045; Kruttschnitt, 728, 729.) In this sense the Southern Pacific Railroad and the Rock Island, El Paso, and Southwestern Railroads are operated as one railroad, (Spence, 1152.) In this sense the

Central Pacific Railroad and the Denver & Rio Grande Railroad are operated as one railroad. (Richardson, 639.) Mr. Richardson, superintendent of transportation of the Southern Pacific Company, testified that in this respect there is no difference between the treatment accorded the Union Pacific and that accorded the Denver & Rio Grande and El Paso and Southwestern as far as he knows (638).

Since the so-called merger between the Union Pacific and the Southern Pacific in 1901, the passenger advertising funds of the Southern Pacific for westbound business have been placed in the hands of the Union Pacific Railroad Company, and the corresponding funds of the Union Pacific for eastbound business have been placed in the hands of the Southern Pacific Company. (Spence, 1046, 1157.) This is confined to passenger business and is not confined to the Union Pacific Railroad.

Prior to the time at which the Union Pacific Railroad Company acquired the control of the Southern Pacific Company, in 1901, the condition of the Central Pacific Railroad was much inferior to what it became thereafter. (Kruttschnitt, 814, 815; Munroe, 379; Schumacher, 152; Chambers, 978.)

The Union Pacific Railroad Company, in its answer in the suit of the *United States* v. *Union Pacific Railroad Company, The Oregon Short Line Railroad Company, and others* (D. Ex. 50, p. 2097), states:

> That the lines of railroad now owned by defendant Union Pacific Railroad Company had been greatly improved while in the

hands of receivers in the foreclosure proceedings hereinbefore mentioned, and prior to January 1, 1901, it recognized the necessity, in the interest of the public as well as of itself, of further improving, and it had determined to further improve, the said railroads, particularly the line between Council Bluffs and Ogden, in order to be able to develop its traffic and serve and accomplish the object of its construction, and to handle such traffic efficiently and economically. Unless the line of the Central Pacific Railway Company, extending from Ogden to the Pacific Ocean, was likewise improved and put and maintained in condition to handle promptly and efficiently the transcontinental traffic passing over the Union Pacific Railroad, the improvement of the latter, as contemplated, would be practically futile. The said Central Pacific Railroad had been mortgaged for large amounts, and the Central Pacific Railway Company was without means or credit to procure the means necessary to bring by improvements its said line of railroad up to anything approximating the condition and efficiency of said Union Pacific Railroad, and the Southern Pacific Company was also without such means or credit, as practically all of its assets and the assets of the various corporations controlled by it were mortgaged or otherwise pledged.
* * *

For the purpose of procuring the improvement of the said Central Pacific Railroad and to bring it up to the standard and degree

of efficiency approximately of the line of the Union Pacific Railroad, and in order that said Union Pacific Railroad Company should become and securely remain the preferred connection of said Southern Pacific Company and Central Pacific Railway Company at Ogden, and thereby secure the unrouted traffic of said companies interchanged at Ogden, and in order to protect itself against the acquisition and control of said Central Pacific Railway Company by adverse interests to these defendants, and without any intent or purpose in any wise to suppress or restrain any competition in interstate or foreign commerce, the said 900,000 shares of the capital stock of said Southern Pacific Company were purchased and acquired as hereinbefore alleged by defendants, Union Pacific Railroad Company and Oregon Short Line Railroad Company, and are now so held by the company last named.

Prior to 1901 the expenditure of the Central Pacific Railroad Company for maintenance of ways and structures varied between $1,100,000 and $2,500,000 annually. (P. Ex. 37, p. 1635.) During the same period the expenditures on the through route of the Southern Pacific Railroad from San Francisco to New Orleans varied between $2,500,000 and $4,800,000 annually. (P. Ex. 38, p. 1636.) Between January 1, 1887, and June 30, 1901, the expenditures of the Central Pacific Railroad Company for additions and betterments, not including new lines, amounted to $10,268,410.01. (P. Ex. 39,

p. 1636.) Between March 1, 1885, and June 30, 1901, the expenditures for the same purposes on the through route of the Southern Pacific Railroad from San Francisco to New Orleans amounted to $30,346,240.10. (P. Ex. 40, p. 1637.)

When the Union Pacific obtained control of the Southern Pacific Company there was inaugurated an era of great improvement of the Central Pacific Railroad (Sproule, 239), and the roadbed of the Union Pacific Railroad and the Central Pacific Railroad and the service over the rails of these two roads was greatly improved. (Sproule, 239, 240.) The Union Pacific Railroad could not, prior to 1901, without the cooperation of the Central Pacific Railroad, make effective any effort for improved service between Omaha and San Francisco Bay. (Sproule, 240.)

The Union Pacific Railroad, during the period prior to 1901, was in advance of the Central Pacific Railroad. (Munroe, 379.) Mr. Munroe, vice president of the Union Pacific, never knew of any action taken by the Southern Pacific Company in the administration of the Central Pacific Railroad looking to the betterment of the Central Pacific route as against the Southern. (Munroe, 388.)

Prior to 1901 the Central Pacific Railroad was a fairly good dirt railroad, with very little ballast except over the mountains on their heavy grades, and laid with 60 or 70 pound rails and kept up just fair. After the merger, so called, in 1901, considerable sums were spent in the upkeep and improve-

ment of the Central Pacific line, and the efficiency and comfort of the road before was about 50 per cent of what it has become since. (Schumacher, 152.)

The Southern Pacific Company kept its freight service over the Sunset line to New York better than any other up to a period after 1901, and continued to do so until the all rail lines had arranged their service so as to make it equal with the Sunset Route service. (Chambers, 979.) Up to the time that the competition of the Atchison made it necessary, Mr. Chambers, vice president of the Atchison did not recollect any efforts of the Southern Pacific Company to make its service through Ogden equal to or preferable to that via the Sunset line. (Chambers, 963.) The service from the Atlantic seaboard to Chicago was always much better for the distance hauled, as long as he could recall, than it was west of Chicago. The lines leading from New York to Chicago—the Pennsylvania, the New York Central particularly, and the Erie—have an expedited merchandise service, a fast service, that they have had for years. They had it at the time that the Atchison first began to make an effort to get seaboard business. They did not have to improve their service very much. The improvement had to be west of Chicago. They had made no great effort to secure the California traffic as against the Sunset Route, because the service could not be equaled under the arrangements they had with western lines, and the western lines were not in

a position to equal the service of the Sunset Route, but they gradually got better, and there was an improvement in billing, the making of the through way bills, the prompt settlement of claims, and avoiding transfers. The Iowa lines, most of them, are in very good shape, and some of them have been for 25 years. The difficulty in bringing up the all-rail service was with the lines west of Omaha and west of the Colorado junctions. The Union Pacific has always been a first-class road since 1887, and the Ogden route has always given very good service. (Chambers, 980.)

Mr. J. C. Stubbs, who is now on the pension rolls of the Southern Pacific Company, was the one having the important say as to the methods of developing the traffic for the Southern Pacific Company prior to 1901, and if any effort had been made to organize through service via Ogden from the Atlantic to the Pacific, it is likely that it would have been made by Mr. Stubbs. (Spence, 1122.) He was not called by the defendants as a witness. Mr. Spence could not tell whether he had ever talked with Mr. Stubbs as to such effort. He did not recall Mr. Stubbs having informed him of any effort that he made after the opening of the Sunset Route to get coordination between the eastern roads and the Central Pacific and the Union Pacific. Mr. Edwin Hawley, the general eastern agent of the Southern Pacific Company, and subsequently assistant general traffic manager, and one of the ablest railroad men of his day, worked

directly and through his subordinates in securing traffic for the Southern Pacific Company, preferentially via the Sunset Gulf Route. Mr. Hawley remained with the Southern Pacific Company up to March 1, 1902. (Spence, 1123.) The success of the Sunset Route was due to the influence of the Southern Pacific being exerted in favor of that route. (Spence, 1117.)

Mr. Chambers, representing the Atchison, Topeka & Santa Fe Railroad, had to do personally with the improvement of the all-rail service so as to compete with the Sunset Gulf line. The Atchison was the first to arrange for through billing from New York to the Pacific coast points and to run through cars (Chambers, 943), in 1889 or 1890. This was not done generally by the all-rail carriers. The Erie-Santa Fe arrangement was the first through billing in connection with all-rail lines. The practice before was for each line to make its own way bill and collect its proportion of the joint rate from its connecting carrier, so that all except the last charges were payable as advance charges, which made it necessary for the shipper to go back to the connecting railroads in case of an overcharge. In the through billing the total charge could be corrected by the agent at destination. (Chambers, 943.) The local billing was very cumbersome and very unsatisfactory. The through billing was one of the strongest points in the Sunset Route. Mr. Chambers thought it was about 1900 before the all-rail lines generally adopted the practice of through billing;

that they came in one after another (944). Of course this resulted in an improvement of the all-rail service and in diminishing the proportion of the traffic obtained by the Sunset Gulf Route. When he made his first through billing arrangements with the Erie Railroad, about 1889, it was the first time there had been any effective competition from the Atlantic seaboard against the Sunset Route. (Chambers, 959.) It took some years to work any considerable volume of business, because the Atchison line was not in very good physical condition. As the condition and service improved the volume of business increased, and the great improvement came after 1895. (Chambers, 958.) The Atchison competition with the Sunset Route in the beginning was just for the southern California business. It did not reach to any extent into northern California. (Chambers, 959.) The through billing through Ogden followed along after that time. The Atchison did not make very much of an effort to compete with the Sunset Route from New York to northern California until after 1900. It was not in a position to compete effectively up to that time. (Chambers, 959.)

Mr. Spence testified that he was not sure whether the Atchison was a pioneer in the through billing; that through billing was very uncommon in the early days; that he should say that the Southern Pacific began through billing through Ogden in the early nineties; that he could not state from memory accurately (1115). He could not tell when through-

package cars began to be run. He did not think they preceded through billing (1115). He testified that there was difficulty with the lines east of Omaha; that he did not and would not know whether the Southern Pacific Company ever attempted to organize coordination with those lines for through business 1117). If the Southern Pacific line in California had stopped at the southern boundary of the State, if the Southern Pacific had not been in the management of the entire line from coast to coast, the Sunset Route, in his judgment, would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California; and if the Southern Pacific's short haul had been to Los Angeles and its longer haul to Ogden, or, in other words, if the influence of the Southern Pacific Company upon that traffic had been exerted in favor of the Ogden haul, the Sunset Route could never have made the progress that it made in getting business; that the Southern Pacific would naturally have preferred its long haul. (Spence, 1120.)

The Southern Pacific Company has made lower rates on some commodities via the Southern Pacific Railroad than by the Central Pacific-Union Pacific Railroad. (P. Ex. 30, 31, pp. 1599, 1611; Topping, 275.) At times the number of these commodities has exceeded 100. (P. Ex. 30, 31, pp. 1606, 1604, 1601.) They made a 55-cent rate from California to New York on wine in tank cars via New Orleans, with right to barrel in transit, against 75 cents all-rail, with the added advantage that as barrels originated

largely in Louisiana and Arkansas the shipper is saved the freight on the empty barrels.

The natural effort of the Union Pacific-Central Pacific line, if it were operated as one continuous line, would be to have all the freight business moved over that line. (Spence, 1163; Kruttschnitt, 826; Richardson, 638; Munroe, 378.)

Notwithstanding the natural advantages of the Central Pacific-Union Pacific route to and from all points north of Tehachapi Pass, the Central Pacific Company, under the control of the Southern Pacific Company, has diverted traffic from its own rails and those of the Union Pacific Railroad to an enormous extent. (Chambers, 942; Spence, 1028, 1119; Schumacher, 150.)

Not only has there been a failure to advance the use of this route for commodities which could be induced to move by the Southern Pacific route through Galveston or New Orleans, but also there has been a very active contrary effort on the part of the Central Pacific Railroad, under the control of the Southern Pacific Company, to have as little freight of this kind as possible move over the Central Pacific-Union Pacific route. (Connor, 329, 330–332, 338, 339, 343, 345, 360, 364, 365; Schumacher, 159, 173; Sproule, 183–185, 188, 197, 203, 204, 208, 212, 213, 214, 239, 240, 255; Chambers, 942; Johnson, 311; Hall, 312; Munroe, 371, 374, 375, 376, 377, 378, 380, 381, 382, 384, 387, 388; Lincoln, 113, 114, 130, 147, 150, 151, 152; Lovett, 289, 293, 294, 297, 303; De

Friest, 305; Kruttschnitt, 739, 741, 767, 808, 810, 813, 816, 825, 827; Spence, 1036, 1037, 1034, 1028.)

Solicitation has a substantial effect upon the routing of freight. (Chambers, 946; Sproule, 211, 239.)

Solicitation for freight traffic is constant day in and day out. (Schumacher, 166, 167.) The soliciting done by the Southern Pacific had the effect of diminishing the amount of traffic which normally would go over the Central Pacific and Union Pacific Railroads. (Schumacher, 173; Connor, 345.)

The Southern Pacific prior to 1901 would not solicit business to go by way of the Central Pacific Railroad. (Lincoln, 113.) Mr. Lincoln, of the Missouri Pacific, had never known of such a thing prior to that date. (Lincoln, 113, 114.) There were no separate traffic representatives for the Central Pacific Railroad. (Lincoln, 123.)

Mr. Connor testified that they devoted their exclusive time and attention to securing the freight from California to his territory for the New Orleans route, and bent every effort with everybody who could lend any assistance; that their receiving agents and solicitors in California, if it was controlled there, were notified and appealed to for assistance; that if the control rested at Chicago, St. Louis, Pittsburgh, or New York, or in any other point, they went after it through their representatives there; and that if it was controlled in his territory he looked out for it there; and that they all pulled together all the time and worked every means known to influence and secure the shipment for that route, and never let up

until the shipment was on the cars moving (Connor, 328, 329); that the Southern Pacific was a very powerful railroad, and looked upon as such by the receivers in California and by the shippers there; and that they cultivated them and tried to do everything they could for their interest and to build up their confidence in that road; that they traced their freight; that they gave them reports on its movement and route, and that they kept them more than satisfied; and that the Southern Pacific Company in California is a very influential road, and that if there were any new industries or industrials being located there, if they were on local territory requiring sidings, the Southern Pacific Company naturally had to put them in; that if there was any material to be moved from the East to complete these industrials and plants it was one of the first things their Southern Pacific solicitors did to see that business was routed to the greatest extent by the long haul; that is, via New Orleans and over the Southern Pacific Railroad (Connor, 329); that there were many times during the period before 1901 when the published tariff rates through New Orleans were cut, although the Southern Pacific Company was not an instigator thereof; that the Southern Pacific Company was a great, big, powerful road, and that they brought pressure to bear in California to make it to their interest to give them the business (Connor, 345); that the Southern Pacific Company supplied him with special equipment required for the shipment of freight from his territory—namely, a special type of

cars for carrying buggies and furniture—and that this equipment was for use exclusively through New Orleans and over the Southern Pacific Railroad (Connor, 330), and no similar equipment was provided for the Central Pacific Railroad; that from 1887 to 1901 the Southern Pacific Company, which operated the Central Pacific Railroad, gave no assistance to the Union Pacific Railroad to secure any freight via Ogden which could be secured via the Southern Pacific Railroad (Connor, 340); that the other connections of the Union Pacific Railroad, such as the Chicago & North Western, the Chicago, Milwaukee & St. Paul, the Illinois Central, the Chicago & Great Western, and the Chicago & Alton, lend their assistance to the Union Pacific Railroad in securing freight traffic (Connor, 340); that there was an absence of competition between the Central Pacific Railroad and the Southern Pacific Railroad; that the Southern Pacific Company had a prescribed blank to be filled out when any agent learned that any freight had traveled over the Central Pacific Railroad from Mr. Connor's territory, to be followed by an immediate call on the shipper in the effort to make him ship no more that way, but to employ the route over the Southern Pacific Railroad (Connor, 338), and that these instructions were received, transmitted, and carried out constantly (Connor, 339); that if the routing was controlled in California the efforts were applied there, and that failing to get the routing changed they looked upon the shipment as lost (Connor, 330), and that he as agent of the Southern Pacific

Company worked the business via the Southern Pacific Railroad first, last, and all the time. (Connor, 359.)

Mr. Schumacher testified that prior to 1901 he had never known of any effort of the Southern Pacific Company to get any transcontinental freight over the Central Pacific Railroad to any point east of the dead line near Indianapolis and Detroit, except that which it was unable to control for the other route (Schumacher, 147, 152); that at that time very little of the transcontinental freight from central and northern California moved over the Central Pacific Railroad through Ogden, because of the strong local organization of the Southern Pacific Company in California. (Schumacher, 149.)

Mr. Lovett, the chairman of the executive committee of the Union Pacific Railroad Company, testified that there is no competition between the Central Pacific Railroad and the Southern Pacific Railroad (Lovett, 292); that the Central Pacific Railroad does not work the business from the Atlantic seaboard territory at all, except where it can not get it by the southern route (Lovett, 289); that the Central Pacific Railroad is not a factor in it at all. (Lovett, 293.)

The effort of the Southern Pacific Company to divert the freight from the natural course through Ogden was extended even to freight originating on the lines of the Central Pacific Railroad or moved over those lines in northern and central California and in Nevada. (Kruttschnitt, 825.)

In consequence of their effort the Nevada wool shipments destined to New York and Boston originating on the lines of the Central Pacific Railroad and which, of course, would move through Ogden and over the Central Pacific Railroad (Munroe, 378), were induced to move via Sacramento, El Paso, and New Orleans to New York and Boston. The Central Pacific Railroad, under the control of the Southern Pacific Company, published rates for this wool via El Paso and the Gulf routes from points in Nevada and as far east as Corinne, Utah. (P. Ex. 32, p. 1621; Topping, 282.) Up to September 14, 1909, the Southern Pacific Company made no through commodity rates via Ogden on wool from any point west of Elko, Nev. This kept the Ogden gateway closed. On that date rates were published for points in Nevada as far west as Winnemucca, and on June 25, 1910, they were published for points west of Winnemucca. (Munroe, 371.)

Prior to these dates the movement of wool via Ogden was very limited, and the great bulk of it moved via Sacramento and El Paso to New Orleans and by boat to New York, and thence by transfer to Boston. (Munroe, 371; Schumacher, 152; Sproule, 219, 221.) Winnemucca is 365 miles west of Ogden and 2,774 miles from New York via Ogden, and is over 4,550 miles from New York via Sacramento, El Paso, and New Orleans. It is farther from New Orleans than it is from New York, and transshipment at New Orleans is necessary, and in the case of wool for Boston another transshipment at New York is neces-

sary. Cars through Ogden would go directly to New York or to Boston. Elko is 140 miles east of Winnemucca and correspondingly nearer New York and farther from New Orleans. The advantages of the Ogden route were apparently such that between Elko and Corinne, where the rates were published both ways, little or no wool could be induced to go via the long route. (Sproule, 219; Munroe, 381.)

It is contended for the defendants that the failure of the Union Pacific Railroad Company to change the routing of Nevada wool when that company came into control of the Southern Pacific Company shows that that routing was not a discrimination against the Union Pacific Railroad. This contention is unfounded. When the Union Pacific Railroad Company acquired control of the Southern Pacific Company it obtained a 46 per cent interest in the stock, and therefore in the earnings, of the Southern Pacific Company. If Nevada wool was routed back through California and via the Southern Pacific Railroad through New Orleans and to New York, the Union Pacific Railroad Company received 46 per cent of the revenue. If it was routed from Nevada through Ogden to New York, the Union Pacific Railroad Company received a much smaller percentage of the revenue—that is, received 100 per cent of the revenue for the haul from Ogden to Omaha, and 46 per cent of the revenue for the haul from Nevada to Ogden, but it received nothing for the haul from Omaha to New York.

Its interest as a stockholder in the Southern Pacific Company neutralized or overcame its interest, as the company operating the Union Pacific Railroad, as to this Nevada wool traffic.

The effect of solicitation upon the movement of traffic is shown by the results of the so-called merger between the Southern Pacific Company and the Union Pacific Railroad Company, on the eastbound traffic over the Denver & Rio Grande Railroad from Ogden. Prior to this merger the Central Pacific Railroad had two outlets at Ogden for its eastbound traffic—one over the Union Pacific Railroad, and the other over the Denver & Rio Grande Railroad—and a substantial part of this traffic moved over the latter road. (Sproule, 238.) Mr. Schumacher estimated the amount at 45 per cent (168). This proportion was materially reduced after the merger, so that the Denver & Rio Grande Railroad felt it necessary to build the Western Pacific Railway to the coast. (Schumacher, 151; Sproule, 238.)

This change in routing was accomplished without the closing of any gateway, and by the efforts of the Southern Pacific Company (Munroe, 377; Sproule, 238), and its active and persistent solicitation. (Munroe, 377.)

Mr. Kruttschnitt testified that the effort of those in charge of the Central Pacific Railroad at all times between 1883 and 1901 was to induce as much traffic as possible to travel, not over the Union Pacific, but over the Sunset line (825, 810, 767, 739), irrespective

of whether the freight originated on Southern Pacific tracks or on Central Pacific tracks (825).

Representatives of eastern connecting railroads testified that it is customary for connecting railroads to assist each other to get traffic over their lines, but that the Central Pacific Railroad and the Southern Pacific Company gave no assistance to the connections of the Central Pacific Railroad to get any traffic over the Central Pacific Railroad which could be influenced to go over the Southern Pacific Railroad (De Friest, 305; Johnson, 311; Hall, 312), and that the indifference of the Southern Pacific Company toward the Ogden gateway since the unmerging of the Union Pacific-Southern Pacific combination is as great as it was before the formation of that combination in 1901. (De Friest, 305.)

Mr. Sproule testified that as to all freight which can be obtained for the Southern Pacific Railroad the effort of the Southern Pacific Company is directed against the success of the efforts of the connecting railroads which seek to obtain freight to move over the Central Pacific Railroad, (189, 197, 213); that the Southern Pacific Company seeks to get for the Southern Pacific Railroad all the business between California and the Atlantic Seaboard which can be persuaded to that route (183); that it does not seek to get for the Central Pacific Railroad any of that business that can be controlled for the Southern Pacific Railroad (184, 185), except certain particular commodities which can not be carried advantageously over the southern route; that prior to 1901 the

Southern Pacific Company exerted this same effort as to the Central Freight Association territory (202); that their effort was to get the Oregon business to go via the Southern Pacific through El Paso (204); that it worked for its long haul (217, 255); that it was the practice before 1901 to watch the movement of traffic through Omaha and to follow up shippers to see whether they could be persuaded to send it over the Sunset Route (240); that the policy of the Southern Pacific Company since the dissolution in 1913 of the Southern Pacific-Union Pacific merger is the same as it was before the formation of that combination in 1901, (201).

This same practice of systematic and preconcerted discrimination against the Union Pacific Railroad in favor of the Southern Pacific Railroad has been continued for years by the Central Pacific Railroad under the control of the Southern Pacific Company. (Spence, 1155.)

Mr. Spence testified that if it could not secure the business for the southern route its effort was to secure it via Ogden, and if it could secure the business via the southern route to and from the territory described, either through New Orleans or, prior to 1901, through the Texas gateways (1126), its effort was not to have it go by Ogden, and that the effort was systematic and preconcerted (1155, 1156). Mr. Connor and Mr. Munroe testified that this systematic and preconcerted discrimination against the Union Pacific Railroad continued up to the so-called merger in 1901. (Connor, 338; Munroe, 375.) Mr. Munroe

testified that this discrimination is still kept up and that a large volume of traffic is diverted. (Munroe, 376.)

If not artificially diverted, substantially all freight moved by the Southern Pacific Company between points in California north of Tehachapi Pass, and in Nevada and southwestern Oregon on the west, and all points east of the Missouri River at or north of the latitude of St. Louis, Mo., on the east, would be moved over the Union Pacific Railroad as the shortest, quickest, and best route.

If the Union Pacific-Central Pacific line was operated as one continuous line the natural effort would be to move all the freight possible over that line. (Richardson, 826; Kruttschnitt, 638; Spence, 1163.)

The evidence is overwhelming that ever since the organization of the Southern Pacific Company the effort of that company and of the Central Pacific Railroad, under the control exercised by the Southern Pacific Company, has been to keep as much freight as possible from going over the Union Pacific Railroad and to divert it to the Sunset Route, except that freight which experience has shown could not be so diverted.

The efforts of the Southern Pacific Company have been directed against the efforts of other railroads, even when they were seeking to secure freight to be moved over the Central Pacific Railroad (Connor 338, 339, 330; Spence, 204.)

The attempt at diversion has been very successful. The amount diverted has been enormous.

(Chambers, 942; Spence, 1028, 1119; Schumacher, 149, 174.)

The diversion has been due to these efforts. If the Southern Pacific Company had exerted itself in favor of the Ogden route, the Sunset route could never have made the progress that it made in getting business. (Spence, 1119.)

The discrimination has gone to the point of giving lower rates by the Sunset route and of furnishing special equipment which the Southern Pacific Company would not permit to be used over the Ogden route.

The discrimination has been extended to freight originated or delivered on the Central Pacific Railroad, and even as far east as Nevada. Unquestionably, if the Central Pacific Railroad and the Union Pacific Railroad were operating "so far as the public and Government are concerned, as one continuous line," Nevada freight originating on the Central Pacific Railroad and destined to New York or Boston would not move through Sacramento, El Paso, and New Orleans. Under control of the Southern Pacific Company this is the course which it did in fact take. The arrangement of the wool rates practically necessitated this route until 1909. The Ogden gateway was closed to virtually all of this traffic until 1909 and 1910.

It is the effort, regardless of its success, which constitutes the discrimination. These practices of systematic and preconcerted discrimination

against the Union Pacific Railroad continued at least from 1887 to the time of the so-called merger in 1901.

This practice was more marked than the discrimination of the Southern Pacific Company in favor of the Union Pacific Railroad against the Denver & Rio Grande Railroad at Ogden, because this last consisted of a choice of two railroads both extending eastward from the common point at Ogden, whereas the choice of the Central Pacific Railroad, discriminating against the Union Pacific Railroad, has been of a most circuitous and broken rail and water route. This less marked discrimination against the Denver & Rio Grande Railroad was what the court said in *United States* v. *Union Pacific Railroad*, 226 U. S. 92, was contrary to the requirements of the Pacific Railroad acts, if practiced against the Union Pacific Railroad.

THIRD ASSIGNMENT.

The payment by the Central Pacific Railroad Company of its debt to the United States and the transactions leading thereto did not exempt the Southern Pacific Company from the provisions of the Sherman Anti-trust Act of July 2, 1890, or permit that company to make a combination which otherwise would be one in restraint of trade, because (1) the settlement commission did not seek any guaranty by the Southern Pacific Company, (2) the contract of settlement did not require such a guaranty, (3) the United States received only payment of a debt already due and adequately secured, (4) neither the commission,

nor the President, nor the Congress purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all other corporations, and (5) such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress.

The defendants claim that the conduct of the United States in connection with receiving payment of this debt amounted to an estoppel which would prevent the United States from maintaining this petition.

The court below apparently did not approve of this contention. The opinion contains no reference to any estoppel. It apparently attaches importance to the action of the settlement commission, but in just what way is not made apparent. The court describes the settlement proceedings in detail, and then refers to "the persuasive force of an administrative construction of statutes" (2333). From what follows it is not apparent whether the court refers to an administrative construction of the antitrust act, or to an administrative construction of the act under which the commission was appointed. It says:

> We do not say the commission was authorized to violate or to sanction the violation of the Act of Congress, but the adjustment they effected necessarily involved the question of its pertinence to the question in hand (2334).

With this comment the effect of these proceedings upon the case at bar is dropped.

On the other hand, Judge Carland, in his opinion, says:

> The settlement by the United States of the debt of the Central Pacific in 1899 can not be held to estop the United States from insisting at this time that the combination between the two roads is in violation of the antitrust act. It is not remarkable that in the proceedings resulting in the settlement so far as they appear of record the antitrust law was not referred to, as little attention was given in those days to the antitrust law of July 2, 1890 (2337).

It seems demonstrable that Judge Carland is right with respect to this defense: (1) The action taken by the Congress, the President, and the settlement commission, showed no intention to construe the antitrust act, or to grant any special indulgence or advance pardon to the Southern Pacific Company to violate it. (2) The commission, the President, and the Congress had no power under the Constitution to grant such an indulgence or advance pardon. (3) A construction put by these functionaries of the Government, either upon the antitrust act or upon the act under which the commission was appointed would not be binding upon this court or a guide to it. (4) No estoppel runs against the United States when it is seeklng as here to enforce the criminal law.

FIRST.

THE ACTION TAKEN BY THE CONGRESS, THE PRESIDENT, AND THE SETTLEMENT COMMISSION, SHOWED NO INTENTION TO CONSTRUE THE ANTITRUST ACT, OR TO GRANT ANY SPECIAL INDULGENCE OR ADVANCE PARDON TO THE SOUTHERN PACIFIC COMPANY TO VIOLATE IT.

The evidence shows that the action of Congress, the President, and the commission was directed toward securing for the United States as a creditor the payment of a debt due to it, and their action was confined to this.

(1) *No intention is disclosed to construe the antitrust act.*

There is not a word in the record that suggests any administrative construction of the antitrust act in this transaction. On the contrary, Attorney General Griggs, who was a member of the commission, and who conducted the negotiations for settlement, says:

> Unquestionably it is true that the legality of the transaction, so far as it might be affected by the Sherman antitrust act, was never considered or discussed with the commission or with the representatives of the Southern Pacific Railroad (1008).

It would be impossible to work out of this conduct any administrative interpretation of the Sherman antitrust act in the light of this testimony introduced by the defendants.

(2) *There was no intention to grant any special indulgence or advance pardon to the Southern Pacific Company to violate the Sherman Antitrust Act.*

The history of the settlement and of the investigations and legislation which led up to it shows that none of the officers of the United States were engaged in making a trade with the Southern Pacific Company by which they agreed either expressly or by implication that if the Southern Pacific Company would guarantee the debt of the Central Pacific Railroad the Southern Pacific Company might be permitted to have a special privilege to restrain trade in violation of the antitrust act.

None of these officers made any agreement, express or implied, that the Southern Pacific Company might buy the stock of the Central Pacific Railroad Company or retain control of that company.

The relation of the Central Pacific Railroad Company as a debtor to the United States for the amount of the principal and interest of bonds of the United States advanced to the Central Pacific Railroad Company under the act of 1864 received the attention of Congress during a number of years before a settlement of the debt was made.

In 1887 the Pacific Railway Commission was appointed and held lengthy hearings concerning this railroad and the other bond-aided railroads. Majority and minority reports were made to the President under date of December 1, 1887. The President submitted these reports to Congress on Janu-

ary 17, 1888. (Senate Executive Documents, first session Fiftieth Congress, 1887–88, vols. 2–6; D. Ex. 31, p. 1921.)

These reports dealt with the financial condition of the company, the methods of construction and operation and financing which had produced these conditions, and the methods to be adopted to secure payment of the debt.

They stated that the Central Pacific Railroad Company was no longer operating its railroad, but had leased it to the Southern Pacific Company and was dependent upon this lease for its income.

In February, 1890, a report was made to the Senate from the Committee on the President's Message. (D. Ex. 32; p. 1921, Senate Reports, first session Fifty-first Congress, 1889–90, vol. 1, report 893, p. 25.) This report said:

> It is manifest from the terms of their lease that any bill for the adjustment and settlement of the debt of the Central Pacific Company must, in order to be efficacious, contain provisions by which this lease and the obligations of the Southern Pacific Company under it shall become security to the United States, and that the consent of the Southern Pacific Company shall be obtained to such provisions of the bill.

The legislation recommended did not pass. Congress then was considering the prevention of restraints of trade and later in the year the Sherman Antitrust Act was enacted.

On July 16, 1894, a petition was filed, under the direction of the Attorney General, on behalf of the United States against the Southern Pacific Company and others in the Circuit Court of the United States for the Southern District of California (D. Ex. 96, p. 2279), alleging a restraint of trade. On August 4, 1894, before the entry of any appearance for the defendants and at the direction of the Attorney General, a decree was entered dismissing this petition without prejudice. (D. Ex. 96, p. 2293.) This was at the time of the great railroad strike.

On July 21, 1894, a report was made to the House of Representatives from the Committee on Pacific Railroads (Fifty-third Congress, second session, House of Representatives Report No. 1290) concerning the financial condition of the Central Pacific Railroad Company and the other bond-aided railroads. (D. Ex. 34, p. 1921.)

In January, 1895, a report was made to the Senate from the Committee on Pacific Railroads on the financial condition of the Central Pacific Railroad Company and the other bond-aided railroads. (D. Ex. 33, p. 1921, Fifty-third Congress, third session, Senate Report No. 830, p. 93.)

On April 14, 1896, a bill was introduced in the House of Representatives providing for a refunding mortgage. (D. Ex. 38, p. 1939.) The proposed legislation failed to pass. This apparently ended the attempts at legislation to require any guarantee from the Southern Pacific Company, or to recognize it, in the settlement.

On April 17, 1896, a bill was introduced in the Senate for the amendment of the original Pacific Railroad laws by the addition of provisions enabling the Central Pacific Railroad Company to issue a refunding mortgage and bonds. (D. Ex. 36, p. 1922; Fifty-fourth Congress, first session, Senate bill 2894.)

On May 1, 1896, the Committee on Pacific Railroads submitted to the Senate a report (D. Ex. 35, p. 1922, Fifty-fourth Congress, first session, Senate Report No. 778) on the same subject. This report stated that—

> The committee has, however, made in the case of the Central Pacific Railroad Company the special requirement that the lease of its properties to the Southern Pacific Company should be so modified as to provide as follows:
>
> First. That the Southern Pacific Company shall guarantee the payment, during the continuance of the lease, of the amounts payable under the bill.
>
> Second. That in case the Southern Pacific Company should consent to the termination of the lease before the maturity of all amounts payable under the bill it shall guarantee the payment of all such amounts thereafter to mature. * * *
>
> It is believed that the bill, in requiring payments of interest at the rate of 2 per cent per annum and payments on account of principal due from each company at the rate of $365,000 per annum (or $1,000 a day) for

> the first ten years, at the rate of $550,000 per annum (or upward of $1,500 a day) for the second ten years, and at the rate of $750,000 per annum (or upward of $2,000 a day) for the remainder of the term, will practically exhaust the reasonably anticipated earnings of the properties involved; that the security reserved to the United States under the bill has been carefully and adequately guarded, and that the provisions of the bill for payment of fixed sums at fixed dates, secured as therein prescribed, will practically insure the payment of the whole debt to the Government.

On April 25, 1896, a report was submitted to the House of Representatives from the Committee on Pacific Railroads. (D. Ex. 37, p. 1938; Fifty-fourth Congress, first session, House of Representatives Report No. 1497.) This was to somewhat the same effect as the report submitted in the Senate. The minority report stated that—

> All the California delegation, with one exception it is said, are a unit against any refunding which will vest both these roads, the Southern Pacific and the Central Pacific, in the same control; that is, in the present control. They contend that the case is within the principle that has given rise to the prohibition in the constitution and laws of so many States to any leasing or consolidation of parallel or competing lines, and within the principle of the antitrust law of Congress, and that in this instance the monopoly has exerted the oppression, for the preven-

tion of which the laws referred to were enacted. They suggest that either the Government, without actually operating the Central Pacific, maintain it as a sort of a railroad turnpike for the use of any or all other companies, or that the road be sold to purchasers of the Union Pacific or any other company that will afford competition with the Southern Pacific.

On January 8, 1897, Mr. Huntington, at request, sent to the chairman of the Railroad Committee of the Senate copies of the lease of the Central Pacific Railroad Company to the Southern Pacific Company dated February 17, 1885, and the modifications of January 1, 1888, December 7, 1893, and March 22, 1894, and these were presented in the Senate.

On January 13, 1897, a bill was introduced in the Senate (D. Ex. 44, p. 1963, Fifty-fourth Congress, second session, Senate bill 3522) to provide for the creation of a commission to be composed of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, to settle the indebtedness of the bond-aided Pacific railroads.

On March 16, 1897, a bill was introduced in the Senate from the Committee on Pacific Railroads which provided for the creation of such a commission to arrange for a settlement of the debt to the Government growing out of the issue of bonds in aid of the Central Pacific Railroad and bond-aided railroads. (D. Ex. 40, p. 1957.)

On April 8, 1897, a report to accompany this bill was submitted to the Senate from the Committee on Pacific Railroads. (D. Ex. 39, p. 1956, Fifty-fifth Congress, first session, Senate Report No. 20.)

On July 12, 1897, a bill was introduced in the House of Representatives (D. Ex. 45, p. 1965, Fifty-fifth Congress, first session, House of Representatives bill 3750) to provide for the creation of such a commission.

On July 7, 1898, an act was passed (30 Stat., chap. 571, p. 659), which provided:

> That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: *Provided*, That any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding.
>
> That said commission shall not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: *And*

also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semi-annually, and with such security as to said commission may seem expedient: *Provided, however*, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest or any part thereof then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: *Provided further*, That unless the settlement herein authorized be perfected within one year after the passage of this act the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

Upon the enactment of this provision the Central Pacific Railroad Company was confronted with the alternative of making a settlement upon these

terms or of being subjected to foreclosure proceedings.

Its financial condition was such that it could reasonably expect to pay an adequate interest on refunding bonds to cover its debts. (Speyer, 1196, 1198.)

At some time between the passage of this act and February 1, 1899, Mr. Speyer presented orally to the President, or to the commission, a scheme for reorganization (1188). This scheme was that the Central Pacific Railroad Company, or a successor corporation, should issue a refunding mortgage to take the place of the existing mortgages and liens. In order to preserve the market values of the outstanding stock and bonds, it was necessary to find some way of getting rid of the Government debt. (Speyer, 1202.) It seemed to Mr. Speyer necessary to get some security which would be satisfactory to all the security holders, including the Government (1202). A guaranty of the refunding bonds by the Southern Pacific Company, or some other substantial guarantor, would increase the market value of these bonds (1202). He did not make any effort to interest any other railroad or other corporation (1200, 1182). In order to get the first-mortgage bondholders to take the new securities diluted by the increase in the amount of the mortgage required to provide for the Government lien, it was necessary to have the new bonds abundantly secured. In Mr. Speyer's judgment, in order to get

those bondholders to take the new bonds, it was necessary to have the guaranty of the Southern Pacific Company or some other adequate guaranty (1208). He presented the scheme to the President, originally in the form in which it finally went through (1203, 1205).

No one representing the Government requested the guaranty of the Southern Pacific Company, or requested the Southern Pacific Company to acquire the stock of the Central Pacific Railroad Company, or informed any representatives of either of the railroads that any breach of the Sherman antitrust law would be condoned. This was not discussed with the commission or considered by it (Griggs, 1008).

Mr. Griggs, then Attorney General, and Mr. Gage, then Secretary of the Treasury, testified that they understood that the bonds were to be guaranteed by the Southern Pacific Company. (Griggs, 999; Gage, 1011.) This guaranty was not of sufficient importance so that it was included in the agreement which was executed. The United States as a creditor had no interest in the question of who might acquire the capital stock of the Central Pacific Railroad Company or any other junior security, and it does not appear that any terms with respect to this were requested or even considered by anyone representing the United States.

Not only did the contract between the Central Pacific Railroad Company and the United States contain no agreement with the Southern Pacific Company to guarantee the new bonds of the Central

Pacific Railroad Company, but also no such guaranty was ever requested by the United States. It was introduced into the reorganization plan by the reorganizers because they believed it would facilitate their securing the cooperation of the first mortgage bondholders in the plan. Mr. Speyer says:

> (1208) In order to get the security holders who held some fifty-seven million dollars of bonds to take the new bonds, it was necessary to have those new bonds abundantly secured. In our judgment, in order to get those fifty-seven million dollars of bondholders to take these new refunding bonds it was necessary to have the guaranty of the Southern Pacific Company, or some other adequate guaranty; the reason being that the mortgage which they had was very considerably increased in amount by the bonds that went to the Government. If it had just been the question of extending the lien which they had, that probably could have been done without a guaranty; but the fact that the existing lien was so much increased in the bonds given to the Government, necessitated the guaranty of the Southern Pacific in order to make them good.
>
> That is, one of the effects of this arrangement was, if it is not too flippant a use of language, to let the Government down from the second story onto the ground floor, so far as security was concerned. And as to whether that had the effect of greatly increasing the securities with which the old security holders would have to pro rate in case of deficient assets.

> If it were not the Government, people would call it diluting them. I would say the security was diluted; but as long as the Government gets it, I do not use that word.
>
> I do not recall whether any of the three commissioners, the President, or Mr. Root suggested or required any substantial change in the plan which I originally proposed. I rather think that they did not, and that the plan, in its essential features, as I first presented it, was the one which went through (1208).

The agreement (*supra*, p. 52, answer, Exhibit A, p. 47) in substance provided that the United States would extend the time for payment of the amount due it in return for being given as security 59 per cent of the entire first mortgage in place of its existing second mortgage, and that $11,762,543.12 of the debt should be taken up by Speyer & Co. within one month.

This obligation of Speyer & Co. was in itself valuable. (Speyer, 1204.)

No agreement was made concerning the stock of the Central Pacific Railroad Company.

On February 20, 1899, the commissioners reported to the House of Representatives the settlement which had been made (P. Ex. 77, p. 1674), and submitted a copy of the agreement of February 1, 1899. This report described the terms of the agreement. Neither the agreement nor the report contained any reference to the fact that the refunding bonds were to be guaranteed by the Southern Pa-

cific Company, or to the fact that the Southern Pacific Company was to acquire the stock of the Central Pacific Railroad Company. The reorganization plan was never submitted to Congress.

March 3, 1899, Congress passed an act to authorize the Secretary of the Treasury to dispose of the notes or other evidence touching the indebtedness of the Central Pacific Railroad Company to the United States (30 Stat. c. 427, p. 1245), and this act said nothing whatever about any guaranty of the Southern Pacific Company, or about the stock of the Central Pacific Railroad Company.

On August 1, 1899, the refunding mortgages were executed by the Central Pacific Railway Company. (D. Ex. 27, p. 1788; D. Ex. 28, p. 1829.) They contained no reference to the fact that the refunding bonds were to be guaranteed by the Southern Pacific Company or that the Southern Pacific Company was to acquire the stock of the Central Pacific Railroad Company.

On the same day the Southern Pacific Company executed agreements subordinating the lease of the Central Pacific Railroad to the refunding mortgages. (D. Ex. 48, p. 1983; D. Ex. 49, p. 1987.)

On October 7, 1899, the bonds were delivered to the United States Treasury Department, and contained engraved on the back the guaranty of the Southern Pacific Company.

On November 30, 1899, the Attorney General, in his regular report to Congress, described the settlement which had been made, and in the course of the

description stated that the notes taken in settlement were guaranteed by the Southern Pacific Railroad Company (D. Ex. 53, p. 2240). In fact, they were not guaranteed by this company, but by the Southern Pacific Company.

The Commercial and Financial Chronicle during 1899 contained a number of references to the refunding scheme. (D. Ex. 95, p. 2258.)

The new notes held by the United States and secured by the refunding bonds were subsequently paid by the Central Pacific Railroad Company. (Van Deventer, 912–915.) The Southern Pacific Company acted as banker or disbursing agent (Van Deventer, 912), but the moneys used for the payment were derived from the sale of the new bonds of the Central Pacific Railway Company or from other of its resources, so that on the clearing of the accounts nothing went to the United States from the Southern Pacific Company in payment of this debt. (Van Deventer, 912, 913.) Debts due from the United States to the Southern Pacific Company were applied in part payment of this debt of the Central Pacific Railroad Company, and a corresponding amount was paid in accounting by the Central Pacific Railroad Company to the Southern Pacific Company. (Defendants' Answer, Exhibit "C", p. 73; Van Deventer, 904.)

On March 1, 1911, the Central Pacific Railway Company issued additional bonds for what is known as the "European loan," and they were guaranteed by the Southern Pacific Company.

There are bonds outstanding under these several mortgages.

Mr. Kruttschnitt has testified to the loss which would result to the Southern Pacific Company if these loans were called and the Southern Pacific Company was obliged to refund them. The figures are based on the assumption that the call was made in a high-money market, and that the Central Pacific Railroad Company as the principal debtor was unable to meet the obligation, or to reimburse the Southern Pacific Company. In making this computation he made no investigation to determine whether or not the assets of the Central Pacific Railway Company were adequate to meet all the bonds (822–824, 734, 755).

Mr. Kruttschnitt has testified that about 30 to 33 per cent of the dividends of the Southern Pacific stockholders come from the earnings of the Central Pacific Railroad (734). The dividends of the Central Pacific Railway Company since 1903 have been substantial and amount up to June 30, 1914, in the aggregate to $66,390,135, of which $22,015,630 was paid during the fiscal year ending June 30, 1914 (P. Ex. 41, p. 1638, 811, 1217).

It is difficult to imagine that Congress intended to grant the power of indulgence to the commission appointed to secure the settlement of the debt of the Central Pacific Railroad.

None of the legislation attempted from 1890 to 1899 provided for the purchase of the Central Pacific Railroad by the Southern Pacific Company.

The bills which sanctioned the lease were opposed on the ground that it tended to suppress competition and these bills failed to pass.

No legislation was passed at any time authorizing the commission to permit the Southern Pacific Company to acquire any of the stock of the Central Pacific Railroad Company.

At the time of the appointment of the commission the United States bore a dual relation to the Central Pacific Railroad Company—that of sovereign defender of the public welfare and that of creditor.

> *United States* v. *Union Pacific R. R. Co.*, 98 U. S. 569, 613.
> *Sinking Fund Cases*, 99 U. S. 700, 724, 751.

It was in its capacity as creditor that it appointed this commission as its business agent. There is nothing in the act of appointment which suggests any intention to confer upon the commission power either to enforce the criminal laws of the United States or to grant a pardon for the breach of them or indulgences to continue breaches of them in the future. The commission was given full power within its limited scope. The express limitations indicate that the scope was not broad. It was "to settle the indebtedness," "upon such terms and in such manner as may be agreed upon;" not to accept a less sum than the amount of the principal and interest of the debt; not to extend time at any rate of interest less than 3 per cent per annum, and to take

"such security as to said commission may seem expedient"; and not to postpone payment more than ten years, the extended payments to be in equal semiannual installments, all to become due on the default in payment of any, the President to proceed to foreclose the existing lien if a settlement was not perfected within one year. On the reading of the whole section it is apparent that the full power of the commission was to exercise a very limited power of attorney. It is not conceivable that Congress intended by this section to vest in this commission the extraordinary power to pardon breaches of the Sherman Antitrust Act and to grant indulgences to the Southern Pacific Company to continue such breaches for the long future.

The action of the commission has gained no additional force in support of the alleged defense of estoppel by any subsequent adoption. The United States Treasury received the notes of the Central Pacific Railroad Company for the payment of its debt and also received as collateral thereto the bonds of that company. The guaranty of these bonds by the Southern Pacific Company was not required by the written agreement negotiated by the commission. The report of the commission to Congress (P. Ex. 77, p. 1674) made no reference to this guaranty or to the fact that the Southern Pacific Company was to acquire the stock of the Central Pacific Railroad Company. It does not appear that Congress, or any member of it, ever knew or knows to-day that this stock was so acquired. The guaranty

if valid rendered the Southern Pacific Company responsible for the payment of the bonds. It was a matter of indifference thereafter whether the United States received payment from the Central Pacific Railroad Company or for account of that company from the Southern Pacific Company, or from other sources. On March 3, 1901, Congress determined that allowances should be made to the Southern Pacific Company and to the Central Pacific Railroad Company on certain pending claims and directed that these allowances should be made by crediting the amount upon the bonds of the Central Pacific Railroad Company, for the payment of which both companies had purported to obligate themselves. This indicated no intention on the part of Congress to approve the unreported acquisition of the stock in the Central Pacific Railroad Company by the Southern Pacific Company or to grant to these companies an indulgence not enjoyed by other citizens to continue to offend against the Sherman Antitrust Act. It indicated no intention to ratify any *ultra vires* act of the commission, if there was any such act. It is not to be assumed that the commission, the President, or the Congress, departed from the equal enforcement of the laws for the sake of getting payment of the private debt of an offender. There is nothing in the evidence to suggest that there has been any such departure.

Neither the act creating the commission nor the contract between the Central Pacific Railroad company and the United States negotiated by the com-

mission contains any reference to the Southern Pacific Company, and that company is not a party to the contract.

When the commission made the agreement of settlement in 1899, the Central Pacific Railroad Company owed the United States for principal and interest $58,812,715.48 and owed on other bonds $59,453,000, a total of $118,265,715.48. (Exhibit A of answer, p. 47.) The average annual net earnings of the company for the preceding 10½ years were $5,582,937.70, or a little more than 4½ per cent annually upon the bonded debt. There was nothing to indicate that the Central Pacific Railroad could not continue to earn at this rate. On the contrary, if it was independently owned, so that those in charge of its operation would not be actuated by the desire to divert as much freight as possible to the Southern Pacific Railroad, there was good reason to believe that its earnings could be increased materially. The United States as creditor could safely permit the debt to rest as it was on payment of the interest annually or could foreclose the lien by a sale at which the United States or others could purchase.

The agreement of settlement provided for the payment of the debt within 10 years with interest at the low rate of 3 per cent. By the agreement it was the United States, and not the Central Pacific Railroad Company, that was making concessions.

The improvement in the security consisted in changing the lien from a second mortgage to 59 per

cent of the first mortgage, and the immediate reduction of the debt to the extent of $11,762,543.12.

Apparently the advantages to the Southern Pacific Company of securing this extension of time and of preventing a sale to a competitor were so great that the Southern Pacific Company decided to undertake a large contingent obligation in order to secure the carrying out of the refunding scheme. It was no part of the agreement between the United States and the Central Pacific Railroad Company that the Southern Pacific Company should do this. The United States gave to the Central Pacific Railroad Company an option to substitute a new security or to suffer a foreclosure. The scheme was proposed in its entirety by the bankers (Speyer, 1201–1203), and was not requested by the commission.

It is evident that if immunity from prosecution for breach of the Sherman Antitrust Act had been a part of the agreement with the United States the contract of settlement would have provided for it. No such provisions are contained in the agreement, and the subject was not discussed. (Griggs, 1008.) No such assurances were given.

Neither the Southern Pacific Company nor the Central Pacific Railroad Company has paid to the United States anything for any such immunity. No more has been paid to the United States than the amount of the debt due to it or than the value of the security which it surrendered to purchasers of the bonds, whose money made the payment.

The large sums paid by the Southern Pacific Company for the stock of the Central Pacific Railroad Company were not expended at the bidding of the United States, and very likely they do not exceed the sums which other corporations have paid to perfect combinations in unreasonable restraint of trade. One of the evils attendant upon such combinations is that they pave the way for obtaining such returns from the dependent public that they invite initial investments far in excess of the intrinsic values obtained.

Doubtless some of these investments are made in reliance upon the chance that the indifference of public prosecutors or their ignorance of the existence of the combinations will furnish a practical immunity.

The making of the excessive payments therefore furnishes no evidence that the Southern Pacific Company was lured into a false sense of security by any action on the part of the commission.

On the contrary, the commission merely received the proposal of the bankers, uninvited, and made a contract for the settlement of the debt of the Central Pacific Railroad Company upon the terms laid down in the act under which the commission was appointed, and this contract did not authorize or purport to authorize the Southern Pacific Company to acquire the stock of the Central Pacific Railroad Company or to engage in operating the Central Pacific Railroad as lessee. The Southern Pacific Company was not a party to the agreement.

The right, denied by the law to all other corporations, to make combinations in restraint of trade is too important to be inferred when the contracting parties did not express it in their agreement. In the particular case the subject was not even discussed. (Griggs, 1008.)

Taking all the evidence at its best for the defendants, no officer of the United States agreed that the Southern Pacific Company might acquire the stock of the Central Pacific Railroad Company.

SECOND.

THE COMMISSION, THE PRESIDENT, AND THE CONGRESS HAD NO POWER UNDER THE CONSTITUTION TO GRANT SUCH AN INDULGENCE OR ADVANCE PARDON.

Of course, if the acquisition by the Southern Pacific Company of the stock of the Central Pacific Railroad Company, or any company owning the Central Pacific Railroad in February, 1899, did not constitute a restraint of trade, then the case for the petitioner fails and it becomes unnecessary to consider the effect of the action of the settlement commission, or the President, or the Congress in connection therewith.

If the acquisition of this stock by the Southern Pacific Company was a restraint of trade, then the action of the commission, the President, and the Congress, in order to have any effect in the case, must be taken in some way to be a grant of a special

privilege to the Southern Pacific Company to restrain trade and to continue to do so. This would mean that this company was granted the right to do that which would constitute a misdemeanor if done by anybody else. This would be a pardon in advance of the commission of the offense and an indulgence to commit crime.

It can require no very extended argument to establish that under a constitutional form of government such as ours no such special privilege can be granted by any department of the Government, executive, legislative, or judicial, or all acting together.

The pardoning power under article 2, section 2, of the Constitution, has its limitations, deducible to some extent from the general principles of that power as exercised by the King of England prior to the Revolution.

Ex parte Wells, 18 How. 307, 312.

The King himself could not pardon an offense before it was committed.

4 Hawkins' P. C. Bk., 2 ch. 37, sec. 28.

5 Chitty's Ed. of Burns' Justice, 2.

Although he might remit for the past, he could not in advance pardon the continuance of obstructions to the highway and the nuisance created by failing to remove them.

Coke's Third Institute, 237.

5 Chitty's Ed. of Burns' Justice, 2.

The continuing obstruction of a highway by physical means is analogous to the obstruction of a highway by the more refined method of destroying the competition which would make for its betterment.

The President himself could not grant an indulgence to continue to offend against the prohibitions of the Sherman Antitrust Act, even upon condition that the grantee should pay its debts to the United States.

THIRD.

A CONSTRUCTION PUT BY THESE FUNCTIONARIES OF THE GOVERNMENT, EITHER UPON THE ANTITRUST ACT, OR UPON THE ACT UNDER WHICH THE COMMISSION WAS APPOINTED, WOULD NOT BE BINDING UPON THIS COURT OR A GUIDE TO IT.

In the majority opinion Judge Hook says:

> The rule as to the persuasive force of an administrative construction of statutes is a familiar one and is frequently applied (2333).

This must refer to the familiar rule that this court in construing for the first time a statute under which the administrative departments of the Government have acted for a long time will take into consideration the unvarying construction previously put upon the statute by these administrative departments.

With the utmost respect it is submitted that this rule has no application whatever to the case at bar. The court must be referring either to the

construction of the act of July 7, 1898 (30 Stat. c. 571, pp. 571, 659), under which the commission was appointed, or to the antitrust act of July 2, 1890.

If the reference is to the act of July 7, 1898, there never has been any attempt by the commission to construe that act; the transaction was a single one; the act was plain on its face; it permitted the commission to negotiate a settlement of a single debt upon definite terms; and it contained no language susceptible of construction by anyone as permitting a restraint of trade. The action of the commission was confined to a single transaction. There has been no repetition of the same or similar action under the statute, and the case is devoid of any resemblance whatever to those announcing or applying the rule of administrative construction of acts of Congress.

If the reference of the court is to the antitrust act of July 2, 1890, the rule of administrative construction has no application, because that was not an act for administrative action or construction in any case. It was a general criminal law to be construed by the courts only. Before 1899 the Supreme Court had already announced the construction of that act in no uncertain terms, and in several cases, as applicable to interstate railroads, and as preventing restraints of trade. If the decision of the court below rests upon the action of the settlement commission in any degree, Judge Carland appears well justified in his statement in dissent that it is difficult to determine from the opinion of the majority exactly upon what ground or grounds the bill in this case is dismissed.

The Supreme Court of the United States in construing the antitrust act is not in need of assistance from the commission on the settlement of the Pacific Railroad debts, nor can such action be said to have "persuasive force," particularly when the guiding member of that commission, the Attorney General, testifies (Griggs, 1008) that the construction of that act was not considered.

In *United States* v. *Reading Company*, 226 Fed. 229 (D. C. Pa.), it was urged upon the court that one of the combinations complained of was made pursuant to a purchase at a receiver's sale ordered and approved by the court, but the court said:

> We do not know whether the act of 1890 was considered in its relation to the plan, and we approach the considerations of the present charges uninfluenced by the former action of the court (266).

In this respect certainly no greater effect should be given to the contract of the commission when it appears expressly that no such consideration was given by it to the act of 1890.

It has been held repeatedly that sanction from as important a governmental body as the legislature of any of the States does not save a combination which is in fact in restraint of trade, or assist to establish that it is not such a restraint.

> *United States* v. *Reading Co.*, 226 U. S. 324, 352, 357.
>
> *United States* v. *Union Pacific Railroad Co.*, 226 U. S. 61, 86.

Northern Securities Co. v. *United States*, 193 U. S. 197, 332.

United States v. *Delaware & Hudson Co.*, 213 U. S. 366.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 693 *semble*.

Philadelphia, Baltimore & Washington R. R. Co. v. *Schubert*, 224 U. S. 603.

U. S. v. *Reading Co.*, 226 Fed. 229, 266, *dictum*.

FOURTH.

NO ESTOPPEL RUNS AGAINST THE UNITED STATES WHEN IT IS SEEKING, AS HERE, TO ENFORCE THE CRIMINAL LAW.

An estoppel by conduct, if effective in such a case as this, produces the same result as an express grant of exemption from prosecution. To have an estoppel by the conduct of any officers of the Government, it is necessary to show that those officers were in a position where they could have made an express grant of such an exemption.

No officer of the United States has power to grant such an exemption.

It is a settled principle that no estoppel runs against the sovereign in the enforcement of the criminal laws.

Boyd v. *Alabama*, 94 U. S. 645.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 690.

United States v. *Willamette V. & C. M.*

Wagon-Road Co., 54 Fed. (C. C. Oregon), 807, 811, *dictum.*

Queen v. *Delme*, 10 Modern 199.

10 *Vin. Ab. Estoppel*, p. 433, *semble.*

Sheffield v. *Ratcliffe*, Hobart, p. 334a (1 Am. Ed. p. 501).

Bigelow on Estoppel, 6th Ed., p. 371.

Everest & Strode on Estoppel, 2d Ed., p. 8,

2 *Herman on Estoppel*, p. 1263.

Union Bridge Co. v. *United States*, 204 U.S. 364, 400, *semble.*

The United States when enforcing the criminal laws is proceeding for the common good, and not for a personal profit. No one in dealing with it should rely upon any supposition that it will disqualify itself to pursue the enforcement of the laws for the common good. If the agents of the sovereign attempt to do so it is apparent to everyone that they are exceeding their authority.

The sovereign in enforcing the criminal laws stands in a position entirely different from that occupied when acting contractually or in relation to its property. In these relations it may be bound by the acts of its agents within the scope of their authority. Instances of this kind are numerous. Many of them have been cited for the defendants. The decisions cited for them in this topic come all within this class.

Where a grant of property is dependent upon the character of the property and the determination of its character is to be made by a public official,

his determination in good faith, although erroneous, may be binding upon the United States.

Kihlberg v. *United States*, 97 U. S. 398.
Lytle v. *Arkansas*, 9 How. 314, 332.
United States v. *Bonness*, 125 Fed. (C. C. A. 8th) 485.
Michigan v. *Jackson*, 69 Fed. 116, 123.
Hough v. *Buchanan*, 27 Fed. 328.
United States v. *Willamette V. & C. M. Wagon-Road Co.*, 54 Fed. (C. C. Oregon) 807.
Cahn v. *Barnes*, 5 Fed. 326.
State v. *Milk*, 11 Fed. 389, 397, *dictum.*
Pengra v. *Munz*, 29 Fed. 830.
United States v. *McLaughlin*, 30 Fed. 147.
United States v. *Missouri R. R. Co.*, 37 Fed. 68.

The United States as a contractor may be bound by the decision of an engineer or arbitrator, rendered pursuant to prior agreement.

United States v. *Gleason*, 175 U. S. 588.
Judson v. *United States*, 120 Fed. (C. C. A. 2d) 637, 643.

The United States when dealing in commercial paper may be bound to some extent by the rules governing private individuals.

Cooke v. *United States*, 91 U. S. 389, 398, *dictum.*

But even this principle has only a limited application.

Hunter v. *United States*, 5 Peters, 173.
Carr v. *United States*, 98 U. S. 433, *semble.*

None of these principles has any bearing upon the liability of the United States to an estoppel against the enforcement of the criminal laws. When so acting it is its prerogative not to be bound by estoppel, and public policy demands that it should be free therefrom.

An express agreement by the authorized prosecuting officer of the Government, made in accordance with the long-established practice, not to prosecute an accomplice who testifies fairly against the chief alleged criminal does not prevent a subsequent prosecution of the accomplice.

Whiskey Cases, 99 U. S. 594.

Even the receipt and retention of money by the state, paid for the exercise of a right claimed under an unconstitutional statute, does not estop the state to set up the unconstitutionality of the statute when enforcing the criminal law, and this notwithstanding the fact that the statute had previously been enforced under a decision of the court of last resort.

Boyd v. *Alabama*, 94 U. S. 645.

The commission appointed to secure a settlement of the debt of the Central Pacific Railroad Company could grant no more rights by estoppel by its conduct than it could by express donation. The principle is the same as that which prevents the United States from being deprived indirectly, by adverse user, of lands donated for public uses only.

A railroad which is the recipient of such a grant can not be deprived of the lands by such adverse posses-

sion as ordinarily would produce that result, because this would accomplish by indirection that which the railroad could not do directly by sale.

Northern Pacific Railway Co. v. *Townsend*, 190 U. S. 267.

The fact that unreasonable restraints of competition by a company have been ignored, and that investments have been made in reliance thereon is not sufficient to raise a presumption that they are approved or to justify the Government in failing to enforce the laws and is no defense to such enforcement.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 690, 691.

The decision in the Union Pacific case is an illustration of this. The combination in that case was made in 1901. The petition for its dissolution was not filed for seven years, and the final decree was not entered for 12 years. The Government of the United States must have known of this combination at about the time it was made, for, so to speak, all the world knew of it.

FOURTH ASSIGNMENT.

The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but on the contrary were always two distinct railroads; (1) separately projected by separate and unrelated groups of men; (2) separately aided by gifts of public lands and loans of the public credit under acts of Congress to promote these two separate competitive systems of railroad between the Atlantic Ocean and the

Central United States on the east, and the Pacific Ocean on the west, and enacted prior to 1867 and before any person interested in the one railroad was interested in the other; (3) separately owned by separate corporations organized by separate groups of men; (4) separately constructed at the expense of and for these separate corporations; (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads; (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1865 and 1899; and (7) separately stock owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and in Europe.

In the majority opinion Judge Hook says:

> Except as to corporate title and bookkeeping there were generally the aspects of a single enterprise. In this respect the conditions were not unlike those which have characterized the growth of many of the important railroad systems of the country in which, for necessity or convenience of financing and in some instances because of local laws, separate corporate organizations were utilized (2329).

n the minority opinion Judge Carland says:

> I do not think the evidence shows that the Central Pacific and the Southern Pacific were created originally and have always continued

to be one system. They have always been and are now operated as separate systems (2337).

The majority in analogizing the development of these two railroads through separate corporate organizations to the development of other railroads through the instrumentality of subsidiary corporations, overlook entirely a very vital distinction. The subsidiary corporations through which a single enterprise is carried out are the property of one holding company or of one group of men, so that the subsidiary company is merely an instrumentality which does not affect the ultimate beneficial property interests. In such a case there is no basis for competition between the different subsidiary companies. In the case of these two railroads, the Central Pacific and the Southern Pacific, there never was, prior to February, 1899, either in form or substance, any such identity of interest.

These two railroads did not have the village of Ogden, Utah, and the city of New Orleans as their terminals, with the cities of California and the Pacific coast as way stations. Neither was a branch or offshoot. Each was a main trunk line (Kruttschnitt, 774) constructed to be operated as a part of separate transcontinental railroads.

FIRST.

THE TWO RAILROADS WERE SEPARATELY PROJECTED BY SEPARATE AND UNRELATED GROUPS OF MEN.

The leading promoters of the Central Pacific Railroad were Leland Stanford, Collis P. Huntington,

Mark Hopkins, and Charles Crocker. Until after the main line of this railroad was completed in May, 1869, they had no interest whatever in the Southern Pacific Railroad Company. Until 1870 the latter company had no officers, directors, or stockholders, in common with the Central Pacific Railroad Company, or its promoters. (P. Ex. 14, p. 1318; P. Ex. 15, p. 1342; P. Ex. 16, p. 1414.)

The two projects had no relation to each other.

The Central Pacific Railroad Company was incorporated in 1861 to construct and operate a railroad from the Sacramento River to the eastern boundary of California. Its actual construction was begun and continued under the acts of Congress of 1862 and 1864 to provide for a railroad from San Francisco Bay to the Missouri River at Omaha and Council Bluffs.

As early as 1865 the project of two other transcontinental railroads which would be competitive with the Central Pacific Railroad had been publicly discussed, and the thirty-fifth and the thirty-second or thirty-third parallels of latitude had been considered for locations for these. (*Southern Pacific Company* v. *Horton*, 32 Fed. 457, 460.) It was to carry out these projects and not as feeder or ally of the Central Pacific Railroad that the Southern Pacific Railroad was organized.

Pursuant to this project, the Southern Pacific Railroad Company was incorporated December 2, 1865, by a group of men having no relation to the

Central Pacific Railroad, and for the purpose of constructing, owning, and maintaining a railroad from San Francisco Bay to San Diego, and thence to the eastern boundary of California, there to connect with a contemplated railroad from the eastern boundary of California to the Mississippi River. (P. Ex. 13, p. 1284.) The projected route to San Diego was through the Santa Clara and Pajaro Valleys, which would take it through Gilroy and Tres Pinos and thence by way of a pass through the coast range (*California* v. *Central Pacific Railroad Co.*, 127 U.S. 1 at 42), and to Alcalde near what is now Goshen (Hood 456; Kruttschnitt 799–800; D. Ex. 23, p. 1709), and down the San Joaquin Valley, and thence to San Diego, which was approximately at the thirty-second parallel of latitude.

Within eight months, on July 27, 1866 (14 Stat., c. 278, p. 292), Congress (P. Ex. 6, p. 1251) empowered the Atlantic & Pacific Railroad Company to construct a railroad near the thirty-fifth parallel of latitude from Springfield, Mo., to the Colorado River, and thence to the Pacific Ocean, and authorized the Southern Pacific Railroad to connect with the Atlantic & Pacific Railroad near the eastern boundary of California. This act gave to both railroads a subsidy of public lands.

On November 30, 1866, the Southern Pacific Railroad Company accepted this act (P. Ex. 75; p. 1672).

On January 3, 1867, the Southern Pacific Railroad Company filed a map in the Department of the Interior showing a route turning eastward before reaching San Diego and meeting the proposed line

of the Atlantic & Pacific Railroad at The Needles at the thirty-fifth parallel of latitude at the Colorado River.

On June 25, 1868 (15 Stat., c. 77, p. 79), Congress passed an act (P. Ex. 7, p. 1262) requiring the Southern Pacific Railroad Company to file with the Secretary of the Interior reports of its officers and stockholders and of other matters similar to those required of the Union Pacific Railroad Company and of the Central Pacific Railroad Company.

On April 4, 1870, the California Legislature passed an act (p. 883) to permit the Southern Pacific Railroad Company to change its route so that it need not pass through the town of San Diego before turning eastward.

On June 28, 1870, Congress passed a joint resolution to permit this change of route (16 Stat. 382).

All this had occurred before the Central Pacific Railroad Company, or any of its stockholders, directors, officers, or promotors had taken any part in the Southern Pacific Railroad project.

In 1870 there were these two separate well-developed projects—one for a railroad from San Francisco Bay to the Missouri River through the central part of the United States, approximately along the forty-first parallel of latitude, and the other for a railroad from San Francisco via the southern and southeastern part of the State, and thence to the Mississippi River, approximately along either the thirty-second or the thirty-fifth parallels of latitude.

Leland Stanford, the president of the Central Pacific Railroad Company, testified to the Pacific Railroad Commission in 1887:

> The construction of the Southern Pacific road was provided for by act of Congress, and its management went into the hands of people other than those who controlled the Central Pacific. It soon became apparent that the best interests of the Central Pacific required that the control of the Southern Pacific should be in the same hands, and that that road should work in perfect harmony with the Central Pacific. It became a necessity therefore that we should control the Southern Pacific, and when opportunity offered we availed ourselves of it and purchased the controlling interest in that road. Since then the roads have worked in entire harmony, with all the advantages of a pooling arrangement, and the advantages resulting from our system of leases (99).
>
> We early saw that if that line of railroad was completed—if it crossed the Sierra Nevada Mountains—all the valleys of the State would be open to it and it would be a very serious competitor of the Central Pacific. So we tried to control it, and we have succeeded in controlling it; and the consequence is that it has never been operated to the prejudice of the Central Pacific (99).
>
> Neither we ourselves, individually, nor any of the Central Pacific people are in any manner responsible for the building of the Southern Pacific line. I mean to say they had

> nothing to do with procuring the Government aid for the Southern Pacific. They had no interest in the Southern Pacific until long afterwards (100).

Mr. Huntington, the vice president of the Central Pacific Railroad, testified to a committee of Congress that the Southern Pacific was not built as a feeder to the Central Pacific Railroad (101).

The Southern Pacific Railroad was built without a year of interruption as a through trunk line (Kruttschnitt, 806, 774), designed primarily for transcontinental traffic. (D. Ex. 23, pp. 1717, 1719.)

The extension of the Southern Pacific Railroad south of the Tehachapi Mountains would not be undertaken as a feeder in any sense to the Central Pacific. (Chambers, 962.)

In September, 1874, Mr. Huntington as president of the Southern Pacific Railroad Company, made a report to the stockholders. It is significant that in this report nothing is said about any relation between this company and the Central Pacific Railroad Company, or its operations. On the contrary, the report is filled with statements indicating that the project was for a through transcontinental line. For instance:

> It is therefore safe to say that the company will receive, upon the completion of the road, the full amount of land covered by the grant (the Government land subsidy). The land agent of the company, after a careful examination and classification of the lands, places their value, at a low estimate, at $30,000,000;

and it is with much satisfaction that you can contemplate the ownership of this immense property, especially when you consider that its value to yourselves and the country has nearly all been created by your own energy and perseverance. (1718.)

As your board thought that it would be for the best interest of the company to build that portion of your road from Los Angeles via San Gorgonio to Fort Yuma, on the Colorado River, to secure the trade of Arizona and Sonora, before completing the road from the Tulare Valley to Los Angeles, they have built 50 miles on that division during the past year. But as this division is not connected with that portion of the road running out from San Francisco, and as it can hardly be said as yet to have been fully opened for general business, the earnings have been light and are not included in the preceding statement. (1716.)

The object of the new corporation was to construct, equip, maintain, and operate a line of railroad from the city of San Francisco to a point on the Colorado River, in the southeastern portion of the State, a distance of, say, six hundred and twenty-nine miles, with a branch from Tehachapi Pass to the Colorado River, at or near Fort Yuma, a distance of, say, three hundred and fifty-three miles. (1717.)

The general location of the Southern Pacific Railroad is peculiarly favorable for developing and controlling a large and remunerative miscellaneous business, for it occupies almost

> the only passes through which a railroad extending from San Francisco to the Colorado River can be built, and must therefore command the entire business between San Francisco and the southern portion of California, as well as northern Mexico and Arizona. At the Colorado River it will meet the Texas & Pacific Railroad, and when this connection is made it will give your road a direct communication by rail with all the southern and southwestern portions of the United States and the shortest line from San Francisco to New Orleans and the country bordering the Gulf of Mexico, over which you may look for much of the surplus grain from the southern half of California to pass on its way to the European market. (1719.)

April 3, 1871, a few months after Messrs. Stanford, Huntington, Hopkins, and Crocker had become interested in the Southern Pacific Railroad Company, that company accepted the Texas Pacific act (P. Ex. 76, p. 1673) and filed in the Department of the Interior its map showing the continuation of its route from Tehachapi Pass by way of Los Angeles, to its junction with the proposed Texas & Pacific Railroad at the Colorado River near Yuma, Ariz., approximately at the thirty-second parallel of latitude. (*U. S.* v. *Southern Pacific Railroad Co.*, 146 U. S. 570, 572, 574; *Southern Pacific Railroad Co.* v. *U. S.* 189 U. S. 447, 449.)

This completed the defining of the intention of the Southern Pacific Railroad Company to connect with

both of the through routes, that via the thirty-fifth parallel of latitude and that via the thirty-second parallel of latitude, in accordance with the project for which it had been organized in 1865.

In 1869 the building of this southern line had progressed to Gilroy. In 1871 it was advanced to Pajaro. (1640; D. Ex. 23, p. 1709.) In 1872 it was continued from Goshen, at the end of the Central Pacific Railroad, and because it was necessary to build 20 miles immediately in order to save the franchise. (Strobridge, 402, 414.)

The stretch from Tres Pinos to Alcade has never been completed. Instead, the coast line has been built from Gilroy (Sproule, 223) down the coast to Los Angeles and thence to the thirty-second parallel of latitude, as originally projected at Yuma, and this now forms the chief freight route of the Southern Pacific Railroad from San Francisco Bay to El Paso, Galveston, and New Orleans. (Sproule, 223.)

From 1865, when the Southern Pacific Railroad Company was incorporated, to 1883, when it had a line near the thirty-second parallel of latitude and connected through to New Orleans, and had also its junction with the Atlantic & Pacific Railroad at The Needles, at the thirty-fifth parallel of latitude, on the Colorado River, there was not a year of cessation in the building of this as a through southern line (Kruttschnitt, 806), substantially as projected in 1865.

The separate character of the project as a through line was never lost.

SECOND.

THE TWO RAILROADS WERE SEPARATELY AIDED BY GIFTS OF PUBLIC LANDS AND LOANS OF THE PUBLIC CREDIT UNDER ACTS OF CONGRESS TO PROMOTE THESE TWO SEPARATE, COMPETITIVE SYSTEMS OF RAILROAD BETWEEN THE ATLANTIC OCEAN AND THE CENTRAL UNITED STATES ON THE EAST, AND THE PACIFIC OCEAN ON THE WEST, AND ENACTED PRIOR TO 1867, AND BEFORE ANY PERSON INTERESTED IN THE ONE RAILROAD WAS INTERESTED IN THE OTHER.

July 1, 1862 (P. Ex. 2, p. 1223), Congress by an act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," incorporated the Union Pacific Railroad Company, to construct a railroad near the forty-first parallel of latitude from the Missouri River (1231, 1233) to the western boundary of Nevada (1229) to connect with the railroad to be built by the Central Pacific Railroad Company of California (1229, 1230).

This act authorized the Central Pacific Railroad Company to construct a railroad from the Pacific coast near San Francisco to the eastern boundary of California, and thence to a connection with the Union Pacific Railroad (1231).

This act granted to these two railroads a subsidy of 10 square miles of public lands for each linear mile of railroad, and also bonds of the United States to the amount of $16,000 for each ordinary mile,

$32,000 for each mile in the less mountainous country, and $48,000 for each mile in the mountainous country (1232).

October 7, 1862, the Central Pacific Railroad Company accepted this act. (P. Ex. 59, p. 1655.) June 23, 1863, the Union Pacific Railroad Company accepted it. (P. Ex. 60, p. 1658.)

July 2, 1864, Congress amended this act (P. Ex. 3, p. 1236), to permit these railroads to issue first-mortgage bonds to an amount equal to the bonds to be advanced by the United States and also doubled the land subsidy.

In this way Congress provided an enormous subsidy for a railroad from San Francisco Bay to the Missouri River near the forty-first parallel of latitude.

On July 27, 1866 (P. Ex. 6, p. 1251), Congress passed the act referred to in the preceding section, giving the Southern Pacific Railroad Company a subsidy for another railroad to run in competition with the first, from San Francisco Bay southerly to the thirty-fifth parallel of latitude, and thence to the Mississippi River.

Under the first subsidy the Central Pacific Railroad was constructed. Under the second subsidy the Southern Pacific Railroad was constructed.

The first was constructed before anyone had a common interest in the two. The subsidy was granted to the second, it had been accepted by the second, and the construction had proceeded as far

as Gilroy before anyone interested in the first railroad had any interest in the second.

The manifest purpose of Congress was to promote two competitive lines from the Pacific Ocean to the eastern part of the country. The importance of this competition in the judgment of Congress is shown again in its action in 1871.

On March 3, 1871 (16 Stat., c. 122, p. 573), Congress passed an act (P. Ex. 9, p. 1265) to incorporate the Texas-Pacific Railroad Company to construct a railroad near the thirty-second parallel of latitude from Marshall, Tex., to El Paso, and thence to the Pacific Ocean at San Diego, and to connect on the east with the New Orleans, Baton Rouge & Vicksburg Railroad, and to authorize the Southern Pacific Railroad Company to extend a line from Tehachapi Pass in California to a junction with this Texas-Pacific Railroad at the Colorado River at the eastern boundary of California. Tehachapi was between Bakersfield and Mojave on the projected line of the Southern Pacific Railroad to its junction with the Atlantic & Pacific Railroad at The Needles on the Colorado River.

This act gave both the Texas-Pacific Railroad Company and the Southern Pacific Railroad Company a subsidy of public lands (1268, 1273).

This act provided that the Texas-Pacific Railroad might consolidate with other roads, but it expressly provided that "no consolidation shall be

with any competing through line of railroads to the Pacific Ocean" (1267).

The defendants presented below the somewhat startling argument that as this limitation upon consolidation was confined to the Texas-Pacific Railroad it manifested an intention on the part of Congress to permit the Southern Pacific Railroad to consolidate even with a competing line. Certainly this is not an inference naturally to be drawn. No reason is assigned for permitting to the Southern Pacific Railroad the privilege of consolidating with competing lines when this was denied to other Government-aided railroads. The reason why the Texas-Pacific Railroad is the only one mentioned in the proviso is obvious. Unless it is expressly sanctioned by general or special legislation, railroads do not have the right to consolidate with each other. No right to consolidate was granted to the Southern Pacific Railroad Company in the Texas-Pacific Railroad act, and therefore there was no grant which required a qualification. The act made an express grant to the Texas-Pacific Railroad Company of the right to consolidate, and out of abundant caution the proviso was added that this consolidation should not be with a competing line.

The rights to consolidate given by the acts of 1862 and 1864 to the Union Pacific Railroad Company and the Central Pacific Railroad Company were extended only to the corporations named in the act. In the Atlantic & Pacific act of 1866 no right to consolidate was given. Therefore it was not

necessary to include in these two acts an express proviso prohibiting consolidation with competing lines. It was only when the more general right of consolidation was given to the Texas-Pacific Railroad Company that it became necessary out of abundant caution to insert the proviso.

It is not likely that Congress intended to leave open the way for the competing Central Pacific and Southern Pacific Railroads to combine with each other while expressly prohibiting the other competing line to do so.

Out of this legislation have developed (1) the Central Pacific-Union Pacific over the original line; (2) the Atchison, Topeka & Santa Fe Railroad in part over the line of the Atlantic & Pacific Railroad; and (3) the Southern Pacific Railroad with its extensions through Texas and Louisiana.

It is believed that the history of railroad legislation in this country would be searched in vain to find a more emphatic illustration of railroads separately projected, created, and aided by the Government to be separate and competing lines.

THIRD.

THESE TWO RAILROADS WERE SEPARATELY OWNED BY SEPARATE CORPORATIONS ORGANIZED BY SEPARATE GROUPS OF MEN.

The Central Pacific Railroad was owned from its inception until 1899 by the Central Pacific Railroad Company, and a part by the Western Pacific Railroad

Company, which was consolidated into the Central Pacific Railroad Company in 1870 (1280).

The Southern Pacific Railroad has been owned since its inception by the Southern Pacific Railroad Company. It had a separate corporate organization in California, Arizona, New Mexico, Texas, and Louisana. These, however, were in the true sense subsidiary companies in that there was an identity of interest and ownership throughout the line from San Francisco Bay to New Orleans, and thence by steamer to New York.

Nobody connected with the Central Pacific Railroad Company had anything to do with the organization of the Southern Pacific Railroad Company. (P. Ex. 14, p. 1316; P. Ex. 15, p. 1342; P. Ex. 16, p. 1414; First Section, *supra*, p. 198.)

FOURTH.

THESE TWO RAILROADS WERE SEPARATELY CONSTRUCTED AT THE EXPENSE OF AND FOR THESE SEPARATE CORPORATIONS.

The defendants have introduced testimony to show that the construction men who worked on one of these roads also work on the other. Instead of showing a unity of action, it shows just the reverse.

The Central Pacific Railroad was constructed for a short distance by Charles Crocker & Co. With this exception, it was constructed by the Contract & Finance Co., which was a construction company, all the stock in which was owned by Stanford, Hunting-

ton, Hopkins, and Crocker in equal parts. By this device, if there were any construction profits, they did not become subject to the bonded or other debts of the railroad company, or inure to the benefit of the other stockholders in the company. This was a source of complaint from these other stockholders. (Pratt, 524; Pacific Railway Commission Report, p. 73; D. Ex. 31, p. 1921.)

These four men, Stanford, Huntington, Hopkins, and Crocker, were stockholders but by no means the only stockholders in the Central Pacific Railroad Company during the course of its construction (*infra*, p. 221).

The construction was carried out for the Central Pacific Railroad Company and at its expense. The funds for this were provided by first mortgage bonds and the Government subsidy. These together provided $32,000 for every ordinary mile, $64,000 for every mile in the less mountainous country, and $96,000 for every mile in the mountainous country.

The main line of the Central Pacific Railroad was completed in 1869. (P. Ex. 42, p. 1638.) The branch south to Goshen was completed in 1872 (1639). The branch north to Redding was completed the same year (1639). This branch was completed from Redding to the northern boundary of California in 1887 (1638). The line from Hazen, Nev., to Mojave, Calif., was constructed between 1881 and 1910 (1639). The line in Oregon was constructed between 1906 and 1912 (1639.) The branch from Derby Junction, Nev.,

northerly to Susanville was constructed between 1904 and 1913 (1639).

The Southern Pacific Railroad had been constructed from California as far south as Gilroy on March 13, 1869 (1640). Stanford, Huntington, Hopkins, and Crocker first became connected with this company in 1870. This railroad was completed to the Colorado River opposite Yuma, Ariz., September 13, 1877 (1640), and to El Paso, Tex., in April, 1881 (1640). The Galveston, Harrisburg & San Antonio Railroad from El Paso to connections with railroads to New Orleans was completed in 1883. The line from Mojave to a junction with the Atlantic & Pacific Railroad at The Needles, at the eastern boundary of California on the Colorado River, was completed July 1, 1883. The line north to Tehama, Calif., was completed in 1882 (1641). That from the southern boundary of Oregon to Portland was completed in 1887 (1644).

From 1870 the Southern Pacific Railroad was constructed by construction companies, the stock in which was owned by Stanford, Huntington, Hopkins, and Crocker. At first the construction was carried out by the same Contract & Finance Co. that had built the Central Pacific Railroad. It was succeeded at some time by the Pacific Improvement Co., and later by the Western Development Co. and by the Southern Development Co. (Hood, 433, 445, 447, 454; Strobridge, 399, 403, 404, 405, 411, 412; Martin, 420, 423; Pratt, 483, 504, 510, 522; Foulds, 588; Redington, 553; Hopkins, 684.)

The construction work was done for each railroad corporation and at its expense.

The construction engineers of the two railroad companies were transferred from one company to the other as the construction was being performed for the one company or the other. (Hood 434, 437, 448.) The two railroad corporations and the several construction corporations were kept distinct. The Central Pacific Railroad Company acted as the banker or clearing house for the construction companies. (Strobridge, 406; Hopkins, 652, 684; Martin, 423; Hood, 436, 449.)

Mr. Redington was in the paymaster's office of the Central Pacific Railroad. He would figure out the pay rolls of the railroad and would obtain from the construction company the pay rolls of the construction company. He would take the pay car and pay the railroad company's men to the end of the line, and would pay the construction company's men beyond the line. He would on his return determine how much he had paid for each company, and would obtain from the construction company a draft for the amount which he had paid for the construction company in return for the money of the railroad company which had been used in making payment. (Redington 554.)

The majority opinion below says:

> Except as to corporate title and bookkeeping there were generally the aspects of a single enterprise (2329).

This comment leaves entirely out of consideration the fact that this bookkeeping affected the actual moneys in the treasury of the one corporation or the other, and the cost of the railroads to the one corporation and the other. The charges were not for convenience in determining for accounting purposes what was the cost of any particular line of railroad. They were charges which were met from the separate funds of two separate corporations. The different stockholders (*infra*, p. 221) in the two corporations were the ones whose financial interests were affected by the way in which the expense of this work was borne.

These charges were kept separate for the express purpose of preventing one corporation from paying for any part of the expense of the construction of the railroad of the other corporation.

The fact that a single construction company built the whole or parts of the two railroads, and that that construction company was owned by directors and large stockholders in these two railroad companies is of no importance in determining whether or not the railroads were separately constructed for and at the expense of the separate corporations. The evidence introduced by the defendants shows that they were so separately constructed and that care was taken to see that no part of the expense of construction of one of them was charged to the other.

FIFTH.

THESE TWO RAILROADS WERE SEPARATELY LEASED BY THESE SEPARATE CORPORATIONS UNDER SEPARATE LEASES, MAKING THE AMOUNT OF RENT DEPENDENT ON THE NET EARNINGS OF THE SEPARATE RAILROADS.

Until April 1, 1885, the Central Pacific Railroad Company operated its own railroad as an owner.

Until March 1, 1885, the Southern Pacific Railroad Company operated the so-called northern division of its railroad, a part of what is now its coast line, as an owner. The Central Pacific Railroad Company never had anything to do with this northern division. (Richardson, 639; Donaldson, 628; Hopkins, 651; Martin, 429; Hood, 456; Redington, 564; Railton, 569, 577; Klink, 600, 609; Englebright, 472.)

From 1872, until March 1, 1885, the Southern Pacific Railroad Company, pending the completion of its through line, temporarily (D. Ex. 23, p. 1712) leased its lines of railroad south of Goshen to the Central Pacific Railroad Company, and the latter company operated them as a lessee. (Pratt, 523; Hopkins, 685; D. Ex. 24, p. 1758–1768.) There was nothing to differentiate the operation by the Central Pacific Railroad Company under these leases from the operation of a leased line by any company. These operations were conducted in the manner customary with leased railroads. (Pratt, 523; Hopkins, 685; Redington, 565; Foulds, 586; Klink, 612.)

The portions of railroad belonging to the Southern Pacific Railroad Company were advertised by the Central Pacific Railroad Company as "leased lines." (D. Ex. 8, p. 1677; D. Ex. 9, p. 1678; D. Ex. 10, p. 1679; D. Ex. 14, p. 1681; D. Ex. 16, p. 1682; D. Ex. 18, p. 1682; D. Ex. 19, p. 1683.) Trains were run without interruption over the lines of the operating company and over the lines of which it was lessee. (Breckenfeld, 458; Englebright, 466; Foulds, 582; Donaldson, 626; Luckett, 533; Railton, 575; Horsburgh, 630.) Rolling stock and supplies were made and repaired in the shops of the lessee company. (Martin, 421; Luckett, 533, 534; Railton, 576.) They were charged to the particular company for which they were provided. (Slater, 528, 530; Luckett, 536, 537; Klink, 606.) The rolling stock was used on the lines owned and on the lines leased. (Luckett, 534, 535; Johnson, 548; Railton, 577; Englebright, 467; Pratt, 506; Sheedy, 593; Kruttschnitt 710.) The operations were separately accounted for and settled between the two companies. (Luckett, 537; Redington, 565; Slater, 529; Klink, 603, 605, 606, 607, 610, 611, 612; Hopkins, 685.)

Messrs. Stanford, Huntington, Hopkins, and Crocker were officials of the Central Pacific Railroad Company from the beginning, and were officials of the Southern Pacific Railroad Company from 1870, and were recognized by all the subordinate officials as having authority. (Railton, 578; Foulds, 585; Horsburgh, 632.) When action by the stockholders

or directors as a board was necessary, it was taken. (Foulds, 586.)

In 1885, on the formation of the Southern Pacific Company, the Central Pacific Railroad Company made one lease of its railroad to the Southern Pacific Company, and the Southern Pacific Railroad Company made another lease of its railroad to the Southern Pacific Company.

These two leases were made on different dates. They were for terms beginning on different dates. The covenants and conditions of the two leases were different. (Klink, 610; Breckenfeld, 461; Englebright, 473; Pratt, 491.)

The lease from the Southern Pacific Railroad Company to the Southern Pacific Company was of lesser importance, because at this time the Southern Pacific Company owned all the stock in the Southern Pacific Railroad Company. The Southern Pacific Company owned none of the stock in the Central Pacific Railroad Company before 1899. This distinction was the reason for the separate lease of the Central Pacific Railroad. (Hopkins, 688.)

The lease of the Central Pacific Railroad required the Southern Pacific Company to pay a rental of $1,200,000 per year, and in addition the net earnings of the Central Pacific Railroad not exceeding $2,400,000 per year. Evidently, this provision of the lease required the Southern Pacific Company to operate the Central Pacific Railroad in such a manner as to yield as large a net income as possible for the

benefit of the Central Pacific Railroad Company and its stockholders. If the lease had been valid and its legal requirements complied with the Southern Pacific Company would have been obliged, in operating under it, to compete against the Southern Pacific Railroad so as to earn and pay as much of this contingent rental as possible.

The lease contained elaborate provisions for accounting between the lessee and the lessor, and required the lessee to maintain the roadbed, equipment, and other property of the lessor's railroad. It required the lessee company to account for any use on any of its other lines, of any rolling stock or other personal property of the lessor in the manner customary with railroads using foreign equipment (18). It charged the lessor company with any of the lessee's equipment used on the lessor's lines.

Accounts in the manner required by the lease were kept between the two companies. Equipment built was lettered to designate to which company it belonged. All the operations were conducted in the manner which is common where one railroad is leased to another.

It does not appear that there was lacking any element of that degree of separation which is to be expected where two separately owned railroads are operated by one company as an owner of one of the railroads and as the lessee of the other. (Hopkins, 685.)

SIXTH.

THESE TWO CORPORATIONS WERE SEPARATELY CONTROLLED BY BOARDS OF DIRECTORS, SOME OF WHOM WERE ALWAYS DIVERSE, AND A MAJORITY OF WHOM WERE DIVERSE IN ALL BUT FIVE YEARS BETWEEN 1865 AND 1899.

There were no common directors of these two corporations before 1870. In every year from the beginning to 1899, with the exception of the years 1876 and 1883 to 1887, a majority of the directors of the two corporations were diverse. In 1895, 1896, and 1897 the two corporations had only one director in common. In 1894, 1898, and 1899 they had no directors in common. (P. Ex. 14, p. 1316; Pratt, 497, 498.)

SEVENTH.

THESE TWO CORPORATIONS WERE SEPARATELY STOCK-OWNED ALWAYS TO A SUBSTANTIAL EXTENT, AND FROM 1883 TO 1899 TO THE EXTENT OF MORE THAN A MAJORITY OF THE CAPITAL STOCK IN EACH CORPORATION HELD BY WIDELY SCATTERED STOCKHOLDERS IN THE UNITED STATES AND IN EUROPE.

These two railroads were separately owned, whether we look at the corporate entities only, or at the stockholders or bondholders behind them.

In the testimony and in the briefs for the defendants will be found constant references to these two railroads as a single system, which the petitioner is seeking to make for the first time into two rail-

roads. There is no foundation whatever for such a contention. These two railroads were the separate properties of two separate and unrelated corporations—the Central Pacific Railroad Company and the Southern Pacific Railroad Company. Neither railroad was the individual property of Stanford, Huntington, Hopkins, and Crocker.

The Central Pacific Railroad was not built with the money of these four men. It was built with the proceeds of the first mortgage bonds and of the bonds loaned to the Central Pacific Railroad Company by the United States. There is no reason to believe that the proceeds of these bonds were not sufficient to pay for the construction of the entire railroad. These two issues of bonds were for $32,000 per ordinary mile, $64,000 per less mountainous mile, and $96,000 per mountainous mile. There is nothing in the record to indicate that this was not an abundant amount to pay for the construction and equipment of the railroad, or that the four promoters made any financial contribution to it. On the contrary, apparently they received all the stock which they ever held in the company as a profit. (D. Ex. 31, p. 1921; Pacific Railway Commission Report, pp. 23, 88, 107, 75, 82, 69–82.) The estimated cost of reproduction of the 850 miles of bond-aided railroad was less than $51,000,000. (P. R. C. Rept., p. 23.)

When it was sought to hold the estate of Mr. Stanford for the obligations of the Central Pacific Railroad, the distinction between the corporation

and the four promoters was made very clear, and it was held that they did not assume the obligations of owners. (*U. S.* v. *Stanford*, 161 U. S. 412, 70 Fed. 346; 69 Fed. 25, 44.) They were not the owners of the railroad. They possessed no franchises. In 1899, in a very substantial sense, the holders of the first-mortgage bonds and the United States Government, to whom together there was owed approximately $117,000,000, were much more nearly the owners of this railroad than were Stanford, Huntington, Hopkins, and Crocker.

However, in the legal sense, and in the substantial sense, the owner of this railroad was the Central Pacific Railroad Company, and the stock in that company was always owned by different men from those who owned the stock in the Southern Pacific Railroad Company and in the Southern Pacific Company.

Stanford, Huntington, Hopkins, and Crocker acquired a controlling interest in the stock of the Southern Pacific Railroad Company in 1870. It does not appear when they acquired the balance of the stock in that company, but it was at some time before 1884. (P. Ex. 16, p. 1414.) In 1884 they owned all the stock in the Southern Pacific Railroad Company. (Hopkins, 672.)

In 1876 Mr. Huntington wrote that the Central Pacific "does not control the Southern Pacific" (101). In 1877 he wrote that "the Southern Pacific is a separate and distinct property" (101).

When the Southern Pacific Company was organized in 1884 these four interests acquired all the stock in that company, and that company acquired all the stock of the Southern Pacific Railroad Company, but none of the stock of the Central Pacific Railroad Company. (Klink, 621.) The Southern Pacific Company acquired no stock in the Central Pacific Company at any time before 1899.

The ownership of the stock in the Central Pacific Railroad Company may be considered conveniently in three separate periods—the first from 1861 to 1877, the second from 1877 to 1884, and the third from 1884 to 1899.

In the first period Stanford, Huntington, Hopkins, and Crocker probably owned, directly or indirectly, a large part of the stock. They never owned it all. In the second period they were disposing of their stock, and so holding a constantly diminishing amount. In the third period they held less than a majority of the stock, and the stock was widely distributed throughout the United States and in Europe.

The stock books of the Central Pacific Railroad Company are not in evidence because the defendants state that the books have been destroyed by fire. (Jackson, 648.)

From the reports filed by the Central Pacific Railroad Company with the Secretary of the Treasury and with the Secretary of the Interior (P. Ex. 15, pp. 1342–1413) and with the California Railroad Commission (871) it appears that the num-

ber of stockholders in this company in different years was as follows:

1863	271	1882	1,880
1864	296	1883	2,198
1865	319	1884	2,600
1866	312	1885	2,237
1867	325	1886	1,916
1868	330	1887	1,826
1869	340	1888	1,796
1870	190	1889. Number not shown.	
1871	140	1890	1,703
1872	130	1891	1,700
1873	85	1892	1,700
1874	90	1893	1,681
1875	90	1894	1,713
1876	90	1895	1,651
1877	89	1896	1,630
1878	82	1897	1,617
1879. No report found.		1898	1,427
1880	411	1899	480
1881	1,340	1900	16

Some of the counties of California were among these stockholders. (P. Ex. 15, pp. 1385, 1402.)

In certain years the reports showed the number of the stockholders resident in California and the par value of their holdings as follows (871):

Year.	Number of stockholders.	Holdings.
1877	62	$43,256,300
1878	56	43,260,000
1880	46	25,672,000
1881	48	18,272,800

During these years Mr. Huntington was a resident of New York, and Mr. Stanford, Mr. Crocker, and Mr. Hopkins and his representatives after his death were residents of California.

These four men, when they sold their stock in the Central Pacific Railroad Company, did so on joint account. (Davis 132, Schwerin 675.)

From these reports of the stock held in California it would appear that they disposed of over 60 per cent of their holdings between 1877 and 1881.

On March 12, 1878, Mr. Richard S. Spofford, on behalf of the Southern Pacific Railroad, said to the Committee on Railroads of the United States Senate (509):

> It is affirmed respecting those by whose labor and enterprise the Southern Pacific Railroad of California has been extended to its present terminus to Fort Yuma that but few of their number are connected, whether by ownership or otherwise, with the Central Pacific Company—so few, indeed, as to constitute but one-seventh in ownership and control of the former corporation, and this is an assertion which is capable, it would seem, of absolute authentication.

Mr. Pratt, who testified as to the authority exercised by Messrs. Stanford, Huntington, Hopkins, and Crocker, was ignorant as to the amount of stock which these men held (498, 502, 503, 510, 511, 514).

Mr. Sproule, president of the Southern Pacific Company, testified that he first joined the Central Pacific Railroad in 1882, and that he understood that considerable blocks of the stock were then held in Europe. (Sproule, 217.)

Mr. Speyer testified that Speyer & Co. had been the bankers for Mr. Huntington and that they sold a block of Central Pacific shares for him in Europe before 1884 (1191); that it was certainly during the dividend-paying period that the great bulk of the stock was sold in England and Holland (1196); that he thought the stock sold at about 50, and that it declined to 36 or something like that in 1883, and was selling considerably below the price at which it had been sold (1196); that the sales in England were, he should think, before 1884, possibly in 1881 (1194); that when he first came to the New York office of Speyer & Co. in 1883, 1884, or 1885 the stock of the Central Pacific Railroad Company was then held largely in England and Holland; that he could not remember whether a majority of the stock was so held (1191). The period of substantial dividends ended January 15, 1884. (P. Ex. 41, p. 1637.)

Frank H. Davis, who was in the service of Mr. Huntington from February 1, 1881, to July 1, 1901, testified that he opened a set of books for Mr. Huntington probably before 1885, and that he entered therein the different investments held by Mr. Huntington (131), and that he recalled that Mr. Huntington then did not have very many shares in the Central Pacific Railroad Company (133), and that he knew that there were stockholders in Europe in 1885 (132); that there had been before that time (132), and that stock was being sold in 1881 through brokers (132) for Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker.

Mr. Klink, clerk in the general auditor's office from 1883 to 1887 and in the office of the secretary and comptroller from 1887 to 1895 (598), testified that he was familiar with the number of stockholders in the company during these years; that the numbers in the reports corresponded with his recollection (613), and that by 1884 large quantities of the stock in the Central Pacific Railroad Company had become widely distributed in America and in Europe—England and on the Continent (664); that the greater part of the stock stood on the books in the names of office employees of the company, who were not themselves the real owners of the stock (614); that the stock was dealt with on the stock exchanges in 1883 (615); that the stock standing in 1884 in the names of Mr. Huntington, Mr. Stanford, Mr. Crocker, and the Hopkins estate was considerably less than a majority of the stock in the company (618); that it was his impression that the stock standing in the names of these four in 1884 was comparatively small (618); that the voting control remained in the hands of 15 or 20 of the employees of the company (618); that he had no knowledge whether stock in their names had been sold in Europe (619); and that the remaining stock held by upwards of 2,500 shareholders was in scattered holdings among the public (618).

Mr. Jackson, present assistant chief clerk in the president's office of the Southern Pacific Company (640), and in the office of the secretary of the Central Pacific Railroad Company in 1885, testified

that in 1885 Mr. Stanford, Mr. Huntington, Mr. Crocker, and the Hopkins estate each held between 30,000 and 35,000 shares of stock in the Central Pacific Railroad Company (645), i. e., about 6 per cent of the total; that the voting control was in the employees of the company (645), and that approximately 30 per cent of the stock in the company was held outside of the employees and Messrs. Stanford, Huntington, Crocker, and the Hopkins estate (647).

The time of transfer of any shares in this corporation is of little or no assistance in determining when the stock was actually sold, because the Central Pacific Railroad Company had adopted a form of certificate which made it unnecessary to have the stock transferred in order to obtain direct payment of dividends. The certificate had attached, numbered warrants for dividends payable to bearer, somewhat like the coupons attached to a bond. (P. Ex. 61, p. 1659; Hopkins, 615; Klink, 679.)

When stock was sold the delivery was made by certificates standing in the name of the employees, and a considerable part of the stock so delivered was not sent back for transfer for some length of time. (Davis, 133.) It is not unlikely that the purchasers were induced to refrain from transferring shares into their own names by the possibility that they would become liable for the debts of the company under the laws of California as stockholders of record. (Hopkins, 681.)

Mr. Timothy Hopkins, the adopted son of Mark Hopkins, and active in the management of his estate

from 1880 to 1889, testified that some of the stock standing in the name of the employees had been sold in this country and in Europe. (Hopkins, 680.)

In October, 1884, W. E. Brown, as secretary of conferences held between Mr. Stanford, Mr. Huntington, Mr. Crocker, and Mr. Timothy Hopkins, made up a statement of the Central Pacific stock on hand of the four interests, which showed the total number of shares as 157,535, out of the total capital then outstanding of 592,755 shares. (D. Ex. 21, p. 1695; Hopkins, 666, 677.)

Mr. Jackson fixed the amount in his recollection at between 30,000 and 35,000 shares apiece (645)—a total for the four of 140,000 shares.

Mr. Hopkins was unable to say whether or not in the spring of 1885 more than 50 per cent of the entire capital stock of the company was owned by outside stockholders who had not transferred the stock from the names of the employees into their own names (690).

In 1887 Mr. Stanford testified to the Pacific Railway Commission that he owned 32,000 shares, par $3,200,000 (i. e., 5 per cent) out of a total of about 670,000 shares, par $67,000,000 (98), and that he thought they succeeded in selling their shares in 1880 (98).

The decree of distribution of Mr. Stanford's estate, entered December 28, 1898, indicates that at his death in 1893 he held 32,973 shares (872).

The inventory of Mr. Crocker's estate of July 12, 1889, shows that he held 34,049 shares (871).

The most probable time for the sale of the stock would naturally be while it was a dividend-paying stock. (Speyer, 1196; Hopkins, 682.)

The company paid substantial dividends from 1873 to January 15, 1884, a total of more than 50 per cent (P. Ex. 41, p. 1637), and no dividends thereafter for four and a half years, after which time dividends of 1 and 2 per cent per year were paid until 1894, and none thereafter.

In 1896 Mr. Huntington testified before a committee of Congress that he had 4,000 or 5,000 shares (102); that no stockholder of the Central Pacific Railroad Company had exchanged his shares for stock in the Southern Pacific Company (102); that he always had 4,000 or 5,000 shares (103); that he did not know that he ever owned more than 6,000 shares (672); that the stock issued by the Central Pacific Railroad Company to the construction company, the Contract & Finance Co., did not come into their hands, but was sold to pay the debts of that company along in the seventies (104); that the stock sold as high as 85, he thought, between 1870 and 1880 (105); that they began to sell the shares when they began to appreciate (673); and that he did not believe that he had ever bought any shares of the stock.

There is no affirmative evidence that any substantial amount of stock in the Central Pacific Railroad Company was sold between 1884 and 1898. The attractive dividends ceased in 1884. It appears from a record of a stockholders' meet-

ing of the company held on April 12, 1898 (P. Ex. 17, p. 1418), that on that date 332,509 shares were held by the Central Pacific Railroad Shareholding Co. (Ltd.), and 32,973 shares by the Stanford family or estate. This last amount is about the same as that stated by Mr. Stanford as owned by him in 1887 (98), and about the same as the amount held by Mr. Crocker's estate in 1889 (871), and about the same as the amount which Mr. Jackson says that each of them held in the spring of 1885 (645).

The Central Pacific Railroad Shareholding Co. (Ltd.) was a British corporation, all the shareholders in which, shown on such papers as it filed with the registrar of joint-stock companies, were residents of England. (P. Ex. 21, p. 1468, 1472.)

The Commercial and Financial Chronicle for February 25, 1899, introduced in evidence by the defendants, stated that the London shareholders' committee represented a majority of the outstanding shares of the Central Pacific Railroad Company. (D. Ex. 95, p. 2267.)

In 1899, in executing the plan for the Southern Pacific Company to acquire the stock of the Central Pacific Railroad Company, the shareholders deposited their stock, for exchange, with Speyer & Co. in New York, Speyer Bros. in London, and Texeira de Mattos Bros. in Holland. Subsequently the Central Trust Co. in New York issued shares in the Southern Pacific Company against the certificates of deposit which had been issued by these three

depositaries. The records of the Central Trust Co. in New York show that the deposits in New York amounted to 370,154 shares (Coles, 265), and those in London to 219,941 shares (Coles, 266), and those in Holland to 79,910 shares (Coles, 266), a total of 670,005 shares.

The deposits were made in many instances by bankers or brokers, and not necessarily by the owners of the certificates. The certificates of deposit were many. Speyer & Co.'s record (P. Ex. 29, p. 1525) shows over 700 depositors, only a few of whom made a deposit of more than 1,000 shares. Of this few, only about five deposits exceeded 10,000 shares, and no one deposit exceeded 18,000 shares.

The strong probabilities are that there was always a substantial number of shareholders from the general public in the Central Pacific Railroad Company; that this number was greatly increased between 1877 and 1884 by sales which were made by Mr. Stanford, Mr. Huntington, Mr. Crocker, and the estate of Mr. Hopkins, so that by the beginning of 1885 these four interests held less than 35,000 shares each, making together less than 25 per cent of the shares then issued, and the remaining shares, 75 per cent were held by members of the public in this country and in England who had invested in the stock, and either had recorded their transfers or had left them registered in the names of the employees in the office of the company.

The reason for the different treatment of the stock of the Southern Pacific Railroad Company and that

of the Central Pacific Railroad Company when the Southern Pacific Company was organized was that substantially all of the stock in the Southern Pacific Railroad Company was held by the promotors of the Southern Pacific Company, whereas there were these many independent stockholders in the Central Pacific Railroad Company. (Hopkins, 688.)

The majority opinion below makes no reference to all this evidence, although there is no conflict in it.

It is indisputable that in 1885 a majority of the stock of the Central Pacific Railroad Company was owned by persons having no interest in the Southern Pacific Railroad Company or in the Southern Pacific Company.

FIFTH ASSIGNMENT.

The Southern Pacific Company on February 20, 1899, had no contractual, or property, or vested interest, direct or indirect, in the Central Pacific Railroad, because (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Company was void for lack of power in that company to make it, both under the laws of California and under the laws of the United States, the sovereignty from which it derived its franchises; (2) in 1893 this lease was canceled and the new purported lease then given was equally void for the same reason; and (3) the leasehold interest was subject to immediate destruction by the foreclosure of the underlying lien of the United States.

The combination of which the petition complains consists of the acquisition by the Southern Pacific

Company in 1899 of the stock of the Central Pacific Railroad Company, and its successor, the Central Pacific Railway Company. This was nine years after the enactment of the antitrust act of July 2, 1890. The defendants seek to defeat the petition by saying that, even if this combination was a restraint of trade, the defendant Southern Pacific Company had acquired a vested right to this restraint before the antitrust act was passed.

The only way, if at all, in which the Southern Pacific Company can have acquired any such vested right is through the lease made to it by the Central Pacific Railroad Company in 1885. If this lease was void, the Southern Pacific Company had no such vested right. It is of no consequence in this connection what was the cause of the invalidity of the lease; that is, whether it was lack of the proper votes of the stockholders in the lessor company, lack of corporate authority, lack of power under the State laws, or lack of power under the Federal laws.

With due respect it must be said that the majority opinion appears to overlook this entirely. In one place the majority say:

> We do not think the statute (the antitrust act of July 2, 1890) was intended to create competition by destroying a proprietary relation formed long before its passage (2331).

At another place they say:

> It is also argued that the leases mentioned were not authorized by the statutes of California. We need not consider that. We do not think the antitrust act picks up the laws of the States for original enforcement (2330).

It will be observed that the petitioner is not asking the court to pick up the laws of the State for original enforcement. The petitioner is not asking any enforcement of those laws. The petitioner says merely that the "proprietary relation," which the majority of the court below assumes, did not exist, because no property right, and indeed no contract right, had been granted by the Central Pacific Railroad Company to the Southern Pacific Company before 1890 (313).

Therefore it is necessary to determine whether or not the Southern Pacific Company had any lease of the Central Pacific Railroad. It certainly had no other property or contract right in that railroad.

Incidentally it should be noted that the majority of the court below, although referring to the argument that the lease was not authorized by the statutes of California, has entirely ignored the argument that the lease was unauthorized under the acts of Congress and also apart from statute.

FIRST.

THE PURPORTED LEASE OF FEBRUARY 7, 1885, BY THE CENTRAL PACIFIC RAILROAD COMPANY WAS VOID FOR LACK OF POWER IN THAT COMPANY TO MAKE IT, BOTH UNDER THE LAWS OF THE STATE OF CALIFORNIA AND UNDER THE LAWS OF THE UNITED STATES, THE SOVEREIGNTY FROM WHICH IT DERIVED ITS FRANCHISES.

It is well settled that a railroad corporation in the absence of express authority from the legislative body which granted its franchise can not make a lease of its railroad for a period of 99 years.

Central Transportation Co. v. *Pullman's Palace Car Co.*, 139 U. S. 24.

Union Pacific Railway Co. v. *Chicago, Rock Island & Pacific Railway Co.*, 163 U. S. 564, 581, *dictum.*

Oregon Railway Co. v. *Oregonian Railway Co.*, 130 U. S. 1.

Pittsburgh Railroad v. *Keokuk & Hamilton Bridge Co.*, 131 U. S. 371, *dictum.*

Green Bay & Minnesota Railroad Co. v. *Union Steamboat Co.*, 107 U. S. 98, *dictum.*

Pennsylvania Railroad Co. v. *St. Louis Railroad*, 118 U. S. 290.

Branch v. *Jesup*, 106 U. S. 468.

Thomas v. *Railroad Co.*, 101 U. S. 71.

Zabriskie v. *Cleveland Railroad*, 23 How. 381.

Pearce v. *Madison & Indianapolis R. R.*, 21 How. 441.

Elkins v. *Camden & Atlantic R. R. Co.*, 36 N. J. E. 5, and notes.

Morris Run Coal Co. v. *Barclay*, 68 Pa. St. 173.

Salt Company v. *Guthrie*, 35 Ohio St. 666.

Raymond v. *Leavitt*, 46 Mich. 447.

Arnot v. *Pittston Coal Co.*, 68 N. Y. 558.

Chicago Coal Co. v. *People*, 214 Ill. 421.

Alger v. *Thatcher*, 19 Pick. 51.

State v. *Hartford & New Haven R. R. Co.*, 29 Conn. 538.

Central R. R. Co. v. *Collins*, 40 Ga. 582, 628.

This principle has received recognition in the constitution and in the statutes of most of the States of the United States, and particularly with reference to railroads.

This invalidity of railroad leases in restraint of trade did not come into existence through the Sherman Antitrust Act. That act merely made criminal and gave certain preventive remedies for the kinds of agreements for monopolies and restraints of trade which by the existing law were invalid.

Standard Oil Co. v. *United States*, 221 U. S. 1.

United States v. *American Tobacco Co.*, 221 U. S. 106.

It follows from the competitive character of these two railroads that even if the Central Pacific Railroad had authority to make a lease, it could not make a valid lease to the Southern Pacific Company. But it had no such power, either under the laws of California or under the laws of the United States,

and authority from the United States was essential to the making of a lease.

The only purposes for which the Central Pacific Railroad Company was incorporated under the laws of California were to "purchase, construct, own, maintain, and operate" railroad lines. (P. Ex. 12, pp. 277, 280.) These powers were never increased.

The constitution of California, adopted May 7, 1879, and in force in 1885, provided in article 12:

> SEC. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized, nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.
>
> SEC. 10. The legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Not only was there no authority under the articles of this corporation to make a lease, but also there was no legislative authority to a railroad corporation to make a lease of this kind.

The general railroad act of May 20, 1861 (ch. 534, p. 609), under which this company was incorporated, gave no authority to a railroad corporation to make a lease. In 1863 section 4 of this act was so

amended as to permit railroad corporations to lease to other corporations organized under the same act, but this amendment made no provision for leasing to corporations organized under the laws of another State. It provided that—

> Any railroad corporation organized under the act to which this is amendatory shall have the right to lease the whole or any portion of their road to any other corporation organized under this act, or to grant to any such corporation the right to use in common any portion of their road. (1 Hittell, art. 838.)

Evidently this provision is not applicable, because the lessee, the Southern Pacific Company, was organized not under this law, or indeed under any law of California. It was organized under the laws of the State of Kentucky.

On April 3, 1880, the California Legislature passed an act (ch. 65, p. 114) which provided:

> Railroad corporations doing business in this State and organized under any law of this State, or the United States, or of any State or Territory thereof, have power to enter into contracts with one another whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad.

This act has been urged by the Southern Pacific Company in several cases, to establish the validity of this agreement of lease, but in none of these cases

has the court found it necessary to pass upon the question.

Lee v. *Southern Pacific Railroad Company*, 116 Calif. 97; 47 Pacific 932.

Johnson v. *Southern Pacific Railroad Company*, 154 Calif. 285; 97 Pacific 520.

Southern Pacific Company v. *U. S.*, 28 Ct. of Claims 77.

Southern Pacific Company v. *Railroad Commissioners*, 78 Fed. 236, 249.

The only right to lease which was given by this act was to corporations "doing business in this State."

At the time of the lease in question (Feb. 17, 1885) the lessee, the Southern Pacific Company, was not doing business in California. (Breckenfeld, 459, 462; Englebright, 467; Pratt, 481, 491, 493, 523; Norton, 551; Railton, 572, 577; Klink, 601, 610.)

It began its first business in California in the spring of 1885, when it began to operate the Southern Pacific Railroad and the Central Pacific Railroad. (Breckenfeld, 459, 462; Englebright, 467; Pratt, 482, 485, 492, 493; Norton, 551; Railton, 572, 577; Klink, 601, 610.)

Obviously the taking of a lease can not constitute doing business within the terms of this statute. Otherwise the words would never have any effect.

The apparent purpose of this section is to permit a railroad corporation operating its own railroad to acquire a lease of lines that may be useful in supplementing its operations. It was not intended to permit railroad corporations to turn over their entire

properties and franchises for a period of 99 years as a means of accomplishing a virtual substitution of one corporation for the other in the operation of a railroad.

It has been argued for the defendants that the Southern Pacific Company was doing business in California on February 17, 1885, because it had obtained a lease from the Southern Pacific Railroad Company for a term immediately to begin on February 10, 1885, although no operations were undertaken under this lease until March 1, 1885. The defect in the argument is that it ignores the fact that the lease by the Southern Pacific Railroad Company to the Southern Pacific Company was also an unauthorized lease under this statute. The only statute under which the Southern Pacific Railroad Company could make a lease was that which provided that it could lease to a corporation doing business in California. The Southern Pacific Company was not doing business in California on February 10, 1885. Under these circumstances the taking of a lease from the Southern Pacific Railroad Company no more constituted doing business than did taking a lease from the Central Pacific Railroad Company. Both leases were outside of the letter and the purpose of the statute.

It follows that, even apart from the requirements of the laws of the United States, this lease was not a lease.

But the most vital requirement of all to a valid lease was authority from the United States.

The several railroads either incorporated or aided by the United States by the Pacific Railroad acts are

without authority to dispose of the franchises derived from those acts.

U. S. v. *Union Pacific Railroad Co.*, 160 U. S. 1, 28.

It has been affirmed repeatedly that the United States was the origin of the franchises of the Central Pacific Railroad Company and of the Southern Pacific Railroad Company.

California v. *Pacific Railroad Co.*, 127 U. S. 1, 44.

Sinking Fund Cases, 99 U. S. 700, 728.

Central Pacific Railroad Co. v. *Cal.*, 162 U. S. 91, *semble*.

U. S. v. *Stanford*, 161 U. S. 412; 70 Fed. 346; 69 Fed. 25, 38.

The Central Pacific Railroad Company in the lease in question of February 17, 1885, describes itself as a corporation "under the laws of the State of California and the United States" (13).

In 1852, before this corporation was organized, the California Legislature had passed an act to grant to the United States a right of way through California for a railroad from the Atlantic to the Pacific Ocean (ch. 77, p. 150), and had instructed its Senators and Representatives (ch. 852, p. 276) to vote for an act of Congress for a railway from the Missouri River and the Mississippi River to the Pacific Ocean.

The Central Pacific Railroad Company did not begin construction until Congress had passed the Pacific Railroad laws of 1862, and when it began

construction it was under these laws and with the subsidy provided by them.

On April 4, 1864, the legislature of California passed an act (ch. 417, p. 471) by which it confirmed the franchise which the United States had granted to the Central Pacific Railroad Company of California, and repealed all conflicting provisions.

This act, Mr. Justice Field, in *Central Pacific Railroad Co.* v. *California*, 162 U. S. 91, 133, said abrogated "the State franchises of those corporations and substituted by adoption in their place the Federal franchises which have remained in force ever since."

The Pacific Railroad laws of 1862 and 1864 required the Central Pacific Railroad Company "to operate and use its railroad." (P. Ex. 3, p. 1244.)

The railroad was constructed and operated not only in California, but also in Nevada and Utah. The only source of the franchise for such a railroad was the United States.

It is immaterial that corporate existence was derived from the laws of California. This corporation, as it existed before the Pacific Railroad acts of Congress were passed, had an authorized capital of $8,500,000, and under the California law it could not borrow in excess of an equal amount and must provide a sinking fund for the redemption in money of the bonds issued.

Sinking Fund Cases, 99 U. S. 700, 727.

The bonds issued for the construction of the original Central Pacific Railroad amounted to more than

$50,000,000, and the right to issue them or to get them came from the United States. The California act of 1864 amounted only to a recognition of the powers which had been granted by Congress.

Sinking Fund Cases, 99 U. S. 700, 728.

The duty of the Central Pacific Railroad Company "to operate and use" its road ran to the sovereignty which granted the franchise. It could not part with that franchise or the right to use that franchise, or delegate the operation of that franchise, or the performance of the duties under it to any other corporation or individual without authority from Congress. The United States was the donor of the franchise, and the one to impose the conditions upon its exercise, and therefore the only one that could modify or dispense with the performance of those conditions. The Central Pacific Railroad Company could not take from the United States the right of way, the public lands, the bonds of the United States, and the other rights conferred by the United States, and then be excused from the performance of the duties imposed by the United States, or delegate the performance of those duties to any one else unless authority therefor was given by Congress.

The Central Pacific Railroad Company by this lease completely deprived itself of the power to operate its railroad as required by the Pacific Railroad acts. If the Southern Pacific Company chose to use this railroad to support the business of the Southern Pacific Railroad, and thereby to diminish the business of the

Union Pacific Railroad, the Central Pacific Railroad Company was practically powerless to prevent this discrimination against the Union Pacific Railroad if the lease was enforceable.

Congress has never given any authority to make this lease. The only suggestion which the defendants have made to the contrary is that the approval of the agreement between the United States and the Central Pacific Railroad Company and Speyer & Co. of February 1, 1899, constituted a consent to the lease because the lease was to be subordinated to the new first refunding bond mortgage. There are at least two answers to this suggestion: (1) That consenting that a mortgage shall have priority to an existing lease does not amount to an agreement that the lease is valid or shall become valid, but it merely prefers the mortgage to the lease whether valid or not, and (2) that Congress, it would appear, never had any knowledge whatever of the agreement to subordinate the lease. The agreement between the United States and the Central Pacific Railroad Company and Speyer & Co. contained no reference whatever to any such subordinating agreement. It is not mentioned in the plan of readjustment. (D. Ex. 45(a); Ex. B of answer, p. 60.) It is not mentioned in the commission's report to Congress, or in the Attorney General's report.

Six months after the date of the agreement—namely, on August 1, 1899—the Southern Pacific Company executed agreements to subordinate the

lease to the new mortgages, but there is nothing to show or to suggest that these agreements were known to any representatives of the Government. It is probable that no officer of the Government or any single member of Congress ever had the slightest knowledge of them. Considering the clarity required for grants of rights from Congress to private individuals, this is too slender a thread on which to hang congressional authority to the Central Pacific Railroad to lease to the Southern Pacific Company.

It follows that for lack of authority from the United States this lease in 1885 was not a lease.

Consequently, because the lease (1) was to a competing railroad; (2) was by a corporation having by its articles, under the constitution of California, no authority to lease; (3) was without authority from the California Legislature; and (4) was without authority from the United States, the Southern Pacific Company on July 2, 1890, when the antitrust act was passed, had no lease of the Central Pacific Railroad and no proprietary interest and no contractual interest, and no other right therein.

SECOND.

IN 1893 THIS LEASE WAS CANCELED AND THE NEW PURPORTED LEASE THEN GIVEN WAS EQUALLY VOID FOR THE SAME REASON.

Even assuming that the void lease of February 17, 1885, was a valid lease, all rights under that lease ended on January 1, 1894, except the adjustment of accounts in respect to prior operation.

On December 7, 1893, the Southern Pacific Company and the Central Pacific Railroad Company purported to enter into a new agreement of lease, and section 5 of this agreement provided in terms that—

> Fifth. The agreements between the same parties, dated February 17, 1885, and January 1, 1888, respectively, are hereby canceled except so far as they relate to operation of said demised premises prior to January 1, 1894, and to adjustment of accounts in respect to such operation thereof.

This agreement provided for a different rental. The original lease provided for a rental of $1,200,000 a year in any event, and in addition the total net income from operation up to $2,400,000. The new lease provided for a fixed rental of $10,000 only, and the net income from operation, with the proviso that if that income exceeded 6 per cent on the outstanding capital stock of the Central Pacific Railroad Company, then only one-half of the excess should go to the Central Pacific Railroad Company.

In the court below defendants argued elaborately that the doctrine of *implied* surrender of an existing leasehold, by the acceptance of a new lease, applied only where the new lease was valid. In this discussion they made no reference whatever to a termination by *express* agreement. Assuming that this principle limiting the doctrine of implied surrender is sound, it has no application. The termination of the old lease in this case was not left to implication.

There was a clear, express agreement to terminate the old leasehold in the quoted fifth section of the new agreement. There was nothing invalid about this section. The parties agreed to terminate and the agreement was effective to terminate.

There was nothing unlawful or criminal about the agreement in that section, nor can the position of the defendants be bettered by saying that they should be relieved from this terminating agreement which they made, and relieved because they made it under the mistaken belief that they were getting a new valid lease. There is nothing to indicate that they made any mistake of fact or any mistake of law. The making of the new lease was of itself the commission of the crime denounced by the Sherman Antitrust Act. Evidently, if the defendant can not retain the fruits of that offense, the court should not help them out by giving back to them the old lease which they gave up in connection with the commission of that offense. The case differs radically from all those referred to in which the failure to get a new valid lease was due to some imperfection of power, or execution, or mistake of fact, and not to the fact that the transaction in which the intending lessee engaged was a crime.

Unquestionably the only lease under which the Southern Pacific Company was operating in 1899 was a lease made three years after the Sherman Antitrust Act became effective.

THIRD.

THE LEASEHOLD INTEREST WAS SUBJECT TO IMMEDIATE DESTRUCTION BY THE FORECLOSURE OF THE UNDERLYING LIEN OF THE UNITED STATES.

On this branch of the case the important consideration is whether in 1899, when the Sherman Antitrust Act was in effect, the Southern Pacific Company acquired a greater power to restrain competition than it possessed before 1890.

At best for it, in 1890 it had only a leasehold interest subject to an underlying lien for the security of the first-mortgage bondholders, and a second underlying lien for the security of the payment to the United States of the amount of the bonds which the United States had given, and for the interest thereon.

In 1898 this second lien had matured and the lease consequently was subject to immediate destruction by foreclosure of the lien in favor of the United States.

Under the act of July 7, 1898, Congress instructed the President to foreclose this lien if the debt was not settled within a year.

On February 1, 1899, before the new combination, the Southern Pacific Company was at the point of being deprived in this way of all control over the Central Pacific Railroad. Note the change wrought by the new combination if valid. On August 1, 1899, the Southern Pacific Company was the owner of all the stock of the Central Pacific Railroad Company and in no danger of being deprived of control of the Central Pacific Railroad by a foreclosure or

otherwise, if this scheme of February 20, 1899, was not subject to attack under the Sherman Antitrust Act, or under the Pacific Railroad laws.

It follows inevitably that after the enactment of the Sherman Antitrust Act the Southern Pacific Company has, by a combination formed by it, acquired a proprietary interest and a power over the commerce of the Central Pacific Railroad which it did not enjoy before.

SIXTH ASSIGNMENT.

Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Antitrust Act was passed, this would not render lawful a combination for the increase and perpetuation of that control, formed after this act was passed.

It is not necessary to consider in this case whether or not the Sherman Antitrust Act prohibits a man from operating, after July 2, 1890, two separate, competitive railroads which become his property before 1890. No such case is presented. At best for the defendants the question is whether or not the combination imperfect before July 2, 1890, can thereafter, notwithstanding the antitrust act, be lawfully operated and be made more firm and indestructible.

The words of the act are enough to answer the question in the negative. It is not merely the making of the combination which is declared to be illegal. It is a misdemeanor to "engage in any

such combination." To continue to operate pursuant to such a combination is to engage in that combination.

It is not clear from the language of the majority of the court below just what view they entertain concerning this particular question. After discussing the lease of 1885 and the new lease of 1893, the court says:

> The applicability of the antitrust act can not be made to rest on such considerations (2330).

This is the only approach to a decision below upon this particular question. On the other hand, Judge Carland says:

> The fact that prior to the passage of the antitrust act there had been a practical control of the Central Pacific by the Southern Pacific by a leasing arrangement in no way validates the present arrangement if it be unlawful (2337).

It is common knowledge that the evils which Congress sought to remedy in 1890 were those already in existence and to some extent known and generally discussed.

Several of the more prominent combinations the continuance of which has been enjoined by the courts were in existence when the statute was passed.

> *Standard Oil Co.* v. *United States*, 221 U. S. 1, 70; 173 Fed. 177, 186.
>
> *United States* v. *American Tobacco Co.*, 221 U. S. 106, 176; 164 Fed. 700, 722.

United States v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 342.

U. S. v. *Lehigh Valley R. R. Co. et al.*, decided December 6, 1920 (41 Sup. ct. Rpts. 104).

Both liberty of contract and the use of property are subject to regulation by the police power of the sovereign for the general good.

Mugler v. *Kansas*, 123 U. S. 623.

Louisville & Nashville R. R. Co. v. *Kentucky*, 161 U. S. 677, 695–700.

Union Bridge Co. v. *United States*, 204 U. S. 364, 400, *semble*.

For example, the commodities clause of the Hepburn Act (June 29, 1906; 34 Stat., c. 3591, p. 584) denying to carriers the right to transport coal owned by them at the time of transportation, prohibits such transportation after the act became operative, notwithstanding the fact that the coal was nearly valueless without opportunity for transportation and that the coal and the transportation facilities were acquired and developed lawfully many years before the act was passed, and under powers granted by one of the States in pursuance of an established policy to encourage this method of developing its natural resources.

United States v. *Delaware & Hudson Co.*, 213 U. S. 366.

In *Philadelphia, Baltimore & Washington R. R. Co.* v. *Schubert*, 224 U. S. 603, 613, holding that the employees liability act, avoiding employees' contracts exempting employers from certain lia-

bilities, avoided such contracts made before the act was passed, the court said:

> The power of Congress, in its regulation of interstate commerce, and of commerce in the District of Columbia and in the Territories, to impose this liability, was not fettered by the necessity of maintaining existing arrangements and stipulations which would conflict with the execution of its policy. To subordinate the exercise of the Federal authority to the continuing operation of previous contracts would be to place, to this extent, the regulation of interstate commerce in the hands of private individuals and to withdraw from the control of Congress so much of the field as they might choose by prophetic discernment to bring within the range of their agreements. The Constitution recognizes no such limitation. It is of the essence of the delegated power of regulation that, within its sphere, Congress should be able to establish uniform rules, immediately obligatory, which as to future action should transcend all inconsistent provisions. Prior arrangements were necessarily subject to this paramount authority.

In the absence of a grant from the sovereign no one had acquired a vested right on July 2, 1890, to restrain commerce or to monopolize it for the future. If the makers of a combination created before 1890 could not be punished for their acts done before 1890, it by no means follows that they could

not be punished for continuing to engage in the combination after 1890.

To engage in a combination in restraint of trade after 1890 is not rendered lawful by the fact that the combination existed before 1890.

United States v. *Trans-Missouri Freight Ass'n*, 166 U. S. 290, 342.

Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86, 108.

United States v. *Kissel*, 218 U. S. 601, *semble.*

Armour Packing Co. v. *United States*, 209 U. S. 56, 80, *semble.*

Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, *semble.*

United States v. *Delaware & Hudson Co.*, 213 U. S. 366, *semble.*

Elliott Machine Co. v. *Center*, 227 Fed. 124 (D. C. W. D. Mich.), *semble.*

United States v. *Swift*, 186 Fed. 1002 (D. C. N. D. Ill.), *semble.*

Thomsen v. *Union Castle Mail Steamship Co.*, 166 Fed. 251, 253 (C. C. A. 2d), *semble.*

Boyd v. *New York & Harlem R. Co.*, 220 Fed. 174, 180 (D. C. S. D. N. Y.), *dictum.*

United States v. *American Tobacco Co.*, 164 Fed. 700, 722 (C. C. S. D. N. Y.), *dictum.*

Ford v. *Chicago Milk Shippers Ass'n*, 155 Ill. 166, 39 N. E. 651.

Finck v. *Schneider Granite Co.*, 187 Mo. 244, 86 S. W. 213.

U. S. v. *United Shoe Machinery Co.*, 227 Fed. 507. (D. C. E. D. Mo.)

The Southern Pacific Company in the case at bar not only continued to operate under the combination existing before 1890, but also in 1893 canceled the agreement under which it was operating and made a new agreement of lease, and finally, in 1899, attempted to perfect its control by acquiring the stock in the Central Pacific Railroad Company at a time when the Central Pacific Railroad was about to pass into the hands of the United States or of such purchaser as might acquire it on the foreclosure of the lien of the United States.

This acquisition was a new, unlawful combination, which was not made lawful by the prior relations between the two companies.

The additional defenses alleged by the defendants which were not discussed in the opinions in the district court.

There remain to be considered certain defenses alleged in the answers of the defendants or urged by them below and apparently not considered by the court below, namely:

(1) The decree in the case of the *United States* v. *Union Pacific Railroad Company*, as *res adjudicata* in favor of the defendants; (2) the estoppel of the United States by inconsistent position taken in the Union Pacific case; (3) the absence of complaint of this restraint of trade in the *Union Pacific case;* (4) laches; and (5) the statute of limitations.

FIRST.

IN THE CASE OF THE UNITED STATES AGAINST THE UNION PACIFIC RAILROAD COMPANY THE COURT DID NOT ADJUDGE EXPRESSLY OR BY INFERENCE THAT IT WAS NOT UNLAWFUL FOR THE SOUTHERN PACIFIC COMPANY TO HOLD THE STOCK OF THE CENTRAL PACIFIC RAILWAY COMPANY.

The defendants in their answer claim that the decree in the case of the United States against the Union Pacific Railroad Company carries in solution a judgment that it was lawful for the Southern Pacific Company to hold the stock of the Central Pacific Railway Company. This is without foundation.

On February 1, 1908, the United States filed in the Circuit Court of the United States for the District of Utah a petition against the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company, the San Pedro, Los Angeles & Salt Lake Railroad Company, the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, the Northern Pacific Railway Company, the Great Northern Railway Company, and certain individual defendants, complaining of restraints of trade by the Union Pacific Railroad Company and others in the acquisition of stock by the Union Pacific Railroad Company (or its subsidiaries or associates) in (1) the Southern Pacific Company, (2) the Northern Pacific Railway Company, (3) the

San Pedro, Los Angeles & Salt Lake Railroad Company, (4) the Atchison, Topeka & Santa Fe Railway Company.

When the Supreme Court rendered its decision and entered its decree in this case, neither the Central Pacific Railroad Company nor the Central Pacific Railway Company was a party to this suit. No relief was asked as to the control of the Central Pacific Railroad by the Southern Pacific Company. The petition contained no allegation that the Central Pacific Railroad was in competition with the Southern Pacific Railroad.

There was no allegation in the answer putting in issue the fact of the control of the Central Pacific Railroad by the Southern Pacific Company or the propriety thereof.

The defense mainly relied upon in the case was that, inasmuch as the Union Pacific Railroad Company, in the movement of transcontinental freight, always had been dependent upon the Central Pacific Railroad, controlled by the Southern Pacific Company, the Union Pacific Railroad and the Southern Pacific Railroad never had been in a position to compete with each other substantially and practically.

The court below (188 Fed. Rep. 102), except Judge Hook dissenting, held that this defense was made out. The court below held unanimously that there was no ground for relief as to the stock held by the Union Pacific Railroad Company in the Northern Pacific Railway Company, the Atchison,

Topeka & Santa Fe Railway Company, and the San Pedro, Los Angeles & Salt Lake Railroad Company.

On appeal the Supreme Court held (226 U. S. 61) that the decision below was correct with respect to the stock of these last three companies, but that there had been a substantial and practical competition between the Union Pacific Railroad Company and the Southern Pacific Company which was unreasonably restrained by the acquisition of control of the stock of the Southern Pacific Company by the Union Pacific Railroad Company or by subsidiary companies controlled by it. The petitioner in the case at bar makes no contention at variance with this decision, but, on the contrary, relies on it.

Neither counsel for the parties in the briefs, nor the court in its opinion, expressly or by implication, urged or upheld as lawful the control of the Southern Pacific Company over the Central Pacific Railroad.

1. *The court made no decision on this question.*

The only restraint of commerce alleged in this case was that accomplished by the Union Pacific Railroad Company or its subsidiaries or associates. A straddling petition which sought at one time to obtain relief from a restraint of commerce composed of an acquisition of the stock of the Southern Pacific Company by the Union Pacific Railroad Company and a restraint of commerce composed of an acquisition of the stock of the Central

Pacific Railway Company by the Southern Pacific Company, two wholly independent transactions, two years apart, if it was not multifarious, at least would not be conducive to simplicity and efficiency in trial. Whether or not permissible, it was not attempted.

No issue was raised as to the legal effect or as to the propriety of the control of the Central Pacific Railroad by the Southern Pacific Company. Evidence showing the competitive character of the Southern Pacific Railroad with the Central Pacific Railroad and the lack of competition between them, unless material for some other purpose, was inadmissible.

It would have caused surprise to the court and to the counsel for the respective parties to learn that they were trying the question of undue restraint of trade by the Southern Pacific Company in holding the stock of the Central Pacific Railway Company. If that question was not on trial, the decision did not dispose of it.

The statement of the Supreme Court quoted in the answer in the case at bar, that "we find no reason to disturb the action of the court below," is taken from the context—

> so far as concerns the attempt to acquire the Northern Pacific stock and the stock of the Atchison, Topeka & Santa Fe Railway Company, afterwards abandoned, and a certain interest in the San Pedro, Los Angeles & Salt Lake Railroad Company and other feat-

ures of the case which were dealt with and disposed of by the decree and opinion of the court below.

The court below did not deal with the lawfulness of the holding of the stock of the Central Pacific Railway Company by the Southern Pacific Company. The only subjects with which it dealt were: (1) The unreasonable restraint of the competition of the Southern Pacific Company by the Union Pacific Railroad Company; (2) the acquisition of the stock of the Northern Pacific Railway Company (188 Fed. 117); (3) the acquisition of the stock of the Atchison, Topeka & Santa Fe Railway Company (117); (4) the acquisition of an interest in the San Pedro, Los Angeles & Salt Lake Railroad Company (117); and (5) the transactions between the Southern Pacific Company, the Phoenix & Eastern, and the California & Northwestern Railroad Companies (118).

These last four matters were the ones as to which the Supreme Court found no reason to disturb the action of the court below.

2. *Indispensable parties for such a decision were absent.*

The unreasonable restraint of commerce by the Southern Pacific Company is composed in part of the agreement of lease of December 7, 1893, by the Central Pacific Railroad Company to the Southern Pacific Company, and in part of the acquisition of the stock in the Central Pacific Railroad Company. Neither the Central Pacific Railroad Company nor

its successor, the Central Pacific Railway Company, was a party to the suit against the Union Pacific Railroad Company when the Supreme Court rendered its decision and entered its decree.

On February 8, 1913, after the suit was remanded to the District Court, the Southern Pacific Company, the Union Pacific Railroad Company, the Central Pacific Railway Company, and the Oregon Short Line Railroad Company entered into a conditional agreement (P. Ex. 20, p. 1428) to transfer the control of the Central Pacific Railroad from the Southern Pacific Company to the Union Pacific Railroad Company. This possibility had been suggested to the Supreme Court and was not disapproved by it. (226 U. S. 97.) This agreement was approved by the Attorney General, and on February 12, 1913, it was presented to the District Court for its approval (2203). All the parties to the agreement were parties to the suit, except the Southern Pacific Railroad Company and the Central Pacific Railway Company. The agreement and the action which the court might take on it would seriously affect these two companies. Consequently, they were made parties to the suit on that day. No allegations were made against either of them and no issue of fact or of law as to either of them was decided. The final decree followed the mandate of the Supreme Court (2202), issued before they were parties. The determinative act in the case was the decision of the Supreme Court rendered in December, 1912.

The Central Pacific Railway Company was directly interested in the validity of the lease of December 7, 1893. Even if permissible, it is improbable that the court would have passed upon the lawfulness of it in the absence of this company.

The absence of parties similarly interested in other transactions which the petitioner sought to question was pointed out by the court below as one of the reasons why the unlawfulness of those transactions should not be considered. (188 Fed. 118.)

The unlawfulness of a combination in restraint of commerce should not be adjudged in the absence of the parties directly interested.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199.

3. *The effect of a decision in such a case is limited to what was actually decided.*

If two suits do not relate to the same property, claim, or transaction, the conclusiveness of the decision in one upon the other is limited to those issues actually tried.

Cromwell v. *County of Sac*, 94 U. S. 351.

Nesbit v. *Riverside Independent District*, 144 U. S. 610.

Davis v. *Brown*, 94 U. S. 423.

Boyd v. *Alabama*, 94 U. S. 645.

Virginia-Carolina Chemical Co. v. *Kirven*, 215 U. S. 252, 257, *dictum*.

Northern Pacific Ry. Co. v. *Slaght*, 205 U. S. 122, *dictum*.

Southern Pacific R. R. Co. v. *United States*, 168 U. S. 1, 49, *dictum*.

New Orleans v. *Citizens' Bank*, 167 U. S. 371, 396, *dictum*.

Last Chance Mining Co. v. *Tyler Mining Co.*, 157 U. S. 683, 687, *dictum*.

Packet Co. v. *Sickles*, 5 Wall. 580, 592, *dictum*.

Washington, Alexandria & Georgetown Steam-Packet Co. v. *Sickles*, 24 How. 333, *semble*.

Emma Silver Mining Co. (Ltd.) v. *Emma Silver Mining Co. of N. Y.* (C. C. S. D. N. Y.), 7 Fed. 401.

Clark v. *Blair* (C. C. D. Neb.), 14 Fed. 812.

Fairchild v. *Lynch*, 99 N. Y. 359, 368.

Arnold v. *Norfolk & New Brunswick Hosiery Co.*, 63 Hun. 176.

Howlett v. *Tarte*, 10 C. B. N. S. 813.

Foye v. *Patch*, 132 Mass. 105.

2 *Black on Judgments* (2 ed.), sec. 609, p. 926, sec. 614, p. 938.

In *Northern Pacific Railway Co.* v. *Slaght*, 205 U. S. 122, 131, the court said:

> There is a difference between the effect of a judgment as a bar against the prosecution of a second action for the same claim or demand, and its effect as an estoppel in another action between the same parties upon another claim or demand. (*Cromwell* v. *County of Sac*, 94 U. S. 351; *Bissel* v. *Spring Valley Township*, 124 U. S. 225; *New Orleans* v. *Citizens' Bank*, 167 U. S. 371; *Southern Pacific Railroad Company* v. *United*

States, 168 U. S. 1; *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273; *Deposit Bank* v. *Frankfort*, 191 U. S. 499.)

In *Cromwell* v. *County of Sac*, 94 U. S. 351, it was held that the failure to recover on certain coupons, because of fraud in the original issue of the bonds to which they were attached, was not a bar to a recovery on other coupons on the same bonds because the plaintiff might show that he was a purchaser of the bonds for value without notice, although this same fact if shown in the first case would have enabled the plaintiff to prevail therein. The court said:

> There is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that per-

fect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, can not again be brought into litigation between the parties in proceedings at law upon any ground whatever (352).

But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and

determined. Only upon such matters is the judgment conclusive in another action (352).

It is not believed that there are any cases going to the extent that because in the prior action a different question from that actually determined might have arisen and been litigated, therefore such possible question is to be considered as excluded from consideration in a second action between the same parties on a different demand, although loose remarks looking in that direction may be found in some opinions. On principle, a point not in litigation in one action can not be received as conclusively settled in any subsequent action upon a different cause, because it might have been determined in the first action (356).

There is nothing in this language, applied to the facts of the case, which gives support to the doctrine that, whenever in one action a party might have brought forward a particular ground of recovery or defense, and neglected to do so, he is, in a subsequent suit between the same parties upon a different cause of action, precluded from availing himself of such ground (358).

This case has been cited with approval repeatedly.

Northern Pacific Railway Co. v. *Slaght*, 205 U. S. 122, 131.

Virginia-Carolina Chemical Co. v. *Kirven*, 215 U. S. 252, 257.

Instances of closely related matters which for the purposes of this distinction have been held to be different claims or transactions are:

Coupons and the bonds to which they were attached:

Cromwell v. *County of Sac*, 94 U. S. 351.

Nesbit v. *Riverside Independent District*, 144 U. S. 610.

Board of Commissioners v. *Sutliff* (C. C. A. 8th), 97 Fed. 270.

Different installments of rent under the same agreement.

Chicago, R. I. & P. Ry. Co. v. *St. Joseph Union Depot Co.* (C. C. W. D. Mo.), 92 Fed. 22.

Howlett v. *Tarte*, 10 C. B. N. S. 813.

Separate notes taken at the same time under a single agreement that the indorsements should not be binding.

Davis v. *Brown*, 94 U. S. 423.

Separate acts of conducting a lottery under the protection of the same statute alleged to be unconstitutional.

Boyd v. *Alabama*, 94 U. S. 645.

A claim under a defective patent to land and a claim to have the holder of a valid patent declared a trustee.

Stark v. *Starr*, 94 U. S. 477.

Different parts of one location of mining claim.

Last Chance Mining Co. v. *Tyler Mining Co.*, 157 U. S. 683, 687.

Different statutory liabilities of the same stockholders for the same judgment against the same corporation.

Harrison v. *Remington Paper Co.* (C. C. A. 8th), 140 Fed. 385.

In *United States* v. *Union Pacific Railroad Company* the indispensable parties, the issues, and the cause of action differed from those in the case at bar, and no attempt was made to decide that it was lawful for the Southern Pacific Company to hold the stock of the Central Pacific Railway Company.

SECOND.

THE UNITED STATES IS NOT ESTOPPED BY ANY INCONSISTENT POSITION TAKEN IN THE UNION PACIFIC CASE.

It is contended for the defendants that the United States is barred by estoppel from taking a position inconsistent with the position which it took in the *Union Pacific case*. For the reasons already stated (p. 34) there is no inconsistency in the positions taken in the two cases. If there was it would not be a bar. The cases in which the United States has been held to be subject to the rule of estoppel of inconsistent position are those in which the property rights or the contract rights of the United States were under consideration. There is no such thing as estoppel of the United States when the United States is acting as a sovereign to enforce the criminal laws. (See Estoppel, *supra*, pp. 192.)

THIRD.

THE UNITED STATES IS NOT BARRED BY ABSENCE OF COMPLAINT OF THIS RESTRAINT OF TRADE IN THE UNION PACIFIC CASE.

It is contended for the defendants that the failure of the United States to complain of the combination of the Central Pacific Railroad Company with the Southern Pacific Company in the *Union Pacific case*, precludes the United States from making such a complaint thereafter because of the rule that a litigant must include the whole subject matter of his complaint in one suit and can not afterwards assign other grounds for complaint of the "same transaction."

This principle has no application to the situation before the court. The only "transactions" complained of in the *Union Pacific case* were restraints of trade by the Union Pacific Railroad Company in 1901 and thereafter. No transaction by the Southern Pacific Company was complained of. No transaction occurring in 1899 was complained of. The control of the Central Pacific Railroad by the Southern Pacific Company was no part of the restraint of trade by the Union Pacific Railroad Company. It was the Southern Pacific Company's control of the Southern Pacific Railroad and not of the Central Pacific Railroad that made the acquisition of stock in the Southern Pacific Company by the Union Pacific Company a restraint of trade. It would have been just as much a restraint of trade, and perhaps even more so,

if the Southern Pacific Company had not controlled the Central Pacific Railroad. The two transactions—the one the acquisition of control over the Central Pacific Railroad by the Southern Pacific Company and the other the acquisition of control over the Southern Pacific Railroad by the Union Pacific Railroad Company—were entirely distinct and neither one assisted the other. On the contrary, their tendency was to offset each other.

FOURTH.

THE PETITION IS NOT BARRED BY LACHES.

There has been no laches in bringing this suit, and also laches by the United States is not a defense to a petition to enforce a criminal law.

1. *There has been no unreasonable delay or laches in bringing the suit at bar.*

The combination complained of was perfected in 1899. Two years later the control of this combination was acquired by the Union Pacific Railroad Company. The orderly course for the United States to pursue in removing this compound restraint of commerce was to procure, first, the dissolution of the second combination, which controlled the earlier one and both of its elements. The petition for this purpose did not result in a final decree until June 30, 1913. The petition at bar was brought shortly thereafter. If the opinion of the court below in the suit against the Union Pacific Railroad Company that the suit was not well founded had

prevailed above, it would have affected materially the question whether the petition now at bar should be filed. Until the contentions made by the defendants in that case had been settled the petition at bar would have served no useful purpose. It was filed promptly after the decision in that case.

In *United States* v. *Reading Co.*, 253 U. S. 26, the principal combination dissolved by decision in 1920 was formed in 1896. The latest acquisition referred to, in the opinion, was in 1901.

2. *Laches by a sovereign is not a defense to a petition to enforce a criminal law.*

It is well established that the United States is not barred by laches.

Stanley v. *Schwalby*, 147 U. S. 508, 515, *dictum*.

United States v. *Dalles Military Road Co.*, 140 U. S. 599, 632.

United States v. *Insley*, 130 U. S. 263.

United States v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120.

United States v. *Van Zandt*, 11 Wheat. 184.

United States v. *Kirkpatrick*, 9 Wheat. 720, 735.

Northern Pacific Railway Co. v. *Ely*, 197 U. S. 1, *semble*.

Northern Pacific Railway Co. v. *Townsend*, 190 U. S. 267, *semble*.

Kindred v. *Union Pacific Railroad Co.*, 168 Fed. 648 (C. C. A. 8th).

United States v. *Willamette V. & C. M. W. R. Co.*, 54 Fed. (C. C. Ore.), 807, 810.

United States v. *International Harvester Co.*, 214 Fed. 987 (D. C. Minn.).

De Koven v. *Lake Shore & M. S. Ry. Co.*, 216 Fed. 955, 959 (D. C. S. D. N. Y.), *dictum*.

This principle is rested not on the extraordinary prerogative of the United States, but on public policy. The United States acts not for its personal benefit, but for all the people, whose sovereign it is. They should not be deprived of rights through the nonaction of the officials of the United States. Such nonaction is frequently due to a lack of knowledge of the facts upon which rights are based, a lack of knowledge which may be pardonable in view of the multiplicity of matters in which the rights of the United States are involved. The situation differs entirely from that of a private individual or corporation, whose business it is to look after his or its own rights in his or its own interest.

It is evident that there is much more reason why the United States should not be barred by laches when seeking to prevent a breach of the criminal laws than when seeking to enforce its property or contract rights. Even in the latter case laches is not a bar.

FIFTH.

THE LAPSE OF MORE THAN FIVE YEARS SINCE THE FORMATION OF THIS COMBINATION IS NOT A BAR.

The decree against the Union Pacific Railroad Company after able representation in defense is a strong indication that the statute of limitations is

not a bar in this case. The combination in that case was completed in 1901, and the petition was filed on February 1, 1908, and the statute was pleaded (2108).

United States v. *Union Pacific Railroad Co.*, 226 U. S. 61; 188 Fed. 102.

The situation was much the same in the petition against the Standard Oil Company.

Standard Oil Co. v. *United States*, 221 U. S. 1.

The United States is not barred by any statute of limitations, State or national, unless Congress expressly so provides.

United States v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120.

The defendants' answer, alleging the lapse of three years and of five years, respectively, as a bar under the statutes of the United States, indicates an intention to rely on Revised Statutes, section 1044, as amended by the act of April 13, 1876 (19 Stat. L., p. 32, ch. 56), and on Revised Statutes, section 1047 (U. S. Compiled Statutes, 1916, secs. 1708, 1712, pp. 3577, 3588), which provide that—

> SECTION 1044, amended. No person shall be prosecuted, tried, or punished for any offense not capital, except as provided in section ten thousand and forty-six, unless the indictment is found, or the information is instituted within three years next after such offense shall have been committed.

> SECTION 1047. No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued.

These sections furnish no defense, for two reasons: (1) Because this is not an indictment or information or suit or prosecution for a penalty or forfeiture, and (2) because the occurrence of an offense more than five years ago does not bar a proceeding to prevent the continuance of it hereafter.

1. *This is not an indictment, information, suit, or prosecution for a penalty or forfeiture.*

This is a petition for a remedial injunction.

Sections 1044 and 1047 and the context all relate to proceedings for punishment. None of them refer to remedial injunctions to restrain breaches in the future.

The two sections grew out of the act of April 30, 1790, chapter 9 (1 Stats., 112), relating to criminal prosecutions only. Section 32 of that act provided—

> That no person or persons shall be prosecuted, tried, or punished for treason or other capital offence aforesaid, willful murder or forgery excepted, unless the indictment for the same shall be found by a grand jury within three years next after the treason or capital offence aforesaid shall be done or committed; nor shall any person be prose-

> cuted, tried, or punished for any offence, not capital, nor for any fine or forfeiture under any penal statute, unless the indictment or information for the same shall be found or instituted within two years from the time of committing the offence or incurring the fine or forfeiture aforesaid.

Excepting treason and capital offenses, this section made no distinction between punishments, penalties, and forfeitures, pecuniary or otherwise.

The act of March 2, 1799, chapter 22, "to regulate the collection of duties on imports and tonnage," provided for penalties for breaches of the act and that they should be sued for in the name of the United States. Section 89 (1 Stats. 696) provided that "no action or prosecution" under this act shall be brought under this act except within three years after the penalty or forfeiture is incurred.

In February, 1804, in *Adams* v. *Woods*, 2 Cranch, 336, the court held that section 32 of the act of April 30, 1790, was a bar to a *qui tam* action of debt for a penalty, because it was a prosecution in substance and a remedy civil in form only.

The act of March 22, 1804, chapter 40, section 3 (2 Stats. 290), provided against the recovery of any "fine or forfeiture" under the revenue laws unless the "indictment or information" was found within five years.

The act of April 20, 1818, chapter 91, section 9 (3 Stats. 452), limited the time for "any prosecution, information or action * * * for any offense

under this act to five years." This was an act laying prohibitions upon the slave trade and providing for forfeitures for offenses against the act. The word "action" in this section adds nothing to the words "prosecution and information" as they had been construed in *Adams* v. *Woods*.

The act of February 28, 1839, chapter 36, section 4 (5 Stats. 322), was substantially in the language of the present section 1047.

From a comparison of these sections it is apparent that "suit" in section 1047 is used in the same sense as "action" in the act of 1818, and means a form of prosecution for a penalty or forfeiture.

It is the substantial result sought and not the form of action adopted which determines the applicability of these sections of the statute of limitations.

Gompers v. *United States*, 233 U. S. 604, 611.

A proceeding for a penalty is no less a criminal proceeding because the form of the action is civil. An action of debt for a penalty does not differ substantially from an information therefor.

Lees v. *United States*, 150 U. S. 476.

In this sense indictments, informations, and suits for penalties are recognized methods of criminal prosecution.

United States v. *Stevenson*, 215 U. S. 190, 198.

Mackin v. *United States*, 117 U. S. 348, 353.

Adams v. *Woods*, 2 Cranch, 336.

Williams v. *Wells Fargo & Co.*, 177 Fed. 352 (C. C. A. 8th), 355.

These different methods of procedure are grouped in sections 1044 and 1047. The difference between the two sections is in the substance of the punishment sought. Section 1047 is limited to cases in which the punishment sought is a penalty or forfeiture.

The proceeding in the case at bar is not for a penalty or for a forfeiture. A forfeiture is property taken as a penalty from an offender and going to the sovereign or to an informer. A common method of obtaining it is by a proceeding *in rem* against the property itself.

> *Dobbins Distillery* v. *United States*, 96 U. S. 395.
>
> *Gelston* v. *Hoyt*, 3 Wheat. 246, 310.

A penalty conveys the thought of punishment.

> *Huntington* v. *Attrill*, 146 U. S. 657, 667.
>
> *Brady* v. *Daly*, 175 U. S. 148, 156.

The first, second, third, and sixth sections of the Sherman Antitrust Act provide all the penalties and forfeitures which may be exacted as a punishment for the breach of the provisions of the act. The seventh section provides for a remedy to persons injured, and the fourth section provides a remedy, not for breaches of the act, but to prevent them. This section is wholly preventive and not punitive.

The suit of a private individual for damages for a breach of the Sherman Antitrust Act is not for a penalty.

Chattanooga F. & P. Works v. *Atlanta*, 203 U. S. 390; 127 Fed. 23; 101 Fed. 900.

Such damages, although trebled by the statute, are not a penalty, not because they are not as great an infliction upon the defendant as a fine would be, but because they are imposed, not as a punishment but as a compensation to the person injured.

The purpose of an injunction against making or engaging in unreasonable restraints of commerce is to prevent just such an injury. It is not punitive. It is to prevent injuries to each member of the community of a kind for which they as private individuals could recover damages. These damages are the kind held in *Chattanooga F. & P. Works* v. *Atlanta* not to be a penalty.

The petition at bar seeks to have the Southern Pacific Company dispose of the stock which it holds in the Central Pacific Railway Company, but does not seek a forfeiture of that stock or of its proceeds or to impose any penalty upon the defendants.

2. *The occurrence of an offense more than five years ago does not bar a proceeding to prevent the continuance of it hereafter.*

The offense sought to be prevented and restrained is continuing to engage in 1921 and thereafter in a combination in restraint of commerce, and not the making of the combination in 1899.

It is immaterial that the combination came into existence in 1899, or when it came into existence, and it would be immaterial that it had never come

into existence provided it could be shown that such a combination was imminent if not restrained. The danger that the defendants will be engaged henceforth in a combination in restraint of commerce is the ultimate fact upon which the application for relief is based. The existence of the combination and the present engagement therein is of value only as evidence of the danger. The danger is present, and therefore within three years.

Even a prosecution for a consipracy made and overtly acted upon more than three years ago is not barred by the statute of limitations if overt acts in pursuance thereof have been done also within three years.

Breese v. *United States*, 203 Fed. (C. C. A. 4th) 824, and cases cited at 830.

Lonabaugh v. *United States*, 179 Fed. (C. C. A. 8th) 476, 478.

Ware v. *United States*, 154 Fed. (C. C. A. 8th) 577, 579.

Hedderly v. *United States*, 193 Fed. (C. C. A. 9th) 561, 569.

Wilson v. *United States*, 190 Fed. (C. C. A. 2d) 427, 435.

Jones v. *United States*, 162 Fed. (C. C. A. 9th) 417, 426.

This is true where the prosecution is for a combination in unreasonable restraint of commerce, contrary to the terms of the Sherman Antitrust Act.

United States v. *Kissel*, 218 U. S. 601; 173 Fed. 823.

The offense defined is not only to "make" such a contract, but also to "engage" in any such combination. The combination is the device merely by which the restraint is accomplished. Therefore, when an injunction is sought, it is immaterial that the combination has passed its executory stage and has been completely formed.

Northern Securities Co. v. *United States*, 193 U. S. 197, 357.

It is immaterial that the combination was formed before the making thereof was made criminal, provided the engaging therein continues after so doing has become criminal. (*Supra*, p. 253.)

United States v. *Trans-Missouri Freight Assn.*, 166 U. S. 290.

Equally, it is no answer to a prosecution for *engaging* now in a combination in unreasonable restraint of commerce that the combination was made more than three years ago, so that the prosecution for the original *making* is barred.

It would be a deplorable result if a right to restrain commerce or to monopolize it for the long future could be acquired by doing it for three years in defiance of law.

CONCLUSION.

This combination is unlawful, and its continuance should be prevented.

These two railroads, separately conceived, separately aided as competitors by the United States, separately owned, parallel in the common sense,

transcontinental by their connections, competitive (theoretically and practically) in a huge volume of traffic, enjoying a monopoly of interstate freight transportation in large sections of south-central, central, and northern California, have been combined through the device of a holding company and thereby, and in consequence thereof, the competition between them has been unreasonably, directly, substantially, and wholly destroyed, and a monopoly has been created artificially, and this unreasonable restraint and monopoly are now going on and will continue unless prevented.

The evils of this unreasonable restraint, if it be not impertinent to address this legislative consideration to the court, have been those naturally incident to such a restraint—a destruction of the normal incentive to furnish good service at fair rates in order to attract business. There are no advantages to the public in the combination except such as may be urged in favor of permitting most of the artificial railroad monopolies—an alleged convenience to shippers, saving of expense, through tickets, through billings, joint through rates, and through trains. All of these may be provided and constantly are provided by agreement or by direction of the Interstate Commerce Commission, over railroads independently controlled, as, for example, in the case of the Union Pacific Railroad and its independent connections east and west. Congress has not considered them a sufficient reason to exempt railroad corporations from the antitrust act.

This restraint is peculiarly unreasonable in that it has produced as an inevitable consequence a systematic and preconcerted discrimination by the Central Pacific Railroad in favor of the Southern Pacific Railroad against the Union Pacific Railroad, contrary to the requirements of the Pacific Railroad Acts, under which the Central Pacific Railroad acquired the franchise by virtue of which it is now operating.

The prenatal combination of these two railroads alleged in the answer did not exist in fact, and is immaterial in law. The agreement of lease of February 17, 1885, in consequence of which the two railroads came under a common *de facto* control, was void and unlawful when made. The persistence in operating under it after 1890 was a violation of the antitrust act. This agreement of lease was canceled in 1893. Since this time the operation has been under a lease made since 1890, and in consequence of a control of stock first obtained in 1899.

The United States has never by its commissioners or otherwise given or attempted to give to the defendants an immunity for the subsequent infraction of the criminal laws of the United States, and the commission appointed July 7, 1898, had no authority and made no attempt to grant any such immunity.

The court in the case of the *United States* v. *Union Pacific Railroad Company* did not adjudge, expressly

or by inference, that it was not unlawful for the Southern Pacific Company to hold the stock of the Central Pacific Railway Company.

The lapse of time during which this unreasonable restraint of trade and this monopoly have existed gives no right to the defendants to continue to violate the law, and does not deprive the United States of remedy.

The cases hereinbefore cited, conspicuously *United States* v. *Union Pacific Railroad Company*, 226 U. S. 61, establish that the facts presented in the case at bar constitute an unreasonable restraint of commerce and a monopoly, and that the continuance thereof should be enjoined.

Respectfully submitted.

EDWARD F. MCCLENNEN,
JAMES W. ORR,
Special Assistants to the Attorney General.
WILLIAM L. FRIERSON,
Solicitor General.

FEBRUARY, 1921.

○

UNITED STATES *v.* SOUTHERN PACIFIC COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

No. 5. Argued April 18, 19, 20, 1921; restored to docket for reargument January 9, 1922; reargued April 11, 12, 13, 1922.—Decided May 29, 1922.

1. A combination whereby one railroad system, through stock purchases, acquires control of the whole or a vital part of another, with the effect of materially reducing free and normal competition in interstate trade between the two, violates the Sherman Anti-Trust Act. P. 229.
2. Inasmuch as the Central Pacific Railway System with its eastern connections, and the Southern Pacific Railway System, are normally competitors for railway traffic moving between California

and the Atlantic seaboard and intermediate places, the acquisition in 1899 by the Southern Pacific Company, owning the Southern Pacific System, of a controlling part of the stock of the Central Pacific Railway Company, owner of the Central Pacific lines, constituted a combination made unlawful by the Sherman Act. P. 229. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61.

3. The principle of *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, and of the previous cases upon which it rested, does not depend upon the existence of competition when the combination is formed. P. 230.
4. The history of the two railroad systems here involved, considered and *held* not to justify the stock purchase in question upon the theory that there was a prior practical consolidation of them, antedating the Sherman Act, through their physical relations and community of stock-ownership and control. P. 232.
5. In view of the important rights and franchises conferred upon the Central Pacific Railroad Company by the United States, a ninety-nine year lease of its railroad made by it in 1885 to its competitor, the Southern Pacific Company, was beyond its corporate capacity, in the absence of any act of Congress authorizing or approving it. P. 233.
6. Approval of this lease is not to be inferred from the fact that Congress had opportunity to learn of it through reports of committees or otherwise. P. 234.
7. The fact that a combination or contract in restraint or monopoly of interstate trade was entered into before the date of the Sherman Act does not exempt it from the operation of that statute. P. 234.
8. Under the Act of July 7, 1898, c. 571, 30 Stat. 659, which constituted the Secretaries of the Treasury and Interior and the Attorney General a commission with full power to settle the debt of the Central Pacific Railroad Company to the United States, subject to the approval of the President and to terms laid down in the act, a plan was approved and reported to Congress whereby the company's notes were to be delivered to the Government and be secured by bonds to be issued under a first mortgage on all its lines. Execution of the plan upon the part of the railroad (then under lease to the Southern Pacific Company) accompanied a reorganization involving creation of the Central Pacific Railway Company, its succession to the property of the Central Pacific Railroad Company, issuance by the new company of mortgage bonds secured by the property and guaranteed by the Southern Pacific Company,

part of which were delivered to the Government as the collateral called for by the settlement agreement, and acquisition by the Southern Pacific Company of a controlling part of the new company's stock. The guaranty, not mentioned in the settlement agreement, was referred to in the Attorney General's report of the settlement to Congress, and Congress later passed acts authorizing the Secretary of the Treasury to dispose of any notes in his possession touching the indebtedness of the Central Pacific Railroad Company and to settle claims of that road and of the Southern Pacific, for transportation services, by credits on the Central Pacific notes. The notes were paid primarily by checks of the Southern Pacific.

Held that the commission's acceptance of the guaranty was neither in intention nor in effect a condonation of the violation of the Sherman Act committed in the acquisition of the stock, and that the settlement did not estop the Government from prosecuting under that statute. P. 235.

9. The decree in *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, does not conclude the Government on the issues here involved, since the Central Pacific Railway Company was not a party in that suit up to the final decree in this court, and the subject-matter of that case and the questions decided in it differ from the subject-matter here and the questions here presented for decision. P. 240.

10. Delay of fourteen years in instituting this suit to set aside the control gained by the Southern Pacific through purchase of Central Pacific stock in 1899 was not laches, in view of the time consumed by the intervening prosecution to set aside the control gained by the Union Pacific Railroad Company through purchase of Southern Pacific stock in 1901. P. 240.

11. Whether the leases to the Southern Pacific Company and its acquisition of Central Pacific stock were in and of themselves violative of the Pacific Railroads Act of 1862 and supplemental legislation—*not decided*. P. 241.

12. The decree to be entered should sever the control by the Southern Pacific of the Central Pacific by stock-ownership or lease, protect, as far as compatible the mortgage of the Central Union Trust Company, and insure both railroads proper access to San Francisco Bay, over the several terminals, lines and cut-offs leading thereto, constructed or acquired during the unified control of the two systems; and similar provision should be made respecting lines extending from San Francisco Bay to Sacramento and Portland, Oregon. P. 241.

13. In framing the decree the District Court may bring in additional parties. P. 241.
239 Fed. 998, reversed.

APPEAL from a decree of the District Court dismissing, upon final hearing, a suit brought by the United States for relief against an alleged unlawful combination between the two railroad companies. The facts are stated in the opinion, *post*, 224.

Mr. Edward F. McClennen, Special Assistant to the Attorney General, and *Mr. Solicitor General Beck*, with whom *Mr. James W. Orr*, Special Assistant to the Attorney General, was on the brief, for the United States.[1]

In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic, and the combination between them unreasonably, directly, substantially, and wholly prevented and destroyed competition between them, and continues to do so; and the combination artificially created a monopoly to the public injury.

The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal, voluntary coöperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad; and the systematic and preconcerted discrimination which the Southern Pacific Company, in operating the franchise of the Central Pacific Railroad, has practiced against the Union Pacific Rail-

[1] At the former hearing *Mr. McClennen* argued the case on behalf of the United States. *Mr. Solicitor General Frierson* and *Mr. Orr* also were on the brief.

part of which were delivered to the Government as the collateral called for by the settlement agreement, and acquisition by the Southern Pacific Company of a controlling part of the new company's stock. The guaranty, not mentioned in the settlement agreement, was referred to in the Attorney General's report of the settlement to Congress, and Congress later passed acts authorizing the Secretary of the Treasury to dispose of any notes in his possession touching the indebtedness of the Central Pacific Railroad Company and to settle claims of that road and of the Southern Pacific, for transportation services, by credits on the Central Pacific notes. The notes were paid primarily by checks of the Southern Pacific.

Held that the commission's acceptance of the guaranty was neither in intention nor in effect a condonation of the violation of the Sherman Act committed in the acquisition of the stock, and that the settlement did not estop the Government from prosecuting under that statute. P. 235.

9. The decree in *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, does not conclude the Government on the issues here involved, since the Central Pacific Railway Company was not a party in that suit up to the final decree in this court, and the subject-matter of that case and the questions decided in it differ from the subject-matter here and the questions here presented for decision. P. 240.

10. Delay of fourteen years in instituting this suit to set aside the control gained by the Southern Pacific through purchase of Central Pacific stock in 1899 was not laches, in view of the time consumed by the intervening prosecution to set aside the control gained by the Union Pacific Railroad Company through purchase of Southern Pacific stock in 1901. P. 240.

11. Whether the leases to the Southern Pacific Company and its acquisition of Central Pacific stock were in and of themselves violative of the Pacific Railroads Act of 1862 and supplemental legislation—*not decided*. P. 241.

12. The decree to be entered should sever the control by the Southern Pacific of the Central Pacific by stock-ownership or lease, protect, as far as compatible the mortgage of the Central Union Trust Company, and insure both railroads proper access to San Francisco Bay, over the several terminals, lines and cut-offs leading thereto, constructed or acquired during the unified control of the two systems; and similar provision should be made respecting lines extending from San Francisco Bay to Sacramento and Portland, Oregon. P. 241.

13. In framing the decree the District Court may bring in additional parties. P. 241.
239 Fed. 998, reversed.

APPEAL from a decree of the District Court dismissing, upon final hearing, a suit brought by the United States for relief against an alleged unlawful combination between the two railroad companies. The facts are stated in the opinion, *post*, 224.

Mr. Edward F. McClennen, Special Assistant to the Attorney General, and *Mr. Solicitor General Beck*, with whom *Mr. James W. Orr*, Special Assistant to the Attorney General, was on the brief, for the United States.[1]

In February, 1899, when this combination was formed, the Central Pacific Railroad and the Southern Pacific Railroad were existing railroads naturally competitive for an enormous volume of interstate traffic, and the combination between them unreasonably, directly, substantially, and wholly prevented and destroyed competition between them, and continues to do so; and the combination artificially created a monopoly to the public injury.

The Pacific Railroad laws imposed on the franchise of the Central Pacific Railroad and on the franchise of the Union Pacific Railroad the reciprocal duty of the one railroad not to discriminate against the other in favor of any other railroad, but to exert together in normal, voluntary coöperation all the natural forces of a single railroad naturally competing with the parallel Southern Pacific Railroad; and the systematic and preconcerted discrimination which the Southern Pacific Company, in operating the franchise of the Central Pacific Railroad, has practiced against the Union Pacific Rail-

[1] At the former hearing *Mr. McClennen* argued the case on behalf of the United States. *Mr. Solicitor General Frierson* and *Mr. Orr* also were on the brief.

road in favor of the Southern Pacific Railroad is a violation of those laws; and this combination between the Southern Pacific Railroad and the Central Pacific Railroad, furnishing the incentive of self-interest to discriminate against the Central Pacific Railroad and the Union Pacific Railroad in favor of the Southern Pacific Railroad, and so to violate those laws, imposed on the Central Pacific Railroad an unreasonable and unlawful restraint to the injury of the public and to the defeat of the purpose of those laws, which was to create and develop three separate, competitive systems of railroad to the Pacific Coast, with all the advantages that would come to the public from three railroads which were competitive.

The payment by the Central Pacific Railroad Company of its debt to the United States, and the transactions leading thereto, did not exempt the Southern Pacific Company from the provisions of the Sherman Act, or permit that company to make a combination which otherwise would be one in restraint of trade; because, (1) the settlement commission did not seek any guaranty by the Southern Pacific Company; (2) the contract of settlement did not require such a guaranty; (3) the United States received only payment of a debt already due and adequately secured; (4) neither the commission, nor the President, nor the Congress, purported to give this company a special indulgence to make a combination in restraint of trade, prohibited as a crime by general law to all other corporations; and, (5) such a special indulgence or advance pardon is beyond the constitutional power of the commission, the President, and the Congress.

The Central Pacific Railroad and the Southern Pacific Railroad were never, prior to February 20, 1899, a single railroad or system, but, on the contrary, were always two distinct railroads; (1) separately projected by separate and unrelated groups of men; (2) separately aided by gifts of public lands and loans of the public credit under

acts of Congress to promote these two separate competitive systems of railroad between the Atlantic Ocean and the Central United States on the east, and the Pacific Ocean on the west, and enacted prior to 1867 and before any person interested in the one railroad was interested in the other; (3) separately owned by separate corporations organized by separate groups of men; (4) separately constructed at the expense of and for these separate corporations; (5) separately leased by these separate corporations under separate leases, making the amount of rent dependent on the net earnings of the separate railroads; (6) separately controlled by boards of directors, some of whom were always diverse, and a majority of whom were diverse in all but five years between 1885 and 1899; and (7) separately stock-owned, always to a substantial extent, and from 1883 to 1899 to the extent of more than a majority of the capital stock in each separate corporation, held by widely scattered stockholders in the United States and Europe.

The Southern Pacific Company on February 20, 1899, had no contractual, or property, or vested interest, direct or indirect, in the Central Pacific Railroad; because, (1) the purported lease of February 17, 1885, by the Central Pacific Railroad Company was void for lack of power in that company to make it, both under the laws of California and under the laws of the United States, the sovereignty from which it derived its franchises; (2) in 1893 this lease was canceled and the new purported lease then given was equally void for the same reason; and (3) the leasehold interest was subject to immediate destruction by the foreclosure of the underlying lien of the United States.

Even if the Southern Pacific Company had had some control over the Central Pacific Railroad before the Sherman Act was passed, this would not render lawful a com-

bination for the increase and perpetuation of that control, formed after this act was passed.

In the case of *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, the court did not adjudge expressly or by inference that it was not unlawful for the Southern Pacific Company to hold the stock of the Central Pacific Railway Company. The court made no decision on this question; indispensable parties for such a decision were absent; and the effect of a decision in such a case is limited to what was actually decided.

The United States is not estopped by any inconsistent position taken in the *Union Pacific Case*, nor barred by absence of complaint of this restraint of trade in the *Union Pacific Case*.

The petition is not barred by laches. There has been no unreasonable delay or laches in bringing the suit at bar. Laches by a sovereign is not a defense to a petition to enforce a criminal law.

The lapse of more than five years since the formation of this combination is not a bar. This is not an indictment, information, suit, or prosecution for penalty or forfeiture. The occurrence of an offense more than five years ago does not bar a proceeding to prevent the continuance of it hereafter.

Mr. Garrett W. McEnerney and *Mr. Joseph P. Blair*, with whom *Mr. William F. Herrin* was on the briefs, for appellees.

This case does not involve any combination of competitive units, or any combination at all; for the Southern Pacific and Central Pacific lines were projected and built and have been operated since their origin as one property.

At the time of the passage of the Sherman Act, the Southern Pacific and Central Pacific lines were owned by a single proprietor, although the Central Pacific lines were held under a ninety-nine year lease made February

17, 1885, instead of in fee; but "it is obvious that in principle the right of a lessee is the same as that of a purchaser in fee." *Waskey* v. *Chambers*, 224 U. S. 565.

The Act of July 7, 1898, 30 Stat. 652, 659, creating the commission for the settlement of the Central Pacific debt, contemplated as natural, if not inevitable, the agreement subsequently made, and it invested the commission with full authority to agree to the plan which was adopted for the payment of the indebtedness, including the provision by which the Southern Pacific Company acquired the stock of the Central Pacific Company.

In any event, the Government is estopped by its conduct to question the legality of the unified control of the Central Pacific and the Southern Pacific lines.

The present status of the Southern Pacific-Central Pacific lines was confirmed by the Acts of March 3, 1899, 30 Stat. 1245, and March 3, 1901, 31 Stat. 1023.

It is established by the opinion and decree in *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, that, up to the time of the Union Pacific merger in 1901, "sharp, well-defined and vigorous" competition existed between the Ogden and El Paso routes, notwithstanding the ownership of the Central Pacific by the Southern Pacific; and it is here in proof that the competitive conditions of 1901 and before were restored after the unmerger in 1913.

It is thus apparent that we may draw upon the three departments of the Government of the United States for support in our position that the Southern Pacific may and does lawfully control and operate the Central Pacific and that no violation of the Anti-Trust Act is involved in such control and operation.

Irrespective of the considerations already dealt with, and considering the matter as an open question, traffic conditions between the El Paso and Ogden routes are such that the control of the Central Pacific line by the Southern Pacific Company does not constitute an undue restraint of commerce.

The Government, by reason of the position taken and claims urged by it in the *Union Pacific Case*, is estopped from questioning the validity of the ownership and control of the Central Pacific Railway Company by the Southern Pacific Company.

The final decree in *United States* v. *Union Pacific R. R. Co.*, is a bar to all relief sought by the Government in this case.

No violation of the Pacific Railroad Laws is presented in this case.

The construction which the Government attempts to put upon the Pacific Railroad Laws is inconsistent with the position which has always been taken by the three departments of the Government concerning the control of the Central Pacific by the Southern Pacific.

Even though a violation of the Pacific Railroad Laws were proved in the case, the remedy would not be dismemberment, but would be injunction of restraint or command to comply with the provisions of the acts.

There is no evidence whatever of any attempts at monopoly or monopolistic practices.

It is impossible to dismember the Southern Pacific-Central Pacific System without substantial deterioration in the public service.

It is not necessary here to consider whether properties which had been operated together as one from their origin continuously down to July 2, 1890, under, say, tenures at will, could or could not thereafter be legally unified by purchase, lease, etc., because, at the time of the passage of the Anti-Trust Act, the properties here involved were owned by a single proprietor, although the tenure under which a part of the properties was owned was a ninety-nine year term and not a fee.

Considering that these lines were operated as one from their origin, and that, on July 2, 1890, the Central Pacific lines were held under a ninety-nine year term expiring

April 1, 1984, it is clear that the lease of December 7, 1893, which cut down the term three months, viz: to January 1, 1984, is entirely lawful.

If the lease of December 7, 1893, were invalid as one executed after the passage of the Anti-Trust Act, the Southern Pacific Company would nevertheless be treated at law and in equity as the holder of the ninety-nine year term which it acquired under the lease of February 17, 1885, notwithstanding the provision of cancelation contained in the lease of December 7, 1893.

The Anti-Trust Act did not make unlawful the operation by a single proprietor of lines owned by him at the date of the passage of the act which were not then competitive but which could be made competitive if divorced.

The argument for the Government in this case overlooks the value and importance to the Government of the guaranty of the bonds by the Southern Pacific Company in 1899.

Both sides seem to be agreed, although for different reasons, that the Government cannot be said to have been an accomplice in the violation of its own laws: the appellees contending that no laws were violated, and counsel for the Government asserting either that: the Government did not know the facts; or was unconscious of the law; or, in final analysis, had no power through its own officers to violate its own laws.

The argument that the ninety-nine year lease of the Central Pacific lines to the Southern Pacific Company, dated February 17, 1885, was or is invalid, is without merit.

This case does not come within any rule or supposed rule dealing with the prevention of competition coming into existence.

The purely theoretical nature of the present suit is shown by the complete absence of complaint on the part of shippers or the public generally.

In its last analysis, the relief here sought is experimental and not judicial in its nature. The Government does not seek the destruction of a new and unlawfully created condition which took the place of an old and natural one; it seeks the destruction of an old and natural condition in order that it may create by a new and untried experiment a condition which has no prototype.

The price paid in 1899 by the Southern Pacific Company for Central Pacific shares was not excessive.

Neither the Northern Division of the Southern Pacific Railroad nor its Coast Line opened in 1901 bears upon the issues here involved.

In considering the estoppels against the Government arising out of the settlement of 1899, it is of no consequence whether the provisions thereof which were designed to protect the Government were in the first instance suggested by Mr. Speyer or by the Government itself.

The powers of the Commission under the Act of July 7, 1898, were limited in those particulars only which are expressed in the act. In respect of matters not so limited the commission had what the act gave it, "full power" in the matter.

Because of the thirty years' de facto unification of the properties, this case is in a class apart.

Testimony contained in the report of the Pacific Railroad Commission is not competent evidence of facts therein narrated.

Mr. Perry D. Trafford and *Mr. James Gore King* filed a brief on behalf of the Union (now Central Union) Trust Company of New York, appellee.

MR. JUSTICE DAY delivered the opinion of the court.

The United States on February 11, 1914, filed its bill in the District Court of the United States for the District of

Utah against the Southern Pacific Company, the Central Pacific Railway Company, the Union Trust Company of New York, and the directors and officials of the Southern Pacific Company. The charge of the petition is that the defendants restrain or attempt to monopolize, and do monopolize trade and commerce in violation of the Act of July 2, 1890, c. 647, 26 Stat. 209, known as the Sherman Act, and have also violated the provisions of the Act of Congress of July 1, 1862, c. 120, 12 Stat. 489. The prayer of the petition is that the lines of the Southern Pacific Company and those of the Central Pacific Railway Company be decreed to constitute competitive systems, and that the ownership acquired by the Southern Pacific Company of all or a controlling interest in the capital stock of the Central Pacific Railway Company, and its lease, control and operation of the lines thereof be declared violative of the Sherman Act; and that the Southern Pacific Company be required to dispose of such capital stock, and cancel and relinquish its lease, control, management and operation thereof; and that the control of the Central Pacific Railway Company by the Southern Pacific be decreed to be in violation of the Act of Congress of July 1, 1862, entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" and also violative of the act, supplemental to the Act of 1862, the Act of July 2, 1864, c. 216, 13 Stat. 356, and the Act of June 20, 1874, c. 331, 18 Stat. 111, the Government maintaining that the effect of such acts is to require the Central Pacific to maintain physical connection with the Union Pacific to make a through line to the coast, and to furnish equal advantages and facilities as to rates, time, and transportation over such through line.

An answer was filed by the defendants, much testimony was taken, and a decree was entered dismissing the peti-

tion, one of the three Circuit Judges who heard the case dissenting. 239 Fed. 998.

The Central Pacific Railroad Company of California was incorporated under the laws of California in 1861 for the purposes of constructing a railroad from Sacramento to the eastern boundary of California. In 1862 and 1864 Congress by proper legislation incorporated the Union Pacific Railroad Company to build from the Missouri River westward, and authorized the Central Pacific to build eastwardly from the Pacific Coast, at or near San Francisco, to a common meeting-point with the Union Pacific. These acts of Congress authorized the issue of first mortgage bonds, and also second mortgage bonds, and made a land grant of public lands for each linear mile of railroad construction. These acts provided that these two railroads should be operated as one continuous line, and that neither should discriminate in favor of or against the other. Leland Stanford, Charles Crocker, C. P. Huntington and Mark Hopkins acquired a large part of the capital stock of the Central Pacific Company. The Central Pacific assigned to the Western Pacific a portion of the construction, namely, that from Sacramento to San Jose, this with the approval of Congress. C. 88, § 2, 13 Stat. 504.

The Pacific Railroads were constructed from 1864 to 1869 from the Missouri River to the Pacific Coast; from Omaha to Ogden by the Union Pacific; from Ogden to Sacramento by the Central Pacific; from Sacramento to San Jose by the Western Pacific, afterwards consolidated with the Central Pacific. These are denominated in the defendants' brief as the "bond-aided lines." What they call the non-bond-aided lines of the Central Pacific system are those from Niles to Oakland, from Lathrop to Goshen, and from Roseville to Redding, which were constructed in the State of California from the years 1869 to 1872. In 1870 the Central Pacific absorbed in consolida-

tion the Western Pacific, which built from Sacramento to San Jose; the Alameda Company which built from Niles to Oakland; the San Joaquin, which built from Lathrop to Goshen; and the California and Oregon Company which built from Roseville north en route to the Oregon line.

The Southern Pacific Railroad Company was incorporated in 1865 under the laws of California for the purpose of constructing a railroad from San Francisco Bay by the way of San Diego to the eastern boundary of California. In 1866 Congress passed an act to incorporate the Atlantic & Pacific Railroad Company to construct a railroad near the 35th parallel of latitude from Springfield, Missouri, to the Pacific Ocean. This act authorized the Southern Pacific to connect with the Atlantic & Pacific near the eastern boundary of California, and both companies were granted public lands. In 1867 the Southern Pacific changed its route to the eastward so as not to go as far south as originally contemplated; this act was ratified by Congress and the legislature of California in 1870.

In 1871 Congress incorporated the Texas Pacific Railroad Company to build a line of railroad near the 32d parallel of latitude from Marshall, Texas, by the way of El Paso to the Pacific Ocean at San Diego, and to connect on the east with other railroads, and on the west with the Southern Pacific Railroad. The Southern Pacific was authorized to construct a railroad from Tehachapi Pass to a junction of the Texas Pacific Railroad at the eastern boundary of California. Land grants were made to both companies. In 1872 the Central Pacific had extended its lines to Goshen.

About 1870 the promoters of the Central Pacific obtained control of the Southern Pacific, and subsequently the latter was constructed from Goshen through Tehachapi Pass, with one fork to a junction with the Atlantic & Pacific at The Needles (near 35th parallel) on the Colorado River at the eastern boundary of the State, and the

other fork to the southeastern corner of the State (near 32d parallel), thence across Arizona and New Mexico to a junction in Texas with the Texas & Pacific, thence to a connection at El Paso with the Galveston, Harrisburg & San Antonio Railroad. The sections of the Southern line were leased for a series of years to the Central. In 1881 the Southern Pacific made a junction with the Atchison, Topeka & Santa Fe at Demming, New Mexico. In 1882 the Southern made a junction with the Texas & Pacific at Sierra Blanca, Texas. In 1883 the direct line of the Southern connection with the Galveston, Harrisburg & San Antonio and its eastern connections was completed through to New Orleans. The same year it made its junction with the Atlantic & Pacific at The Needles.

The section from Mojave to Needles was leased to the Santa Fe in 1883, and sold to it in 1911. From 1883 to 1885 the Central Pacific was the lessee owner of a system of leases, and the system was known as the "Central Pacific Railroad and Leased Lines." In February, 1885, after the formation of the Southern Pacific Company (of Kentucky) that road became the lessee. We shall have occasion to deal more particularly with that lease later.

Without familiarity with the geography of the region described and the location of the points named, this description means little. The outstanding facts, and those essential to be considered in the view which we take of this branch of the case, are: The Central Pacific Railroad extends from the Bay of San Francisco to Ogden, Utah, with a branch extending north from Roseville in central California to the northern boundary of California; and to Kirk in Oregon; and a branch extending south from Lathrop in central California to Goshen, California; and a branch extending south from Hazen in Nevada to Mojave in California; and a branch from Fernley in Nevada to Susanville, California; and a short line in Oregon from Oakridge to Natron. At Ogden, the Central Pacific con-

nects with the Union Pacific, extending to Omaha, Nebraska, and to Kansas City, Missouri; connecting at Ogden with the Denver & Rio Grande Railroad, and with other connecting roads eastwardly to the Missouri River; and from the Missouri River to the central and eastern parts of the United States.

The Southern Pacific system extends from San Francisco Bay by way of El Paso to Galveston, Texas, and to New Orleans, there connecting with steamship lines to New York City controlled by the Southern Pacific. At El Paso it connects with the Rock Island which runs to Omaha and Chicago; at New Orleans, it connects with roads extending to points in the central and eastern parts of the United States. It owns branches in Texas, Arizona, New Mexico, Oregon and many in California.

The Central Pacific with its eastern connection at Ogden forms one great system of transportation between the east and the west, and the Southern Pacific with its roads and connections, and steamboat lines, forms another great transcontinental system for transportation from coast to coast. The Central Pacific constitutes some 800 miles of the transcontinental line of which it is a part. The Southern Pacific system has practically its own line of railroads and steamboat connections to New York via Galveston and New Orleans.

Under principles settled in the *Union Pacific Case*, 226 U. S. 61, 86, the acquisition by the Southern Pacific Company of the stock of the Central Pacific Railway Company in 1899, unless justified by the special circumstances relied upon, to be hereinafter considered, constituted a combination in restraint of trade because it fetters the free and normal flow of competition in interstate traffic and tends to monopolization. In the *Union Pacific Case* this court held that the acquisition by the Union Pacific, which constituted about 1,000 miles of the transcontinental system, to which we have referred, of enough stock in the Southern

Pacific to dominate and control it, was violative of the Sherman Act. This case differs from that not at all in principle. These two great systems are normally competitive for the carrying trade in some parts from the east and middle west to the coast, and for the traffic moving to and from central and northern California, including a great volume of ocean-borne traffic which lands on the coast destined across the continent to the Atlantic Seaboard and intermediate western and eastern points, or is destined from the latter points to foreign ports via San Francisco or other Pacific Coast points.

Counsel for the defendants, evidently realizing this situation, make elaborate argument to distinguish the *Union Pacific Case*. The claim is made that the decision there rested only on the fact that a then existing competition was restrained through the purchase by the Union Pacific of the control of the Southern Pacific in 1901; but the principle of that decision and of the previous cases upon which it rested was broader than the mere effect upon existing competition between the two systems.

Such combinations, not the result of normal and natural growth and development, but springing from the formation of holding companies, or stock purchases, resulting in the unified control of different roads or systems, naturally competitive, constitute "a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected." *Northern Securities Co.* v. *United States*, 193 U. S. 197, 327. This principle was restated and applied in *United States* v. *Union Pacific R. R. Co., supra;* it was reiterated and approved by the court as recently as the October Term, 1919, *United States* v. *Reading Co.*, 253 U. S. 26, 57, 58, 59.

These cases, collectively, establish that one system of railroad transportation cannot acquire another, nor a substantial and vital part thereof, when the effect of such

acquisition is to suppress or materially reduce the free and normal flow of competition in the channels of interstate trade.

In the instant case we are not dealing with the principle in the abstract. The proof is ample that the policy of the Southern Pacific system has been to favor transportation on its line by securing for itself, whenever practicable, the carriage of freight which would normally move eastward or westward over the shorter line of the Central Pacific Railroad and its connections, for its own much longer and wholly owned southern route. This course was limited by an arbitrary rule during the time the Union Pacific dominated the Southern Pacific from the stock purchase in 1901 until the so-called "unmerger" in 1913, as a result of the decision of this court in the *Union Pacific Case.* The compelling motive of this course of conduct is obvious. The Southern Pacific owns and controls the southerly route, and receives 100% of the compensation for freight transported by its road and water lines. Over the Central Pacific route it receives but a fraction of the freight because the Union Pacific with its eastern connections takes up the carrying from Ogden to the east. Self-interest dictates the solicitation and procurement of freight for the longer haul by the Southern Pacific lines. While many practices, formerly in vogue, are eliminated by the legislation of Congress regulating interstate commerce, and through rates and transportation may be had under public supervision, there are elements of competition in the granting of special facilities, the prompt carrying and delivery of freight, the ready and agreeable adjustment and settlement of claims, and other elements which that legislation does not control.

It is conceded in the brief of counsel for the defendants that "it is true of all such systems that, other things being equal, freight is preferentially solicited for the 100% haul."

We reach the conclusion that the stock ownership in the Central Pacific acquired by the Southern Pacific is violative of the Sherman Act within the principles settled by this court, certainly since the decision in the *Northern Securities Case*, in 1904; and that such stock ownership must be divested from the Southern Pacific Company unless the special circumstances and defenses set up and relied upon by the defendants are to prevail.

In the opinion of the majority of the judges sitting in the District Court it was set forth that these companies, the Southern Pacific and the Central Pacific, constituted practically a single system of railroads. This was held to be particularly true of so much of the systems as are in California and Oregon. It was said that the roads of the Central Pacific System appear on the map as natural links and parts of the Southern Pacific System, and that the spurs, branches and tributary feeders of the Central Pacific belong to the Southern Pacific. It was maintained that the construction and control of these systems had substantially united them before the acts complained of which are alleged to be violative of the Sherman Act. True, the Central Pacific was incorporated by, and for a portion of the time under consideration its stock was owned by, Messrs. Stanford, Hopkins, Huntington and Crocker. Perhaps as early as 1870 the same group gained control of and continued to dominate the policy of the Southern Pacific. The roads were always separate and distinct corporations; they were so recognized in the acts of Congress making land grants to them, authorizing their construction and operation from one State or Territory to another, and otherwise conferring rights on them which only Congress could confer. For a good part of the time the roads had boards of directors not consisting of the same persons. At times the majority of the stock was separately held. In the Central Pacific when the lease of 1885 to the Southern Pacific was made only one-fourth

of the stock was held by the group to which we have referred. It had been sold and was widely owned in the United States and Europe. The dominating control was maintained from the fact that the stock had not been transferred by its true owners on the company's books, and much of it was held in the name of employees who were used in voting it by the original promoters, their successors and survivors.

We cannot accept the theory of prior practical consolidation as a justification for a violation of the Sherman Act resulting from the stock control acquired in 1899.

Much stress is placed on the lease in February, 1885, of the Central Pacific to the Southern Pacific for a term of 99 years. In 1884 the Southern Pacific, a holding company, was organized as a corporation of the State of Kentucky. The organization of this company which acquired the stocks of the Southern Pacific System, and became the lessee of the Central Pacific, was the result of a meeting in New York of Messrs. Stanford, Huntington, Crocker, and Timothy Hopkins, the successor of Mark Hopkins. The plan was then discussed, and the necessary measures directed to carry it into execution.

The lease of 1885 is set up in the answer and relied upon as showing an existing legal acquisition before the transfer of the Central Pacific stock in 1899. This lease made February 17, 1885, was modified in January, 1888, and on December 7, 1893, a lease was entered into which recited that the agreements of lease between the same parties, the Southern Pacific and the Central Pacific, dated February 17, 1885, and January 1, 1888, respectively, should be canceled except in so far as they relate to the operation of the demised premises prior to January 1, 1894, and to the adjustment of accounts in respect to such operation.

It is contended by the Government that this lease in itself constituted a combination in restraint of interstate

commerce. However this may be, this court has repeatedly recognized the fact that the Central Pacific was a corporation receiving much of its authority and power from acts of Congress. *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1. In *Central Pacific R. R. Co.* v. *California*, 162 U. S. 91, it was held by this court that on the return for taxation by the Central Pacific Railroad Company of the value of its franchise and roadway, roadbed and rails within the State of California, the same might be taxed under the laws of that State. This conclusion was reached against the elaborately stated and strongly expressed dissents of Mr. Justice Field and Mr. Justice Harlan. In the prevailing opinion, delivered by Mr. Chief Justice Fuller, it was recognized (p. 123) that important franchises conferred upon the Central Pacific were of federal creation, including that of constructing a railroad from the Pacific Ocean to Ogden in the then Territory of Utah.

It is true, as is argued at length by counsel for the defendants, that Congress had opportunity by the reports of its committees, and otherwise, to learn of this lease; but we are referred to no legislation passed by Congress authorizing or approving of it. In our view the lease for 99 years by the Central Pacific to a rival and competitive company could not legally be made without authorization by federal legislation. In the absence of such action the Central Pacific had not the corporate capacity to make the lease. *Pennsylvania R. R. Co.* v. *St. Louis, Alton & Terre Haute R. R. Co.*, 118 U. S. 290; *Central Transportation Co.* v. *Pullman's Palace Car Co.*, 139 U. S. 24. Moreover, it is authoritatively settled by decisions of this court that no previous contracts or combinations can prevent the application of the Sherman Act to compel the discontinuation of illegal combinations. After Congress exercises its authority to regulate interstate commerce conduct becomes illegal which has the effect of contracts,

conspiracies, or combinations to restrain the freedom of interstate trade, or to monopolize the same in whole or in part. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 228. The principle has often been declared and applied in this court. It is stated and the previous cases reviewed in *Philadelphia, Baltimore & Washington R. R. Co.* v. *Schubert*, 224 U. S. 603, 613, 614.

We find nothing in these leases to the Southern Pacific Company which justifies the continued control of the Central Pacific by the Southern Pacific after the Sherman Act became effective.

We come now to the settlement of the Central Pacific debt, in 1899, which the court below held to be a practical construction of the Sherman Act, and to warrant the conclusion that the Southern Pacific control of the Central Pacific was not within its condemnation. After hearings and reports, and attempted legislation, Congress passed the act to create a commission to settle the indebtedness of the Central Pacific and Western Pacific Railroads to the United States. This act was passed July 7, 1898, c. 571, 30 Stat. 659, and constituted the Secretary of the Treasury, the Secretary of the Interior and the Attorney General a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of construction of the Central Pacific and Western Pacific bond-aided roads, upon such terms and in such a manner as might be agreed upon between them and the owners of said roads. The act also provided that the settlement should not be binding until approved by the President of the United States; that the commission should not agree to accept a less sum than the full amount of principal and interest and all amounts necessary to reimburse the United States for moneys paid, for interest, or otherwise. It provided that the rate of interest upon instalments should be not less than 3% per annum, pay-

able semi-annually, with such security as the commission might deem expedient; that the final discharge of the indebtedness should not be postponed beyond ten years; that the whole amount, principal and interest, should be paid in equal semi-annual instalments within that period; that any settlement made should provide that if a default were made in the payment of either principal or interest, the whole sum and all instalments should immediately become due and payable; and that unless the settlement authorized should be perfected within one year the President of the United States should at once proceed to foreclose all liens held by the United States against the railroad companies to collect the indebtedness sought to be settled under the act, and that nothing therein contained should be held to waive or release any right, lien or cause of action held by the United States.

Under this act a settlement was effected as of date February 1, 1899. The Central Pacific's debt to the United States for government aid in the construction of lines between Sacramento and Ogden, and Sacramento and San Jose, amounted to $58,812,715.48; one-half of this amount was accrued interest. It was secured by a statutory lien on the bond-aided lines, subject to prior first mortgages. The Central Pacific's bonded debt amounted to $57,471,000, largely secured by first mortgages on its various lines of railroad. The outstanding stock was $67,275,500.

Messrs. Speyer & Company, New York bankers, undertook to formulate the plan, and the agreement of settlement was signed by the commissioners in behalf of the United States, the Central Pacific Railroad Company and Messrs. Speyer & Company. It was approved by the President. By the agreement of settlement the Central Pacific was to execute to the United States twenty promissory notes dated February 1, 1899, payable respectively on or before each six months for ten years, each note for

the sum of $2,940,635.78, being one-twentieth of the debt, bearing interest at 3%, payable semi-annually, all to mature on default in payment of any one of them. Under the agreement gold bonds not exceeding $100,000,000 were to be issued, secured by first mortgage on all the Central Pacific lines, bond-aided, or not, this mortgage to be prior in lien to any lease of the railroads of the Central Pacific Railroad Company. The bonds were secured by the guaranty of the Southern Pacific. No such agreement of guaranty was embodied in the written settlement, but it was known to the commissioners that the plan contemplated such guaranty. Of these bonds $58,820,000 were to be deposited with the Treasurer of the United States as security for the twenty instalment notes. Speyer & Company within one month after the execution and delivery of the notes were to purchase from the United States the four notes first maturing by paying the face thereof for the same, $11,762,543.12 and interest. A proportionate amount of the collateral mortgage bonds was to go with the notes.

On February 15, 1899, the commission reported the agreement to the House of Representatives. No reference to the guaranty of the Southern Pacific upon the bonds appeared in the report. In the annual report of the Attorney General to the Senate and House of November, 1899, the completion of the settlement, which had been made, was set out, and the guaranty of the Southern Pacific was stated, no doubt by inadvertence, to be upon the notes instead of upon the bonds. The notes, held in the Treasury of the United States, were paid primarily by the checks of the Southern Pacific, and charged by that road against the Central Pacific.

On March 3, 1899, c. 427, 30 Stat. 1245, Congress authorized the Secretary of the Treasury to dispose of any notes in his possession touching the indebtedness of the Central Pacific Railroad Company to the United

States. On March 3, 1901, c. 831, 31 Stat. 1023, the Secretary of the Treasury was authorized and directed to settle claims for interest growing out of transportation services for the Government over non-bond-aided lines of the Southern Pacific and the Central Pacific by crediting the amounts on the Central Pacific notes.

Neither the agreement between the commissioners, the Railroad Company and Speyer & Company, nor the report of the commission to Congress contained any reference to the proposed acquisition of the stock of the Central Pacific by the Southern Pacific. The Speyer plan for the adjustment of the affairs of the Central Pacific was dated February 8, 1899, was put out February 20th of the same year, was extensively published in American and European financial circles, and was given publicity in the Commercial and Financial Chronicle in the February, 1899, issues of that journal. Under the terms of the plan the Central Pacific Railway Company, successor to the Central Pacific Railroad Company, was organized as a corporation of the State of Utah on July 29, 1899. The Central Pacific Railroad Company (the old corporation of 1861), conveyed all of its property to the new company. On August 1, 1899, the Central Pacific Railway Company executed a refunding mortgage of $100,000,000 to the Central Trust Company of New York, trustee, and a mortgage of $25,000,000 to the Union Trust Company of New York. The Southern Pacific Company executed instruments subordinating its lease to the lien of these mortgages. Thereupon, carrying out the Speyer plan for the Southern Pacific to acquire the stock of the new Central Pacific Railway Company, $20,000,000 of the preferred shares of the latter company were issued, which were taken by the Southern Pacific at par. The outstanding stock of the old Central Pacific was taken by the Southern Pacific, share for share, plus 25% in the bonds of the Southern Pacific.

To consummate this transaction Southern Pacific mortgage bonds amounting to $36,819,000 were issued,—$20,000,000 thereof were used to acquire the new Central Pacific preferred stock, the balance to provide the 25% in bonds required to aid in the share-for-share exchange of the outstanding Central Pacific stock in the hands of private owners. Thus the Southern Pacific under the Speyer plan was to become the owner of the Central Pacific Railway Company stock.

In the opinion of the District Court it is said:

"We do not say that the commission was authorized to violate or to sanction the violation of the act of Congress, but the adjustment they effected necessarily involved the question of its pertinence to the business in hand. The acceptance of the guaranty of the Southern Pacific was a recognition that it had sufficient corporate interest in the Central Pacific to justify it. Without such interest its accommodation guaranty of $100,000,000 of bonds of another company would manifestly have been *ultra vires*—a gross, indefensible excess of its corporate powers. Again, the acceptance of the guaranty implied a recognition of its possible natural result; that is to say, the enforcement of the rights of a guarantor against the property of a debtor. The addition of the stock ownership by the Southern Pacific to its long leasehold interest did not so change the situation as to make unlawful what was not so before."

We are unable to accept this view. The commission with the approval of the President was authorized to settle the Central Pacific debt in accordance with the terms of the Act of 1898. It did not undertake to exercise authority not conferred upon it by giving immunity from the penalties of the Sherman Act. The Attorney General testified that the act was not mentioned in the course of the discussion. The Southern Pacific Company's guaranty of the new bonds was made, so far as that company

was concerned, from motives of self-interest sufficient in the opinion of those who controlled it to warrant such action. The commissioners, acting for the Government, accepted such guaranty. They did not thereby condone, or intend to condone, any act which had the effect to violate the Sherman Act. Nor could this settlement estop the Government from prosecuting an action under the provisions of the act.

It is insisted that the decree in the *Union Pacific Case* is decisive of this controversy, and amounts to an adjudication against the Government of the issues involved. The conclusive answer to this contention is that the Central Pacific was not a party to that suit up to the final decree in this court. That suit and the present one do not relate to the same subject-matter. The issues and questions, therein decided, are not the ones presented for decision here. *Cromwell* v. *County of Sac*, 94 U. S. 351; *United Shoe Machinery Co.* v. *United States*, 258 U. S. 451.

The defendants contend that the suit is barred by laches on the part of the Government in failing to institute it earlier. Without deciding that this defense is available when an action is brought under an act of Congress embodying, as does the Sherman Act, an expression of public policy enforceable by criminal prosecution and by civil suit instituted by the Attorney General, we are unable to discover that laches exists in the failure to more promptly prosecute the suit. The stock acquisition complained of was in 1899. In 1901 the Union Pacific acquired control of the Southern Pacific by purchase of sufficient stock to accomplish that purpose. The *Union Pacific Case* was begun in 1908, and a final decree reached in 1913, and in 1914 this suit was begun.

Other points are insisted upon in the oral argument and the elaborate briefs of the defendants. We have considered them, but they do not overcome the conclusions here-

inbefore stated which in our view dispose of this cause, and require a reversal of the decree of the District Court.

We do not find it necessary to pass upon the Government's contention that the leases to the Southern Pacific and the acquisition by it of Central Pacific stock were in and of themselves violative of the Pacific Railroad Acts of Congress of 1862 and subsequent supplemental legislation.

We direct that a decree be entered severing the control by the Southern Pacific of the Central Pacific by stock ownership or by lease. But, in accomplishing this purpose, so far as compatible therewith, the mortgage lien asserted in the brief filed for the Central Union Trust Company shall be protected.

In addition, the several terminal lines and cut-offs leading to San Francisco Bay which have been constructed or acquired during the unified control of the two systems for the purpose of affording direct or convenient access to the Bay and to the principal terminal facilities about the Bay should be dealt with, either by way of apportionment or by provisions for joint or common use, in such manner as will secure to both companies such full, convenient and ready access to the Bay and to terminal facilities thereon that each company will be able freely to compete with the other, to serve the public efficiently, and to accomplish the purpose of the legislation under which it was constructed. And a like course should be pursued in dealing with the lines extending from San Francisco Bay to Sacramento and to Portland, Oregon.

To the end that an appropriate decree may be framed, the District Court may and should bring in additional parties whenever that may become advisable in executing our directions.

Reversed and remanded accordingly.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BRANDEIS took no part in the consideration or decision of this case.

MR. JUSTICE McKENNA, dissenting.

I am unable to concur in the opinion and judgment of the court. To this I feel constrained because I think it is unjust for the Government to enforce a dissolution of the relation existing between the Central Pacific Railway Company and the Southern Pacific Company. I put my action on that ground alone though much can be said on the other grounds urged by the Government and contested by the appellee companies.

Prior to this relation another existed between the two companies or systems (they may be said to have had that pretension and extent) constituted by a lease for 99 years, executed in 1885 by the Central Pacific Railroad Company to the Southern Pacific, giving to the latter the dominion of a proprietor. *Waskey* v. *Chambers*, 224 U. S. 564, 565.

The Central Pacific Railroad Company was a bond-aided road and on account of it was under obligation to repay the Government the aid it had received, and Congress by an Act passed July 7, 1898, 30 Stat. 659, created a commission with power to settle the indebtedness. An agreement of settlement was made in which the Southern Pacific was a participant and by it assured the payment of the securities provided for in the agreement of settlement between the Central Pacific Railroad Company and the Government.

This participation was contemplated in the scheme submitted by Speyer & Company to the commission,[1] and

[1] James Speyer of the firm of Speyer & Company being on the witness stand, the following is part of his testimony:

"Q. Please state whether the Central Pacific could have complied with the conditions imposed by that act of Congress [Act of 1898] without a financial readjustment of their affairs of the kind contained in the readjustment which you arranged for?"

The question was objected to, but the witness answered.

"The Witness. Without some kind of readjustment they could not have complied. I am not prepared to say that the adjustment we

the present relation of the company is the outcome of the settlement, and it may be said, is the substitute of the

---

made was the only kind; but some kind of adjustment seemed absolutely necessary."

By Mr. Blair:

"Q. And you made a plan of readjustment?

A. We did.

Q. I put before you, for convenience of reference, the plan of readjustment which was used when Mr. Ruhlender was testifying. You recognize that as the plan of readjustment which was arranged for?

A. I do.

Q. Mr. Speyer, when you started to work upon that plan of readjustment did you expect and count upon the intervention and aid of the Southern Pacific Company?

A. I knew I could not carry it through without the help of the Southern Pacific; or some other railroad company, in case the Southern Pacific had not come to assist.

Q. Did you ever contemplate or work upon any plan which did not involve the intervention and aid of the Southern Pacific Company?

A. I did not.

Q. And that plan could not have been carried through without the intervention and aid of the Southern Pacific Company?"

The question was objected to.

"Q. Mr. Speyer, considering the terms required by the act of Congress, namely, the requirement that the entire debt of fifty-eight million eight hundred thousand dollars, in round numbers, would have to be paid in ten years, in twenty semiannual installments, would any one at all familiar with the Central Pacific affairs know that the Central Pacific, with its own resources and credit, could not comply with those conditions?

A. He would.

Q. It would be obvious to anyone at all familiar with the affairs of the Central Pacific that it could not with its own resources and credit comply with the terms of that act?

A. Yes, sir.

Q. In making the agreement which you participated in with the United States, what did you count upon to enable you to carry out the agreement with the United States?

A. The cooperation of the security holders of the Central Pacific and of the Southern Pacific Company."

rights and control the Southern Pacific, as lessee, had of the Central Pacific Railroad Company.

Was it a justifiable substitute? The answer should be in the affirmative. When the Act of 1898 was passed the situation was serious, the problem complex, and because the problem was complex three Cabinet officers were selected to solve it. These were the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General. Their prominence in the Government, their official concern with the subject-matter assured fidelity in the execution of the trust and repel charge or intimation that they were, or could be, actuated by anything other than a strict consideration of duty and the exercise of their trust. And their ability assured judgment in the selection of means. The problem, it is to be remembered, was something more than to ascertain the amount of the debt. It involved, it might be, foreclosure of the Government's liens and, it might also be, government ownership and all that that meant.

The debt was known to be $58,812,715.48. It was secured by a mortgage on the lines of the Central Pacific Railroad Company, it is true, but the mortgage was subordinate to other mortgages for about the same amount. It was to be rescued from this subordination, and given independence and certain solvency. The power given to the commissioners was necessary to and commensurate with the purpose. The power was "to settle the indebtedness" "*upon such terms and in such manner as*" might "*be agreed upon*", and to take "*such security as*" might "*seem expedient*". The only limitation was that the payment was not to be extended more than ten years.

Necessarily, therefore, there was power to view the situation and judge of it, its legal and practical aspects, and what was possible in law and fact in the interest of all concerned to be done, and it may be presumed that the commission found that there was nothing exigent in the

situation or that demanded the separation of the Southern Pacific from the Central Pacific, and that the guarantee of the former could be accepted, and all that would follow from it. And it is to be remembered that the action of the commission received the sanction of the President, and was reported to Congress. If either had objected, the settlement as planned could not have been accomplished, and both would have objected if they had discerned anything sinister or inimical to law in it or that would result from it.

It is said, however, that there was no affirmative approval by Congress, and that its approval cannot be assumed from nonaction.

The Government makes much of this, ignoring all else, and ventures, in a kind of desperation, against the circumstances, the incredible assertion that Congress was ignorant of the guarantee of the Southern Pacific and its contributing efficiency. And this against an irresistible presumption to the contrary and in defiance of the fact that the Attorney General reported to Congress the terms of settlement and that the notes taken in settlement were guaranteed by the Southern Pacific; and in defiance of the further fact that the bonds that it was provided were to be deposited as security for the notes with the Secretary of the Treasury, had endorsed upon them the guarantee of the Southern Pacific and that the financial and commercial journals of the country, addressing the business world—the world that was to accept the notes which Congress authorized the Secretary to sell—explained the settlement and the relation of the Southern Pacific to it, and the assurance of safety and value the guarantee of the Southern Pacific gave.

I need not dwell on the contention of the Government; the court has not been impressed by it. The court's view is, rejecting that of the District Court, that there was no acceptance by the commission of the Southern Pacific's

guarantee which carried obligation, and that the guarantee was the prompting of interest on the part of the Southern Pacific. I concede the latter. The enterprise that is necessary, and is exhibited in the conduct of great railroad systems, whose traffic is concerned with a continent, is not induced by the altruistic—it is, and naturally must be, prompted by interest, but it, as other transactions of the business world, is entitled to legal sanction and remedy.

The court asserts an interest in the Southern Pacific that urged its guarantee but does not explain the interest. It is of pertinent concern to consider what it was. It manifestly was no other than the relation of the company to the Central Pacific Railway Company through stock ownership. The company would necessarily have no concern or interest in the Central Pacific (the new company) or the payment of the old company's debts to the Government, if it was to be separated from the Central Pacific and declared a competitor and a business antagonist; and this must have been apparent to everyone connected with the transactions if they gave any reflection to them—anything but a haphazard and reckless attention, inconsiderate of practical and legal consequences. This cannot be assumed and the contrary must be, that is, that the guarantee of the Southern Pacific was accepted as necessary to the settlement of the debt.

I repeat, and summarize, that the situation was of great concern to the Government. Its solution was the consummation desired, and through the aid of the Southern Pacific. The company's guarantee was assurance to the business world that behind the notes and bonds of the Central Pacific were the great properties of the Southern Pacific and the competency of its management. And the company made sacrifices in addition to the guarantee and they, and it, were accepted by the Government, and therefore, the benefit that the company expected cannot be denied it.

There was no thought in anyone's mind that the acquisition of stock by the Southern Pacific in the Central Pacific would be a restraint upon competition, or a detriment to the public interest. The attitude of those concerned in the transaction can be accurately realized by the reflection that the interest—control, if it may be so called—that the Southern Pacific acquired in or over the new company (the Railway Company) was not greater nor more offensive to law than it had in or over the old company (the Railroad Company). The latter control existed from the enactment of the law until it was superseded by the agreement, a period of eight years. And there was no revulsion against or condemnation of the control—not by the Government, whose duty it was to proceed against it if it violated the Anti-Trust Law; not by any business interest, though for such interest the law was enacted as a protection. This suit was not brought until 1914, fifteen years after the agreement, not, however, by the government of the agreement but by the government of a much later time.

I think, therefore, that the decree of the District Court should be affirmed.